

Congress Acts Aggressively to Strengthen Employment Protections, Fight Discrimination

By Kenneth A. Rosenberg and Brett D. Halloran

After years of inactivity in the employment law realm, Congress recently has developed a renewed interest in fighting workplace discrimination and strengthening employment protections for workers. Last year, President Bush signed the Genetic Information Nondiscrimination Act of 2008 (GINA) and the Americans with Disabilities Act (ADA) Amendments Act of 2008 into law. GINA makes it illegal for employers to acquire, disclose, or make employment decisions based on genetic information. Likewise, the ADA Amendments Act of 2008 revises the federal Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101, *et seq.*, to broaden the class of individuals who qualify as disabled and are protected under ADA. This trend has continued under the current administration with President Obama extending the protections of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.* to make it easier for plaintiffs to bring pay discrimination claims.

The Civil Rights Act of 1964 stands as a legislative landmark in the federal government's efforts to fight discrimination in employment, public accommodation, public facilities, schools, government agencies, the courts, and voter registration. In particular, Title VII of the Act prohibits discrimination in employment based on race, color, religion, sex, and national origin. At the same time, Congress created the federal Equal Employment Opportunity Commission (EEOC) to enforce Title VII's

protections. Since the passage of Title VII, however, Congress has rarely revisited the statute. In the meantime, many states enacted laws with employment protections that surpass those in Title VII, including, but not limited to, protections against employment discrimination based on sexual orientation, gender identity, ancestry, marital status, and familial status. In 2009, Congress significantly changed Title VII with the passage of the Lilly Ledbetter Fair Pay Act of 2009, and further reforms are likely on the horizon.

The Ledbetter Act was a legislative response to the U.S. Supreme Court's decision in *Led-*

day statute of limitations. The Court rejected Ledbetter's argument that each new paycheck she received reset the statute of limitations. The Court reasoned that tolling the statute of limitations in that way would improperly diminish a plaintiff's burden to prove intentional discrimination. It shifted the "intent" element away from the discriminatory act itself to later effects of that act that were not performed with a discriminatory bias or motive and would further distort Congress' preference for a prompt resolution of employment discrimination claims.

In its findings, Congress

"including each time wages, benefits, or other compensation is paid." The Ledbetter Act made similar changes to ADA, the federal Rehabilitation Act of 1973, 29 U.S.C. §§ 791, 794, and the federal Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621, *et seq.* The Ledbetter revisions mean, in part, that each paycheck that is issued subsequent to any decision to discriminate in compensation starts the running of a new statute of limitations period regardless of when such a decision is first made. Thus, companies should be advised to review their compensation and merit-increase structures to identify any pay discrepancies and ensure that they are able to articulate justifications for any disparities that may exist.

Congress has not shown that it is content to revert to another long period of inac-

"married" is defined under the federal Defense of Marriage Act).

Congress also is considering the Paycheck Fairness Act (PFA). The PFA would amend the federal Equal Pay Act (EPA) of 1963 to strengthen its equal pay provisions. Under EPA, employers defending a pay discrimination claim can show that any pay differential between men and women is based "on any other factor other than sex." The PFA, among other changes, would sharply limit this defense to instances when employers could prove that the "other factor" is (1) not based on or derived from a sex-based differential in compensation; (2) job-related to the position in question; (3) and consistent with business necessity.

The renewed congressional attention to employment discrimination will likely engender a new wave of litigation by plaintiffs and enforcement efforts by EEOC. In the coming months and years as these new bills work their way through Congress, young lawyers should follow Congress' actions closely to provide timely and practical guidance to clients on these important issues. Ultimately, given the current downturn in the U.S. economy, whether these legislative initiatives prove to be effective in eviscerating employment discrimination in the workplace remains to be seen.

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better v. Goodyear Tire & Rubber Co., 550 U.S. 618 (2007). Lilly Ledbetter was hired as a factory worker at the Goodyear Tire & Rubber Company's Gadsden, Alabama, plant in 1979 and initially received the same salary as her male counterparts. By the time she retired in 1998, however, she was earning significantly less money than the plant's male factory workers. Ledbetter claimed that the pay disparity was due to several poor evaluations that she received because of her sex. Without reaching the question of whether those evaluations were, in fact, discriminatory, the Court held that Ledbetter's claims were barred because the evaluations occurred outside Title VII's 180-

