



Legal Alert: Recent Election Results Will Likely Impact Airline Employers

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Airline employers, like other business groups, should be prepared for possible regulatory and legislative changes as the balance of power in Washington shifts to the Democrats in the wake of the 2008 elections. Although the currently proposed changes to the National Labor Relations Act (NLRA) identified as the Employee Free Choice Act (EFCA) will not directly affect airlines and other employers covered by the Railway Labor Act (RLA), recent Congressional criticism of the National Mediation Board's election rules and release policies may portend future attempts to change these procedures as well.

Additionally, other pending legislation could significantly impact airline employers. Some of this legislation is highlighted below:

- **Airline Flight Crew Technical Corrections Act:** This Act would amend the Family and Medical Leave Act (FMLA) to make flight attendants and flight crewmembers FMLA eligible if, during the twelve-month period preceding the leave, they were paid for or worked: (1) at least 60% of their full-time schedule and (2) a minimum of 504 hours. This legislation passed the House and has been referred to the Senate Committee on Health, Education, Labor and Pensions.
- **Healthy Families Act:** This legislation would expand the FMLA to require employers with fifteen or more employees to provide seven days of paid sick leave to full-time employees. Employees would be considered full-time if they worked at least thirty hours per week. The Act states that it does not diminish the obligation of an employer to comply with any contract, collective bargaining agreement, or any employment benefit program or plan that provides greater paid sick leave rights to employees than the rights established under the Act. Additionally, the Act states that the rights established under it shall not be diminished by any contract, collective bargaining agreement, or any employment benefit program or plan. Versions of this legislation have been referred to committees in the House and the Senate.
- **Employment Nondiscrimination Act:** This bill proposes to prohibit discrimination in employment based on an applicant's or employee's sexual orientation. The House passed the ENDA on November 7, 2007, but the Senate did not take it up.
- **Civil Rights Act of 2008:** Among other items, this bill would eliminate the damages cap under Title VII of the Civil Rights Act. Versions of this legislation have been referred to committees in the House and Senate.

- **Family Leave Insurance Act:** This pending legislation would provide eight weeks of paid leave under the Family and Medical Leave Act to employees who work for companies that employ at least fifty workers. The legislation states that it does not diminish the obligation of an employer to comply with any collective bargaining agreement or any employment benefit program or plan that provides greater paid leave rights to employees than the rights it establishes. Similarly, the rights established by this legislation shall not be diminished by any collective bargaining agreement or employment benefit program or plan. Versions of this legislation have been referred to committees in the House and Senate.

- **Survivor's Empowerment and Economic Security Act:** This bill would require companies that employ fifteen or more persons to provide up to thirty days of unpaid leave for employees to handle issues arising out of domestic violence. The Act states that the rights it establishes shall not be diminished by any state or local law, collective bargaining agreement, or employment benefits program or plan. Similarly, the Act would not diminish greater benefits provided by Federal, state or local law, a collective bargaining agreement, or employment benefits program or plan. Versions of this legislation have been referred to committees in the House and Senate.

- **Ledbetter Fair Pay Act:** This legislation would amend Title VII, the Age Discrimination in Employment Act of 1967, the Americans With Disabilities Act of 1990, and the Rehabilitation Act of 1973 to provide that discrimination in compensation occurs every time a paycheck is issued, not just when a discriminatory compensation rate is established. The House passed the Act and it has been referred to committee in the Senate.

While it is not clear which, if any, of these legislative proposals ultimately will become law, it is important for employers to be aware of these pending measures, many of which were supported by President-elect Obama. We will continue to keep you updated on the status of this pending legislation and any other significant legislative developments.

If you have any questions regarding this legislation or other labor or employment related issues, please contact the Ford & Harrison attorney with whom you usually work.