

# **THE WIT ADVOCATE UPDATE**

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Welcome to the first edition of the WIT Advocate Update. This newsletter, to be published quarterly, is designed to provide helpful information about legislative and regulatory issues that are relevant to WIT members, and to offer resources and links that WIT members can use to pursue independent research on the featured topics.

The staff of The WIT Advocate Update are looking for ideas and contributions of articles. Any article that you wish to submit should be concise, objective and informative articles, and contain enough information to sketch the major facets of the specific issue. The article should be between 250 and 600 words, and should include 2 – 4 links to additional resources about that issue or a related topic. We reserve the right to decide whether or not to print any article that is submitted and to make modifications unless you specifically request otherwise.

The materials and information contained in this newsletter are intended to provide information (not advice) about important new legislation or other legal developments. The information contained in this newsletter is not intended to be legal advice, nor should you rely or act on this information without first having consulted with legal counsel licensed in your own jurisdiction. This newsletter is produced by volunteers, and none of us has had time to confirm the accuracy of the material presented or the sources of the information. There may be errors or events described in these articles that may have been overtaken by latter events about which we have no knowledge. The great number of legal developments that occur daily does not permit the issuing of an update for each issue addressed in this Newsletter, nor does it allow the issuing of a follow-up on all subsequent developments.

You can help make this better by sending us any inaccuracies or clarifications that you find relevant or appropriate. We welcome your comments and suggestions, and, of course, articles. Please forward them to the editors at [Mholden@foleylaw.com](mailto:Mholden@foleylaw.com) or [broberts@catoctin.com](mailto:broberts@catoctin.com) .

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## **THE EQUAL PAY ACT**

The Equal Pay Act makes it unlawful for employers to pay different wages to men and women for the same work. During the forty years since its enactment, this Act has assisted many women in their pursuit of equality in the workplace. However, pay disparity continues to be a problem. Recent U.S. Census Bureau reports conclude that women continue to earn less than men for each dollar earned by a man, a woman makes only \$.73. Proposed legislation known as the Paycheck Fairness Act strengthens efforts to eliminate pay disparity. If enacted, the Paycheck Fairness Act would expand the types of relief available to a prevailing plaintiff, facilitate the possibility of

bringing a class action for wage claims, and prohibit employers from disciplining employees who discuss salary issues. The proposed Act will also assist EEOC investigation of potential violators by improving the EEOC's ability to collect relevant pay information from employers. The Act will also limit an employer's ability to affirmatively defend pay disparity by increasing the employer's burden to show pay differentials were based on a characteristic other than sex.

To learn more about the Paycheck Fairness Act, go to:

<http://www.bpwusa.org/content/FairPay/Legislation/legislation.htm>

To learn more about pay disparity, go to

<http://www.nwlc.org/pdf/PaycheckFairnessFeb2002.pdf>

To learn more about Equal Pay Day, April 16th, go to

<http://www.feminist.com/fairpay/epd2002.htm>

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### **REPORT ON THE GENERAL ASSEMBLY – Do transportation improvements have a chance in Northern Virginia?**

The Virginia General Assembly finished up its 2002 session and left town when the Speaker of the House adjourned untimely in order to avoid putting to a vote the Senate's proposal for a transportation referendum. While on its face that looked like a blow to Northern Virginia, it appears that the bill would have allowed a referendum on increasing local sales taxes for both transportation and education, and would have required that some of the jurisdictions in Northern Virginia send a large portion of the increased tax revenues set aside for education to other areas of Virginia. One of the areas that was to receive some of these revenues was the Hampton Roads area, an area that is not exactly poverty stricken. According to Delegate Joe May, the Speaker adjourned the House rather than have this bill come to a vote. The issue is now in the hands of Governor Warner, who will have the chance, on April 17, to add Northern Virginia to a bill that would allow the Hampton Roads area to have its own referendum to increase taxes to raise money for transportation improvements. That bill has passed both Houses, but Northern Virginia's politicians were unable to come to a consensus over the transportation/education issue and so were unable to get Northern Virginia included in that bill during the regular session. Without the increase in local taxes, we can expect no big road improvements, and will have to allow even more time to get to our WIT functions.

To learn more about bills introduced and bills passed, go to:

<http://legis.state.va.us> Virginia General Assembly

<http://leg1.state.va.us> Legislative Information System

To learn more about transportation issues in Northern Virginia, go to:

<http://www.nvta.org/index.html> Northern Virginia Transportation Alliance

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### **H.R.721, TRUTHFULNESS, RESPONSIBILITY AND ACCOUNTABILITY (TRAC)**

Introduced on February 14, 2001, as H.R. 721 (in the Senate, it is A. 1152), the Truthfulness, Responsibility, and Accountability in Contracting Act (TRAC), is intended to ensure that the business of the Federal Government is conducted in the public interest and in a manner that provides for public accountability, efficient delivery of services, reasonable cost savings, and prevention of unwarranted Government expenses.

AFSCME favors the legislation, citing benefits such as effective contract administration to reduce waste, fraud and abuse and prohibitions against artificial personnel ceilings.

The American Institute of Architects, on the other hand, opposes the legislation that claim: "This legislation would freeze all outsourcing of federal contracts and calls for review of current contracts...The TRAC Act specifically would prohibit any federal agency from making a decision 'to privatize, outsource, contract out, or contract for the performance of a function currently performed by such agency or to conduct a study to convert the

performance of the function to the performance by a contractor.’ An agency could apply for permission to contract out, but must first conduct a laborious public/private competition.”

