

**SUMMARY OF PENDING FEDERAL EMPLOYMENT LEGISLATION
As Of July 15, 2009**

By D. Albert Brannen and Tiffani Hiudt Casey

This Summary provides an overview of federal labor and employment laws that have been proposed in the 111th Congress. It does not include noteworthy legislation proposed in prior sessions such as the Re-empowerment of Skilled and Professional Employees and Construction Tradeworkers (RESPECT) Act, the Civil Rights Act of 2008 or others, nor does it include proposed regulatory changes. These proposed laws are grouped by category and listed in the order in which they were introduced this year. This Summary is not intended to be, and should not be construed as, legal advice for any specific factual situation.

To conserve space, we have only summarized these proposed laws. If you want more details or if you have any questions about this Summary, please feel free to contact the authors at the address shown at the end of this Summary.

FISHER & PHILLIPS LLP is one of the country's oldest and largest firms devoted exclusively to representing employers in labor, employment, civil rights, employee benefits and business immigration law. Our depth and breadth of experience in these niche areas are unsurpassed.

The Firm's practice includes counseling and defending employers under all major federal and state labor, employment, and employee benefits laws and regulations including, among others: The Age Discrimination in Employment Act (ADEA); The Americans With Disabilities Act (ADA); The Civil Rights Acts of 1866, 1964 and 1991; The Consolidated Omnibus Reconciliation Act (COBRA); The Employee Polygraph Protection Act (EPPA); The Employee Retirement Income Security Act (ERISA); The Equal Pay Act (EPA); The Fair Credit Reporting Act (FCRA); The Fair Labor Standards Act (FLSA); The Family and Medical Leave Act (FMLA); The Immigration Reform and Control Act (IRCA); The National Labor Relations Act (NLRA); the Occupational Safety and Health Act (OSHA), and The Worker Adjustment and Retraining Notification Act (WARN), as these laws have been amended.

Our lawyers practice in federal and state courts throughout the United States. In addition to representing employers in litigation, we also represent employers in federal, state and local administrative proceedings, mediation and arbitration, collective bargaining and administration of collective bargaining agreements, and informally in resolving threatened claims prior to the initiation of formal proceedings.

As a result of our representation of employers in litigation and formal claims proceedings, we have acquired considerable expertise in developing and implementing policies, practices, and procedures to help employers minimize or avoid the occurrence of employment-related claims, the risk of liability from such claims, or other forces that may interfere with employer rights.

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Law, Regulation or Executive Order	Status	Summary
LABOR		
Labor Relations First Contract Negotiations Act of 2009 H.R. 243	<i>Introduced</i> Jan. 7, 2009 <i>Referred to Subcommittee</i> Mar. 16, 2009	Would amend the NLRA to require mediation and, if necessary, binding arbitration of initial contract negotiation disputes
Secret Ballot Protection Act H.R. 1176 S. 478	<i>Introduced</i> Feb. 25, 2009 <i>Recommended for entire Senate consideration</i> Feb. 26, 2009 <i>Referred to Subcommittee</i> April 22, 2009	Would amend the NLRA to make it an unfair labor practice for: <ul style="list-style-type: none"> ▪ an employer to recognize or bargain collectively with a labor organization that has not been selected by a majority of the employees in a secret ballot election conducted by the NLRB ▪ a labor organization to cause or attempt to cause an employer to recognize or bargain collectively with a representative that has not been selected in such a manner
National Labor Relations Modernization Act H.R. 1355	<i>Introduced & Referred to Committee</i> Mar. 5, 2009 <i>Referred to Subcommittee</i> April 29, 2009	Would amend the NLRA to require employers to provide labor organizations with equal access to employees prior to an election regarding representation, to prevent delays in initial collective bargaining, and to strengthen enforcement against intimidation of employees by employers
Employee Free Choice Act (EFCA) H.R. 1409 S. 560	<i>Introduced</i> Mar. 10, 2009 <i>Referred to Subcommittee</i> April 29, 2009	Would amend the NLRA to provide for: <ul style="list-style-type: none"> ▪ “Card check,” which could practically eliminate secret-ballot elections ▪ Union-friendly bargaining rules ▪ Increased penalties against employers ▪ More NLRB injunctions
Patriot Corporations of America Act of 2009 H.R. 1874	<i>Introduced & Referred to Committee</i> Apr. 2, 2009	Would provide federal contracting preferences for, and a reduction in the rate of income tax imposed on, “Patriot” corporations. Among other requirements, employers would have to waive their Section 8(c) free speech rights and not oppose unionization of their employees to be labeled a “patriot” employer
Freedom From Union Violence Act of 2009 H.R. 2537	<i>Introduced & referred to Judiciary Committee</i> May 21, 2009 <i>Referred to Subcommittee</i> June 12, 2009	Would impose fine of up to \$100,000 and/or prison sentence of up to 20 years for anyone affecting commerce who commits: (1) robbery; (2) extortion; or (3) an act of physical violence to any person or property during a labor dispute. Would amend the Hobbs Act, which is a statute combating racketeering in labor-management disputes
Rewarding Achievement & Incentivizing Successful Employees Act (RAISE) H.R. 2732 S.B. 1184	<i>Introduced</i> June 4, 2009 <i>Referred to Committee</i>	Would amend the NLRA to allow employers to pay their employees higher wages than may be provided for in a collective bargaining contract agreement renewed or entered into after the date of the enactment of the RAISE Act

