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A TWO BILLION DOLLAR EMPLOYMENT LAW FINE? According to the judge in a Minnesota state court lawsuit, a large national retailer has violated state laws and contractual rights on rest breaks and wages over two million times. The plaintiffs in the case alleged that the company denied them meal and rest breaks required by state law and/or contract and made them work off the clock. The judge has threatened to impose a \$1,000 fine on each such violation, meaning a \$2 billion fine is possible for the alleged employment compliance failures. Wow and ouch! The same employer is reportedly facing 70 similar lawsuits across the country. Other judges have already awarded similar verdicts, some now on appeal, in excess of \$200 million. I know I have said it here before, but please remember that careful employment law compliance is critical to a company’s healthy bottom line. These kinds of cases are the exclamation point (!) on such comments.

RULES ON RIFS A reader’s recent email reminded me it may be time to again circulate a summary of general employment law rules---actually, best practices is probably a better phrase---on reductions in force. Here are five helpful tips: (1) have and document a reason for the overall RIF (e.g. business downturn, lost contract, etc.); (2) be able to articulate (and maybe do so in a spreadsheet comparing affected employees) legitimate business reasons on why you kept Employee A over Employee B (e.g. Employee A has

more experience dealing with the products the company will primarily emphasize post-RIF) and document the same; (3) same point as item no. 2 re: any allowed transfers out of the impacted division (e.g. why was this employee allowed to transfer but not that one?) (4) have a non-decision maker (e.g. HR) review initial management proposals to make sure the RIF is governed by points (1) and (2) above rather than inappropriate factors such as race, age, gender, etc.; (5) if paying severance use releases and claim waiver agreements but make sure you comply with the terms of the Older Workers Benefit Protection Act so they are enforceable, especially for employees aged 40 and older.

MINIMUM WAGE INCREASE ON JULY 24: Remember that the most recent federal minimum wage increase (from \$5.85 to \$6.55 per hour) takes effect on July 24, 2008. Those of us in Utah, where this update originates, can celebrate the minimum wage increase on the same day we celebrate the arrival of the founding pioneers into the state back in 1847! The federal minimum wage goes up again (to \$7.25 per hour) on July 24, 2009. If your employee lives/works in a state with a higher minimum wage, you must pay at least that rate.

SEXUAL ORIENTATION DEBATE INTENSIFIES: A national debate is intensifying about whether or not sexual orientation should be added to the list of classifications protected by federal law from employment discrimination. A bill (H.R. 3685) prohibiting discrimination based on such a classification is slowly making its way through Congress. The House has passed the bill and it awaits action in the Senate, but the Senate has not announced a schedule for considering it. The bill got a recent boost when national SHRM released a statement on June 19, 2008 supporting it. President Bush has not stated a position on the pending bill. However, many state laws already prohibit sexual orientation discrimination, as do many business policies even when not required by applicable laws. The Utah Legislature has considered such bills in regular session and interim committees, but there is not significant support for the bill among elected legislators.

DEALING WITH GOSSIP AT WORK: Growing up in Northern Utah, you won't be surprised to learn that from time-to-time our television channel found its way to "Hee-Haw," the long-running country western humor and musical show. One of the most memorable pieces of the show included several of the performers singing, "Now, we're not ones to go a round spreading rumors, now really we're just not the gossiping kind, oh, you'll never hear one of us repeating gossip, so you better be sure and listen close the first time!" Controlling destructive gossip is a constant challenge for employers, one recently discussed in the excellent newspaper, The Christian Science Monitor. The article, found at <http://www.csmonitor.com/2008/0603/p13s01-wmgn.html>, discusses some interesting approaches and problems with various approaches to the issue. The biggest risk for employers is not to mistake gossip for protected activity. For example, gossip may well be protected employee concerted activity, such as employee discussions on how to improve working conditions or about complaining of sexual harassment. Punishing such "gossip" will have very few hee haws associated with it.

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