rejected the Court's view of congressional intent and stated that the *Ledbetter* decision (1) impaired and undermined statutory protections against compensation discrimination by unduly restricting the time period for which victims can recover, (2) ignored the reality of compensation discrimination, and (3) was contrary to statutory intent. The Ledbetter Act effectively overturned the Court's decision by providing that employers are liable for compensation discrimination under Title VII when discriminatory practices are adopted, when employees become subject to such practices, and when employees are "affected by application of" such decisions,

tivity in the area of employment discrimination. Rather, Congress is considering taking further action that would alter the employment landscape. In particular, the Employment Non-Discrimination Act of 2009 (ENDA) is currently pending in Congress. If passed by Congress and signed by President Obama, ENDA would follow many state laws that make it illegal for employers to discriminate in employment based on sexual orientation or gender identity. Notably, ENDA would not require employers to extend spousal benefits to same-sex couples as it specifically provides that employers are not required to treat unmarried couples similar to married couples (the term

NEXT STEPS

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Devise a Job-Search Game Plan (and Contact Your Law School Career Center)

By Bill Chamberlain and Arthur Fama

Whether you have been laid off or you are trying to cope with the lack of job security, your first impulse may be to send out hundreds of résumés in response to online job ads. However, taking some time to assess your situation and devise a game plan before you job search will reap better results.

Developing an effective job-search strategy should begin with a thorough career self-assessment. Start by exploring and answering these questions:

- What do you want your next job to be?
- What do you like and dislike about your current (or most recent) job?
- Apart from the effects of the down economy, how happy are/were you in your job?
- Is/was your practice area a good fit for you?
- Does/did your work environment fit your personality and your needs for contact with people, time spent working

alone, or work/life balance?

- How do you feel about a hierarchical structure and the use of such a structure in staff decisions made for participation in client cases and deals?
- Do you like research and writing? Are you good at giving presentations?

Then, take a look even further back.

- Why did you go to law school? What were you hoping to do with your law degree?
- If you were hoping to change the world in some small or large way, how many steps have you taken toward that goal?
- What values motivate you? Money? Power? Prestige? Working with good people? Praise?

There also are many popular self-assessment tools that can help you sort out your skills, values, and interests, such as

the Myers-Briggs Type Indicator or the Strong Interest Inventory. You can further consult books such as Deborah Arron's *What Can You Do with a Law Degree?*, Barbara Sher's *Wishcraft*, or Timothy Butler's *Getting Unstuck*, which can help you realize that the variety of career options within and outside of law is unlimited.

In addition to your own work on assessing your career, your law school career center can help you with the self-assessment process. Remember that once you have entered law school, your career center is yours to use for life. Larger career centers have a dedicated counselor for alumni. Use the centers for more than access to job postings.

After conducting an assessment of your current work situation, you may decide that a different path would lead to a happier work life for you. If this is your conclusion, you should identify some jobs that would better utilize your skills and in-

terests. Then, you should locate the people who have those jobs and set up informational interviews. Again, your law school career center can help. You should target alumni of both your law school and your undergraduate institution and keep in mind that the more you have in common with these individuals the more likely that they will agree to meet with you.

During an informational interview, ask the following questions:

- What path did you take to where you are now?
- What is a typical day is like for you?
- What do you like and dislike about your job?
- Do you think I have the necessary experience and skills for this type of work?
- What professional organizations do you belong to and what law publications do you read?
- What is the typical salary range for your type of posi-

tion?

- Is there anyone you know whom I could contact with more questions?

Do not ask for a job. If interviewees like you and have an opening for which you would be qualified, they will let you know.

Responding to job postings is fine but only after you have done the work outlined above and only when you acknowledge that your chance of finding a job from any one posting is minimal. The good news is that you have much support in these tough times, not only from your friends and family, but also from your larger network of people who have known you and your work. One of your first calls after a layoff or if you're feeling anxious about job security should be to your law school career center. While career counselors do not have a job drawer or a magic bullet, we excel at strategizing and helping you develop a game plan for the next step in your career.

Bill Chamberlain is assistant dean and clinical assistant professor of law in the Center for Career Strategy & Advancement at Northwestern University School of Law in Chicago. Arthur Fama is dean of Career Services at the Benjamin N. Cardozo School of Law in New York City. You can contact them at w-chamberlain@law.northwestern.edu and fama@yu.edu.



