

# President Obama Signs Three New Executive Orders: Nondiscrimination of Qualified Workers Under Service Contracts, Economy in Government Contracting, Notification of Employee Rights Under Federal Labor Laws

Employers in the United States are beginning to see many of the labor and employment law changes that were anticipated following the November 2008 elections. For example, President Obama signed the Lily Ledbetter Fair Pay Act on January 29, 2009. This new law overturns a 2008 United States Supreme Court decision, *Ledbetter v. Goodyear Tire & Rubber Co.*, in which the Court found that pay discrimination lawsuits must be filed within a certain number of days after the employee first experiences the "unlawful employment practice". The new law creates a rolling statute of limitations for filing pay discrimination claims, as each wage payment is considered a new unlawful employment practice. This change will likely lead to an increase in the frequency of wage discrimination lawsuits.

Significant additional labor law changes were made on January 30, 2009, though the changes came in the form of Executive Orders rather than new legislation. On that date President Obama signed three new Executive Orders which place new legal obligations on employers that are federal contractors or subcontractors:

1. **Nondiscrimination of Qualified Workers Under Service Contracts**. This Executive Order requires contractors and subcontractors taking over an existing federal government contract to offer employment to the prior contractor's employees. Those employees now enjoy "a right of first refusal" of employment in positions for which they are qualified. The contractor taking over the contract cannot fill employment vacancies until the right of first refusal has been provided. Employers which violate the Executive Order are subject to "appropriate" sanctions including reinstatement of employees not given the right of first refusal, backpay and debarment for up to three years.  
This Executive Order applies to contracts for services entered into by the federal government covered by the Service Contract Act of 1965. While the Executive Order became immediately effective as of the date it was signed

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by President Obama, the Secretary of Labor has until August 1, 2009 to publish regulations interpreting the Executive Order.

2. **Economy in Government Contracting.** This Executive Order disallows reimbursement of costs for any activities by a federal contractor or subcontractor undertaken to persuade employees to exercise, or not to exercise, the right to organize into a union and the right to collectively bargain with their employer. Examples of the newly disallowed costs include, but are not limited to, the costs for: (a) preparing and distributing materials; (b) hiring or consulting with advisers; (c) holding employee meetings; and (d) planning or conducting activities by managers, supervisors or union representatives during working hours. This Executive Order applies to all contracts for goods and services with the federal government and is also effective January 30, 2009. The Federal Acquisition Regulatory Council will publish rules and regulations pertinent to this Executive Order on or before July 1, 2009.
3. **Notification of Employee Rights Under Federal Labor Laws.** This Executive Order creates a new legal obligation on federal contractors and subcontractors to post a notice to employees advising employees of their legal rights under the National Labor Relations Act. Violating employers are subject to suspension, cancellation or termination of their government contract and debarment. Like the others, this Executive Order became effective on January 30, 2009. The language of the posting is not yet known but the Secretary of Labor has been charged with determining the size, form and content of the notice. The Secretary of Labor must initiate rulemaking on or before June 1, 2009.

While significant labor and employment law changes have occurred, additional significant changes are still looming on the horizon. Reinhart's [Labor and Employment Department](#) is ready to assist you in managing these changes. Please contact us should you want additional information on the Ledbetter Fair Pay Act or these three Executive Orders.

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