



By Christina Harris Schwinn

## Looking Back, Looking Forward

By the time this article is published, 2009 will have ended and the New Year will have begun. As you may recall at the beginning of 2009, I wrote an article which discussed pending federal legislation that would expand upon existing law protecting employees' rights.<sup>1</sup> Following President Obama's inauguration, it was widely anticipated that several employee and union-friendly pieces of legislation would quickly become law. Supporters of such legislation were energized when President Obama signed into law the Lilly Ledbetter Fair Pay Act of 2009 ("Act") which amended the federal Civil Rights Act of 1964 (Title VII), the Americans With Disabilities Act of 1990, including amendments thereto, the Age and Discrimination and Employment Act of 1967 and the Rehabilitation Act of 1973.

### Looking Back

#### Paycheck Fairness Act and Employee Free Choice Act

The referenced article discussed two other pending bills: the Paycheck Fairness Act and the Employee Free Choice Act. The Paycheck Fairness Act would have amended the Fair Labor Standards Act and imposed a standard (or test) to be applied in equal pay cases.

Strongly supported by the unions, the Employee Free Choice Act would have amended the National Labor Relations Act by significantly changing the election and collective bargaining processes.

Neither the Paycheck Fairness Act nor the Employee Free Choice Act passed the Senate in 2009. Whether these bills will pass in 2010 remains to be seen.

#### Family and Medical Leave Act of 1993 ("FMLA")

In October 2009 President Obama

signed into law amendments to the Family and Medical Leave Act which further expand family medical leave rights available to service members and certain family members.<sup>2</sup> Generally, employers employing 50 or more employees will need to update their family medical leave policies to ensure compliance with the FMLA amendments.

### Looking Forward

2010 will bring with it new challenges and opportunities for employers and employees. During these tough times, it is important to remember that employers are still required to comply with the law. Dotting i's and crossing the t's—so to speak—can go a long way to improving an employer's bottom line and ensuring compliance with the law. Oftentimes, employers focus on the initial cost of compliance rather than focusing on the cost of noncompliance. Costs incurred as a result of failing to comply, can far outweigh the cost of compliance in the first place. From time to time, employers are well advised to audit their practices to ensure compliance.

#### Employee Claims/Government Outreach

Regardless of whether the Paycheck Fairness Act or the Employee Free Choice Act pass, the federal government is taking an active role to ensure that employees know their rights. Both the United States Department of Labor ("DOL") and the Equal Employment Opportunity Commission ("EEOC") are hiring new investigators and have committed to public outreach programs. For example, the DOL recently announced it intends to launch a campaign to educate workers about their right to be paid minimum wage and overtime under federal law. As a result, there may be an additional up-tick in the rising number of claims filed with these agencies.

Now would be a good time for employers to take proactive steps to ensure their policies and procedures comply with the law and have been updated to keep pace with changes in the law which have been numerous in the recent past. Compliance with laws

like the Fair Labor Standards Act can be tricky. As an employment lawyer, I spend a considerable amount of time advising clients on how to comply with the Fair Labor Standards Act as well as other employment laws. As I have said before, one of the most prolific myths regarding salaried-exempt status under the FLSA is that payment of a regular salary to an employee is sufficient to satisfy the FLSA's requirements. Not true. Another prevalent myth is that it is the employee's responsibility to keep accurate time records. Not true.

When undertaking a compliance audit review, be sure to consult with competent professionals who know the law.

### Note from the Author

I have been writing this column for the BIA for approximately four years and enjoy it. Like all writers, one of the ongoing challenges is finding a topic that will interest readers. In 2010, I would like to hear from you regarding what employment law topics you are interested in. I welcome your input and feedback. Feel free to email me at [christinaschwinn@paveselaw.com](mailto:christinaschwinn@paveselaw.com) with questions or ideas which you may have for future articles.

### New Year's Message

Thank you for your loyalty and readership. On behalf of the Pavese Law Firm, my partners, the associates and the staff, we wish you happiness, prosperity and success in 2010 and the years to come.

*A note to the reader: This article is intended to provide general information and is not intended to be a substitute for competent legal advice. Competent legal counsel should be consulted if you have questions regarding compliance with the law.*

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

<sup>1</sup>See "Could It Be a New Era in Employee Rights?" Lee Building Industry Association, The Building Review, March 2009 (a copy of which is available at [www.paveselaw.com](http://www.paveselaw.com) under Publications).

<sup>2</sup>The October 2009 amendments to the FMLA further expand upon the January 2008 amendments to the FMLA.

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Michael Reitmann, Executive Vice President  
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239.936.5525 ph • 239.936.5839 fax • [www.bia.net](http://www.bia.net)  
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