

State labor legislation enacted in 1996

Increases in minimum wage rates, prevailing wage changes, protection for employers disclosing job performance information, and bans on employment discrimination were major subjects of State labor legislation

Richard R. Nelson

State legislation, enacted in 1996, covered several different aspects of employment standards.¹ While the subject of minimum wage rates received much of the attention, important laws also were enacted revising prevailing wage and family leave laws, protecting employers who provide job performance information, regulating the apparel and employee leasing industries, consolidating State labor departments into larger agencies, and protecting workers from various forms of employment discrimination.

This article does not cover occupational safety and health, employment and training, labor relations, employee background clearance, and economic development legislation. Articles on unemployment insurance and workers' compensation appear elsewhere in this issue of the *Monthly Labor Review*.

Wages. Minimum wage was the most active area of legislative interest in 1996 with activity at the Federal level; at the State level through new legislation, ballot measures, and administrative actions; and in several cities.

On August 20, President Clinton signed the Minimum Wage Increase Act of 1996, providing for an increase in the Federal minimum wage rate from \$4.25 per hour to \$4.75 on October 1, 1996, with a further increase to \$5.15 per hour scheduled for September 1, 1997. This law also provides for a subminimum wage rate of \$4.25 an hour for employees under 20 years of age during their first 90 consecutive calendar days of employment with the same employer. For employees who receive tips, the employer's cash wage obligation is set at \$2.13 an hour, replacing a for-

mer provision requiring that tipped employees be paid at least 50 percent of the minimum wage in cash.

Prior to enactment of the Federal law, bills had been introduced in a majority of the States to increase State minimum wage rates, with measures adopted in Delaware, Rhode Island, and Vermont.

Following passage of the Federal act, rates increased in 16 States, the District of Columbia, and Guam, as the result of provisions linking their rates to changes in the Federal rate. The Federal rate was matched by administrative action in Colorado, North Dakota, Utah, and Wisconsin. The Massachusetts rate rose as the result of prior law. North Carolina authorized a study to examine the effects of increasing its minimum wage rate. Ballot measures to increase State rates were adopted in California and Oregon and were defeated in Missouri and Montana. A measure that would have established a minimum wage rate for the City of Denver also was defeated.

A number of cities considered establishing minimum wage rates applicable to all employers or enacting "living wage" rates applicable to employers receiving contracts or grants from the city. Jersey City, New York, and Portland, OR, were among the cities enacting "living wage" measures that establish a minimum wage rate in contracts let by the jurisdiction.

As of January 2, 1997, minimum wage rates higher than the Federal standard are in effect in Alaska, Connecticut, Delaware, the District of Columbia, Hawaii, Massachusetts, New Jersey, Oregon, Vermont, and Washington.

Colorado, Rhode Island, Utah, and Vermont changed their permissible tip credit which permits employers to use tips received by employees to meet a portion of the minimum wage. New exemptions were added to minimum wage and

Richard R. Nelson is a State Standards Adviser in the Division of External Affairs, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

overtime requirements in Kentucky and to overtime payment requirements in Illinois.

Several bills were introduced in 1996 to enact, repeal, or revise State public works prevailing wage laws. A few significant laws were enacted, including those making changes to the laws of Kentucky and Wisconsin. Coverage of the Kentucky law was expanded, the dollar threshold amount for coverage was reduced, the definition of locality for rate-setting purposes was changed, and provision was made for adoption of Federal Davis-Bacon Act prevailing wage rates. Wisconsin's changes included raising the threshold amount for coverage, defining "area" for rate-setting purposes, changing the rate-setting formula, and providing for an annual survey to determine prevailing wage rates. Maryland made changes in the effective dates for rate determinations.

The Indiana State Supreme Court lifted an injunction that had blocked enforcement of prevailing wage law changes adopted in 1995.

Michigan became the 27th State to enact legislation authorizing its labor department to enter into reciprocal agreements with other States to collect claims for wages, fringe benefits, and penalties.

New Hampshire increased the civil penalty that can be imposed for any violation of the State's labor laws.

Family issues. The Connecticut family and medical leave law was amended to incorporate several provisions of the Federal Family and Medical Leave Act and to add new sections dealing with eligibility of medical providers; the relationship to collective bargaining agreements; confidentiality of records; and reporting requirements. In Tennessee, the law authorizing State employees to use sick leave for maternity leave was amended to also allow use of sick leave for paternity leave. A provision in Kentucky permitting teachers to use up to 30 days of sick leave following adoption of a child will apply also to the birth of a child, while in Rhode Island, an employer who allows employees to use sick leave after the birth of a child now must allow the same time to be used following adoption.

Schools in Utah are to work with employers to develop policies and programs to allow greater employee participation in the schools during school hours, and the Minnesota law requiring employers to grant leave for attending school activities was amended to extend coverage to a greater number of activities.

Child labor. Child labor, which has been a major topic of legislation in recent years, saw only a few significant enactments in 1996. A law in Florida permits student learners, 16 to 18 years of age, who are enrolled in recognized vocational training programs, to be employed in hazardous occupations in which employment would otherwise be pro-

hibited. Training and safety requirements are specified for these occupations. Hours of work restrictions were eased for minors in certain specified occupations in Massachusetts and Michigan. The minimum legal age for the sale or dispersing of liquor was lowered in Colorado. Offices were created to foster and support school-to-work transition efforts in Kentucky and Rhode Island. Responsibility for an existing program in Hawaii was transferred from the Department of Labor and Industrial Relations to the Department of Education.

Apparel industry. New York adopted legislation adding a section to its apparel industry regulatory law granting "hot goods" enforcement authority to the State labor department. Manufacturers or contractors in the industry will be held liable if they ship, deliver, or sell items that they know or should have known were produced in violation of minimum wage or payment of wages laws. New Jersey adopted new regulations for the confiscation of tangible property in the apparel industry where violations have occurred.

