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CONGRESS ACTUALLY EXPANDS FMLA, AGAIN: On again, off again! Once again, Congress has voted to expand the Family and Medical Leave Act (FMLA) and unlike the last version of this bill, President Bush has now signed it into law. In addition to the existing FMLA requirements with which you are familiar, the new FMLA has two important new parts. Part One of the new FMLA now requires that an employer give an employee up to twelve (12) weeks of unpaid leave when that employee's immediate family member (spouse, child, parent) is a reservist or National Guard member called to active military duty. Moreover, Part Two of the new FMLA also now requires an employer to give up to twenty-six (26) weeks of unpaid leave to an employee providing care to an immediate family member (spouse, child, parent), as well as to the nearest blood relative, wounded while serving in the United States military. Part Two leave must be combined with the usual 12 week availability (in other words, employees do not get 38 weeks of leave), can only be taken once during an employee's career and does not renew in subsequent twelve month periods. All the usual FMLA rules regarding leave eligibility remain in place and the new leave can be taken intermittently. Now is the time to update your policies, handbooks, FMLA notices and FMLA practices. Part Two of the new law is effective immediately, and Part One will be effective when new regulations are issued by the government, according to a brief United States Department of Labor guidance explaining it, see: http://www.dol.gov/esa/whd/fmla/NDAA_fmla.htm

NEW FMLA FORMS AVAILABLE: According to a notice from national SHRM, late last year, the DOL reissued their FMLA Certification Form WH-380 and Request for Leave Form WH-381, with a current OMB control number which now expires on September 30, 2010. While the forms are both optional for employers to use when designating FMLA leave, each form clearly states that “Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number”. To make sure you have the most current version of these forms, we have provided links below, where you may download them free of charge from the DOL for use in your organization. The new physician certification form can be found at: <http://www.dol.gov/esa/regs/compliance/whd/fmla/wh380.pdf> The new notice to employee needing FMLA form is available at: <http://www.dol.gov/esa/forms/whd/WH-381.pdf> Both new forms expire in 2010, and may also need to be updated given the revisions to FMLA discussed just above.

UTAH LEGISLATURE UPDATE: The Utah Legislature is in session from January 21 to March 5, 2008. The Legislature is considering several employment-related bills. Here is a summary of some of them, links to the text of each bill and a status report.

Weapons at work- SB 67 would require employers and other businesses and private property holders to allow a concealed weapon on their property (such as a parking lot) as long as the weapon is concealed and secured in the car of the involved employee/visitor. Here is a link to the text of the bill: <http://le.utah.gov/~2008/bills/sbillint/sb0067.htm> A Utah Senate Committee has passed this bill already and now the full Utah Senate is considering it. Utah’s SHRM chapters have adopted a policy of EMPLOYER CHOICE on these types of issues. This is not a pro-gun or anti-gun position. Rather, it recognizes that employers and other private property holders are in the best position to decide what happens on their property. Utah SHRM’s position allows employers to assess their own security needs, culture, employee morale and other business factors and decide whether or not to allow weapons on their property. S.B. 67 takes away this right of choice and control from employers, businesses and private property holders. Utah’s SHRM chapters urge you to contact your Utah State Senator ASAP and advocate EMPLOYER CHOICE on this important issue by asking the Senator to oppose S.B. 67. The Salt Lake Tribune also opposes the bill, see: http://www.sltrib.com/opinion/ci_8121873 You can find the name, email address and other contact information (by geographic location) of your Utah State Senator by following this link: <http://www.utahsenate.org/perl/spage/roster2007.pl>

Immigration issues- HB 98 (<http://le.utah.gov/~2008/bills/hbillint/hb0098.htm>) requires that all Utah public employers use the federal system (called E-verify) for verifying the validity of a Social Security number (SSN). This bill has passed the Utah House of Representatives and now goes on to the Senate. HB 257 (<http://le.utah.gov/~2008/bills/hbillint/hb0257.htm>) would impose this requirement on any private employer receiving certain economic incentives from the State. This bill is pending in a House Committee. HB 239 (<http://le.utah.gov/~2008/bills/hbillint/hb0239.htm>) would repeal driving privilege cards for undocumented immigrants. This bill has been approved by a House Committee. SB 97 (<http://le.utah.gov/~2008/bills/sbillint/sb0097.htm>) would set up a legislative task

force to consider a wide range of immigration issues. This bill is awaiting assignment to a Senate Committee.

Minimum wage- HB 114 (<http://le.utah.gov/~2008/bills/hbillint/hb0114.htm>) would raise the Utah minimum wage to \$7.25 per hour with annual adjustments for inflation. This bill is pending in a House Committee.

Sexual orientation discrimination- HB 89 (<http://le.utah.gov/~2008/bills/hbillint/hb0089.htm>) would prohibit employment discrimination based on gender identity and sexual orientation. This bill is pending in a House Committee.

Watch for emerging details on these topics and other topics as the legislative session progresses.

WATCH FOR I-9 AUDITS: The immigration enforcement arm of the United States Department of Homeland Security has announced it will step up audits of employers to verify I-9 compliance. The inspections will be “announced” by service of a subpoena calling for production of all I-9 forms for current employees and employees terminated over the last year. The subpoena will also ask for other information, such as any Social Security “no-match” letters received by the employer. Now would be a good time to make sure your I-9 house is in order. You should also consider storing I-9 information separately from other personnel records so you do not have to go through each employee’s file to find the proof of your I-9 compliance.

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Legal-mail is a legal and legislative update service sent out about twice a month to various Utah SHRM members and chapters. As a courtesy to SHRM, the Utah law firm of Jones Waldo Holbrook & McDonough P.C. underwrites the costs of the service. If you have any questions or comments, please contact Michael Patrick O'Brien.

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