



Obama Recess Appointments Leave Mark on NLRB, EEOC

By: Thomas R. Bagby

On March 27, 2010, President Obama announced recess appointments to the NLRB of controversial SEIU and AFL-CIO union lawyer Craig Becker and practicing union attorney Mark Pearce. Together with current Chair Wilma Liebman, the appointments constitute a three-person majority of former union-side attorneys on the NLRB. The recess appointments will last until the end of the 2011 Congressional session.

The business community and employer groups had strongly opposed Becker's nomination. The opposition to Becker was largely a result of his expressed support of pro-union labor law reforms and his assertion that many such reforms could be carried out by the NLRB itself, without involving Congressional changes to the law. Becker's nomination had been stalled in the Senate, which resulted in the President's recess appointment of him.

The recess appointments of Becker and Pearce are likely to result in a decided pro-union shift at the NLRB. As a result,

employers must be vigilant to the likelihood of increased organizing and other steps by unions emboldened by the new pro-union majority at the Board.

At the same time he made the NLRB recess appointments, President Obama also made three recess appointments to the EEOC. He appointed as Chair Jacqueline Berrier, a Democrat and former associate-director-counsel of the NAACP Legal Defense Fund, and Chai Feldblum, Democrat, and Victoria Lipnic, a Republican, to the two other open Commission seats. The five person EEOC (like the NLRB) traditionally has at least two commissioners who are members of the party not in control of the White House. As a result of the EEOC recess appointments, Democrats now have a three person majority on the Commission.

Like the NLRB appointments, the recess appointments to the EEOC are likely to signal more aggressive enforcement by the Commission.

Federal Law Now Requires Reasonable Break Time for Nursing Mothers

By: Thomas R. Bagby

The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, ("PPACA" or the "Act") signed into law by President Obama on March 23, 2010, amends the Fair Labor Standards Act to require employers to provide "a reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk." Employers must also provide a place shielded from view and

from intrusion by coworkers and the public, other than a restroom, where mothers can express their milk. Employers are not required to compensate employees for breaks taken pursuant to this provision. Moreover, employers with fewer than 50 employees are excluded from the new requirement if compliance would impose undue hardships. The effective date of this provision is March 23, 2010, the date of enactment.