Equal employment opportunity. Various forms of employment discrimination were the subject of legislation in a number of States. Among these enactments, all Massachusetts employers, employment agencies, and labor organizations are to promote a workplace free of sexual harassment. Coverage of the Arizona law providing protection from sexual harassment was expanded to cover all employers. South Carolina made it an unlawful employment practice to discriminate on the basis of disability. The Massachusetts ban on discrimination because of disability now specifically covers part-time or temporary help agencies, and Missouri made it an unlawful employment practice to discriminate against sight, hearing, or physically disabled persons by interfering with the use of an aid or appliance, including a guide dog, hearing dog, or service dog. Rhode Island now prohibits employment discrimination against any individual because they have sought protection under laws protecting victims of domestic abuse. New Jersey made it an unlawful employment practice to discriminate on the basis of genetic information and New York made it unlawful to require genetic testing of employees unless directly related to the work environment.

Drug and alcohol testing. Regulation of employee drug and alcohol testing continued as an area of legislative interest. Washington provided for the implementation of drug-free workplace programs in the State with guidelines on when and how testing may be conducted, and amendments were made to the Florida drug-free workplace testing requirements. Drug testing will now be required for certain corrections employees in Delaware and the District of

Columbia, and for employee candidates with boards of education in New Jersey. The Rhode Island law restricting urine and blood testing as a condition of employment was amended to clarify under what circumstances such testing will be allowed.

Worker privacy. Wisconsin will now permit polygraph testing for prospective employees of law enforcement agencies.

Continuing a recent trend, 11 more States provided immunity from civil liability for employers who provide information about the job performance of a current or former employee to a prospective employer.² Amendments were made to the existing laws of Arizona and Georgia.

Employee leasing. Regulation of employee leasing companies (firms that lease persons to client companies and assume personnel, payroll, and other functions) continued as an emerging issue. Vermont enacted a comprehensive law establishing standards for the operation, regulation, and licensing of these firms. The Maine law was amended to transfer registration responsibility to the Commissioner of Labor and to modify health care benefit plan provisions. The New Hampshire and Tennessee laws were also amended.

Private employment agencies. The Virginia private employment agency regulatory law was repealed, and the Tennessee law was repealed and replaced with one that does not require registration. Coverage of the Pennsylvania law was expanded to include modeling and theatrical agencies. In other actions, the California, Kansas, and Wyoming laws were revised.

Alabama

Wages. Overtime provisions for nonelected county law enforcement officers were amended to provide that their compensation for overtime be made pursuant to the Federal Fair Labor Standards Act.

Alaska

Wages. The State minimum wage rate is set by law at 50 cents more than the Federal Fair Labor Standards Act rate. Therefore, the State rate rose from \$4.75 per hour to \$5.25 on October 1, with an increase to \$5.65 scheduled for September 1, 1997.

Hours. The period of permitted employment in underground mines, at the mine face or other place where the work is actually carried on, was increased from 8 to 10 hours in a 24-hour period. In addition, it was specified that miners must

be paid from the time they enter the mine portal until they leave the mine. An employer may make a written request to the labor commissioner for issuance of a variance permitting employment in an underground mine or workings for up to 12 hours in a 24-hour period if the additional working time is permitted by a collective bargaining agreement covering those doing the work or if the time extension is in the best interest of resident workers of the State. The variance can be revoked where the health and safety of the miners is jeopardized or if a reduction in hours is in the workers best interest.

Arizona

Equal employment opportunity. The law banning employment discrimination was amended to apply, for purposes of administrative and civil actions regarding allegations of sexual harassment, to any person having one or more employees in the current or preceding calendar year.

Inmate labor. A Prison Industry Enhancement Program was created in Mississippi, authorizing private entities to employ offenders under custody of the Department of Corrections or prison industries. Wisconsin will permit counties to establish work camps for persons sentenced to the county jail.

Other laws. Among other laws of interest, in Florida, certain alien agricultural workers will be excluded from unemployment compensation coverage. An Arizona employment protection act places limits on employers' ability to discharge employees when the discharge violates the public policy of the State. A recent trend continued with Colorado, South Dakota, and West Virginia providing paid leave for State employees who are American Red Cross certified disaster service volunteers. In response to repeal of Federal requirements for mandatory employee traffic reduction programs to meet requirements of the Federal Clean Air Act, the Delaware Commute Options Act was repealed and voluntary programs were adopted, replacing mandatory programs in Connecticut, Illinois, and New Jersey.

State labor departments became part of new consolidated agencies in Iowa, Michigan, and Rhode Island, and new functions were assigned to the Kentucky Cabinet for Workforce Development and the Wisconsin Department of Industry, Labor, and Job Development. In Utah, a decision is pending as to whether the Industrial Commission should become part of a new Department of Workforce Services.

Wyoming repealed various archaic and superseded provisions pertaining to the employment of women, including limitations on hours of work, rest periods, and provision of seats at the worksite.

The following is a summary, by jurisdiction, of labor legislation enacted in 1996.

Otherwise, the law applies to employers having 15 or more employees.

Worker privacy. The law providing for immunity from civil liability for employees who, in good faith, provide job performance information about a former employee to a prospective employer was amended to specify that there is a presumption of good faith if either the employer employs less than 100 employees and furnishes only the information authorized by law, or the employer employs at least 100 employees and has a regular practice of providing information requested by a prospective employer about the reason for termination of a former employee or about the job performance, professional conduct or evaluation of a current or former employee. The presumption of good faith is rebuttable by showing that the employer disclosed knowingly false information or provided information with an intent to mislead.

