



May 6, 2008

This is Utah SHRM Legal-mail no. 2008-10 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:

- **CONGRESS PROHIBITS GENETIC BIAS**
- **OTHER LEGISLATIVE DEVELOPMENTS**
- **WHY THE INCREASE IN EEOC CHARGES?**
- **ADA LITIGATION ON THE RISE?**
- **WATCH WHAT YOU SAY ABOUT THIS UPDATE**

CONGRESS PROHIBITS GENETIC BIAS: Congress has passed, and President Bush is expected to sign into law, the Genetic Information Nondiscrimination Act (GINA). Under the new law, genetic information is defined to include individual genetic tests, tests of family members and the manifestation of disease or disorder in family members. GINA prohibits employers and health insurers from making employment decisions or denying coverage or adjusting benefits based on genetic information and a person's likelihood of acquiring a genetic disorder. Both employers and insurers are also banned from requesting, requiring or buying genetic information except, in certain limited circumstances, e.g. getting a physical history in a workplace wellness program. Despite the provisions of GINA, insurance companies maintain the power to base coverage and pricing on the actual presence of a disease. Note that Utah and many other states have had similar laws in place for several years. Employers should add the phrase "genetic status" to the list of protected classes in all policies and handbooks and plan to get new workplace posters including the new protected class.

OTHER LEGISLATIVE DEVELOPMENTS: Congress has rejected a legislative proposal to make it easier for employees to bring equal pay discrimination claims. The proposal would have increased the time in which such claims can be asserted. Congress is presently considering

whether leave under the Family and Medical Leave Act (FMLA) should be paid leave (as you know, only unpaid leave is required at present). This proposal would fund the paid leave through a trust financed by both employee and employer contributions. Florida has passed a law requiring employers to allow employees to maintain concealed weapons in employee vehicles. A group of Florida businesses is challenging the law in court. Finally, Colorado has enacted a law banning employers from prohibiting employees from discussing their wages with each other. A similar provision exists on a federal level from the National Labor Relations Act.

WHY THE INCREASE IN EEOC CHARGES? You may have read in my last update how discrimination charges brought before the federal Equal Employment Opportunity Commission have increased significantly. It looks like 2008 job bias filings (up 21% over last year's same time period) may set a new record. Ever wonder why? One SHRM writer did and recently wrote an article suggesting that the ease of online filing forms coupled with the declining economy are the reasons for the surge in charge filings. The EEOC recently placed its intake questionnaire online (see <https://apps.eeoc.gov/eas/>), thus making it much easier to raise a claim with the agency. As for the economic reasons, the speculation is that in tougher economic times, it is harder for a discharged employee to find a new job, so he or she is more likely to turn to governmental bodies like the EEOC for help.

ADA LITIGATION ON THE RISE? A group of legal commentators is opining that 2008 will be a hot year for litigation of Americans With Disabilities Act (ADA) claims. Why? Increased ADA filings in court, some court decisions favorable to plaintiffs, an overall increase in discrimination litigation and efforts in Congress to expand the reach of the ADA. What should you do? As with any type of employment law issue, a pound of prevention is better (and cheaper) than an ounce of litigation. Audit your employment practices, double check your policies and handbooks, train your supervisors and manage your terminations and other job actions to minimize the risk you'll be hauled into court and to maximize the chances you will be able to successfully defend yourself if you land there.

WATCH WHAT YOU SAY ABOUT THIS UPDATE: Not happy about the news in this update? Hate my writing style? Upset about the Utah Jazz? Just in a bad mood generally? Be careful how you express yourself when at work. A recent national SHRM article notes that 36% of employers have warned, and 6% have fired, employees for cursing, see: http://www.shrm.org/hrnews_published/articles/CMS_025516.asp#P-8_0 Here are some suggested alternatives (not original with, but nonetheless greatly appreciated by, me): (1) "you are full of shitake mushrooms," (2) "Hoover Dam it," and (3) dag nam it son of a monkey squirrel." Here's a link to another, more profitable way, to handle profanity at work (warning before you click...this is censored, PG-13, material but still not for overly-sensitive ears): <http://www.youtube.com/watch?v=EJL5dxgVaM>.

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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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