



October 8, 2007

This is Utah SHRM Legal-mail no. 2007-22 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 "UNSUBSCRIBE" in the subject field if you no longer wish to receive this message.

CONTENTS:

- **NEW YORK CELEBRITY EMPLOYMENT LAW WOES**
- **NATIONAL EMPLOYMENT LAW LITIGATION UPDATE**
- **LOCAL SUITS ABOUND TOO**
- **NO PRIVILEGE FOR LETTER FOUND ON EMPLOYER'S COMPUTER**
- **LEGISLATIVE UPDATE - THE NEW PROPOSALS**

NEW YORK CELEBRITY EMPLOYMENT LAW WOES: It has been a tough couple of weeks, at least regarding employment law, for New York celebrities. A federal jury has ordered the owners of the New York Knicks professional basketball team to pay \$11.6 million to a former team marketing executive who alleges she was sexually harassed by, and retaliated against for complaining about, Knicks president/coach and former Detroit Pistons NBA star Isiah Thomas. The jury agreed with the plaintiff's allegations that Thomas called the woman degrading and insulting names but later proposed a romantic liaison to her. Part of the evidence used against the Knicks was the fact of a player's affair with a team intern, used to show that the team had a "frat house" mentality rather than that of a professional work environment. In other New York news, other women in New York have sued the company owned by New York Mayor Michael Bloomberg, alleging he "fostered, condoned and perpetuated" discrimination against female employees. The plaintiffs allege that females, notably pregnant women, were denied employment opportunities at the Mayor's company. Bloomberg also was sued for pregnancy bias and sexual harassment in 1997, a case that was later settled.

NATIONAL EMPLOYMENT LAW LITIGATION UPDATE: There is also lots of interesting national news regarding employment lawsuits. A Texas jury has awarded an asthmatic woman \$1.5 million in her case alleging her employer failed to accommodate her asthma attacks by permanently removing office air fresheners that apparently

triggered her attacks. The Equal Employment Opportunity Commission (EEOC) has sued an employer in Hawaii alleging it violated the Americans with Disabilities Act by disclosing confidential employee health information. A Florida healthcare company has agreed to pay \$1.8 million to settle claims of same sex harassment and retaliation made by an executive employee. A California judge has extended the temporary restraining order prohibiting the United States Department of Homeland Security from implementing its new “no-match” regulations regarding Social Security numbers. Finally, the United States Government has sued the State of Illinois, which recently banned employers from using the federal government’s electronic database for verification of an employee’s legal authority to work in this country. Illinois passed the law because it questioned the accuracy of the federal database.

LOCAL SUITS ABOUND TOO: Employment lawsuits are not just hot in the Big Apple and on the national scene; there has been a burst of recent filings in Utah too within the last few weeks. The EEOC has sued the Alpine School District alleging age bias. Delta Airlines has been sued for alleged age and race bias. Park City has been sued for alleged national origin bias. Another Utah employer has been sued by plaintiffs who claim they were fired from their jobs because they reported a sexual attack to their supervisors. And the company that owns the Crandall Canyon mine was recently sued for alleged religious discrimination. In a recent case resolution, the federal appeals court that governs Utah has ruled that the Utah Transit Authority (UTA) did not violate federal law when it discharged a male bus driver who started using female restrooms while undergoing a sex change procedure. UTA feared liability from the employee’s use of such restrooms. The same court also recently ruled that favoritism of one employee over another does not violate the federal anti-discrimination laws, as long as it is not based on any protected classes such as race, sex, etc.

NO PRIVILEGE FOR LETTER FOUND ON EMPLOYER’S COMPUTER: A Virginia court has ruled that there is no attorney-client privilege attached to a letter an employee wrote to his attorney on his employer’s computer. In reaching its decision, the court relied on a statement in the employer’s handbook that said there is no expectation of privacy for any information contained on the employer’s computers or electronic equipment. All employers should include similar language in handbooks or other notices to employees, as well as reserving the right to inspect/monitor/search any company equipment. Such notices should also state that employment and/or continued employment constitutes consent to the same.

LEGISLATIVE UPDATE- THE NEW PROPOSALS: Congress is still busy considering many employment law bills, several of which I have mentioned in recent updates. Here are the newest proposals: In the absence of any federal legislation, a Florida Congressman has introduced a bill allowing the states to enact their own efforts to deal with immigration reform. Sen. Barack Obama of Illinois has introduced a bill that would increase IRS enforcement actions against employers who misclassify employees as independent contractors. Various other bills would expand coverage of the Family and Medical Leave Act (FMLA) for military service injuries and related family members.

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.