

Labor and Employment Law Predictions for the Next Decade

By Matthew D. Austin

A new year always welcomes new predictions. Although predictions frequently do not occur as expected, they are still fun to make. Since this year is also the first year of a new decade, forecasting this year for what will occur in the next ten years should be ten times as much fun! As someone who loves to have fun and practices labor and employment law, here are my predictions for what we will see in the workplace over the next ten years.¹

Increased Funding for Government Agencies

Employers will notice an increase in government oversight and employees will make more frequent use of government agencies tasked with enforcing regulations. At the end of December, 2009, President Obama signed an Omnibus Spending Bill that significantly boosted funding for the Department of Labor, National Labor Relations Board, Equal Employment Opportunity Commission, Occupational Safety and Health Administration, and the Immigration arm of the Department of Homeland Security. Although that bill covers only fiscal year 2010, the current administration is expected to continually increase its funding year after year in these areas.

The Department of Labor's funding increase will provide the financial support for an increase in personnel, regulatory actions, and enforcement efforts. The National Labor Relations Board received close to a 20% increase in funding to use for enforcement and investigation proceedings. The Board will also hire additional agents to aid in those areas.

The Equal Employment Opportunity Commission has a budget of \$367M, which is \$23M above last year's amount. These additional funds will be used to help ease the backlog of more than 70,000 pending employment discrimination claims. Within the EEOC, the Civil Rights Division has a \$145M budget, \$22M above last year, "to reinvigorate the civil rights program at the Department of Justice."

OSHA, along with other health and safety commissions like the Employee Benefits Security Administration, Employment Standards Administration, and Mine Safety and Health Administration, has \$121M above last year's budget. According to the government, this increase is intended "to continue a multi-

year process of rebuilding OSHA's enforcement capacity and increasing the pace of standard setting."

With respect to OSHA alone, the head of the Department of Labor said in June 2009, "OSHA was going to be back in the enforcement business." In September 2009, the Acting Assistant Secretary of Labor for Occupational Safety and Health said, "We're back in the enforcement business and we're back in the standards-writing business." Anecdotally, my practice can personally vouch for increased OSHA investigations and enforcement. Employers who are inspected should expect OSHA inspectors to issue more citations than before and those citations will increasingly be characterized as serious, repeat, or willful violations of the Act.

Lastly, increased funds for immigration would be used to "modify current authorities to allow the Departments of Homeland Security and Labor to conduct fraud prevention and enforcement programs that focus on industries employing temporary workers using the H-1B, H-2B, and H-2A visa programs." Immigration has moved towards targeting certain industries and not just doing random inspections, and this statement indicates that such a path will continue.

Miscellaneous Additional Expectations for the Workplace

In addition to the large federal government agencies that received all time high dollar amounts for increased investigation and enforcement activities, the workplace itself will see many changes. New breeds of lawsuits will emerge, hiring practices will evolve, employee benefits packages will change from what we have become accustomed to over the past few years, and the culture within each workplace will undoubtedly shift in a new direction. Here are some highlights of what I expect to see in the next ten years.

Hiring Practices

Social networking will replace traditional resumes for job searches as employees brand themselves as a way to market their services. Prospective employers will increasingly evaluate an applicant's online activity when making hiring decisions and

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applicants will embrace this change as a passive way interviewing. Employers will try to attract younger workers by positioning themselves as “green.” And, a focus on workplace diversity will remain paramount for large companies

Employee Benefits

Employers will increase workplace health programs to include mid-day exercise or yoga classes. Company sponsored health club memberships or on-site work out rooms will increase as an effort to reduce health care costs. There will be a return of company match 401k programs, same-sex partner benefits will become universal, and bus passes will become a common workplace benefit to aid the environment and increased salary perks for employees that walk or bike to work.

Workplace Culture

“Regular business hours” will have no common meaning because of telecommuting, smartphones, and laptops. Overtime lawsuits will escalate because of the expectation that employees should always be available to employers and customers. Telecommuting and video conferencing will become much more mainstream due to the increasing cost and uncertainty of air travel and the decreasing cost of quality technology. Tracking employee productivity through programs that measure computer and telephone usage will increase for both in person employees and telecommuting employees. Coffee shops will start charging rent or a table fee to telecommuters who use them as virtual offices. An assortment of teas will be offered as a healthful alternative along with coffee and soda to employees and clients; and donuts and bagels will be replaced with low-fat, low-calorie fruits and snacks.

Lawsuits

There will be increased government oversight and penalties for misclassifying employees as independent contractors in an effort

to recoup unpaid employment taxes, Attorneys will expand venue shopping for the most favorable location to foreign countries because of the increasing globalization of corporations. Bartering for services will increase and the IRS will not be able to catch people who do not report bartered transactions as income. Age discrimination claims by baby boomers will increase as they attempt to remain employed longer to pay off the debt they incurred in the last few years

In summary, the next decade appears to be one where employees will be working from places other than the workplace, employers will focus on healthy measures for people and the environment, government agencies will continue to investigate and to enforce regulations at an unprecedented level, and a new genre of lawsuits will dominate the court rooms.

Happy New Decade!

1. There is no need for anyone to save this article for the next ten years just to make sure that what I predicted actually occurred. Even Nostradamus, who made over 6,000 written predictions, was wrong most of the time –save for when he accurately predicted that he would die before the sun came up the following morning.



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