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LEGAL ALERT



Legal Alert: THE SHAPE OF THINGS TO COME? President Obama Issues A Series of Pro-Labor Executive Orders

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On Friday, January 30, 2009, President Obama signed three pro-labor executive orders affecting the rights of federal contractors and their employees. Intended to "level the playing field" for labor unions, the new executive orders reverse several Bush Administration policies that organized labor claims favored employers over unions. Executive Order "Notification of Employee Rights Under Federal Labor Law" requires that federal contractors post a notice informing employees they have a right to join or not to join a labor union. The Executive Order charges the Secretary of Labor with determining the specific content of the notice to be posted. In addition, this Executive Order expressly revoked Executive Order 13201 – signed by President Bush on February 17, 2001 – which allowed employers to post a notice advising employees of their right not join a labor union as well as the right of unionized employees to limit their financial support of unions acting as their collective bargaining representative. Executive Order "Economy In Government Contracting" denies reimbursement to federal contractors for expenses used to influence workers' decisions regarding whether to form unions or engage in collective bargaining – effectively mandating that federal contractors **remain neutral** during any attempt by a labor union to organize its employees. Under the new order, "unallowable costs" include any costs undertaken "to persuade employees to exercise or not exercise ... rights to organize or bargain collectively." More specifically, the executive order lists (1) preparing and distributing materials; (2) hiring or consulting legal counsel or consultants; (3) holding meetings with employees (including paid meetings during work hours); and (4) planning or conducting activities by managers, supervisors, or union representatives during work hours. Federal contractors that violate this order can be denied reimbursed for such expenses and precluded from being awarded future contracts. Executive Order "Nondisplacement of Qualified Workers Under Service Contracts" requires service contractors at federal buildings to offer jobs to qualified current employees when contracts change. In other words, when an administrative contract expires, the successor employer who is awarded the new contract must hire the predecessor's employees upon taking over the service contract.

These pro-labor executive orders may foreshadow the shape of things to come under the new administration and Congress. President Obama promoted the new executive orders as necessary "to level the playing field for workers and the unions that represent their interests." Moreover, Anna Burger, Chairperson of the Change To Win Coalition, indicated the new executive orders provide a basis for "model employment standards for private sector workers as well as for the direct federal workforce." Notably, these

pro-labor executive orders came just one day after President Obama signed the Lilly Ledbetter Fair Pay Act – the new administration's first major piece of legislation – which effectively extends the statute of limitations period in which employees can sue their employer for pay discrimination.

Employers can expect additional pro-labor executive orders and legislation in the weeks and months ahead. For example, labor leaders are also lobbying heavily for an executive order requiring the use of project labor agreements on all federally funded construction projects – which could prove very significant as "rebuilding infrastructure" and similar public works projects are central components of President Obama's proposed economic recovery plan. Moreover, organized labor's top legislative priority remains passage of the Employee Free Choice Act sometime this year.

If the first 10 days of the new administration provide any indication of the weeks and months ahead, 2009 will likely be a very busy year for employers. If you have questions regarding the new executive orders, please contact the Ford & Harrison attorney with whom you usually work or the author of this Alert, John Bowen, a partner in our Minneapolis office at jbowen@fordharrison.com or 612-486-1703.