



MT-SHRM Semi-Annual Legal & Legislative Update



ATLANTA

CHATTANOOGA

NASHVILLE

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U.S. Supreme Court: Ricci v. DeStefano

- City of New Haven throws out test results for firefighter promotions where few minority applicants passed
- Reason: fear of disparate impact lawsuit
- White and hispanic firefighters who passed the test bring disparate treatment race discrimination claim
- Thrown out by Second Circuit
- Supreme Court reverses
- City did not have "strong basis in evidence" of valid claim by minority firefighters—so intentional discrimination against not justified.



ADA Amended

- Effective January 2009
- June 17, 2009: EEOC moves forward with new regs
- Highlights of proposed rules
 - Eliminate severe restriction requirement
 - Limitation on one life activity enough
 - Cell growth limitation enough
 - Less emphasis on statistical analysis
 - Impairments lasting less than 6 months count
- Due for publication August 2009



Automatic Disabilities

- Cancer
- Epilepsy
- MS
- HIV/AIDS
- PSD
- Bipolar disorder
- Schizophrenia

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Major Life Activity of Working

- Prior rule: substantially limited in a broad range of jobs
- Now: limitation in a “type” of work as defined by the nature of the work and specific job-related requirements

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Expansion of major life activities list

- Reading
- Bending
- Communicating
- Mitigating measures will not be considered
- Episodic impairments/conditions in remission may be substantially limiting

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FMLA Regulations Amended

- Effective January 16, 2009
- Two new categories of leave
 - Qualifying exigency leave (12 weeks)
 - Military caregiver leave (26 weeks)
- New forms
- New rules

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ARRA--COBRA Changes

- The American Recovery and Reinvestment Act of 2009 (ARRA) provides for a 65% reduction in COBRA premiums for certain assistance eligible individuals for up to 9 months. An assistance eligible individual is a COBRA "qualified beneficiary" who meets all of the following requirements:
- Is eligible for COBRA continuation coverage at any time during the period beginning September 1, 2008 and ending December 31, 2009;
- Elects COBRA coverage (when first offered or during the additional election period), and
- Has a qualifying event for COBRA coverage that is the employee's involuntary termination during the period beginning September 1, 2008 and ending December 31, 2009.

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COBRA Changes (continued)

- Extended election period provided for those who previously declined COBRA coverage (60 days from notice)
- Maximum continuation coverage period not expanded—coverage still runs from date of qualifying event
- Employers must locate employees who previously declined COBRA and provide notice

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Cobra Changes--Impact on Employers

- Must locate employees and provide notices
- Form notice and guidance now available online (IRS and USDOL websites).
- Must advance 65% to employees, then seek reimbursement through offset from federal payroll tax payments

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Immigration Law Update

- Modified E-Verify/Basic pilot program postponed until September 8, 2009
- ICE sends over 650 Employers I-9 Audit Notices

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Independent Contractors

- Employee Misclassification Prevention Act (would amend FLSA to add IC recordkeeping requirements). DEAD.
- Independent Contractor Proper Classification Act (would restrict ability to classify workers as independent contractors, increase exposure for back taxes for misclassified workers, establish procedure for contractors to challenge status). DEAD.

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Family and Medical Leave

- HR 824 Family and Medical Leave Enhancement Act—time off for kids', grandkids' activities
- HR 2161—FMLA Restoration Act
- HR 2132—FMLA Inclusion Act (same sex)
- HR 2515—Domestic Violence Leave Act
- All in committee

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Other Proposed New Federal Legislation

- HR 3017—Employment Nondiscrimination Act of 2009 (in committee as of 6/24/09)
 - Would amend Title VII to include sexual orientation as a protected category
- HR 2067—Protecting America's Workers Act
 - Increase penalties for OSHA citations
 - Increase whistleblower protection
 - Extend OSHA to cover public employers

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Other Proposed Federal Legislation

- HR 2460—Healthy Families Act—introduced in May
 - Applicable to employers with 15 or more employees
 - Employees would accrue one hour of paid sick time for every 30 hours worked, up to 56 hours (7 days)
 - Accrual is immediate but use delayed 60 days
 - Year to year carryover, capped at 56 hours
 - Would cover absences relating to domestic violence, sexual assault, stalking, and pursuing legal action
 - Would apply to both FMLA and non-FMLA covered employers

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Other Proposed Federal Legislation

- S 1374 and HR 3042—Forewarn Act
 - Bipartisan effort
 - Would lower coverage requirements (applying to smaller employers and actions impacting smaller numbers of employees) and change content of WARN notices
 - Would permit civil actions by DOL
- HR 933-Family Friendly Workplace Act—would amend FLSA to permit comp time for private employers

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Employment Laws from 2009 Tennessee Legislative Session

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Workers Compensation

- Public Chapter 364: As enacted, provides that any employee who retains the right to reconsideration of an award of permanent partial disability benefits for a workers' compensation injury that occurs on or after July 1, 2009, and whose pre-injury employer is sold or acquired after such award is made, may seek reconsideration from the successor employer if either the employee's employment with the successor employer is involuntarily terminated through no fault of the employee or the employee's rate of pay is reduced to a level below the rate of pay that the employee had at the time of the injury.
- Public Chapter 407: As enacted, adds additional injuries that are not covered by workers' compensation. - Amends TCA Section 50-6-110.
 - Safety violations; willful misconduct; drug use; self-inflicted injuries
 - Clarifies responsibility for injuries incurred during recreational activities

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Workers Compensation

- Public Chapter 486: As introduced, decreases amount of civil penalty commissioner of commerce and insurance may assess to insurance companies for failure to submit modification factors or rates from \$2,000 per incident to \$1,000 per incident.
- Public Chapter 526: As introduced, imposes certain penalties on employers and employees in certain cases involving employees not authorized to work in the U.S. under federal immigration laws.

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Unemployment

- Public Chapter 479: revises benefit provisions concerning seeking work, dishonesty and absenteeism, and also revises hearing procedures, and penalties for fraud.
- Public Chapter 550: increases taxable wage base from \$7,000 limit to \$9,000 limit

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Miscellaneous

- Public Chapter 384: As enacted, requires criminal background checks to be conducted for nursing direct care employees "prior to employment" instead of "prior to employment or within seven days of employment".
- Public Chapter 283: Requires school personnel to report child abuse (new requirements)

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And...

- Public Chapter 161: Amends whistleblower statute. As enacted, clarifies that the civil cause of action for the retaliatory discharge of an employee for reporting illegal activities applies to state employees, private employees, and certain federal employees.
- Public Chapter 339: Permits firearms in bars and restaurants but makes clear owners can ban weapons from premises.

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