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LABOR		
Truth in Employment Act of 2009 H.R. 2808	<i>Introduced & referred to Committee</i> June 10, 2009	Would amend the NLRA to protect employers from being required to hire any person seeking a job in order to promote interests unrelated to those of the employer. Would give employers the right to fire workers who engage in a salting campaign and would crack down on what sponsors characterize as frivolous claims brought by union salts

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LEAVE		
Family Fairness Act of 2009 H.R. 389	<i>Introduced & Referred to Committee</i> Jan. 9, 2009	Would amend FMLA to eliminate requirement that employee has to have worked at least 1,250 hours during a 12-month period before requesting FMLA, thereby providing FMLA leave to part-time as well as full-time employees.
Security and Financial Empowerment Act (SAFE) H.R. 739	<i>Introduced</i> Jan. 28, 2009 <i>Sponsor Remarks</i> Feb. 3, 2009	Would promote economic security and safety of victims of domestic and sexual violence by: <ul style="list-style-type: none"> ▪ providing entitlement standards and implementation guidelines for employee use of emergency leave to address domestic violence, dating violence, sexual assault, or stalking (domestic or sexual violence) ▪ permitting victims of domestic or sexual violence to substitute existing leave in lieu of emergency leave ▪ prohibiting certain discriminatory employer practices against victims of domestic or sexual violence
Family Leave Insurance Act of 2009 H.R. 1723	<i>Introduced</i> March 25, 2009 <i>Referred to Subcommittee</i> May 14, 2009	Would establish a Family and Medical Insurance Program, mandatory for certain covered employers, which would <ul style="list-style-type: none"> ▪ entitle eligible employees to Program benefits that include specified percentages of their daily earnings for 12 work weeks of leave under FMLA during any 12-month period ▪ authorize any employer to establish a voluntary plan meeting specified criteria ▪ specify prohibited acts and penalties for violations
Family and Medical Leave Enhancement Act of 2009 H.R. 824	<i>Introduced</i> Feb. 3, 2009 <i>Referred to Subcommittee</i> May 4, 2009	Would amend the FMLA to: <ul style="list-style-type: none"> ▪ cover employees at worksites employing fewer than 50 employees but not fewer than 25 employees ▪ allow employees to take, as additional leave, parental involvement leave to participate in or attend children's and grandchildren's educational and extra-curricular activities ▪ clarify that leave may be taken for routine family medical needs, to assist elderly relatives, and other purposes; ▪ allow employees to elect, or employers to require, substitution of any paid or family leave or paid medical or sick leave of employee for any FMLA leave ▪ impose certain notification requirements on employee requesting leave
FMLA Inclusion Act H.R. 2132	<i>Introduced & Referred to Committee</i> Apr. 28, 2009 <i>Referred to Subcommittee</i> June 26, 2009	Would amend FMLA to permit leave to care for same-sex spouse, domestic partner, parent-in-law, adult child, sibling, or grandparent with serious health condition
Healthy Families Act H.R. 2460	<i>Introduced & Referred to Committee</i> May 18, 2009	Would allow employees to earn one hour of paid sick leave for every 30 hours worked to address their own health needs and health needs of their families. Employees would begin accruing sick leave when employed and may begin using leave after 60 days. Employer coverage would be phased in over time, but the law would eventually cover employers with 25 or more employees.

