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NEW UTAH RULES ON DRUG TESTING: The Utah State Legislature has passed two new laws regarding employee drug testing, both of which are likely to be signed into law by Governor Gary Herbert. H.B. 23 clarifies the current Utah state law allowing employment drug testing (<http://le.utah.gov/~2010/bills/hbillint/hb0023.htm>). The bill also provides that an employer is not liable for taking a job action based on an inaccurate drug test if the employer complies with the requirements of the statute, acts reasonably and in good faith and relies on a licensed physician as a medical review officer (MRO) to interpret the results of the test. The MRO provision is new and not currently included in the Utah drug testing law. The Legislature also has approved a bill that requires all contractors for state construction projects to drug test their employees (see <http://le.utah.gov/~2010/bills/sbillint/sb0013.htm>). Make sure you review these bills and modify your drug testing procedures accordingly.

LEGISLATIVE POLITICS AND DISCRIMINATION: The Utah House of Representatives is considering a resolution that would seek to amend the Utah State Constitution to include an anti-discrimination claims. If approved by the Legislature and voters, HJR 24 (see text at <http://le.utah.gov/~2010/bills/hbillint/hjr024.htm>) would prohibit discrimination or preferential treatment based on race, sex, color ethnicity or national origin in any public employment, education or contracting. Utah law already prohibits discrimination based on any of these factors, as well as other factors.

INDEPENDENT CONTRACTOR ENFORCEMENT: The proposed federal budget includes new incentives and resources for the United States Departments of Treasury

(i.e. the IRS) and Labor to increase enforcement efforts against businesses that misclassify workers as independent contractors. State governments, via the unemployment compensation system, also are cracking down on misclassification. Governments are more proactive on this issue now, than in recent memory, primarily because they are seeking additional sources of revenues for shrinking public budgets. The distinction between an employee and independent contractor hinges on several factors, but primarily on how much control the business exercises over a worker's activities. A useful description of the employee/contractor distinction can be found at the IRS website at: <http://www.irs.gov/businesses/small/article/0,,id=99921,00.html>

MILLION DOLLAR OVERTIME BILL: The US Department of Labor (DOL) has settled an overtime claim against the Dallas, Texas facility of a national poultry processor. The employer has agreed to pay \$1 million in unpaid overtime and to pay workers for "donning and doffing," i.e. putting on and taking off required work gear. The Company also had failed to keep proper records of hours worked, deemed to be another violation of the Federal Fair Labor Standards Act (FLSA). FLSA requires the payment of minimum wage (\$7.25/hr.) and overtime wages to non-exempt employees.

EEOC TO RE-DEFINE AGE BIAS DEFENSE? The Federal Equal Employment Opportunity Commission (EEOC) has proposed a new rule that would redefine an important defense to certain age discrimination claims. The defense at issue applies to what are called "disparate impact" claims, or claims that certain employer actions have an adverse impact on older workers. Under current law, an employer can defend an adverse impact claim by proof that the policy at issue was based on a reasonable factor other than age ("RFOA"). The proposed EEOC regulations seek to flesh out the RFOA defense with defining factors such as: (1) whether the employer took steps to assess any adverse impact on older workers; (2) the extent older workers are harmed; and (3) what other options were considered or available. The proposed regulations also require employers to bear the burden of factually proving the RFOA defense. Comments on the proposed regulations are due by about April 18, 2010.

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