Discharge. An employment protection act was adopted allowing employees to sue an employer for damages because of a discharge that violates the public policy of the State. The law specifies that the public policy of the State is that the employment relationship is contractual in nature and is severable at the pleasure of either the employee or employer unless both have signed a written contract to the contrary restricting the right of either party to terminate the relationship. Claims against an employer for termination of employment will be permitted in instances including where (1) employment has been terminated in breach of an employment contract; (2) employment has been terminated in violation of a State statute including the Civil Rights Act, the Occupational Safety and Health Act, the Agricultural Employment Relations Act, or statutes governing hours of employment; (3) termination in retaliation for refusal to violate the law, for disclosure that the employer has violated the law, for the exercise of rights under the workers' compensation statutes, for service on a jury or in the National Guard or Armed Forces, for the exercise of voting rights, or for refusal to join a labor organization.

California

Wages. On August 23, the State Industrial Welfare Commission issued an order adopting the newly enacted Federal minimum wage rate increases. Therefore, the State rate rose from \$4.25 per hour to \$4.75 on October 1, and will increase again to \$5.15 on September 1, 1997.

The November ballot measure, Proposition 210, calling for raising the State's minimum wage to \$5 an hour on March 1, 1997 and to \$5.75 on March 1, 1998, was approved by the voters.

Child labor. Until January 1, 1999, 16- and 17-year-olds in Lake County who are employed in agricultural packing plants may work more than 48 hours, but no more than 60, in any 1 week with written approval of the Lake County Board of Education. This provision amends the child labor law that otherwise limits the number of hours that these minors may work to no more than 48 hours per week and 8 hours a day, or up to 10 hours on any nonschool day in agricultural packing plants during the peak harvest season.

Apparel industry. Amendments to the garment industry registration law require the Labor Commissioner to notify registrants in writing, and provide an application and instructions for renewal, at least 90 days prior to expiration of registration. However, failure of the Labor Commissioner to provide this notice will not excuse a registrant from making timely application for renewal and will not subject the Labor Commissioner to any legal liability. If a renewal application is received by the Labor Commissioner 30 days prior to expiration of the registration, but it cannot be processed before the expiration date, a 90-day extension of registration is authorized if the applicant has submitted

a complete application, owes no outstanding penalties, owes no back wages, meets all applicable bonding requirements, and meets all other requirements for registration.

The United States Department of Justice and the United States Department of Labor were asked to jointly conduct an investigation of the events that led to the sewing shop raid in El Monte, California, coordinating the investigation with all agencies involved, including, but not limited to, the United States Immigration and Naturalization Service and the Division of Labor Standards Enforcement of the California Department of Industrial Relations. It is asked that a report on the investigation be made to the California legislature.

Worker privacy. The law providing for the confidentiality of peace officer personnel records was amended to provide that a peace officer employer may release factual information concerning a disciplinary investigation if the peace officer or his representative publicly makes a false statement through the news media. The employing agency may only release facts contained in the peace officer's personnel folder that specifically refute the false statements.

Private employment agencies. The provision of the private employment agency law that requires all agencies to give every jobseeker, from whom a fee or deposit is to be received, a written contract that includes a specific contract expiration date was amended. A new provision allows a domestic agency that engages in the business of obtaining and filling commitments for domestic help to enter into a continuing contract that can be terminated, in writing, by either the domestic worker or the agency.

Preference. The law requiring State agencies to give a preference to State resident contractors on bids for public construction contracts was amended to require that a nonresident contractor, at the time of bidding, disclose to the awarding agency all bid preferences received from the State or country where the nonresident contractor has its principal place of business.

Other laws. October was proclaimed as Workplace Fitness Month in the State. This action was taken to support employee fitness programs as a means of reducing employee absenteeism and turnover, while bolstering morale and commitment.

Colorado

Wages. Minimum Wage Order No. 20 was adopted raising the minimum wage rate from \$3 to \$4.75 per hour on November 1, 1996, for employees of businesses not covered by the Federal minimum wage law. As under Federal law, employers of employees who receive tips for their work must pay a cash wage of at least \$2.13 per hour with the remainder of the minimum wage to be made up from tips. Also, workers under the age of 20 who are being supported

by parents or guardians may be paid \$4.25 per hour for the first 90 days of employment.

A ballot measure (Initiative 100) was defeated that would have established a minimum wage in the City of Denver at \$6.50 per hour on January 1, 1997, with future increases to \$6.85 on January 1, 1998; \$7.15 on January 1, 1999; and annually thereafter beginning January 1, 2000, to rates indexed to the cost of living.

Child labor. The minimum legal age for the sale or dispensing of spirituous liquors, in establishments that serve meals, was lowered from 21 to 18. A person under age 21, employed to sell or dispense beer, wine, or spirituous liquors must be supervised by another person who is on the premise and who is at least 21 years old.

Agriculture. Farm and ranch labor is excluded from the definition of employee for purposes of coverage under the State Labor Peace Act. The law was amended to specify that "farm" means stock, dairy, poultry, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, orchards, and other structures used for the raising of agricultural or horticultural commodities, provided such structures are used for at least 50 percent of the total output produced.

Other laws. Any employee of a State agency who is a certified disaster services volunteer of the American Red Cross may, with approval of the executive director of the department, be granted leave from work with pay for up to 5 days a year to participate in disaster relief services in the State or 15 days a year to participate in such activities in a national disaster, for the American Red Cross, without loss of annual leave, sick leave, group medical benefits, or similar benefits. An employee granted this time off will not be considered to be an employee for workers' compensation purposes during the period of leave.