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LEAVE		
Paid Vacation Act of 2009 H.R. 2564	<i>Introduced & Referred to Committee</i> May 21, 2009	Would amend FLSA to require employers to provide a minimum of 1 week paid annual leave to employees
Balancing Act of 2009 H.R. 3047	<i>Introduced & Referred to Committee</i> June 25, 2009	<p>This 262-page bill would amend and expand the FMLA to provide for, among other things:</p> <ul style="list-style-type: none"> ▪ expand coverage of the FMLA to employers with 15 or more employees ▪ 12 weeks of paid leave for all workers to care for a family member, bond with a new child, recover from a serious illness or deal with an exigency arising from the deployment of a relative member of the military [this is similar to H.R. 1723] ▪ creation of a Family and Medical Leave Insurance Fund funded by employers and employees each paying premiums equivalent to 0.2% of each worker's earnings. Employers with fewer than 20 employees would only pay a 0.1% premium. ▪ up to 7 days of paid sick leave per year on an accrual basis. Employees would earn one hour of paid sick leave for every 30 hours worked to a maximum of 56 hours (7 days) [this is similar to H.R. 2460] ▪ allow employees to take "parental involvement" leave to participate in their children's and grandchildren's educational and extracurricular activities and "family wellness" leave to allow employees to take family members to regular medical appointments and to assist elderly relatives [this is similar to H.R. 824] ▪ extend FMLA protections to workers to address issues related to domestic violence or sexual assault of either themselves or family members [this is similar to H.R. 739] ▪ permit care for a domestic partner, child of a domestic partner, same-sex spouse, parent-in-law, adult child, sibling or grandparent if that person has a serious health condition [this is similar to H.R. 2132] ▪ create a program to raise awareness about telecommuting

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EMPLOYEE RIGHTS/DISCRIMINATION		
Title VII Fairness Act S. 166	<i>Introduced & Referred to Committee</i> Jan. 7, 2009	Would amend the ADA and Title VII to delay start of time period for filing charges of employment discrimination until aggrieved person has, or should be expected to have, enough information to support reasonable suspicion of discrimination
Arbitration Fairness Act of 2009 H.R. 1020	<i>Introduced</i> Feb. 12, 2009 <i>Referred to Subcommittee</i> Mar. 16, 2009	Would provide that: <ul style="list-style-type: none"> ▪ no pre-dispute arbitration agreement to be valid or enforceable if it requires arbitration of: (1) an employment, consumer or franchise dispute, or (2) a dispute arising under any statute intended to protect civil rights ▪ the validity or enforceability of an arbitration agreement would be determined by court, under federal law, rather than an arbitrator, irrespective of whether the party resisting arbitration challenges arbitration agreement specifically or in conjunction with other terms of the contract containing the agreement
Working Families Flexibility Act (so-called "Union of One" law) H.R. 1274	<i>Introduced & Referred to House Judiciary</i> Mar. 3, 2009	Would authorize an employee to request from an employer a change in the terms or conditions of the employee's employment if the request relates to: (1) the number of hours the employee is required to work; (2) the times when the employee is required to work; or (3) where the employee is required to work. Would impose obligations on employers to confer with the employee, to provide relevant information and for substantial penalties for non-compliance.
Alert Laid Off Employees In Reasonable Time Act H.R. 2077	<i>Introduced</i> Apr. 23, 2009 <i>Referred to Subcommittee</i> June 4, 2009	Would amend WARN to require notifications under the Act for mass layoffs that occur at more than one site of employment during any 30-day period and increases penalties for violation of the Act.
Wounded Veteran Job Security Act H.R. 466	<i>Passed House</i> June 8, 2009 <i>Received in Senate & Referred to Subcommittee</i> June 9, 2009	Would entitle a person absent from employment by reason of receipt of medical treatment for service-connected disability to: <ul style="list-style-type: none"> ▪ be retained by person's employer ▪ the seniority and other rights and benefits determined by seniority prior to treatment or as if continuously working ▪ be considered on furlough or leave of absence during such treatment, retaining rights and benefits ▪ use any vacation, annual, medical or similar leave with pay accrued before the commencement of the treatment Would provide certain exemptions for employers
Employee Non-discrimination Act of 2009 (ENDA) H.R. 2981	<i>Introduced & referred to House Judiciary</i> June 19, 2009	Would prohibit employment discrimination on the basis of sexual orientation or gender identify