Landing a Legal Job in the Federal Government

By Dawn L. Oliver

Did you know that the federal government employs more than 93,000 attorneys? Many of these positions are legal counsel for federal agencies such as the Department of Justice (DOJ), the Social Security Administration (SSA), the Department of Veterans Affairs (VA), the Department of Education (DOE), and the National Aeronautic and Space Administration (NASA). And despite the recent recession, the number of federal workers is generally on the rise. According to a Septem-

ber 3, 2009, *Washington Post* article, the "Justice Department is expecting 4,000 new positions among law enforcement personnel, correctional officers and attorneys in the 2010 budget."

Federal government attorneys enjoy many benefits and great rewards. Generally, attorneys are provided opportunities to immediately develop their knowledge, skills, and abilities. They practice in many areas and may advise on agency legal or policy matters. Because federal agencies do not have

a billable hour requirement, attorneys can focus on deriving the best legal answer without the additional stress of "making their hours."

An additional benefit of working for the federal government is the opportunity to achieve a manageable work/life balance. Attorneys have a reasonable work week and enjoy the benefit of federal holidays and ample vacation and sick leave. As federal government employees, attorneys have access to health and retirement benefits and loan repayment programs. Specifically, the federal government can be accommodating for attorneys in terms of geographical location and movement between agencies as most agencies require a J.D. and attorneys to be mem-

bers of the bar in good standing in any jurisdiction (which does not have to be the one where they are employed).

If you are interested in landing a job with the federal government, check out the following tips from the *2008-2009 Federal Legal Employment Opportunities Guide* (http://76.12.222.174/uploads/2008-2009_FLEOG_FINAL_PDF.pdf), produced by The Association for Legal Career Professionals (NALP) in cooperation with the Partnership for Public Service and the American Bar Association's Government and Public Sector Lawyers Division.

1. Take advantage of an unprecedented opportunity.

One third of the full-time, permanent federal workforce is expected to leave the government in the next five years. The majority of those employees will be leaving their positions by retiring. The result is that the government will be aggressively recruiting talented and committed candidates to replace their public servants.

2. Know where to look. Although most federal job opportunities are posted on www.usajobs.opm.gov, a Web site run by the Office of Personnel Management (OPM), you should also visit the Web sites of those agencies that interest you. Also, be sure to

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To Tweet or Not to Tweet? The Best and Worst Social Networking Sites for Lawyers

By Larry Bodine

You could hear the collective groan when Twitter made the cover of *TIME Magazine* and lawyers realized that they had to become familiar with yet another social networking site. There's already Facebook, MySpace, Naymz, Spoke, Plaxo, LinkedIn, Martindale Connected, Legal OnRamp, and JD Supra—to name just a few. Deciding where to focus your online business development efforts can be overwhelming and time consuming.

The good news is you can ignore most of them, concentrate on a single online network, and turn your efforts into new clients, new files, and new billable work.

Eliminate the time-wasters.

Twitter is the primary example of a social networking site that you don't need. Consider that:

- Only 6 percent of lawyers in private practice and 4 percent of in-house lawyers use Twitter, according to a 2009 survey by Leader Networks.
- 10 percent of Twitter users account for over 90 percent of tweets, according to a June Harvard Business School report.
- 60 percent of people with a Twitter account drop out after one month and never

come back, according to Nielsen Wire.

- About 55 percent of Twitter users have never tweeted, according to HubSpot.com.

Twitter can be useful as a supplemental marketing tool though. If you write a new article or post a new item to your blog, you can use the 140-character limit to send out the headline and URL. It's also useful to monitor tweets about your own name and firm name. Tweetbeep.com will do this for you for free. Otherwise, don't waste your valuable time.

You can also forget about MySpace, which has been losing users since the *New York Times* reported that 90,000 registered sex offenders had MySpace profiles. As for Naymz, Spoke, and Plaxo, none of them receive enough online traffic to be worth your time.

Facebook is the 800-pound gorilla with 300 million users, as of November. Facebook is for staying in touch with people you *used to know*. If you have a personal Facebook account, don't put anything online that you don't want clients to see. Monitor posts to your wall, and adjust your security settings to control what others can see.

Focus on LinkedIn.

Some 840,000 lawyers have profiles on the business-oriented social networking site LinkedIn, according to a June Stemlegal.com report. With more than 50 million users as of October, LinkedIn is the *de facto* online directory for finding professionals of all kinds. Unlike Facebook, LinkedIn is for connecting with *new people* you'd like to meet and keep in touch with—clients and referral sources. But, it only works as a marketing tool if you

use it. Don't just create a LinkedIn profile and think clients will come to you. Instead:

1. Create a complete profile.

Make sure that your profile includes a professional photo of yourself and that all of your information (e.g., work experience, professional affiliations, and volunteer work)

is updated and accurate.

