



By Christina Harris Schwinn

2009 brings with it a new presidential administration and a Congress in Washington, D.C., which is dominated by democrats. Since democrats took control of the House and the Senate, a number of employee-friendly pieces of legislation have been filed that will, if passed and signed into law, significantly expand employee rights and modify statutes such as the National Labor Relations Act ("NLRA") and the federal Civil Rights Act.

On January 29, 2009, President Obama signed into law, the Lily Ledbetter Fair Pay Act of 2009 ("Fair Pay Act") which amends Title VII of the Civil Rights Act ("Title VII"), the Age Discrimination and Employment Act of 1967 ("ADEA"), the Americans with Disabilities Act of 1990 ("ADA") and the Rehabilitation Act of 1973 ("RA"). The Fair Pay Act provides that an unlawful, discriminatory employment practice occurs when: (1) a discriminatory compensation decision or other practice is adopted, (2) an individual becomes subject to the decision or practice, or (3) an individual is affected by the application of the decision or practice, including each time compensation is paid. Among other things, the Fair Pay Act would provide the additional remedy of back pay to the aggrieved individual for up to two (2) years and extends the time frame for the filing of a pay discrimination lawsuit.

On January 9, 2009, the Paycheck Fairness Act ("Fairness Act") passed in the House of Representatives. The Fairness Act would amend the Fair Labor Standards Act ("FLSA"). The FLSA is the federal law governing minimum wage and overtime compensation. If the Fairness Act passes, wage rate differentials between men and women would be limited to bonified factors such as education, training or experience. Introduction of the Fairness Act and its passage in the House of Representatives is a direct result of the number of studies that have been conducted and reported over the years that still show that women, on average, make less than men and, depending on what segment or sector of the economy is being examined, that difference can range

anywhere from 25 to 35 percent depending upon the report or study. Available remedies under the Fairness Act include compensatory and punitive damages.

It is likely that another bill originally introduced during the 2007 legislative session referred to as the Employee Free Choice Act ("Free Choice Act") will be reintroduced in this 2009 legislative year. The message from Washington is that the Free Choice Act will pass. It will amend the NLRA. Currently under the NLRA, if a majority of employees present a signed petition to form a union, the National Labor Relations Board ("NLRB") conducts and holds an election to certify the union. The Free Choice Act will eliminate the election process and provides that, upon presentation of a petition by a majority of the employees that would make up the collective bargaining unit to the NLRB, the NLRB would be required to certify the petition and order the parties to bargain, which is a major change. The Free Choice Act would further amend the NLRA to expand the remedies available to an aggrieved employee under the NLRA to include back pay and would also impose the potential for significant penalties against an employer who violates an employee's rights under the NLRA.

Whether the other two pieces of legislation discussed in this article will become law remains to be seen. It is important to note, however, the Fair Pay Act became law on January 29, 2009 and the Fairness Act has already passed the House of Representative and has been sent to the Senate. It is anticipated by many that the Fairness Act and the Free Choice Act will become law some time this year.

A note to the reader: This article was submitted to BIA on January 30, 2009 and will likely be published in March 2009. This article is intended to provide general information and is not intended to be a substitute for competent legal advice.

Questions regarding the content of this column or past columns may be e-mailed to Christina Harris Schwinn at christinaschwinn@paveselaw.com. To view past columns written by Ms. Schwinn please visit the firm's website at www.paveselaw.com. Ms. Schwinn is an experienced employment law attorney with the Pavesel Law Firm, 1833 Hendry Street, Fort Myers, FL 33901; Telephone: (239) 336-6228; Telecopier: (239) 332-2243.

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Stimulus Provisions to Help Put Housing on the Right Track

The \$787 billion economic stimulus package signed into law on Feb. 17 by President Barack Obama contains elements that will bolster housing and the economy, according to NAHB.

"While we believe that including a more enhanced home buyer tax credit in the final legislation would have been the best way to spur housing demand and move the economy forward, the new law does include several provisions that should help to put housing and the economy on the right track," said NAHB Chairman Joe Robson.