Connecticut

Wages. By law, the State minimum wage rate automatically increases to 1/2 of 1 percent more than the Federal Fair Labor Standards Act rate if the Federal minimum equals or becomes higher than the State minimum. Accordingly, the State rate increased from \$4.27 per hour to \$4.77 on October 1, when the Federal rate increased to \$4.75. The State rate will increase to \$5.18 on September 1, 1997, when the Federal rate increases to \$5.15.

Hours. Employers who violate the provisions of the act concerning the requirement to provide meal breaks shall be liable to the labor department for a civil penalty of \$150 for each violation.

Family issues. The State family and medical leave law, applicable to private sector employers, was amended to incorporate several provisions of the Federal Family and Medical Leave Act (FMLA) and its implementing regulations,

including those permitting reduced and intermittent schedules; requiring 30 days' notice to the employer where possible; pertaining to medical certification; pertaining to the relationship to paid leave; and providing for protection against discrimination and retaliation.

Additional provisions allow the labor commissioner flexibility in determining the types of medical providers who may certify eligibility for medical leaves; require collective bargaining agreements to control on issues of employee transfer and reasonableness of required medical recertifications; prohibit an employer with no collective bargaining agreement from requiring recertification more than once every 30 days unless required by the employee's health care provider; provide that normally exempt employees do not become subject to overtime requirements solely because they reduce their weekly work schedules by taking unpaid leave; require employer records on medical leave to be kept confidential; and eliminate certain reporting requirements. Provisions of the original State act which are substantively more protective for employees than under the Federal law are preserved. By January 1, 1997, the State labor commissioner is to adopt new implementing regulations that, to the extent possible, coordinate with the Federal Family and Medical Leave Act and its regulations.

Other laws. A voluntary traffic reduction program was established, replacing an existing mandatory State-wide traffic management program which was enacted to bring the State into compliance with traffic reduction requirements of the Federal Clean Air Act. The Federal requirements have been repealed by Congress. Any affected employer who elects to participate in the new program is to submit a plan and an annual update to the Commissioner of Transportation describing measures to be implemented to reduce single occupancy vehicle trips to and from work and to relieve traffic congestion. Participating employers with an approved plan will be eligible for tax credits and other assistance.

Delaware

Wages. A new law was enacted increasing the State minimum wage rate from \$4.25 per hour to \$4.65 on April 15, 1996, and to \$5 on January 1, 1997. Because the State minimum wage rate is replaced with the Federal minimum if it becomes higher than the State minimum, the State matched the Federal increase to \$4.75 on October 1, 1996, and will increase its rate from \$5 to \$5.15 to match the Federal rate on September 1, 1997.

A Volunteer Firefighter and Rescue Squad Worker Protection Act was adopted permitting professional firefighters and rescue squad members to volunteer their off-duty services and to waive their claim to overtime compensation. It will be unlawful for an employer to require an employee who is a firefighter or member of a rescue squad to volunteer his or her services during any time when he or she would be entitled to overtime compensation. The act will

become effective only upon enactment of comparable Federal law.

Employee testing. Mandatory screening for the use of illegal drugs will now be required for all applicants for employment in security sensitive positions in the Department of Corrections. In addition, all department employees working in these positions will be subject to testing for the illegal use of drugs either on a random basis; if there is a reasonable suspicion of an employee being impaired by an illegal drug; or following an incident involving the death or serious physical injury to a department employee, loss or significant damage to department property, or the escape of an inmate where the security-sensitive employee was directly involved in the incident.

Worker privacy. A Quality in Hiring Act was enacted, providing that an employer who discloses information about a current or former employee's job performance to a prospective employer is presumed to be acting in good faith; and unless lack of good faith is shown, is immune from civil liability for the disclosure or its consequences. The presumption of good faith may be rebutted by a showing that the information disclosed was knowingly false, was deliberately misleading, or was rendered with malicious purpose; or that the information was disclosed in violation of a nondisclosure agreement, or was otherwise confidential according to applicable Federal, State, or local law or regulation.

Whistleblower. Provisions were added to the Use of Lie Detector Test by Employers law, the Discrimination in Employment Act, the Right to Inspect Personnel Files law, and the Clean Indoor Air Act to prohibit retaliation against any person who makes or cooperates in any complaint or investigation pertaining to these laws. All the laws enforced by the State Department of Labor will now have anti-retaliation provisions.

Other laws. The Employee Commute Options Act was repealed. This act had provided for mandatory employee traffic reduction programs to meet requirements of the Federal Clean Air Act. These Federal requirements have been repealed by Congress.

District of Columbia

Wages. The District of Columbia minimum wage rate is automatically set at \$1 above the Federal minimum wage rate. Therefore, the rate rose from \$5.25 per hour to \$5.75 on October 1, and will increase again to \$6.15 on September 1, 1997.

Employee testing. A law was enacted to establish a mandatory drug and alcohol testing policy for Department of Corrections employees in the District of Columbia. Testing will be required of all applicants for employment with the Department as well as those employees who have had a reasonable suspicion referral; any employee

who, while on duty, is involved in an accident resulting in personal injury or property damage, or both; and those employees who have inmate care and custody responsibilities or who work within a correctional institution. Only the last category of employees will be subject to random testing. Testing methodology and confirmation procedures are specified. The drug testing policy is to be issued in advance to inform employees and allow them the opportunity to seek treatment. Thereafter, any confirmed positive test results or a refusal to submit to the test will be grounds for termination.

Other laws. The Police Officers Outside Employment Amendment Act of 1996 was adopted to increase outside employment opportunities for members of the Metropolitan Police Department in an effort to provide increased protection to residents and businesses against criminal activities.