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EMPLOYEE RIGHTS/DISCRIMINATION		
Federal Oversight Reform and Enforcement of the WARN Act (FOREWARN) H.R. 3042	<i>Introduced & referred to Committee</i> June 25, 2009	Would amend the WARN Act to minimize the adverse effects of employment dislocation by: <ul style="list-style-type: none"> ▪ re-defining the definition of “employer” to any business that employs 75 or more employees ▪ re-defining the definition of “plant closing” to include the employment loss of 25 or more employees during any 30-day period ▪ re-defining the definition of “mass layoff” to include the employment loss of 25 or more employees during any 30-day period ▪ increasing the “Notice Period” to 90 days ▪ adding a provision that “Notice” shall be excused in the event of a “terrorist attack” ▪ modifying the language required on the “Notice” ▪ increase penalties to \$500 for <i>each separate offense</i> ▪ modifying other procedures

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WAGES & BENEFITS		
Health Care Incentive Act H.R. 77	<i>Introduced</i> Jan. 6, 2009 <i>Referred to Subcommittee</i> Mar. 16, 2009	Would allow any employer in interstate commerce that is required by federal or state law to pay a minimum wage rate higher than the current federal rate under the Fair Labor Standards Act of 1938 to include the value of creditable health care benefits in determining the required wage
Paycheck Fairness Act H.R. 12 S. 182	<i>Introduced</i> Jan. 6, 2009 <i>Passed House</i> Jan. 9, 2009 <i>Referred to Senate Subcommittee</i> Mar. 6, 2009	Would amend the Equal Pay Act portion of the FLSA to revise remedies for, enforcement of, and exceptions to prohibitions against sex discrimination in the payment of wages
Pension Security Act of 2009 H.R. 712	<i>Introduced & Referred to Committee</i> Jan. 27, 2009	Would amend Title I of ERISA to require financial statements filed with annual reports for a defined benefit pension plan covered by ERISA to include a separate schedule identifying: (1) each hedge fund (i.e., unregistered investment pool) in which plan funds are invested; and (2) amount invested
Defined Contribution Fee Disclosure Act of 2009 S. 401	<i>Introduced & Referred to Committee</i> Feb. 9, 2009	Would amend ERISA to prohibit administrator of an individual account plan that includes the qualified cash or deferred arrangement from contracting for services to the plan unless administrator has received written statement in advance describing services to be provided, identifies any other entity performing such services, provides expected total annual service charges allocated among specified components, and discloses financial relationships with, or free or discounted services provided by, other parties
Family-Friendly Workplace Act H.R. 933	<i>Introduced</i> Feb. 10, 2009 <i>Referred to Subcommittee</i> Mar. 23, 2009	Would amend FLSA of 1938 to: <ul style="list-style-type: none"> ▪ authorize private employers to provide compensatory time off to private employees if in accordance with a collective bargaining agreement or, in absence of such agreement, an agreement between the employer and employee ▪ prohibit employee from accruing more than 160 hours comp time ▪ require employer to provide monetary compensation after end of calendar year for any unused comp time accrued during preceding year

