

HINKLE

L A W F I R M LLC

**Strategies for Employers and HR Leaders: What do
Federal Agencies Currently Care Most About?**

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Presenters

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Department of Labor

- **Focus on collaboration**
- **Reach wider clientele**
- **Enforcement techniques**

DOL – Wage & Hour Division

- **Misclassification enforcement initiatives**
- **Collaboration with other Agencies**
- **Increase efforts in targeted industries**
- **Davis-Bacon Act Compliance**
- **Referrals to Private Attorneys**

DOL – WHD Regulations

- **Existing Proposed Regulations**
 - **Home Health Care Proposal**
 - **Farm Child Labor Proposal**
- **Regulatory Initiatives**
 - **Employer Classification of Workers**

DOL – OSHA

- **Over 40,000 inspections in 2011**
- **Scaled back regulatory proposal agenda**
- **Pressure from worker advocates**
- **Potential final rules**
 - **Hazard communication**
 - **Recordkeeping to modernization**
 - **Back over prevention**

EEOC – Carry Over from 2011

- **Continued Budget Cuts**
 - 2011 - \$1 million
 - 2012 - \$6.5 million
- **Hiring Freeze**
 - Re-training staff
 - Case inventory backlog

EEOC – Affects from 2011

- **Record Number of Discrimination Charges**
 - 99,497 charges
 - 10% reduction of charge backlog
- **Use of Priority Charge Handling Process**
- **Five Year Strategic Plan**

EEOC – Litigation

- **2011 Litigation**
 - **23 Lawsuits – Class wide Discrimination**
 - **One Class wide case in every Field Office**
 - **Additional cases under every statute**
- **Recent Settlements**
 - **\$20 million with Verizon**
 - **\$10 million with Roadway Express, Inc.**
 - **\$3 million with Scrub Inc.**

EEOC – Potential Litigation

- **ADA Amendments Act**
 - 60 lawsuits in 2011
 - Involve conditions with unfavorable ruling under original ADA
- **Hiring Discrimination**
 - Current cases pending
 - Underserved communities
- **Effects of Wal-Mart for Class Action**

EEOC – Proposed Rules

- **Age Discrimination in Employment Act**
 - **Disparate Impact**
 - **Reasonable Factor Other Than Age**
 - **No Business Necessity Defense**
 - **Prior Supreme Court Cases**
 - **Smith v. Jackson (2005)**
 - **Meacham v. Knolls Atomic Power Laboratory (2008)**

EEOC – Proposed Guidance

- **Limit Credit and Consumer Checks**
- **Use of Arrest & Conviction Records**
- **Leave Accommodation Under ADA**

EEOC Guidance – Arrest and Conviction Records

- **Effective April 25, 2012**
- **Addresses Disparate Treatment and Disparate Impact Situations**
- **Must be job related and consistent with business necessity**
- **Compliance with Federal or State laws and/or regulations**

EEOC Guidance – Arrest and Conviction Records

- **Disparate Treatment**
 - Treatment because of protected status
 - Evidence EEOC determines support findings
 - Biased Statements
 - Inconsistencies in hiring
 - Similarly situated employees
 - Employment testing
 - Statistical evidence

EEOC Guidance – Arrest and Conviction Records

- **Disparate Impact Situations**
 - **Must be job related and consistent with business necessity**
 - Validation through Uniform Guidelines
 - Use of the Green Factors
 - Individualized Assessment

EEOC Guidance – Arrest and Conviction Records

- **Employer Best Practices**
 - **Eliminate policies that exclude people because of criminal record**
 - **Train managers and hiring officials**
 - **Develop a policy**
 - **Questions that are job related for the position**
 - **Confidentiality of records**

EEOC Potential Guidance – Leave as a Reasonable Accommodation

- **Public Meeting from June 8, 2011**
- **Past Guidance identifies leave may be reasonable accommodation**
- **ADAAA accommodation dialogue**

EEOC Potential Guidance – Leave as a Reasonable Accommodation

- **Employer Best Practices**
 - **Articulating the Possibility of more leave**
 - **Coordinate Leave Administration with Accommodation Administration**
 - **Follow up with employees on leave**
 - **Reviewing the situation before terminations**

EEOC – Other Activity

- **Pay Discrimination**
 - **Commissioned Study**
 - **OFCCP efforts complement EEOC**
 - **Training of investigators**
- **Pregnancy & Caregiver Discrimination**
 - **Small Business Task Force**

NLRB – Carry Over from 2011

- **White House Appointments**
 - Challenges to the appointments
 - DOJ Opinion
 - Experience of all Board
- **Budget Cuts**
 - Reduction by \$4.5 million
 - Potential closing of small resident offices

NLRB – Pending Rules

- **Posting of Notices**
 - Addressed by two Federal Courts
 - Focus on authorization of NLRB
- **Procedure in Union Representation**
 - Limit issues before NLRB
 - Eliminate pre-election board review
 - Reduce unnecessary litigation and delays

NLRB – Guidance

- **Consider Remainder of Election Rule**
 - **Set Pre-Election Hearings within 7 days from the Notice**
 - **Shorten time to produce final voter list**
 - **Shorten time period for posting Board's final notice of election**

NLRB – Guidance

- **Social Media Guidance**
 - **August 2011 and January 2012**
 - **Focus on overbroad policy provisions**
 - **Focus on policies that inhibit comments about terms and conditions of employment**

Immigration for Employers

- **Focus on Entrepreneurs**
 - Investor visas
 - Intra-Company transfers
- **Focus on Continued Compliance**
 - E-verify Improvements
 - Audits and Investigations

Questions?

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