Florida

Child labor. Student learners 16 to 18 years of age may now be employed in work on any scaffolding, roof, superstructure, residential or non-residential building construction, or ladder above 6 feet; in the operation of power-driven woodworking machines; in the operation of power-driven metal forming, punching, or shearing machines; involving slaughtering, meat packing, processing, or rendering; in the operation of power-driven paper products and printing machines; in excavation operations; on electrical apparatus or wiring; and in operating or assisting to operate a tractor that has more than 20 power-takeoff horsepower, any trencher or earth-moving equipment, fork lift, or any harvesting, planting, or plowing machinery, or any moving machinery. Otherwise, work in these occupations is considered hazardous and prohibited for minors under age 18. A student learner must be enrolled in a recognized vocational training program, and must be employed under a written agreement that provides that the work in the occupation declared particularly hazardous will be incidental to the training, the work will be intermittent and for short periods of time under the direct supervision of a qualified and experienced person, that safety instructions be provided, and that a schedule of organized and progressive work processes to be performed on the job has been prepared.

Alien workers. The definition of the term "employment" was modified to exclude from unemployment compensation coverage those services performed in agricultural labor by alien agricultural workers admitted to the United States to perform service under specified sections of the Immigration and Nationality Act.

Employee testing. Among amendments to the law relating to drug-free workplace requirements, the Agency for Health Care Adminis-

tration, rather than the Department of Labor and Employment Security, is now responsible for adopting drug-testing rules and rules for handling contested drug test results. A provision was added to allow testing of hair samples for the presence of illegal drugs; and standards and procedures were established related to hair-testing—including collection procedures, testing procedures, drug-testing facility requirements, security, chain of custody, and employee privacy. It was specified that the law does not eliminate collective bargaining rights and that the drug-free workplace program requirements under the act are to be a mandatory topic of negotiations with any certified collective bargaining agent for nonfederal public sector employers. A drug-testing policy or procedure adopted by an employer is to be applied equally to all employees.

Other laws. Provisions ensuring the employment protection of members of the Florida National Guard, when ordered into State active service, were amended to add enforcement procedures. An employee who has been injured by a violation may bring a civil action against the employer in violation. If found guilty, the employer will be liable for the greater of actual damages or \$500. The prevailing party in any action will be entitled to recover their reasonable attorney's fees and court costs.

Georgia

Wages. The law relating to voluntary deductions from wages or salaries of State employees for benefit of charitable organizations was amended to expand coverage to public authorities and public corporations and to revise the definition of charitable organization to permit contributions to educational and environmental restoration or conservation agencies.

Worker privacy. The law providing immunity for employers who disclose factual information regarding an employee's job performance was revised to extend coverage to most private and public sector employers. Coverage had been limited to banks, licensed home care providers, home health agencies, savings and loan associations, and credit unions.

Other laws. State Department of Labor employees engaged in the practice of a specialty, in an official capacity, were added to the list of those persons exempt from the licensing requirements for professional counselors, social workers, and marriage and family therapists.

Guam

Wages. The Guam minimum wage law adopts the Federal minimum wage rate by reference. Therefore, the rate rose from \$4.25 per hour to \$4.75 on October 1, and will increase again to \$5.15 on September 1, 1997.

Hawaii

Wages. Resolutions were adopted expressing disapproval of legislation, passed in the Commonwealth of the Northern Mariana Islands, that delayed for 6 months a previously enacted increase in the local minimum wage.

Child labor. A school-to-work transition program was established within the Department of Education to assist high school students in moving successfully into the labor force or in furthering their training and education. This program replaces a similar transition-to-work system that had been established in the Department of Labor and Industrial Relations. All duties and functions relating to that department's program are to be transferred to the Department of Education.

Idaho

Wages. The law relating to overtime work for nonclassified employees of State government was amended to clarify that assistant attorneys general attached to the office of the attorney general are eligible for cash compensation or compensatory time for overtime work.

The wage payment law was amended to provide for the payment of attorney's fees and other costs of bringing a suit in those instances where a demand is made, in writing, at least 5 days before suit is brought for the payment of a sum not to exceed the amount found to be due by the court or the jury.

New sections were added to the wage payment law providing that an employee who knowingly files a false claim for wages or other compensation will be guilty of a misdemeanor and subject to up to 6 months in jail or a fine of up to \$1,000, or both. An employee who initiates a civil proceeding to collect unpaid wages or other compensation, either on his or her own behalf or through the Director of the Department of Labor and Industrial Services, based in whole or part on a knowingly false claim, also will be liable for attorney's fees and costs incurred by the employer in defending against the false claim, as well as any attorney's fees and costs, or other administrative costs incurred by the director in any investigation or proceeding to collect the wages or other compensation falsely claimed by the employee.

Hours. Provisions were repealed that had limited work in mines and smelters to 8 hours a day, with certain exceptions.

Worker privacy. An employer who, in good faith, provides information about the job performance, professional conduct, or evaluation of a former or current employee to a prospective employer of that employee, at the request of the prospective employer of that employee, or at the request of the current or former employee, may not be held civilly liable for the disclosure or the consequences of providing the information. An employer will be considered to be acting in bad faith only if it can be shown that the information

disclosed was knowingly false and deliberately misleading.

Illinois

Wages. The State minimum wage law adopts the Federal minimum wage rate by reference. Therefore, the State rate rose from \$4.25 per hour to \$4.75 on October 1, and will increase again to \$5.15 on September 1, 1997.

Radio or television announcers, news editors, and chief engineers covered by the Federal Fair Labor Standards Act were added to the list of those employees excluded from the overtime payment requirements of the minimum wage law.

Worker privacy. A new Employment Record Disclosure Act provides that an employer who, upon request by a prospective employer, provides truthful written or verbal information about a current or former employee's job performance is presumed to be acting in good faith and is immune from civil liability for the disclosure and the consequences of the disclosure. The presumption of good faith may be rebutted if the information disclosed is shown to be knowingly false or in violation of a civil right of the employee or former employee.