Chief among these is an \$8,000 first-time home buyer tax credit for qualified home purchases in 2009. To encourage prospective home buyers to get off the fence, the tax credit:

- **Does not have to be repaid**
- **Is fully refundable**
- **Will remain in effect until Dec. 1, 2009 so that consumers can utilize it during the critical summer and fall home-buying months**
- **Allows tax credit home buyers to participate in the mortgage revenue bond program**
- **Permits state housing finance agencies to help buyers at closing by advancing the credit amount as a loan using tax-exempt bond proceeds**

More information on the first-time home buyer tax credit can be found at www.federalhousingtaxcredit.com.

Other important components in the American Recovery and Reinvestment Act of 2009 will help small businesses and bolster the housing market. The legislation will:

- Help home borrowers by restoring the higher 2008 FHA, Fannie Mae and Freddie Mac loan limits through the end of this year (the limit will return to \$729,750 from the current \$625,500 in the highest cost markets, and will also rise in many other areas because the 2008 maximums were based on a more generous formula and, for most areas, higher median prices)
- Temporarily allow exchange of Low-Income Housing Tax Credit allocating authority for tax-exempt grants and it appropriates \$2 billion in HOME funding for affordable housing projects
- Provide up to a 10-year deferral of tax due to business debt restructuring
- Expand the net operating loss carry-back period from two years to five years for small businesses (businesses with average gross receipts of no more than \$15 million over the prior three years) for losses arising in tax year 2008
- Extend the 25C existing home remodeler credit through the end of 2010, increase the credit rate from 10% to 30%, raise the lifetime cap from \$500 to \$1,500 and expand the set of qualifying property
- Provide an Alternative Minimum Tax patch for tax year 2009
- Increase bonus depreciation and Section 179 small business expensing for business investment in 2009

Green Gives Builders the Sales Edge in Tight Florida Markets

Seeking a competitive advantage in today's tight marketplace, Florida builders who are building high-performance energy-efficient homes that meet the U.S. Department of Energy's Builders Challenge (<http://www1.eere.energy.gov/buildings/challenge/about.html>) are reporting higher sales and profits.

"The Building America process is not easy and requires a fundamental change in the ways homes are designed and built," Subrato Chandra, director of the Building America (<http://www.baihp.org/>) program at the Florida Solar Energy Center (<http://www.fsec.ucf.edu/en/>), said during a seminar at last month's International Builders' Show in Las Vegas.

"But those that do are rewarded with higher rates of market penetration, very high levels of customer satisfaction and quicker sales," he said. "This all translates into more profits."

The Department of Energy has developed a Home Energy Rating System (http://www.energystar.gov/index.cfm?c=bldrs_lenders_raters.nh_HERS) (HERS) to evaluate the overall energy performance of a home, awarding an energy rating score of between one and 100. The lower the score, the higher the energy rating.

Typical new homes are built with an energy score of about 100 and the Builders Challenge encourages homes to be 30% more efficient, or have a rating of 70 or lower.

To read the complete article, go to www.bia.net/government.html.

The Future of Residential Construction Is Green

The Certified Green Professional (CGP) designation teaches builders, remodelers and other industry professionals techniques for incorporating green building principles into homes using cost-effective and affordable options.

Earning the CGP demonstrates to clients and peers your commitment to the best and latest in green building practices and techniques. More than 1,000 people have earned the CGP designation to date. For more information, visit www.nahb.org/CGPinfo.

Remodels Key to Energy-Efficient Future

As the nation's home builders embrace green building in growing numbers, industry research indicates that even the most aggressive efficiency goals for new homes won't make a dent in overall energy consumption. Instead, remodeling and retrofitting the nation's older homes is by far the more efficient solution, industry experts said last week at the International Builders' Show. The home building industry can combat the potential effects of global climate change by providing additional training to its members and by encouraging home owners to alter some of their habits - and make energy-efficient improvements to their homes, the experts said.

"By just making thoughtful choices, we can reduce that impact," said Ray Tonjes, chair of the NAHB Green Building Subcommittee and a green home builder in Austin, Texas.

"Energy efficiency is absolutely key to our nation's continued security and to our economy. Additionally, we know that building with energy conservation in mind is practical and profitable. My industry has stepped up to the plate to prevent the effects of global warming - but we call it responding to market demand," he said.