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**NEW MINIMUM WAGE POSTER NOW AVAILABLE:** As discussed a few updates ago, the federal hourly minimum wage increases to \$5.85 on July 24, 2007. Among other things, this means employers must display updated Fair Labor Standards Act (FLSA) minimum wage posters in conspicuous places at the worksite. Not much in life is free, but these posters are...go to <http://www.dol.gov/esa/regs/compliance/posters/flsa.htm> to download one. Remember to update your posters again when the minimum wage increases to \$6.55 on July 24, 2008 and to \$7.25 on July 24, 2009.

**LEGISLATIVE/REGULATORY UPDATE:** Congress is considering a bill that would prohibit employers from requiring employees to arbitrate employment-related disputes. The proposed amendment to the Federal Arbitration Act, the Arbitration Fairness Act of 2007 (H.R. 3010), is pending in both the House and Senate. A Senate Committee has approved an amendment that would prevent the Equal Employment Opportunity Commission (EEOC) from using appropriated monies to bring lawsuits against employers with "English-only" rules in the workplace. The amendment sponsor stated, "It's ridiculous that employers from the shoe shop to Wal-Mart to 911 emergency callers need to be worried that

they'll be sued if they require their workers to communicate in our common language." The EEOC has amended its age bias regulations to conform with a 2004 United States Supreme Court decision. The amended regulations clarify that federal law does not prohibit an employer from favoring an older worker over a younger worker when both are protected by the federal age discrimination act (i.e. both employees are age 40 or older).

**UTAH LAW RE: PERSONAL INFORMATION NOW IN EFFECT:** As of January 2007, Utah private employers are covered by a state law that regulates how businesses maintain and dispose of personal information about individual employees. The Consumer Credit Protection Act (Utah Code section 13-44-101 and following) applies to "any person who conducts business" in Utah and "maintains personal information." The phrase "personal information" means someone's name combined with unencrypted "data elements" such as Social Security numbers, financial account numbers, credit or debit card numbers, security or password codes allowing access to accounts or driver license numbers. The new law requires that a business protect such information from unlawful use or disclosure. It also mandates that such records be ultimately destroyed only by shredding, erasing or rendering the data indecipherable. Finally, the law also requires that affected persons be notified by the business when its secured data system has been breached. The Utah Attorney General can impose civil fines for a breach of the statute. You can read the full statute at: [http://le.utah.gov/~code/TITLE13/13\\_2B.htm](http://le.utah.gov/~code/TITLE13/13_2B.htm)

**FMLA CLAIMS WAIVABLE ONLY IN LIMITED CIRCUMSTANCES:** Many employers routinely include claims under the Family and Medical Leave Act (FMLA) in the list of disputes resolved by waivers or settlement agreements with current or former employees. However, the federal appeals court covering parts of the southeastern United States has now ruled that waivers of FMLA claims are not enforceable unless approved in advance by a court of the United States Department of Labor. A similar rule applies to claims of violations of the Fair Labor Standards Act (FLSA), and the court concluded the FMLA is more similar to the FLSA than it is to other statutes for which unapproved claim waivers are enforceable. This decision conflicts with one made by another federal court of appeals and thus could be reviewed by the United States Supreme Court or even by Congress.

**DOL REPORT OUTLINES FMLA WOES:** A recently-released DOL report summarizes a number of problems employers are experiencing complying with the FMLA regulations. DOL notes that the most serious problem involves the use of intermittent leave (in the words of my teenagers...duh! Thank you Captain Obvious!). DOL also notes that employers desire improvement in the medical certification process and clearer guidance in how to deal with the overlap between FMLA and the Americans with Disabilities Act (ADA). DOL could use the report as the basis for a possible revision of the FMLA regulations, but no regulation changes are currently proposed or planned.

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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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