everyone agrees that the US was the epicentre of the financial meltdown?

But these critics seem to presume that Europe will come out of the crisis in far worse shape than the US, and it is too early to make that judgement. An epic, financial crisis-

Europe is using sufficiently aggressive Keynesian stimulus, but whether Europe will resume its economic reform efforts as the crisis abates. If Europe continues to make its labour markets more flexible, its financial market regulation more genuinely pan-European, and remains open to

including strong democratic governments and sound legal institutions, are often underrated as long-term competitive strengths in today's globalised economy. The recession has presented challenges but European leaders were right to avoid becoming intoxicated with short-term

Europeans will probably not wait so long to start moving ahead again.

■ *Kenneth Rogoff is professor of economics and public policy at Harvard University, and was formerly chief economist at the IMF. Copyright: Project Syndicate, 2009.*

Bosses will have to walk a fine line

The ban on adverse actions is a significant part of the Fair Work Act, write **Alex Manos** and **Nick Ruskin**.

Many aspects of the new industrial relations laws have been hotly debated over the last 18 months but some "sleeping giants" have quietly escaped comment. The prohibition on adverse actions and the enforcement of the discrimination laws took effect on July 1 and are sure to influence the way decision making is conducted within businesses and organisations.

Under the new laws, a person is prohibited from taking an "adverse action" against another person because that person is entitled to, or has exercised, a workplace right.

For employers, an adverse action occurs if an employee is dismissed, injured, discriminated against or suffers an alteration of position. The action must have occurred because of an employee's right under an industrial instrument, workplace law or because of an inquiry or complaint made about their employment. For a claim to be made out, there must be a link between the adverse action and the workplace right.

Consider this example. An employee is appointed as harassment officer under an enterprise agreement. The employee is later terminated and told her role has been made redundant. The employee believes one of the reasons for her termination is the appointment as harassment officer. The employee would be able to bring a claim in the Federal Court under the new adverse action laws and seek compensation and, potentially, reinstatement.

The adverse action laws are broad in many ways. They enable employees to bring claims even where the alleged action has not yet occurred and is merely organised or being threatened. If the matter proceeds to a court hearing, the onus of proof is shifted to the employer to prove the reason for the claimed action was a lawful one.

Many businesses will be unaware that acts of discrimination may now attract a civil penalty.

Interim injunctions may be issued preventing the employer proceeding with its actions pending a full hearing of the claim.

Consider another example. An employee makes an inquiry to his or her employer about overtime rates. Several months later, the employer begins organising a transfer of the employee to an alternative location permitted under the employee's contract. The employee believes a reason for the transfer is because of the overtime inquiry. If the employee is able to satisfy a court, among other things, that he or she has a serious case to be tried and the balance of convenience favours the orders sought then the court may issue an interim injunction preventing the transfer until the matter can be determined at a final hearing. The adverse action in this case would be the threat or organisation of the transfer to the alternative location and the workplace right would be the inquiry about the terms of employment as they affect overtime.

This protection represents a drastic change to the scope of workplace protection and the type and timing of applications brought. Employers will need to ensure they can justify any decision even before it has been implemented, should this be required. Breaches of these provisions may result in reinstatement, uncapped compensation and penalties of up to $33,000 a breach. Any person, regardless of remuneration level, is eligible to use the protections.

Many businesses and organisations will be unaware that acts of discrimination under the Fair Work Act 2009 may now attract a civil penalty. While the prohibitions in the act closely reflect the equal opportunity laws in each state, preventing discrimination for prohibited reasons, they will allow the Fair Work Ombudsman to initiate prosecutions against those who engage in discrimination.

This will allow the Fair Work Ombudsman to initiate a civil prosecution against an employer. A finding of discrimination may require an employer to reinstate the employee, pay uncapped compensation and pay a civil penalty of up to $33,000 a contravention. The Workplace Ombudsman (the Fair Work Ombudsman's predecessor) has demonstrated its capacity to enforce workplace laws effectively.

The new general protections have been overshadowed by public focus on other aspects of the act but they have not been lost on the unions, which have indicated their readiness to use these new rights with full effectiveness. The general protections are sure to leave their mark on the industrial relations landscape.

■ *Alex Manos is a senior associate and Nick Ruskin a partner at DLA Phillips Fox.*

elections and requiring the ballot language to specify the costs of measures being voted on.

She emphatically opposes a change that many proponents of a new constitution favour — eliminating the requirement of a two-thirds vote of both houses of the legislature to pass a budget or raise taxes. Without those provisions, "taxes would be so high we might not have a state left".

Today's most pressing problem — government in the grip of public-sector unions — is, she thinks, ripe for improvement. To change Sacramento, the state capital, she must find new ways to communicate with a disconnected public. Using the internet, she hopes to ready the state for challenges such as modernising the water storage and delivery system that was designed for a California with half today's population.

"There is," she says, "plenty of water in California — we can't get it from where it is to where it is needed." The result, partly because of aggressive environmentalism, is "a slow-motion Katrina" in some Central Valley towns where unemployment is above 40 per cent.

Because legislators feel validated by volume, the legislature is, she says, a "bill machine". She vows to wield the veto power as vigorously as did Republican governors Pete Wilson and George Deukmejian, who cast 1890 and 2298 vetoes respectively. The current calamitous governor wanted, as movie stars do, to be loved, but Whitman says tersely: "Getting elected is a popularity contest; governing is the opposite."

Although California is a blue state, it has had Republican governors for 30 of the last 43 years. The Republican revival nationally might begin here next year.

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