

## Labor and Employment Law Weekly Update (Week of January 3, 2012)

### Careful Maintenance of Employee Medical Records May Help Avoid Needless Litigation

Written by: John L. Litchfield

Employers often find themselves in possession of medical information about their employees, particularly when making determinations regarding leaves of absence, disability accommodations, or when implementing employee wellness programs. Recent developments in federal law, however, and guidance from the [EEOC](http://www.eeoc.gov/) (<http://www.eeoc.gov/>) have taught that the manner in which this information is maintained can be a ticking litigation time bomb if not diffused correctly.

After the passage of the [Genetic Information Non-Discrimination Act](http://tinyurl.com/4pao9c8) (GINA) (<http://tinyurl.com/4pao9c8>) in 2008, it became a federal requirement that employers maintain an employee's "genetic information" (including an employee's basic family medical history) separate and apart from other personnel files, in confidential medical files, accessible only to those with a "need to know." Title I of the [ADA](http://tinyurl.com/7kykqyd) (<http://tinyurl.com/7kykqyd>) requires that information obtained by an employer regarding the medical condition or history of an applicant or employee must be collected on separate forms, kept in separate medical files, and be treated as a "confidential medical record." [29 C.F.R. §1630.14\(b\)\(1\)](http://tinyurl.com/88uf3vp). (<http://tinyurl.com/88uf3vp>) Now, as was highlighted by an [EEOC opinion letter on May 31, 2011](http://tinyurl.com/66perm5) (<http://tinyurl.com/66perm5>), with the recent updates to the ADA, it is even more pertinent that employers create a systematic process by which *any* medical information received by the employer — whether it relates to a request for leave under federal or state family and medical leave act laws, disability accommodation requests, fitness for duty exams, and so forth — is treated confidentially, and stored separately from other personnel files. If an employer maintains this information electronically, it would be wise to encrypt such information with passwords, and limit access to a limited number of individuals.

Although it also matters *how* an employer comes into possession of genetic or medical information of its employees (either purposefully by request, or inadvertently), it is the method by which such information is stored and maintained that is easily overlooked and that may result in unnecessary litigation. A careful medical record maintenance policy can help avoid a potential pitfall under the new federal laws and regulations.

### Make Sure You Increase Minimum Wage, Where Needed

Written by: John S. Lord, Jr.

Happy New Year! Many state laws and local ordinances provided for an increase in minimum wage effective January 1, 2012. Make sure you are complying with these increases for any employees who work for you in the following states or locales:

**Arizona** (<http://tinyurl.com/234yppy>): Minimum wage increases from \$7.35 to \$7.65 an hour. Minimum wage for tipped employees increases from \$4.35 to \$4.65 an hour.

**Colorado** (<http://tinyurl.com/6qqg65ys>): Minimum wage increases from \$7.36 to \$7.64 an hour. Minimum wage for tipped employees increases from \$4.34 to \$4.62 an hour.

**Florida** (<http://tinyurl.com/73x2dbk>): Minimum wage increases from \$7.31 to \$7.67 an hour. Minimum wage for tipped employees increases from \$4.29 to \$4.65 an hour.

**Montana** (<http://tinyurl.com/7pfmjn9>): Minimum wage increases from \$7.35 to \$7.65 an hour. (Montana state law does not allow employers to take a tip credit against minimum wage for tipped employees.)

**Ohio** (<http://tinyurl.com/7pk3g3e>): Minimum wage increases from \$7.40 to \$7.70 an hour. Minimum wage for tipped employees increases from \$3.70 to \$3.85 an hour.

**Oregon** (<http://tinyurl.com/7bpdvo9>). Minimum wage increases from \$8.50 to \$8.80 an hour. (Oregon state law does not allow employers to take a tip credit against minimum wage for tipped employees.)

**Vermont** (<http://tinyurl.com/7hojmuy>): Minimum wage increases from \$8.15 to \$8.46 an hour. Minimum wage for tipped employees increases from \$3.95 to \$4.10 an hour.

**Washington** (<http://tinyurl.com/68ps5ns>): Minimum wage increases from \$8.67 to \$9.04 an hour. (Washington state law does not allow employers to take a tip credit against minimum wage for tipped employees.)

**San Francisco** (<http://tinyurl.com/7vkyoqb>): Minimum wage increases from \$9.92 to \$10.24 an hour.

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