

[Civil Rights Division Announces Plan to Target Public Employers](#)

February 2, 2010 by [Adam Santucci](#)

During his recent [State of the Union Address](#), President Barack Obama confirmed the news that some employers feared. During his address, President Obama stated that the [Civil Rights Division \(CRD\)](#) of the [Department of Justice \(DOJ\)](#) will begin aggressively pursuing employment discrimination claims. The President's statement reiterated the [CRD's December 2009 message to Congress](#) that they will be increasing prosecution and litigation efforts in this area.

In December 2009, Thomas E. Perez, assistant attorney general for civil rights, announced the CRD's intention to file more class action "pattern or practice" discrimination suits against state and local governments. Class action suits involve large groups of plaintiffs, and the term "pattern or practice" refers to alleged widespread discrimination, typically when dealing with decisions involving new hires or promotions. In [a typical case](#), the CRD will allege that an employment practice, such as a test or physical ability requirement, unlawfully discriminates against a certain protected class of individuals because fewer members of that class are selected. This makes public employers who hire large numbers of employees each year, for example prison guards or police officers, susceptible to discrimination claims based on latent defects in their selection methods or tests.

In addition to seeking a variety of remedial damages in these cases, such as priority hiring and reforming an organization's hiring and promotion procedures, the CRD also will pursue monetary damages. Mr. Perez also announced his intention to pursue other types of claims against employers, such as those arising Uniformed Services Employment and Reemployment Rights Act (USERRA), which protects reemployment rights of employees serving in the military. Mr. Perez also mentioned [Project Civic Access](#), which seeks to enforce compliance with the public accommodation provisions of the Americans with Disabilities Act by sending investigators to evaluate state and local government facilities. The heightened focus on enforcement efforts already has begun to increase investigation, prosecution and litigation in each of these areas.

The CRD's renewed focus on vigorous enforcement and prosecution of cases, without any testimony regarding an actual increase in the number of violations, is consistent with the renewed focus on enforcement within the Department of Labor, the Equal Employment Opportunity Commission, and other federal agencies under the Obama Administration. State and local governments that come under investigation by the Department of Justice, the CRD, or any other federal government agency should seek legal counsel early in the process to ensure the investigation proceeds in a lawful manner and the potential damages available, if any, are limited.

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