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POST-ELECTION...WHAT'S NEXT? In the aftermath of an historical (and very long) national election season, overjoyed Obamacrats and melancholy McCainicans can certainly agree on at least one thing. The world of employment law could and likely will change significantly in the next few years. And I do not mean only because the presidential election is a fascinating statement on the emerging power of diversity on the national scene. The Democrats now control both the Executive and Legislative branches of government. Republicans still will be able to block certain legislative proposals with Senate filibusters, but the power in Washington has clearly shifted. Here are some things to watch for from Washington in the coming months.

FMLA EXPANSION: Congress and President-elect Barack Obama both support some sort of expansion of the Family and Medical Leave Act (FMLA). This will probably include lowering the coverage threshold from 50 to 25 employees and allowing workers to take leave for elder care, school-parental leave and domestic violence situations. You will probably also see the new Administration support efforts to make FMLA leave paid,

rather than unpaid. Finally, efforts to require most businesses to provide employees with a certain amount of paid sick leave will also gain momentum.

SEXUAL ORIENTATION AND PAY DISCRIMINATION: Congress likely will pass and the new President will support a national prohibition on employment discrimination based on sexual orientation. Many states already prohibit such job bias, but Congress seems poised to add sexual orientation to the national list of protected classes, along with race, color, age (40 or over), sex, pregnancy, gender, religion, disability, national origin, ethnic background, genetic status, military service and citizenship. The new Administration also seems to support Congressional efforts to strengthen the federal laws prohibiting pay disparities based on gender.

IMMIGRATION: Immigration reform has been on the Congressional back burner since bipartisan reform efforts died in the Summer of 2007. Now, Congress seems much more likely to impose a mandated, national verification system on employers, a temporary worker program with a path to citizenship for undocumented workers already here and to seek to allow the entry of a greater number of highly-skilled foreign workers. A more “punitive” model of immigration reform seems much less likely to pass Congress.

UNIONS AND MINIMUM WAGE: Washington is much more union-friendly now that it was before the 2008 elections. Watch for Congress to pass laws allowing employees to unionize by signing cards (rather than by a secret ballot vote). Democrats will now also gain control of the National Labor Relations Board, which governs the area of business-union relations. Congress also seems more likely to raise the minimum wage again, perhaps to as high as \$10/hour. Congress also may again explore “living wage” legislation, which could result in even higher minimum wage standards.

HEALTH CARE REFORM: President-elect Obama supports universal health care, but his method for reaching the same maintains and supplements the traditional employer-sponsored benefit program. Employers will likely be required to provide coverage or contribute towards a government-sponsored plan. Obama also has proposed providing tax credits to small businesses to encourage them to provide employees with health care benefits.

THE SUPREME COURT: As you have read in recent updates, many national employment law issues are settled by the United States Supreme Court. The President appoints, and the Senate confirms, Supreme Court justices. The current justices most likely to leave the Court are considered moderates or liberals. Thus, Obama appointments will likely preserve the status quo or move the court into a more center-left position on the political spectrum. This probably means that a more employee-friendly Court and federal bench will eventually emerge.

JOB SECURITY FOR HR: Many of these proposals outlined above could easily carry the legislative subtitle of “the Human Resources Professional Full Employment Act of 2009.” The 2008 election clearly establishes job security for HR professionals and for employment lawyers (I hate it when that happens!). Companies likely will face more,

and more complex, HR law compliance issues in the next four years. Make sure you stay on top of the evolving law, and make sure you get actively involved in the legislative process to try to shape these possible new laws into the clearest, most-user-friendly and most-practicable form possible. If you think the last two years leading up to the election were perplexing, interesting, frustrating and/or exciting, hang on-- you ain't seen nothing yet.

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