

LABOR & EMPLOYMENT ALERT

LABOR UPDATE SUMMARY

- I. President Obama's first law of his administration (Lilly Ledbetter Fair Pay Act – Pub. L. No. 111-2) will make it easier for an employee to bring pay bias claims. This law initially overturns a 2007 Supreme Court decision. The law, which addresses time limits faced by workers alleging pay bias in the workplace, amends Title VII of the Civil Rights Act of 1964, Age Discrimination in Employment Act of 1967, Americans with Disabilities Act of 1990, and the Rehabilitation Act of 1973. An unlawful act now occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice.

- II. Additionally, on January 20, 2009, President Obama designated Wilma B. Liebman, a member of the NLRB, as Chairman. Chairman Liebman has served on the Board since November 14, 1997 and was first appointed by President Clinton. She began her legal career as an NLRB staff attorney in 1974, then served on the legal staff of two labor unions: the International Brotherhood of Teamsters, (1980 – 1989) and the International Union of Bricklayers and Allied Craftsmen (1990 – 1993).

- III. Unions added 428,000 members in 2008 as membership rates climbed to 12.4% (an increase of 0.3% points from 12.1% in 2007). The rise in the share of workers who were union members was the largest since 1983. The number of employed workers decreased in 2008 from 129.8 million in 2007 to 129.4 million. The industry with the largest increase in union membership last year was education and health services, where unions added about 132,000 members. (Increase in the percentage of workers in this sector grew from 8.8% to 9.1%.) Also, the leisure and hospitality sector grew significantly by 59,000 in 2008. (This sector grew from 2.8% to 3.2%.) Within manufacturing, union membership remains relatively steady (11.3% to 11.4%).

By gender, data shows that union membership generally was higher for men than women (13.4% of men are union members vs. 11.4% of women workers). By race, black workers were most likely to be union workers last year (14.5%) followed by whites (12.2%), Asian and Latinos (10.6%).

Union membership rose over the year in 26 states and the District of Columbia, fell in 20 states, and held steady in four. About half of all union members in the U.S. lives in six states: California, New York, Illinois, Pennsylvania, Michigan and Ohio. North Carolina continues to post the lowest union membership (3%), and then Georgia (3.7%), South Carolina (3.9%) and Virginia (4.1%).

* data released January 28, 2009 by the Labor Department, Bureau of Labor Statistics.

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With only two weeks in office, President Obama is setting the stage for what “change” we are likely to face and a reformation of the labor front as we have enjoyed over recent years. It appears that this may be a signal that the “Employee Free Choice Act” is likely to become more of a reality.

IV Jury Verdict Summary

- a. In 2007, the median discrimination verdict rose some 70% to \$252,000 from \$147,000 in 2006.
- b. Employers won only 38% of discrimination cases in 2007, prevailing most often in race discrimination cases (43%) and losing most frequently in sex discrimination cases (30%).
- c. Employers in manufacturing and industrial sectors had the biggest verdicts, followed by the government, transportation and service sectors.

This data should cause all employers to make certain that they regularly review, update, and reinforce their internal company policies and procedures and conduct annual sensitivity training sessions with all management and supervising members to reinforce a zero tolerance against any form of discrimination. Conducting a comprehensive and confidential internal investigation and acting accordingly will allow for the proper preventive measure to protect the company and reduce the probability of litigation.

Source: *Employment Practice Liability: Jury Awards Trends and Statistics*, 2008 Report by Jury Verdict Research

*The Labor & Employment Alert is intended to keep readers current on matters affecting labor & employment, and is not intended to be legal advice. If you have any questions, please call **Frank Botta** at 412.566.1940 or any other attorney with whom you have been working.*

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