Other laws. The Voluntary Employee Commute Options Emission Reduction Credit Act was created to replace the repealed Employee Commute Options Act which was enacted to bring the State into compliance with traffic reduction requirements of the Federal Clean Air Act. The Federal requirements have been repealed by Congress. Any affected employer who elects to participate in the new program is to submit a plan to the State Department of Transportation, describing measures to be implemented to encourage the use of carpooling, mass transit, vanpooling, telecommuting, compressed workweeks, clean fuel vehicles, and other measures that either reduce the number of commuting trips by employees or reduce the emissions associated with those trips.

Participating employers with an approved plan will be eligible for tax credits and other assistance.

Indiana

Wages. On June 14, the State Supreme Court lifted an injunction that had blocked enforcement of prevailing wage law changes adopted in 1995. These changes include increasing the threshold amount for coverage to \$150,000, raising from three to five the number of members on the committee that determines wage rates for each public works project, and changing the wage determination method from the "prevailing wages paid in the locality for each class of work" to the "common construction wages paid on all construction in the county where the project is located." Rates will now be established in all of the State's 92 counties, rather than for 16 sites.

Iowa

Wages. The State minimum wage rate is replaced with the Federal minimum if it becomes higher than the State minimum. Because of this provision, the State rate increased from \$4.65 per hour to \$4.75 on October 1, and will increase again to \$5.15 on September 1, 1997.

Inmate labor. Persons convicted of forcible felonies may not be released on work release or parole.

Other laws. A Workforce Development Department was created to administer State laws relating to unemployment compensation insurance, job placement and training, employment safety, labor standards, and workers' compensation. The new department consolidates programs and services from the Departments of Employment Services, Economic Development, and Human Rights. In consultation with a newly created work force development board and regional advisory boards, the Workforce Development Department is to develop and implement a system to increase the skills of the State work force, foster economic growth and the creation of new high skill and high wage jobs through job placement and training services, and increase the competitiveness of State businesses by promoting high performance workplaces. The labor commissioner and industrial commissioners, formerly under the Department of Employment services, will continue in these positions in the new department.

Kansas

Wages. If the Secretary of the Department of Human Resources prevails on behalf of an employee, after taking an assignment in a wage claim case, the court is to award the agency reasonable attorney fees for the action.

Private employment agencies. The Private Employment Agency regulatory law was amended to permit charging a fee of up to \$75 for receiving or filing applications for employment, and to repeal a section requiring that the fee be returned, upon request, if the applicant does not obtain employment through the licensed agency within 3 days after registration. Also, an exemption from the law was removed for a business that publishes employment information through the use of a computerized data base, and that, prior to July 1, 1993, had received a written statement from the Secretary of Human Resources that it was not a private employment agency.

Kentucky

Wages. The 50-percent tip credit allowed against the State minimum wage will now apply to any employee working in an occupation in which he or she receives more than \$30 per month in tips. The previous standard was \$20

per month of tip income. Employees may voluntarily enter into agreements to divide gratuities among themselves, but may not be required by the employer to do so.

Employees who provide twenty-four hour residential care on the employer's premises in a parental role to children who are primarily dependent, neglected, and abused and who are in the care of private, nonprofit child-caring facilities licensed by the Cabinet for Human Resources were added to the list of those exempt from State minimum wage and overtime requirements.

Among several changes in the State prevailing wage law, exemptions were eliminated both for school construction and for city and county projects involving less than 50 percent State funding; the threshold amount for coverage was reduced from \$398,760 to \$250,000 (the level had been set at \$250,000 in 1982 with annual increases thereafter indexed to the Consumer Price Index); and a prohibition was added on dividing projects into multiple contracts of lesser value to avoid compliance. Locality, for purposes of rate determination, will no longer be restricted to the county where work is to be done and may now include more than one county within a State Senatorial district.

The requirement for the labor commissioner to hold public hearings for rate determination purposes will not be required in any locality where the U.S. Department of Labor has issued a prevailing wage rate under the Davis-Bacon Act. In these cases, the commissioner may adopt the Federal rates.

Hours. The provision that police officers, in cities of the second class and urban-county governments, not be required to work more than 8 hours a day for 5 days a week was amended to permit work schedules of 10 hours a day and 4 days a week.

The law limiting the maximum driving and on-duty time of employees of motor carriers was amended to exempt transporters of agricultural commodities or farm supplies for agricultural purposes. To qualify, the transportation must be limited to an area within a 100-mile radius from the source of the commodities or distribution point for the farm supplies, and must be restricted to the State's planting and harvesting seasons.

Family issues. A provision allowing teachers to use up to 30 days of sick leave following the adoption of a child or children was amended to apply also to the birth of a child and to provide that additional days may be used when the need is verified by a physician's statement.

Child labor. An Office of School-to-Work, attached to the Office of the Secretary of the Workforce Development Cabinet, was created to support a school-to-work transition system. The system is to involve business, labor, education, and government in developing school curriculum and workplace training to prepare students for the work force.

Other laws. The composition of the Cabinet for Workforce Development was changed as part of a government reorganization. A new Office of Training and Reemployment was created within the Cabinet, and the Department for Employment Services and the Unemployment Insurance Commission were transferred to it from the Cabinet for Human Resources.

Louisiana

Equal employment opportunity. The Senate Committee on Labor and Industrial Relations and the House Committee on Labor and Industrial Relations were asked to jointly study State and Federal statutes and regulations regarding fair employment practices and related labor issues, especially instances of inconsistency, conflicts, and overlapping between counterpart statutes. Findings are to be reported to the legislature prior to the start of the 1997 regular session.

