



February 20, 2008

This is Utah SHRM Legal-mail no. 2008-5 prepared for Salt Lake SHRM, the Human Resources Association of Central Utah (HRACU), the Northern Utah Human Resources Association (NUHRA), the Color Country Human Resources Association (CCHRA), the Bridgerland Society for Human Resource Management and Utah at-large members of the national Society for Human Resource Management (SHRM). This update is best viewed in a HTML format. Please reply with your name and "UNSUBSCRIBE" in the subject field if you no longer wish to receive this message.

CONTENTS:

- **NEW PROPOSED FMLA REGULATIONS**
- **HR DIRECTOR ARRESTED IN IMMIGRATION RAID**
- **UTAH LEGISLATURE UPDATE**
- **TIPS TO MINIMIZE RETALIATION CLAIMS**
- **EMPLOYEE CELL PHONE USE MEANS BIG DAMAGE AWARD**

NEW PROPOSED FMLA REGULATIONS: The United States Department of Labor (DOL) has published proposed regulations clarifying the Family and Medical Leave Act (FMLA). DOL will take public comments on the proposals until mid-April of 2008 and then revise and finalize the regulations. The proposed regulations, among other things, do the following: (1) provide remedies for employees injured by an employer's failure to timely designate time off as FMLA leave; (2) clarify how/when provider visits combined with incapacity result in a serious health condition; (3) increase the employer's ability to obtain detailed return-to-work certifications focused on ability to perform essential job functions; (4) attempt to streamline the notification and certification process; (5) address the new military family leave requirements. The proposed regulations are quite lengthy, but if you want to read them for yourself, go to:

http://www.shrm.org/government/regulatory_published/CMS_024538.pdf

HR DIRECTOR ARRESTED IN IMMIGRATION RAID: In early February of 2008, federal immigration officers raided the offices of a company in Utah County, detained 50 workers suspected to be undocumented and filed criminal charges against the company's HR director. The HR director recently pleaded not guilty to two charges of encouraging illegal workers to stay in the United States. The raid is a timely reminder of two important points. The federal government is stepping up enforcement of the

immigration laws. Company officials, including these in HR, can be charged with crimes if they knowingly or recklessly fail to comply with the immigration laws. Don't go there.

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

Weapons at work- The Utah Senate has passed S.B. 67, a bill that 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> Before passage, the bill was amended to exempt homeowners from its provisions. 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 representative in the Utah State House of Representatives ASAP and advocate EMPLOYER CHOICE on this important issue by asking the Representative to oppose S.B. 67. You can find the name, email address and other contact information (by geographic location) of your House Representative by following this link: <http://www.le.state.ut.us/house/members2005/membertable1add.asp>

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 House and is pending in 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 has passed in a House Committee and has also been passed by the full House. 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 the House and now goes on the Senate. 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 has been passed by a Senate Committee. S.B. 81 (<http://le.utah.gov/~2008/bills/sbillint/sb0081.htm>) attempts to address a broad range of issues related to illegal immigration. This bill allows the filing of a discrimination lawsuit by an employee discharged by an employer when at the same time the employer hires in a similar job someone the employer knows or should know is an illegal immigrant. In addition to the new employment discrimination cause of action discussed above, the bill also prohibits employers from issuing identification documents to illegal immigrants and requires public employers and contractors to use the federal electronic verification program when hiring new workers. The bill has been approved by a Senate Committee and is now being considered by the full Senate.

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 and probably will not go further.

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 and probably will not go further. SB 166 (<http://le.utah.gov/~2008/bills/sbillamd/sb0166s01.htm>) prohibits employment discrimination on the basis of military service. The bill has been approved by a Senate Committee.

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

TIPS TO MINIMIZE RETALIATION CLAIMS: Retaliation claims are on the rise. The HR Daily Advisor recently published six useful tips for minimizing the risk of retaliations claims: (1) establish clear policies prohibiting retaliation; (2) establish several means or channels for employees to register complaints; (3) train supervisors that preventing retaliation is part of their jobs; (4) make sure HR gathers information and intelligence to prevent possible retaliation; (5) insist an HR review of possible discipline against persons who have been whistleblowers; and (6) train all employees regarding your complaint system and train supervisors about the risks and hazards of retaliation.

EMPLOYEE CELL PHONE USE MEANS BIG DAMAGE AWARD: A Georgia lawsuit has resulted in a settlement payment of \$5.2 million by an employer to a woman injured by one of its employees. The employee was driving over 70 MPH while using her employer-supplied cell phone and became involved in a car accident. The employee's vehicle rear-ended the other vehicle, flipped it on the driver's side and caused it to slide on the asphalt while the driver's arm was trapped between the car and the pavement. Georgia law prohibits distracted driving. Here are some other recent examples of employers held liable for employee cell phone driving accidents: \$20 million paid by an Arkansas company; \$2.5 million paid by the State of Hawaii; and a \$2 million jury verdict against a Virginia law firm.

Written by: Employment Attorney, Michael Patrick O'Brien
Utah State and Salt Lake SHRM legal director
Email: mobrien@joneswaldo.com
Phone: 801-534-7315
Website: www.joneswaldo.com



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.

Disclosure: These updates are merely updates and are not intended to be legal advice. Receipt of this information does not create an attorney-client relationship.