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The Law of the Workplace: A Growing Conundrum

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Recent & Pending Workplace Legislation: An Expanding Morass

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Recent & Pending Workplace Legislation: An Expanding Morass

1. The Continuing Evolution of the Political Landscape
2. 2009 Legislative Initiatives: New Developments in a Dynamic Climate
3. What to Look For in 2010

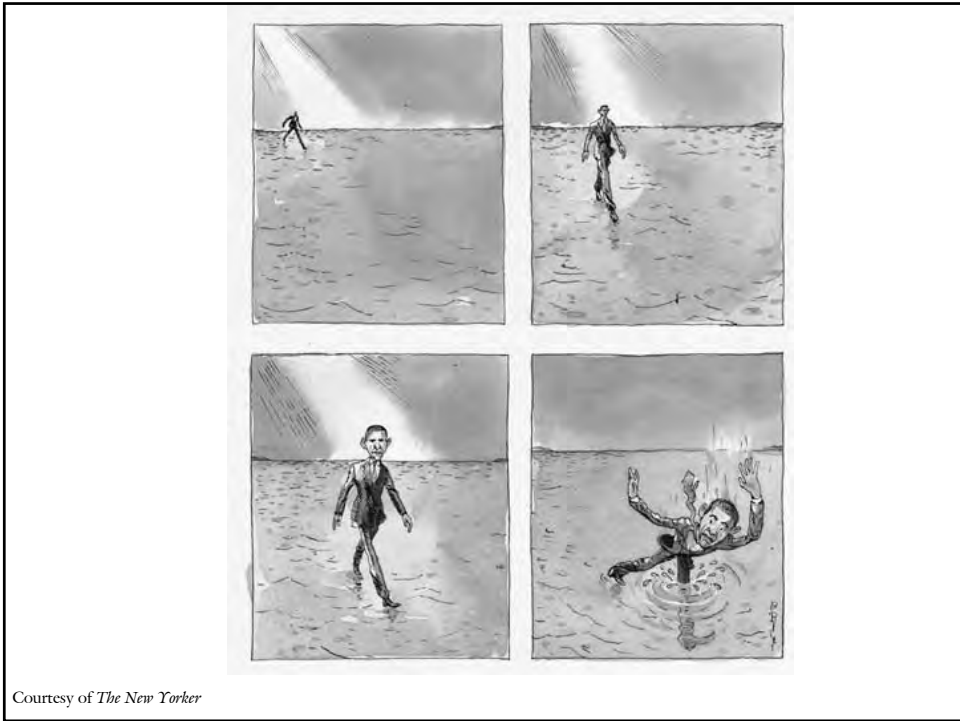
The Continuing Evolution of the Political Landscape

Timing is Everything



"Son...timing is everything."





January 2009 ...

“Yes We Can” mentality

Mid-Term Elections

Year	President	House	Senate	Rating*
'46	Truman	-45	-12	32
'54	Eisenhower	-18	-1	59
'62	Kennedy	-4	3	58
'66	Johnson	-47	-4	49
'70	Nixon	-12	2	24
'74	Ford	-48	-5	53
'78	Carter	-15	-3	34
'82	Reagan	-5	-8	63
'90	Bush	-8	-1	56
'94	Clinton	-52	-8	68
'02	Bush	8	2	38

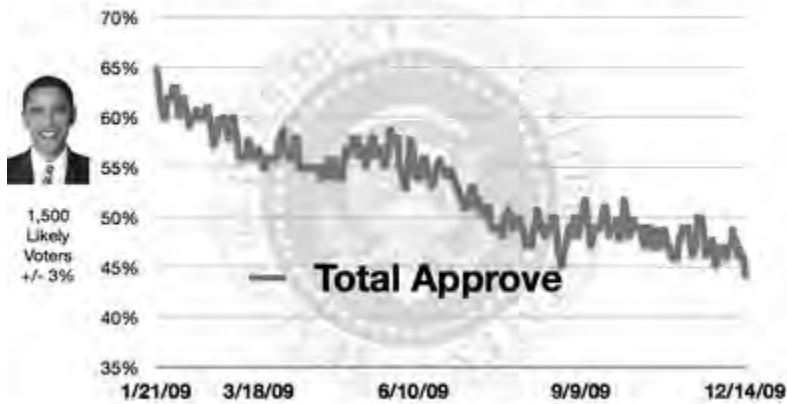
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* End of term approval rating

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Presidential Job Approval



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2. 2009 Legislative Initiatives: Key Developments in a Dynamic Climate

One Year Ago ...

- Extremely aggressive agenda
- Over 30 legislative initiatives
- Represents a paradigm shift in the role of government in the workplace
- Repudiation of many Bush-era developments

One Year Later ...

- Severely altered by intervening events-reactive
- Severely altered by changing political landscape
- Severely altered by focus on health care reform



Remnants of Prior Administration



- Genetic Information Non-Discrimination Act (5/21/08) – effective November 21, 2009
- ADA Amendments Act (1/1/09)
- FMLA Revised Regulations (1/16/09)

- Dominated by Intervening Events
 - American Reinvestment and Recovery Act
 - Bailouts (auto, finance)
 - Executive Compensation Limits
 - Jobs Act – yes? no? maybe so?



– Some Substantive Changes

- Lilly Ledbetter Fair Pay Act of 2009
- Executive Orders Affecting Federal Contractors
- Supporting Military Families Act (10/27/09)
- Health Care Reform – not quite, but not over
 - February 25 summit

– Legislation Still In Limbo

- RESPECT Act
- Employment Non-Discrimination Act
- WARN Expansion (“Forewarn”)
- Healthy Families – Balancing Act
 - numerous bills
- Employee Free Choice Act



Actions of New Administration



– Legislation Still In Limbo

- Paycheck Fairness Act (Equal Pay)
- Employee Misclassification Prevention Act
- Increase minimum wage (\$9.50 by 2011)
- Mandatory arbitration: limit or prohibit
- Protecting Older Workers Against Discrimination Act
- Immigration reform

3. What to Look For in 2010

What to Look For in 2010

- **Big Wildcards:**
 - Healthcare Reform; Jobs Act
 - Economic recovery; deficit; national security; unemployment
 - 2010 election cycle
 - 2011 Senate
- **Potential legislation – narrower list**
 - ENDA; Paycheck Fairness; Protecting Older Workers – Maybe
 - Forewarn; RESPECT; FMLA – No
 - EFCA – Substantially amended
- **Supreme Court appointment**
- **Real action: Agency-level appointments, rulemaking and enforcement**

