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LAYOFFS LOOMING: Do you want further compelling, if only anecdotal, evidence of the current economic problems? Here it is – I have had many more inquiries during the last six weeks about the legal implications of layoffs than I had in the six months before. So, maybe it is time it remind everyone about some good legal layoff tips for minimizing legal risk during reductions in force. If your company is planning more layoffs, plan to minimize the risks of litigation as follows. Make sure economic or other business conditions justify the action. Make selections according to your policy or established parameters for selection and be sure you can justify the selections with job-related criteria. Carefully analyze selections to make sure there is no disparate impact on protected classes and that selections make business sense. If you allow transfers, make sure these decisions are free of discrimination or appearances of favoritism and can be justified by legitimate business factors too. If the layoff is large enough, remember to comply with notice laws such as the WARN Act. If you use severance packages and releases, make sure the releases are legally enforceable (yes, there are certain legal hoops you must jump through). Involve legal counsel to help minimize risks. Document the

process accurately and carefully and maintain your records. Treat those selected for layoff with dignity and respect and consider use of outplacement services to minimize the individual impacts.

PREGNANCY DISCRIMINATION CLAIMS INCREASE: The United States Equal Employment Opportunity Commission reports that employment discrimination claims based on pregnancy have increased significantly from 1992 to 2007. Pregnancy claims increased sixty-five percent during the last fifteen years and hit a record high in 2007. Interestingly, a large part of the increase came from filings by women of color – black women pregnancy claims were up 45%; claims by Hispanic women up 135%; claims by Asian women up by 90%; and by Native American women up 109%. The Pregnancy Discrimination expands the gender protected class by prohibiting employment discrimination against women based on pregnancy and related issues. Because the threat of pregnancy discrimination claims is an increasing risk factor today for employers, wise employers will review their policies, practices and procedures to try to minimize this risk.

THE GHOST OF CALIFORNIA PRESENT: Think you are safe from California's employee-friendly labor laws just because some of your employees who sometimes work there don't actually live there? Think again! Like Dickens' Ghost of Christmas Present, California's laws may come to haunt you in the here and now if you're not careful. A recent decision from the federal appeals court with jurisdiction over California has ruled that California's overtime laws may apply to employees who lived in Arizona and Colorado, but who worked for temporary periods of time in California. The employees were trainers for a large computer company who trained California clients for time periods ranging from several weeks to several months. Their employer also had a corporate presence in California and other employees who lived and worked there. The federal appeals court concluded that these facts were enough to subject the visiting employees to rules like daily overtime pay for work in California of a day or longer. Consider the implications of this decision as you send your employees off to work in California.

NEW FEDERAL PROCUREMENT CONTRACTOR E-VERIFY RULES OUT: In June of 2008, President Bush signed an Executive Order requiring federal contractors whose activities are covered by the Federal Acquisition Regulations ("FAR") to use the E-Verify employment eligibility program to minimize the risk contractors will hire undocumented workers. The order does not apply to all federal contractors, but only those involved in procurement activities covered by the FAR. In mid-November of 2008, the federal government issued regulations implementing this rule. If you are a covered federal contractor, get and read the regulations, found at: <http://edocket.access.gpo.gov/2008/pdf/E8-26904.pdf> . You can also read a good federal contractor FAQ re: the new regulations (from the Department of Homeland Security): <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=cb2a535e0869d110VgnVCM1000004718190aRCRD&vgnnextchannel=75bce2e261405110VgnVCM1000004718190aRCRD> .

MORE FMLA UPDATES: As you have read from past updates in November of 2008, the United States Department of Labor (DOL) issued new, revised regulations

interpreting the Family and Medical Leave Act (FMLA). You can read the new regulations at <http://edocket.access.gpo.gov/2008/pdf/E8-26577.pdf> . As the full scope of the new regulations becomes clear, I will feature more highlights of the same in these updates. In fact, here are a couple more updates now. The new regulations require covered employers with an employee handbook to provide certain FMLA information in that handbook. Attached (pdf) are the new required disclosure points. You can restate these in your handbook or directly distribute this attached FMLA handout to employees. Moreover, there are lots of new recommended FMLA forms now available from DOL. Read here for a good summary of the same and links to the new forms: http://www.shrm.org/law/library/CMS_027224.asp#P-6_0

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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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