Maine

Wages. The State minimum wage rate is replaced with the Federal minimum if it becomes higher than the State minimum. Because of this provision, the State rate increased from \$4.25 per hour to \$4.75 on October 1, and will increase again to \$5.15 on September 1, 1997.

The minimum wage law was amended to clarify that the regular hourly rate, for purposes of overtime calculation, does not include any sums excluded from the definition of "regular rate" under the Federal Fair Labor Standards Act.

Within 2 weeks after the sale of a business, the seller of the business must pay employees any wages earned while employed by the seller, including compensation for accrued vacation time if paid vacations were included in the terms of employment. The seller may comply through an agreement with the buyer in which the buyer agrees to pay any wages due and to honor any paid vacation earned prior to the purchase.

Employee leasing. Among amendments to the employee leasing company regulatory law, responsibility for registering these firms was transferred from the Bureau of Insurance to the Commissioner of Labor. The Commissioner of Labor also is responsible for working with various State officials to develop materials that would assist new businesses or small employers who are considering using an employee leasing company. Employee leasing companies are prohibited from offering health benefits on a self-insured basis to their employees without meeting the funding and reporting requirements that currently apply to other forms of multiple-employer welfare arrangements. If a multiple-employer welfare arrangement is terminated, prior written notice must be provided to the affected employees. The law strengthens the regulation of multiple-employer welfare arrangements by requiring fidelity bonds to guarantee benefit payment.

Preference. The Bureau of General Services is to adopt policies to promote the participation by enterprises doing business in the State and State residents in procurement contracts.

Maryland

Wages. The State minimum wage law adopts the Federal minimum wage rate by reference. Therefore, the State rate rose from \$4.25 per hour to \$4.75 on October 1, and will increase again to \$5.15 on September 1, 1997.

The prevailing wage law was amended to provide that rates under the law be determined annually, by the labor commissioner, with the determination to be effective for a 1-year period from the date of determination. Previously, determinations became final only when incorporated into a public works contract, rather than on the date of determination, and could remain in effect for longer than 1 year.

Hours. The law relating to modified work schedules for law enforcement employees or 40-hour civilian employees of the Department of State Police was revised to permit workdays of up to 12 hours, rather than 10, in lieu of an 8-hour workday, with the authorization of the Secretary.

Worker privacy. An employer acting in good faith may not be held liable for disclosing any information about the job performance or the reason for termination of employment of an employee or former employee, (1) to a prospective employer of the employee or former employee at the request of the prospective employer, or the current or former employee, or (2) if requested or required by a Federal, State, or industry regulatory authority. An employer who discloses information will be presumed to be acting in good faith unless it is shown that the employer acted with malice or intentionally or recklessly disclosed false information about the employee or former employee.

Massachusetts

Wages. As the result of prior legislation, the State minimum wage rate rose from \$4.75 per hour to \$5.25 on January 1, 1997.

Child labor. Employment of 16- and 17-year-olds by facilities licensed to sell State lottery tickets or operate horse and dog races will not be considered to be employment injurious to the morals of minors. Minors of this age working at race tracks may now be employed until 12 p.m. on Fridays and Saturdays and during school vacation periods, except for the last day of the vacation period.

The requirement that noncontinuous work periods of minors under age 18, whose work is divided into two or more periods, be completed within a period of 10 consecutive hours was amended to now permit completion within 12 consecutive hours.

Equal employment opportunity. All employers, employment agencies, and labor organizations are to promote a workplace free of sexual harassment. Employers are to adopt a policy against sexual harassment that is to include a statement that sexual harassment in the workplace is unlawful; a statement that it is unlawful to retaliate against an employee for filing a complaint of sexual harassment or for cooperating in an investigation of a complaint; a description and examples of sexual harassment; a statement of the range of consequences for employees who are found in violation; a description of the process for filing internal complaints about sexual harassment and the work addresses and telephone numbers of the person or persons to whom complaints should be made; and the identity of the appropriate State and Federal enforcement agencies, and directions on how to contact them. Employees are to receive an individual written copy of the employer's policy against sexual harassment annually, and new employees are to be provided with a copy at the time of hire. Employers and labor organizations are encouraged to conduct education and training programs for new employees and members, and additional training for new supervisory and managerial employees and members.

Provisions barring employment discrimination on the basis of disability were amended to specifically cover agencies that employ individuals directly for the purpose of furnishing part-time or temporary help to others.

Other laws. Except for certain limited exceptions, State contracts are not to be entered into with companies doing business with or in Myanmar (Burma).

Michigan

Wages. The wage payment law was amended to authorize the Director of the Department of Labor to enter into reciprocal agreements with other States for the collection of claims for wages, fringe benefits, and penalties.

A measure enacted late in 1995 permits employers to deduct an overpayment from an employee's wages without written consent under certain specified conditions. These include a requirement that the deduction be made within 6 months of the overpayment; that the employer provide the employee with a written explanation of the deduction at least one pay period before it is to begin; that the deduction not be greater than 15 percent of the gross wages earned in the pay period; and that the deduction does not reduce wages below the greater of the State or Federal minimum wage. This provision applies only to overpayments based on a mathematical error, miscalculation, or typographical error.

Child labor. A measure enacted late in 1995 will permit 16- and 17-year-olds employed in agricultural processing (washing, sorting, or stacking fruits and vegetables) to work 62 hours a week and 11 hours a day for up to 4 weeks during a school vacation period with parental con-

sent. Minors not enrolled in school may work these hours any time of the year. The prior limits were 10 hours a day and 48 hours a week.

Child labor work permits may now be issued by public school academies or nonpublic schools. Previously, work permits were issued only by public school district superintendents or their designees.

Worker privacy. An employer who discloses information about the job performance of a current or former employee to a prospective employer may not be held liable for such disclosure in a civil complaint, unless the information was known to be false or misleading or the disclosure was specifically prohibited by a State or Federal law.