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SAFETY/HEALTH (OSHA) AND ENVIRONMENTAL		
Worker Protection Against Combustible Dust Explosions and Fires Act of 2009 H.R. 849	<i>Introduced</i> Feb. 4, 2009 <i>Referred to Subcommittee</i> Mar. 23, 2009	Would provide additional occupational safety and health standards regarding worker exposure to combustible dust . Would be applicable to manufacturing, processing, blending, conveying, repackaging, and handling of combustible particulate solids and their dusts
Protecting America's Workers Act H.R. 2067	<i>Introduced & Referred to Committee</i> Apr. 23, 2009 <i>Referred to Subcommittee</i> May 21, 2009	Would amend Occupational Safety and Health Act of 1970: <ul style="list-style-type: none"> ▪ to cover more employees and allow felony prosecutions against employers who commit willful violations that result in death or serious bodily injury ▪ to increase civil/criminal penalties and expand whistleblower protection
Corporate Injury Illness and Fatality Reporting Act of 2009 H.R. 2113	<i>Introduce & Referred to Committee</i> Apr. 27, 2009	Would impose additional reporting requirements on employers with more than one establishment and more than 500 employees regarding work-related deaths, injuries, and illnesses
Nurse and Health Care Worker Protection Act H.R. 2381	<i>Introduced & Referred to Committee</i> May 13, 2009	Would regulate safe patient handling and injury prevention by: <ul style="list-style-type: none"> ▪ requiring Secretary of Labor to issue a standard on safe patient handling and injury prevention ▪ requiring health care employers to establish injury prevention plans and track nurses and healthcare workers regarding the plan and safe patient care ▪ requiring OSHA to promulgate standards mandating use of mechanical lifts by healthcare workers when moving patients

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D. ALBERT BRANNEN is a partner and team manager in the Atlanta office of Fisher & Phillips LLP. Since 1982, he has represented employers in successfully solving labor and employment law problems in the workplace. He has a depth of experience advising employers how to stay union-free and in assisting employers with the administration, negotiation, mediation and arbitration of collective bargaining agreements. He has successfully represented clients in formal administrative proceedings before the NLRB, EEOC, DOL and in federal and state courts. Much of his time is devoted to counseling employers about how to avoid workplace crises, comply with all applicable laws and prevent litigation. He helps prepare all of the documents associated with the employment experience, including

employee handbooks, employment contracts, restrictive covenants, ethics and confidentiality agreements, non-competition or non-solicitation agreements, and severance agreements. He has written numerous articles on a wide variety of labor employment law subjects. He frequently speaks to business and professional associations, industry groups and individual employers. He has been repeatedly named a "Super Lawyer for Labor & Employment Law" and is the Chairman of the Labor and Employment Law Section of the State Bar of Georgia. He also teaches labor and employment law as an associate professor at Georgia Institute of Technology.



TIFFANI HIUDT CASEY is an associate in the Atlanta office. She represents management in all areas of labor and employment law in state and federal courts as well as before state and federal agencies. A significant portion of her practice is devoted to providing clients with day-to-day preventive advice to reduce the likelihood of demands, charges, and litigation. She prepares employee handbooks and policies, conducts manager and employee training, and provides counseling regarding hiring, termination, unemployment, employee leave and disability, harassment, discrimination, the Occupational Safety and Health Act, and other federal and state laws and regulations affecting employment. Prior to joining Fisher & Phillips in 2008, she was associated with two other leading Southeastern law firms. While in law school, Tiffani served as Research Editor for the *Emory Bankruptcy Developments Journal*. She received a 2001 Emory Trial Techniques Award and a 2000 Emory Trial Argument Competition Award. Tiffani was one of "Georgia's Rising Stars Super Lawyers" in *Atlanta* magazine for Labor and Employment in 2006 and 2008.

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