

Attorneys: Employers watchful of Obama's 2nd-term initiatives

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Employer concerns about the Obama administration's second term and its impact on new regulations are much more focused than they were four years ago.

"We've looked at what was actually accomplished in Obama's first term, and we determined very little that he campaigned on related to employment law was actually done, except for the Lily Ledbetter Act," said [Joseph Santoro](#), a shareholder and employment law practice leader for the [Gunster](#) law firm.

The Lily Ledbetter Fair Pay Act changed the statute of limitations to file protests against pay discrimination so that limits are reset every time a paycheck is issued. The previous interpretation of the law set the limit back to the first decision made about pay level.



"Very little that he campaigned on related to employment law was actually done" during President Barack Obama's first term, Gunster shareholder Joseph Santoro says.

Santoro made his comments at a recent employment law conference for Gunster clients and others in West Palm Beach. He noted that President [Barack Obama](#)'s biggest legislative accomplishment in his first term, the Patient Protection and Affordable Care Act, consumed a lot of time and energy.

Employment attorney [Robert Turk](#), a shareholder in the Miami office of [Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.](#), offered a slightly different view.

"There were other accomplishments in the first term, including the application of the Family and Medical Leave Act to include more rights for veterans and their families to take leave," he said.

He said many observers are holding their breath now to see what the Obama administration pursues in the next two years, before midterm elections.

The appellate court ruling decided that the president exceeded his constitutional authority by appointing three people to the board while Senators were on break. Several major decisions by the board may hinge on the whether the Supreme Court accepts the case or not.

'Sidetracked by health care'

The big omission from Obama's first-term agenda was the Employee Free Choice Act, which was supposed to allow unionizing based on card signatures, rather than requiring an election.

"That was the big one everyone was talking about in 2008, but that got sidetracked by health care, we believe," Santoro said. "Because of a split Congress, we don't expect a big change in that because the House is under Republican control."

Santoro said Gunster has fielded questions about businesses that want to avoid the Affordable Care Act.

"You hear a lot of stuff on the news about people wanting to make everyone part time, or some other method to avoid regulations," he said. "Our conclusion was, as a practical matter, the ways to avoid compliance are not really practical. As a restaurant, if you make everyone part time, what happens when someone calls in sick and you have to give someone extra hours? You have to be ready to comply."

Businesses can choose to pay a penalty for avoiding the ACA regulations, but Santoro said the penalty is not tax-deductible, whereas health insurance costs are.

The biggest impact is for a small company nearing 50 employees, which triggers ACA enforcement.

"These costs are significant, and I think it probably will keep employers from growing," Santoro said.

EEOC enforcement ramped up

He also addressed increased enforcement by the [U.S. Equal Employment Opportunity Commission](#), which he said has been ramped up instead of using new congressional action.

For example, renewed focus on immigration enforcement has led to increased requests for and investigations of company records.

"You need to be careful about how cooperative you are with the EEOC," Santoro said. "They send you a document request that asks for lots of things, some of which might not be relative to the complaint, such as seeking all of your hiring data."

He said many employers are concerned that they might have to hire someone with a criminal background because of new emphasis on preventing discrimination.

"My view is you're better off defending an employment case than you are if you hire someone that is violent or a liability," Santoro said.

Paul Brinkmann covers law, accounting, automotive, energy and environmental issues.