

WHAT'S NEXT? PLAN, PREVENT, AND PROTECT, THAT'S WHAT.

4. May 2010 By Steve Palazzolo

It's been an interesting year so far for those of us who practice labor and employment law. First, Congress and the President gave us the LedbetterFair Pay Act. Then the Employee Free Choice Act got put off for who knows how long (with a bit of luck, forever). Then, over the strong objection of some business groups, the President made recess appointments to fill vacancies on both the National Labor Relations Board (3 new members) and the Equal Employment Opportunity Commission (4 to the EEOC). For the first time in a long time the NLRB and the EEOC both have a full compliment of members and the EEOC has a new General Counsel. So what's next? Well, only time will tell what the NLRB and the EEOC will do. And we still don't know what Congress is going to do next: Are they back after the EFCA? Will we see passage of Employment Nondiscrimination Act, or maybe it's the Paycheck Fairness Act, all of which are currently pending.

Well, at least the Department of Labor is not keeping us waiting. Oh, joy. On April 26, 2010 the DOL published, in the Federal Register, its Semiannual Regulatory Agenda. In a video message posted on the DOL website Secretary of Labor Hilda Solis announced the DOL's "**Plan/Prevent/Protect**" Initiative. Secretary Solis informs the public that the DOL is proposing 78 new rules in its' 2010 regulatory agenda. In the video, Secretary Solis decries what she calls the "catch me if you can" model of current labor regulation, wherein some "employers make calculated decisions not to comply with employment laws." She says, that instead, the new initiative is designed to expand the DOL's effort to "ensure compliance with labor laws." Secretary Solis explains the new Plan/Prevent/Protect Initiative as follows:

Plan means employers will be required to "create a plan to find and fix violations of the law."

Prevent means that employers' will be required to implement their plan in a "manner that prevents violations of the law."

Protect means that employers must make sure that the plan "actually does what it is supposed to do."

Secretary Solis goes on to say that employers who fail to do these things will be "considered out of compliance with the law."

To give you a taste of what the Secretary is talking about, one of the sets of regulations under consideration for changes are the regulations related to the Fair Labor Standards Act. For example, the Wage Hour Division of the DOL is proposing that the record keeping requirements of the FLSA be updated to "foster openness and transparency, to increase awareness among workers, and to encourage greater compliance by employers." DOL is

considering rule changes that will require employers to provide greater information to employees about how hours worked are recorded and how wages are computed. In addition, the proposal will require that if an employer seeks to “exclude a worker” from coverage (by hiring them as an independent contractor for example) the employer will be “required to perform a classification analysis and disclose that analysis to the worker.” The employer will also be required to keep the analysis and provide it to the WHD on demand.

Of course, all of this is simply a proposal at this point. But you just never know what’s next. We will keep an eye on what is going on. In the meantime, if you want to see the Secretary’s message, or see all 78 sets of regulations under consideration for revision, you can find them at <http://www.dol.gov/regulations/>. And if you are ready to **Plan, Prevent and Protect** your business, give us a call.