



## Increased Activity By Federal Agencies

### Key Issues In 2012

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## ***Agency Activity – DOL and SOX***

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- Whistleblower cases are on the rise
- Federal courts are increasingly willing to grant summary judgment on SOX whistleblower claims
- The ARB continues to take broad approach to interpreting the scope of protected activity
- Employers will face greater challenges in seeking dismissals before the DOL



## ***Agency Activity – EEOC and Age and Disability Discrimination***

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- The EEOC issued expansive regulations under the Americans With Disabilities Amendment Act (ADAAA), which had already broadened the definition of "disability."
- The EEOC published rules to prevent employers from winning summary judgment in age discrimination disparate impact cases where the reasonable factor other than age ("RFOA") defense has been raised



## ***Agency Activity – Background Checks***

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- Efforts to pass legislation to protect employment applicants
  - ▶ FCRA litigation
  - ▶ EEOC activity, as evidenced by its October 2011 hearing, “Employer Use of Credit History as a Screening Tool”



## ***Agency Activity - OSHA***

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- OSHA has instructed its local Area Offices to make greater use of "Repeat" and "Willful" citations
- OSHA continues to target large corporations and use public relations activity
- OSHA is targeting "severe violators" who have serious injuries caused by violations that are "Repeat" or "Willful"
- OSHA is targeting employers in high hazard industries (e.g. dust, silica, falls, PSM)



## ***Agency Activity - OFCCP***

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- New proposed affirmative action regulations for individuals with disabilities
- Veterans and disabled individuals regulations in process



## Looking Ahead to 2012

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Class Action Arbitration Waivers

New EEOC guidance and more litigation on credit checks

More ADA charges and litigation

EEOC focus on leave and attendance issues

Increased EEOC focus on systemic cases

Effort to amend Title VII by adding unemployed as protected class