For the full text and more information, please go to:

<http://www.mapps.org/senate1.htm>

[http://www.pscouncil.org/alerts\\_news/alerts.htm](http://www.pscouncil.org/alerts_news/alerts.htm)

<http://www.afge.org/Index.cfm?Page=TRACAct>

<http://www.uschamber.org/Political+Advocacy/Issues+Index/Privatization+and+Procurement/Anti-Contracting+Initiatives/>

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## EMPLOYMENT ISSUES

The US Supreme Court has narrowed the reach of the Americans with Disabilities Act by limiting its coverage to those employees whose disability renders them unable to perform the tasks that make up major life activities. Major life activities are those activities such as walking, seeing, hearing, brushing one’s teeth, fixing breakfast, gardening, that are of central importance to most people’s lives. In *Toyota v. Williams*, issued January 8, 2002, the Court held that even though the employee, who had carpal tunnel syndrome, had a disability, her disability had to be measured by whether the disability restricted her in the major life activities, and not just in her ability to perform manual tasks for her job.

In Alexandria, Virginia, a circuit court ruled that an employee could sue for unlawful termination on the grounds that the termination violated his right to free speech. This is the first case of this kind in Virginia to have survived a motion to dismiss. Look for this to be appealed if the employee wins!

The EEOC has provided guidance to employers that are developing or re-evaluating emergency evacuation plans that comply with the Americans with Disabilities Act and the Rehabilitation Act. Employers may now request information to help identify individuals who might need assistance because of a medical condition in developing such a plan. Employers are allowed to ask employees to self-identify if they will require assistance because of a disability or medical condition. Employers can identify employees who may need assistance after extending a job offer, as a survey of its current employees, and by asking employees with known disabilities. The employer must inform all employees who are asked about such needs that the information they give will be kept confidential and shared only with those who have responsibilities under the emergency evacuation plan.

The full text of the EEOC guidance can be found at:

<http://www.eeoc.gov/facts/evacuation.html>

More information on emergency preparedness for employees with disabilities can be found on the President's New Freedom Initiative Disability Direct web site <http://www.disabilities.gov/category/6/51> and on the Job Accommodation Network's web site at <http://janweb.icbi.wvu.edu/media/emergency.html>.

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## THE IMPACT OF USA PATRIOT ACT

By Janet Hernandez and Tara Giunta, Partners and Matthew Vitale, Associate,

## THE IMPACT OF USA PATRIOT ACT

On October 26, 2001, President Bush signed the USA Patriot Act (formally called “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001” (the “Patriot Act”). It is a lengthy statute that addresses domestic security, surveillance procedures, money laundering, border control, terrorism, and many other national security concerns. The Patriot Act’s enhanced surveillance procedures confers broad powers upon law enforcement agencies that creates significant ramifications for corporations offering communications services. Every provider of communications services should assess the effects of the Patriot Act and its underlying statutory scheme on its business, including developing compliance programs and internal procedures to address the requests of law enforcement officials.

Although the Patriot Act covers many broad areas, some of the surveillance related highlights include: (1) clarifying that the scope of surveillance legislation extends beyond traditional wireline telephone systems to the Internet, mobile telephone systems, and other modern forms of communication; (2) lessening the burden imposed on law enforcement to obtain judicial authorization to access communications networks for surveillance purposes, which is expected to result in a dramatic increase in the quantity and frequency of such surveillance requests on communications service providers; (3) broadening the jurisdiction of courts and law enforcement agencies beyond the district in which surveillance orders are issued to nationwide application, thereby requiring communications providers to respond to such orders even though they are not specifically listed in the order and/or they are located outside the issuing jurisdiction; (4) providing for voluntary disclosure of customer records or communications in emergencies, including for purposes of self-protection, which confers immunity on providers that respond to subpoenas and other requests by law enforcement officials (liability remains for improper disclosure, however).

Moreover, since the Patriot Act was passed, President Bush signed new legislation (under Intelligence Authorization Bill HR-2883) to expand law enforcement authority under the Foreign Intelligence Surveillance Act (“FISA”). FISA allows for Government surveillance of foreign powers or their agents in the United States. Under the Patriot Act, the Department of Justice is allowed to intercept real-time e-mail and voice communications before getting prior approval from the Foreign Intelligence Surveillance Court (“FISA Court”). Previously, the Department was required to submit its wiretap orders to the FISA Court for approval within 24 hours of approval by the Attorney General. The new legislation gives the Department 72 hours to obtain FISA Court authorization. In addition, the new legislation allows the Department to target multiple wiretap locations under a single wiretap order *without* specifying the locations. These roving wiretaps were initially authorized under the Patriot Act. However, the new legislation removes the requirement that law enforcement specify locations.

Communications providers should expect law enforcement agencies to request information more frequently and to be intolerant of companies that appear insufficiently concerned about complying with the new law. In order to avoid liability, companies should formulate policies, develop compliance programs and establish adequate internal procedures for complying with the Patriot Act. For more information on the Patriot Act and its potential impact on your business regarding surveillance procedure issues and beyond, visit the following websites:

For full text, go to”

<http://www.cdt.org/security/usapatriot/011026usa-patriot.pdf>

For analyses, see:

<http://www.usvisanews.com/memo1461.html>

[http://www.eff.org/Privacy/Surveillance/Terrorism\\_militias/20011031\\_eff\\_usa\\_patriot\\_analysis.html](http://www.eff.org/Privacy/Surveillance/Terrorism_militias/20011031_eff_usa_patriot_analysis.html)

<http://civilliberty.about.com/library/weekly/aa100401a.htm>

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