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**OSHA TRUMPS STATE WORKPLACE GUN LAWS:** A federal court judge in Oklahoma has ruled that the general duty clause of the Occupational Safety and Health Act (OSHA), which requires employers to create safe workplaces, trumps state laws requiring employers to allow employees to carry weapons in the workplace. The lawsuit arose when the Oklahoma state legislature passed a bill in 2004 providing that employers could not ban weapons in locked employee vehicles parked on employer premises. A group of employers sued to overturn the law. One of the arguments made by the employers was that the state law interfered with their ability to assure a safe workplace, i.e. some employers concluding that a workplace without weapons was safer. The court agreed and declared the Oklahoma law invalid. An appeal is likely. Four other states (Kansas, Kentucky, Minnesota and Alaska) have similar laws. The Utah State Legislature has considered similar rules in the past but not enacted any into law. Utah SHRM’s position on this issue favors employer choice, i.e. that each individual employer should be free to consider its own company culture, security needs, morale and employee desires and decide whether or not to allow weapons on its premises. A recent Utah Supreme Court decision essentially adopted the same position as Utah SHRM.

**BEWARE OF EEOC FAKE EMAIL WITH VIRUS:** It is never exactly a happy moment for an employer to hear from the Equal Employment Opportunity Commission

(EEOC), but it just got worse. The EEOC has issued a warning about a fake email circulating to businesses that purports to be a notice of a sexual harassment complaint filed against the company. The fake message contains a Trojan Horse virus that could harm the recipient's computer if the file attached to the message is downloaded. The EEOC reminds employers that it sends out notice of filed charges via the United States Postal Service, not via email. For further information about this fake email problem, go to: <http://www.eeoc.gov/press/10-19-07.html>

**EMPLOYER POLICIES MAY VIOLATE NLRA:** The National Labor Relations Board (NLRB) is currently considering the issue of whether employees can use an employer's email system to try to organize a union at the workplace. The case is a timely reminder that many workplace policies may unwittingly violate the National Labor Relations Act (NLRA), even in a non-union setting. For example, the NLRA precludes employers from preventing employees from discussing their wages with each other. An employer with a rule requiring that employees maintain such information as confidential or not discuss wages (or other terms and conditions of employment) with each other is invalid. Another example is that a complete ban of solicitation or distribution of literature at the workplace (even on breaks) may violate an employee's right to engage in concerted activities related to the possible organization of a union. Finally, a policy limiting email or internet usage to business matters should be strictly and evenhandedly enforced because if it is not, and personal usage is allowed, employees have a stronger argument that they should also be allowed to use such employer systems for union organizing. The pending NLRB decision should give us all final insights into the scope of this issue.

**EMPLOYMENT LAW NEWS ROUND-UP:** There are some very interesting articles out about employment law issues. *The Salt Lake Tribune* has reported about an employer who has filed a lawsuit seeking to stop someone from sending out racist emails while posing as an employee of the business: [http://www.sltrib.com/business/ci\\_7331736](http://www.sltrib.com/business/ci_7331736) *The Deseret Morning News* reports that, due to escalating costs, more and more employers are choosing not to provide health insurance to their employees: <http://deseretnews.com/article/1,5143,695223760,00.html> National SHRM recently published an interesting article offering great tips on dealing with I-9 forms and immigration issues, see [http://shrm.org/hrnews\\_published/articles/CMS\\_023526.asp#P-8\\_0](http://shrm.org/hrnews_published/articles/CMS_023526.asp#P-8_0) Finally, CCH is featuring an article about employee absenteeism and how many employees call in sick for reasons other than illness: <http://hr.cch.com/press/releases/20071010h.asp>

**LEGISLATIVE UPDATE:** In a very close vote, a committee of the United States House of Representatives has passed a bill that would nationally ban employment discrimination based on sexual orientation. The advanced bill was watered-down from the original proposal and did not include provisions banning job bias based on gender identity or trans-gendered status. The bill now advances to the full House. President Bush has threatened to veto it. Many states already prohibit sexual orientation discrimination in the workplace. As you read in past updates, a California Judge has put a hold on implementation of the new federal Social Security number mismatch

regulations. However, a bill has been introduced into the House that would implement those regulations in a statutory form. Stay tuned for developments.

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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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