2. Seek recommendations.

When your clients are delighted with the outcome of a case or completion of a deal, at that moment, ask them to visit your profile and make a recommendation. This is a testimonial, which is very powerful marketing.

3. **Join a group.** This is where the action happens on LinkedIn. You can find a group for your practice area, an association to which you belong, or an industry where you would like more clients.

4. **Start a discussion.** Every group has online discussions,

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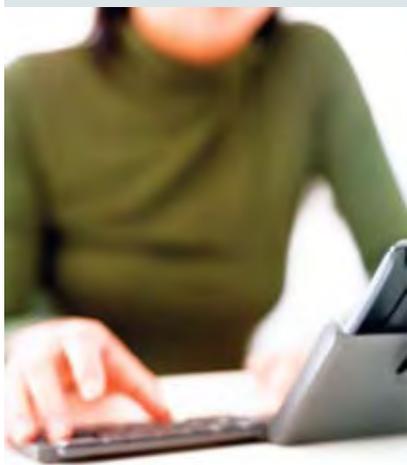


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Jobs in Federal Government

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check out federal job fairs.

- 3. Target your search.** There are many career opportunities in all three branches of the federal government. The executive branch is the largest employer, with more than seventy individual departments and agencies. The U.S. Government Manual (www.gpoaccess.gov/gmanual/index.html) is a great resource to help narrow your search.
- 4. Be prepared.** Update your résumé, locate your transcript, and verify contact information for your references. Applications that are incomplete or not received by the closing date of a job announcement may not be considered.
- 5. Consider a short-term service opportunity.** Many agencies offer term positions, which provide short-term opportunities that may lead to permanent employment.
- 6. Be patient.** The federal hiring process moves more slowly

than hiring in the private sector. You should not be concerned if you submit applications and do not receive immediate responses.

When applying for jobs with the federal government, you may submit an existing résumé, create a résumé online at www.usajobs.opm.gov, or complete the Optional Application for Federal Employment (OF 612) available at www.opm.gov/forms/pdf_fill/of612.pdf. Be sure to check job announcements for résumé requirements and application instructions. Required information includes the job announcement number, the position title and grade, personal information, education, job-related work experience, and other job qualifications (e.g., member of the bar in good standing in any jurisdiction).

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To Tweet or Not to Tweet?

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- which gives you a chance to demonstrate your expertise. Pick a hot topic of the day and ask for opinions. By starting a discussion, you are positioning yourself as a leader.
- 5. Make a comment.** LinkedIn will e-mail you a current list of discussions underway. This is your chance to chime in an offer a comment.
 - 6. Ask a question.** Go to the “Answers” section and you’ll see a box where you can ask a question or make a statement. You can select among your contacts as to whom you want to send a message.
 - 7. Build up your connections.** Whenever you speak with clients, referral sources, prospects, or new people, ask for their e-mail addresses and invite them to connect to you on LinkedIn.
 - 8. Do not violate ethics rules!** As with any social network-

ing site, do not give a legal opinion or you’ll attract unintended client relationships. Do not express a legal opinion that may conflict with a position your firm is taking in a brief for a client. Also, avoid personal attacks that could be viewed as defamatory falsehoods. Simply stick to facts—news, new opinions, new regulations, and new accomplishments—and you should be safe from ethics violations.

As rainmakers know, new business comes from relationships. Potential clients are everywhere online, and you have the opportunity to make them your clients. Use LinkedIn as a business development tool, and you will garner the clientele you want to grow your practice.

Larry Bodine is a business developer from Glen Ellyn, (Chicago) Illinois, who specializes in helping law firms attract and keep more clients. He can be contacted at LBodine@LawMarketing.com.

ELECTION NOTICE

The ABA Young Lawyers Division will elect its 2010–2011 officers and other representatives at the ABA Annual Meeting on August 7, 2010, in San Francisco, CA. The officers and representatives who will be elected include the Chair-Elect, Secretary-Treasurer, Speaker, Clerk, two delegates to the ABA House of Delegates, and nominee for the young lawyer member-at-large position on the ABA Board of Governors. Written notice of candidacy for elected YLD positions must be received by the YLD Secretary-Treasurer, Speaker, and Staff Director by the YLD Assembly’s adjournment at the ABA Midyear meeting on February 6, 2010, in Orlando, FL. For more information, visit www.abanet.org/yld/elections.html or contact YLD Secretary-Treasurer Michael G. Bergmann at mbergmann@pili-law.org or (312) 832-5129.