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# the staff management report

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## Handbooks and HR Audits

This newsletter covers a number of recent employment law changes -- GINA, FMLA, VESSA, EPA. Throw in changes earlier this year to COBRA, and changes last year to the ADA and you have quite an alphabet soup on your hands. To help you sort through these issues, Staff Management, Inc. offers two important HR consulting services.

**Employee Handbook.** Many of these statutory changes will require a change in policy. Staff Management, Inc. can review your current employee handbook and provide updated policies to help you with your compliance efforts.

**HR Audit.** These new statutes also bring with them new compliance issues. Our HR Audit provides you with a snapshot of your human resource function. Armed with this information, you can take the steps necessary to avoid compliance and HR practice problems.

If we can help, please don't hesitate to contact us.

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## Statutory Burdens Continue to Grow for Employers

By: Samuel J. Castree, Jr., Senior Vice President & General Counsel

The legal obligations imposed on employers continue to grow. Recent statutory and regulatory developments at both the State and federal level will require employers to review their HR policies and procedures. A brief summary of these new laws includes:

### The Genetic Information Nondiscrimination Act

**Legal Summary.** Effective November 21, 2009, the Genetic Information Nondiscrimination Act ("GINA") addresses discrimination on the basis of genetic information in employment and health insurance. GINA places restrictions on employers and prohibits:

- Discrimination based on genetic information in hiring, firing, compensation and other terms and conditions of employment.
- The collection of genetic information by an employer through a request, requirement or purchase (with limited exceptions).
- Retaliation against any individual because he or she has opposed any act or practice that is unlawful under GINA, or because the individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the statute.

GINA also places restrictions on health plans. Health insurers and health plans may not:

- Increase group premium or contribution amounts based on genetic information.
- Request or require an individual or family member to undergo a genetic test.
- Request, require or purchase genetic information prior to or in connection with health plan enrollment, or at any time for underwriting purposes.

Finally, GINA imposes strict workplace confidentiality and disclosure rules on all genetic information.

The Equal Employment Opportunity Commission ("EEOC") published proposed regulations on March 2, 2009 (74 F.R. 9056). The proposed regulations summarize GINA as prohibiting the use of genetic information in employment decision-making, restricting the deliberate acquisition of genetic information, requiring that genetic information be maintained as a confidential medical record, and severely restricting the disclosure of genetic information. 42 C.F.R. §1635.1, proposed at 74 F.R. 9066. The release of final regulations is expected in the very near future and before the effective date of the Act on November 21. On October 7, the U.S. Department of Labor, Internal Revenue Service, and Department of Health and Human Services published interim final rules implementing the provisions of GINA for group health plans and health insurance companies.

**Impact on Employers.** It has been our experience that very few employers engage in any genetic testing. For that reason, the restrictions on health plans may have a greater impact on most employers. For health plans that renew on a calendar year basis, the regulations will be effective January 1, 2010. Employers with wellness programs will also be impacted. Collecting family medical history as part of a wellness program's health risk assessment will violate GINA if a reward is offered for completing the assessment. An employer with a wellness program must review forms and procedures carefully to ensure that they do not run afoul of GINA's restrictions.

## Family and Medical Leave Act Amended Again

The military leave provisions of the Family and Medical Leave Act ("FMLA") were signed into law on January 28, 2008. Later that year, the U.S. Department of Labor published regulations that updated the existing FMLA regulations and implemented the new military leave provisions. These regulations became effective January 16, 2009.

**Legal Summary.** Now, Congress has again amended the FMLA. On October 28, President Obama signed a law amending the FMLA to extend the exigency or "emergency" leave benefits to family members of active duty service members. Previously, only family members of National Guard and Reservists called to active duty were eligible for exigency leave.

In addition, the provisions of servicemember family leave were expanded. This leave is now available to family members who are caring for a veteran who is undergoing medical treatment, recuperation or therapy for serious injury or illness that occurred any time during the five years preceding the date of treatment. These amendments are effective retroactively, to October 1, 2009.

**Impact on Employers.** The new amendments expand somewhat those eligible for FMLA leave. Employers will need to update their FMLA policies again.

### New EEOC Poster

The EEOC has issued a new poster covering the various civil rights laws it enforces. The poster is available at [www.eeoc.gov/self\\_print\\_poster.pdf](http://www.eeoc.gov/self_print_poster.pdf). The poster should be posted before GINA's effective date of November 21, 2009.

## VESSA Coverage Expanded

The Illinois Victims' Economic Security and Safety Act ("VESSA") offers FMLA-like leave for victims of domestic or sexual violence, and to a family or household member of a victim of such abuse. Originally, VESSA applied to private-sector employers with 50 or more employees and provided 12 weeks of unpaid leave. These provisions remain unchanged.

**Legal Summary.** VESSA has been amended, however, to cover more employees. Now, employers with at least 15, but less than 50 employees, must provide up to 8 workweeks of leave during any 12-month period.

The amendments also provide that, where the employee is eligible for paid or unpaid leave, the employee may elect to substitute such leave for the leave benefits provided by VESSA. Unlike the FMLA, an employer may not require an employee to substitute paid leave, such as vacation, for VESSA leave.

**Impact on Employers.** Smaller employers not previously covered by VESSA will need to establish policies, procedures and forms. Supervisor training is also recommended. Employers previously subject to VESSA should review their policies to make sure they comply with the leave substitution amendments.

The Management Report offers information on human resource and related topics. Materials presented are for informational purposes only. We address topics in a general manner that may not apply to individual circumstances. Consult your human resource or legal advisors for advice pertaining to your specific situation.

## Illinois Human Rights Act Adds New Protected Status

The Illinois Human Rights Act prohibits discrimination in employment on the basis of race, color, religion, national origin, ancestry, age, sex, marital status, disability, military status, sexual orientation, or unfavorable discharge from military service. The Human Rights Act has been amended to add another protected group.

**Legal Summary.** Effective January 1, 2010, the Illinois Human Rights Act will prohibit discrimination in employment on the basis of "order of protection status." The Act defines "order of protection status" to mean "a person's status as being a person protected under an order of protection issued pursuant to the Illinois Domestic Violence Act of 1986 or an order of protection issued by a court of another state."

**Impact on Employers.** Employers should update their EEO policy to include the new protected group. Supervisors should receive training to understand the employer's new obligation. Other policies, such as termination and discipline policies, should be reviewed to make sure they comply with the amendment.

## Illinois Equal Pay Act

The Illinois Equal Pay Act ("EPA") prohibits an employer from discriminating "between employees on the basis of sex by paying wages to an employee at a rate less than the rate at which the employer pays wages to another employee of the opposite sex for the same or substantially similar work," subject to exceptions.

**Legal Summary.** The EPA was amended in important ways:

- Employees or former employees now may file a complaint with the Illinois Department of Labor within a year of the alleged EPA violation.
- Employees may also file civil lawsuits, and the time to file those lawsuits has increased from three to five years from the last date that wages were underpaid.
- Wage payment records must now be kept for *five* years.

**Impact on Employers.** In light of these changes to the EPA, and enactment of the federal Fair Pay Act earlier this year, employers must be sure that their compensation systems are gender neutral. Reviewing current compensation systems, or establishing even a basic wage scale will help prove that compensation is based on legal factors, not gender. Shooting from the hip with compensation decisions is more dangerous now than ever. With the new record keeping requirements, employers must also revise their records retention policies.

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