

PUBLICATION

Coffers to Overflow at DOL, EEOC, OSHA, OFCCP and NLRB in 2010

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For Fiscal Year 2010, the Obama Administration has requested increased funding for virtually every federal labor and employment regulatory agency. For the Department of Labor (DOL), the Administration is requesting \$104.5 billion, reflecting an increase over all prior years' original budget requests. Secretary of Labor Hilda L. Solis identified the protection of workers, green jobs promotion, and increased transparency as the DOL's top three priorities, and stated that she intends to use this money to provide significant additional resources for worker protection agencies, specifically the Wage and Hour Division of DOL, the Occupational Safety and Health Administration (OSHA) and the Equal Employment Opportunity Commission (EEOC).

The DOL's Wage and Hour Division has already announced its intent to step up investigations in lowwage industries, especially those that employ young and immigrant workers. DOL has signaled it will target repeat offenders. It also plans to conduct investigations of a nature intended to increase protection for the greatest number of workers. This may signal an increase in 'test' cases or investigations that will focus on particular standards across targeted industries.

The Administration's FY10 budget likewise seeks \$367 million for the EEOC, an increase of almost \$40 million over the current budget. Among other things, this additional funding is intended to allow the EEOC to more aggressively enforce the country's newest discrimination laws, including the ADA Amendments Act and the Lilly Ledbetter Fair Pay Act.

OSHA, in turn, would receive \$563.5 million, an increase of \$77.5 million over the current level of funding. This increase would fund 213 additional full-time employees, including an increased number of bilingual inspectors devoted to reviewing the practices of certain industries where OSHA violations are most prevalent.

The Administration is also requesting a significant increase in appropriations for the Office of Federal Contract Compliance Programs (OFCCP). The OFCCP's FY10 budget is expected to increase to more than \$109 million – a whopping 33% increase from the agency's 2009 budget. These monies are expected to fund a case management system and to support litigation to amplify enforcement activities. Parenthetically, the OFCCP has posted four consecutive years of record financial settlements culminating in more than \$67 million in settlements in FY08.

Finally, the Administration has also proposed a \$32 million increase in funding for the National Labor Relations Board (NLRB), which currently receives approximately \$251 million in funding.

The Administration will likely get most or all of the appropriations it has requested. What do these increases mean? Employers should expect the DOL and the other agencies to more aggressively enforce laws in more marginal cases than in the past. Employers should also expect that enforcement will pick up in areas of renewed focus such as wage and hour violations and unfair labor practices, in addition to the laws recently enacted in the last twelve months and those that Congress may pass later this year.

In light of the FY10 requested appropriations, employers should consider self-audits and other internal compliance reviews in order to avoid being on the receiving end of these financially reinvigorated agencies' investigations and enforcement actions.

Baker Donelson stands ready to assist you in preparing for these and other employment-related challenges. For assistance, please contact your Baker Donelson attorney or any of our nearly 70 Labor & Employment attorneys in the Firm's Labor & Employment Department, located in *Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; and Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee.*

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