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E-VERIFY NO LONGER VOLUNTARY FOR UTAH EMPLOYERS: OK, I know, this story has changed a lot during the last several updates...what the heck is going on here? The Utah Legislature passed a bill that would require all Utah private employers with 15 or more employees to use the federal E-Verify employment verification system, or a comparable system, when hiring new employees beginning on or after July 1, 2010. The bill, Substitute S.B. 251 (see full text of bill at <http://le.utah.gov/~2010/bills/sbillenr/sb0251.htm>) was sponsored by Sen. Chris Butters (of West Jordan, Utah). Utah Governor Gary Herbert signed the bill, but thought he had struck a deal with Sen. Butters that such verification will only be voluntary for its first year. They also apparently had agreed that this change to the bill will be formally implemented during a future special session of the Utah Legislature. After all that happened, Arizona passed its controversial immigration law and Utah legislators started talking about doing the same thing, perhaps during the special legislative session to handle the E-Verify issue. Governor Herbert is concerned that such an issue should not be handled in a special session but rather should be more deliberately considered in a regular session of the Legislature. Thus, he has decided not to call a special session. As a result, the E-Verify bill will take effect- and NOT just on a voluntary basis- on July 1, 2010. A recent Salt Lake Tribune article outlined more of the details on this development, see: http://www.sltrib.com/news/ci_15090719

LOGAN PASSES SEXUAL ORIENTATION ANTI-DISCRIMINATION ORDINANCE:

The City of Logan, Utah has followed the lead of the Salt Lake City Council and passed an ordinance prohibiting private employers (15 or more employees) within the Logan City limits from discriminating in employment against “otherwise qualified” persons (applicants and employees) based on sexual orientation or gender identity. It is effective on publication. The new Logan City law (which you can read at: [http://www.loganutah.org/City%20Council/PDF/10-26_Employment_Antidiscrimination_Ordinance_Draft\[1\]\[1\].pdf](http://www.loganutah.org/City%20Council/PDF/10-26_Employment_Antidiscrimination_Ordinance_Draft[1][1].pdf)) is modeled on Salt Lake City’s new law (described in previous updates). Covered employers now must get ready to comply. At a minimum, covered employers should revise their employee handbooks, policies, practices, training materials, etc. to reflect these new protected employment classifications and the other requirements of the ordinance.

UTAH SUPREME COURT RULING REQUIRES REVIEW OF YOUR HANDBOOKS: A recent ruling by the Utah Supreme Court should cause employers to take another look at their handbooks to ensure that at-will statements and contract disclaimers are broad and effective enough. The case (found at: <http://www.utcourts.gov/opinions/supopin/Cabaness042310.pdf>) involved an employer with a handbook that only disclaimed employment contracts involving “salary, salary ranges, movement within salary ranges, or employee benefits.” An employee sued and alleged that there could be a contract for employment conditions not involving “salary, salary ranges, movement within salary ranges, or employee benefits.” The court agreed and found that an implied contract existed for other items in the handbook, such as the antidiscrimination section. The lesson here is that an employer must be careful that its at will or contract disclaimer language in its handbook is not too narrow in scope. Here is some sample employee handbook language that might help avoid this problem:

“This Employee Handbook is provided to inform and acquaint employees with

(“the Company”) and with the Company’s policies, procedures, and practices. The Company may change any of its policies, procedures, benefits or other matters described in this Handbook or elsewhere with or without notice, at the sole option of the Company, without prior consultation with or agreement by any employee. Neither this Handbook, employment with the Company, nor the maintenance of supervisory or other policies or procedures shall be construed as constituting a promise from or contract of any kind with the Company, either express or implied, regarding any of the matters addressed in any such handbooks or policies. ***Although it is intended that the relationship between the Company and its employees will grow and be in the best interests of both the employee and the Company, all employees are employed for an indefinite period in an at-will capacity. This means that both the Company and its employees retain the right to end or terminate the employment relationship at any time, with or without notice, and for any reason or for no reason at all.*** No supervisor, manager, or representative of the Company, other than the President, has the authority to enter into any contract or agreement with you of any kind, including but not limited to for employment for any specific duration or to make any commitments contrary to the at-will nature of employment. Only a separate, express written

agreement signed by the President of the Company and designated as an employment contract may create any such contract and change the at-will nature of the employment relationship.”

FEDERAL EMPLOYMENT LAW UPDATES: There have been several recent interesting news items on federal employment law. First, both Houses of Congress are presently considering the proposed Employee Misclassification Act, which would amend the Fair Labor Standards Act (FLSA) and impose new obligations on employers to ensure that workers are not improperly misclassified as independent contractors. Second, the United State Department of Labor (DOL) has issued its Spring 2010 Regulatory Agenda. The DOL Agenda outlines plans for a more aggressive regulatory and enforcement strategy for the nation’s employment laws...called the “Plan/Prevent/Protect” program. Part of the strategy may require employers to prepare and publish written plans and programs to ensure compliance with applicable laws. Such plans would require employers to have a plan to identify and remedy possible instances of noncompliance. For example, an employer plan could require that it search the workplace for safety hazards or have a written explanation justifying why a worker has been classified as an independent contractor. This approach would require employers to shift their focus to proactive compliance, rather than waiting until a problem arises to resolve it, and likely will require more self-audits and training. DOL is expected to flesh out more details of this possible new requirement in draft proposed regulations to be issued later this year.

WRESTLING SEXUAL HARASSMENT LAWYER CONTROVERSY: Q- What do you get when you mix professional wrestling, sex and lawyers? A- Either a great distraction from work, a heck of a lawsuit and/or a wonderful way to end a legal update, assuming it is all true, which it may not be. Various news services recently reported that a national wrestling entertainment company reportedly fired its chief lawyer for allegedly sexually harassing a woman in the company’s sales department. The news accounts said he made unwanted advances on her at WrestleMania 26 (wait a minute, wasn’t that part of the script/show?). But wait, that’s not all...the news accounts also say the female sales employee was later fired after she was caught engaging in a sex act with a male subordinate at work. The company is now denying all these reports, saying only that it and its former lawyer have parted ways amicably. We may never get a good hold of or pin down the full story here. And you think you had to grapple with tough issues at work? So many possible puns...so little time.

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comments, please contact Michael Patrick O'Brien.

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