



**LEGAL ALERT JUNE 2008**

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**ALERT ON LEGAL DEVELOPMENTS FOR EMPLOYERS IN PUERTO RICO**

**NEW PERMISSIBLE SALARY DEDUCTION TO BENEFIT UNIVERSITY OF PUERTO RICO**

A new Puerto Rico law now affords the University of Puerto Rico (UPR) with the means to facilitate alumni contributions to its fund raising campaigns, by means of direct withholding from salaries. Law No. 82 of June 2, 2008 has thus carved yet another exception to the general prohibition against deductions from the salaries of non-exempt employees. Employees may now ask that their employers withhold and remit their contributions towards the UPR's fund raising campaigns. Employers are required to oblige employee's written requests to this effect. This law modifies Section 5 of Law No. 17 of April 17, 1931.

**JOB ADVERTISEMENTS MAY ENCOURAGE MINORITY APPLICATIONS BUT MAY NOT EXPRESSLY SEEK PERSONS ON A PROTECTED BASIS**

According to an informal discussion letter from the Office of the EEOC's Legal Counsel, an employer may legitimately undertake efforts to recruit women and minorities and encourage them to apply. It may not, however, specifically target a particular type of applicant, as it denotes a preference for that group: "seeking persons on a protected basis, such as race or gender, would violate EEOC-enforced laws." For instance, drafting a job advertisement seeking "stay at home moms" expresses a preference based on gender, thus running afoul of Title VII. Regarding the use of gender-specific job titles in job advertisements, the EEOC states that using a narrow term such as "waitress" implicates Title VII because it is likely to deter men from applying. The EEOC does allow for the use of gender-specific job terms when the term is one of art, designating a particular level or skill. The letter reminds us that new ADEA regulations explicitly permit employers to favor relatively older persons and to express that preference in job advertisements. Section 1625.4, 72 FR 36873, July 6, 2007. Note, however, that such an advertisement might implicate, Puerto Rico law, which prohibits discrimination on the basis of age generally.

**NEW FEDERAL LAW PROHIBITS EMPLOYMENT AND INSURANCE DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION**

President Bush has signed into law the Genetic Information Nondiscrimination Act (GINA). GINA protects against employment and insurance discrimination on the basis of genetic information. It applies to, among others, private employers who meet the definition of Title VII (15 or more employees) and benefits employees and job applicants. GINA prohibits employment discrimination because of genetic information with respect to an employee. It also prohibits an employer from requesting or purchasing genetic information with respect to an employee, the employee's spouse or dependent children or relatives up to the fourth degree (such

as the employee's parents, grandparents, uncles and aunts, nieces and nephews and cousins).

The law creates several exceptions to this prohibition, such as when the request for genetic information is inadvertent, where the employer requests family history in compliance with a certification under the FMLA, or where the employer offers health or genetic services or monitors the biological effects of toxic substances in the workplace. These last two exceptions require the employer to comply with certain requirements. The information so gathered cannot be used to discriminate and must be maintained confidential in a separate file. The information may not be disclosed except in certain circumstances, such as if the employee requests it in writing, in response to a court order (provided that the employer informs the employee about the order and information disclosed), to GINA compliance officials, and in connection with certification provisions of FMLA.

GINA's remedies and enforcement procedures are those available through Title VII and 42 USCA Sec. 1981, which include exhaustion of administrative remedies before the Equal Employment Opportunity Commission. GINA expressly rejects liability on the grounds of disparate impact (when a neutral employment practice has a disparate effect on a protected group).

GINA's employment related provisions become effective in November 21, 2009.

GINA also imposes restrictions on group health plans. These may not adjust group premium or contribution amounts on the basis of genetic information. A health insurance issuer may increase the premium for an employer based on the manifestation of a disease or disorder of an individual enrolled in the plan, but such individual manifestation cannot be used as genetic information about other group members to further increase the premium for the employer. Group health plans may also not request or require an individual or a family member to undergo a genetic test, except under certain circumstances for participants or beneficiaries, merely for research, not underwriting purposes. They shall not request, require, or purchase genetic information for underwriting purposes or information with respect to any individual prior to such individual's enrollment. The term "family member" as used in this context includes the fetus carried by a pregnant woman and the embryo legally held by an individual or family member using assisted reproductive technology.

GINA's insurance related provisions become effective in May 21, 2009.

### **MINIMUM WAGE**

Remember that the second hike in the federal minimum wage takes effect next **July 24**. The new minimum wage then will be **\$6.55**. The third increase is scheduled for the same day next year, to bring the minimum wage to \$7.25.

### **CLOSING REMARKS**

I hope that the information provided in this bulleting will be of interest to you. This bulletin is no t intended as legal advice but as an alert for situations when seeking such advice might be to your business advantage. Please feel free to contact us should you wish to discuss these or nay other employment matters further. You can also find our Employment Law Updates in our website [www.arizmendisafilippo.com](http://www.arizmendisafilippo.com)