



## Legal Alert: How Will the 2010 Mid-Term Elections Impact Employers?

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In the wake of victories that allowed Republicans to take control of the House and gain influence in the Senate, many businesses hope to see reforms of what they view as the anti-business policies of the Obama administration. While the Republican Party's emphasis on scaling back big government will make it difficult for new laws regulating the workplace to be enacted, employers must still deal with measures that have already been enacted. Areas likely to feel the greatest impact include:

- **Health Care Reform:** Regardless of Republican campaign promises, wholesale repeal of the new health care law is unlikely, especially since President Obama can veto any such legislation even if it isn't blocked by Senate Democrats. However, Republican leaders have indicated they will aim to scale back the impact of the law by restricting funding to the agencies charged with its implementation. Additionally, President Obama has indicated he is open to "tweaking" certain areas of the law, such as the requirement that businesses issue 1099 statements to anyone with whom they do more than \$600 in business. However, substantial reforms of the law are unlikely while there is still a split of control between the House and Senate. Employers should continue preparations to comply with existing health care reform laws, especially those becoming effective within the next 2 to 3 years.
- **Labor Issues:** While it is unlikely that union-backed legislation such as the EFCA will be passed, National Labor Relations Board members appointed by President Obama have issued decisions demonstrating a clear pro-union trend, which is unlikely to change until the current Board members' appointments expire. Additionally, labor leaders have indicated they intend to focus their efforts on regulatory agencies that govern labor and union-organizing matters. This means employers need to continue to be aware of workplace issues that could cause unrest and possibly make employees more amenable to organizing efforts.
- **Legislation:** Again, with Republicans in control of the House, Congress is unlikely to pass new laws regulating the workplace. However, the Paycheck Fairness Act, which would require employers to report workers' race, gender and salaries to the government, is scheduled for debate in the lame duck session of the Senate the week of November 17, 2010. The House of Representatives has already passed the legislation and, if it passes the Senate, President Obama has said that he will sign it. Although it is possible that the Senate will pass this bill, it appears unlikely at this point.
- **Agency Enforcement:** Administrative agencies such as the EEOC and

DOL have taken an aggressive enforcement stance during the Obama Administration, which likely will continue. Republican efforts to curtail government spending may result in a reduction in funding for these agencies, which could curtail some of these agencies' more aggressive efforts.

- **Financial Regulation:** While Republicans have not vowed to repeal the recently enacted financial reform law, leaders have indicated they will conduct careful oversight of implementation of the bill, which likely will include Congressional hearings to evaluate the effectiveness of the numerous disclosures mandated by the Dodd Frank Act.

- **Immigration:** Legislation to reform U.S. immigration laws may be unlikely in the near future; however, ICE will undoubtedly continue its enforcement efforts, including civil and criminal penalties against employers who violate immigration laws. Additionally, newly elected Republican governors in some states may push for more restrictive state immigration laws, similar to that enacted in Arizona.

**Bottom Line:**

While the influx of Republicans to the House and Senate means the pace of new legislation regulating the workplace should be limited, employers must continue to deal with the increased enforcement efforts and aggressive stance taken by administrative agencies appointed by the Obama Administration.

If you have any questions regarding this Legal Alert, please contact the Ford & Harrison attorney with whom you usually work.