A separate law requires that before hiring an applicant for employment, a school district or school is to request the applicant to sign a statement that both authorizes the applicant's current or former employer or employers to disclose any unprofessional conduct by the applicant, and releases the current or former employer from any liability for providing the information. This information is to be requested by the prospective employer and must be provided within 20 business days by the applicant's current or former employer or employers. An employer that discloses the requested information in good faith is immune from civil liability for the disclosure unless it is shown that the information disclosed was knowingly false or misleading, that the information was disclosed with a reckless disregard for the truth, or that the disclosure was specifically prohibited by a State or Federal law.

Other laws. An Executive Order reorganizing the departments of Labor and Commerce took effect on May 15, 1996. The new department is the Department of Consumer and Industry Services.

Minnesota

Family issues. The law requiring employers to grant employees up to 16 hours of leave a year to attend school conferences or their children's classroom activities was amended to expand applicability to school-related activities rather than the more limited leave for classroom activities.

Other laws. Membership on the nine-member pollution control board was expanded to add a representative of organized labor beginning in January 1998.

Mississippi

Inmate labor. A Prison Industry Enhancement Program was created under which the Department of Corrections is authorized to contract with a private entity to employ offenders within the custody of the department or prison industries. The offenders must voluntarily agree to the program and must be under the supervision of

the department at all times while working. They are to be paid, by the entity or entities, wages at a rate not less than that paid for similar work in the locality where the work is performed. Deductions of up to 80 percent of gross wages may be taken to pay Federal, State and local taxes; to pay reasonable charges for room and board; to support the offender's family pursuant to State law, court order, or agreement by the offender; and to pay contributions into the Crime Victims' Compensation Fund.

Other laws. It was made unlawful for any employee of a merchant to give away any merchandise without the permission of the merchant.

Missouri

Wages. The State minimum wage law adopts the Federal minimum wage rate by reference. Therefore, the State rate rose from \$4.25 per hour to \$4.75 on October 1 and will increase again to \$5.15 on September 1, 1997.

A ballot measure (Proposition A) was defeated by the voters that would have raised the State rate to \$6.25 per hour on January 1, 1997, \$6.50 on January 1, 1998, \$6.75 on January 1, 1999, and an additional 15 cents each year thereafter beginning January 1, 2000.

Equal employment opportunity. It is now an unlawful employment practice for any employer to discriminate against any person with a visual, aural, or physical disability by interfering, directly or indirectly, with the use of an aid or appliance, including a guide dog, hearing dog, or service dog, by such person.

Montana

Wages. The State minimum wage law adopts the Federal minimum wage rate by reference through administrative action. Action was taken to raise the State rate from \$4.25 per hour to \$4.75 on October 1, with a further increase to \$5.15 scheduled for September 1, 1997.

A ballot initiative (No. I-121) proposing to raise the State's \$4.25 minimum wage by \$2 in four 50-cent steps over a 2-year period (\$4.75 on January 1, 1997; \$5.25 on January 1, 1998; \$5.75 on January 1, 1999; and \$6.25 on January 1, 2000) was defeated in the November general election.

Nevada

Wages. The State minimum wage law adopts the Federal minimum wage rate by reference through administrative action. Action was taken to raise the State rate from \$4.25 per hour to \$4.75 on October 1, with a further increase to \$5.15 scheduled for September 1, 1997.

New Hampshire

Wages. The State minimum wage rate is replaced with the Federal Fair Labor Standards

Act rate if it becomes higher than the State minimum. Because of this provision, the State rate increased from \$4.25 per hour to \$4.75 on October 1, and will increase again to \$5.15 on September 1, 1997.

Employee leasing. Among the amendments to the law relating to employee leasing companies, workers' compensation coverage will not be provided to any leasing companies that are not licensed. Leasing agencies, for licensing purposes, must have a bond or securities on deposit that the Commissioner of Labor deems adequate to assure payment of wages and benefits, and must now have a minimum net worth of \$100,000 instead of \$50,000. The Commissioner may refuse to issue, suspend, or revoke a license if the employee leasing company fails to pay Federal withholding tax, unemployment insurance contributions, wages, or benefits when due. Companies in violation, or client companies doing business with an unlicensed employee leasing company, may be fined up to \$1,000 per employee for each day the violation continues.

Other laws. The civil penalty that the Commissioner of Labor can impose for any violation of the State's labor laws was increased from up to \$500 to up to \$1000.

New Jersey

Wages. Amendments were made to the law permitting unsuccessful bidders, on those public works contracts subject to the State prevailing wage law, to bring an action for damages in court against the contractor awarded the contract if the contractor violated the prevailing wage law, or failed to pay any contribution, tax, assessment, or benefit required by any other applicable law. These amendments include clarification of which bidders can bring suit, and specify that the courts may order no payment if violations or failures to pay were caused by minor recordkeeping mistakes, minor computational errors, or other minor mistakes.

Apparel industry. New regulations were adopted for the confiscation of tangible property in the apparel industry to help ensure compliance with the provisions of the Apparel Registration Act.

Equal employment opportunity. As part of a new Genetic Privacy Act, it was made an unlawful employment practice for an employer to refuse to hire, to discharge, or to take other adverse action against an employee because of genetic information that is provided, or because of the refusal to submit to a genetic test, or to make the results of a genetic test available to an employer.

Employee testing. Boards of education will now be permitted to include drug testing as part of any physical examination that is required of a candidate who has received a conditional offer of employment. Drug testing is to be conducted

by a physician or institution designated by the board of education and the costs are to be paid by the board. Guidelines, for those electing to require testing, are to be developed by the Department of Education in consultation with the Department of Health.

Other laws. A voluntary Travel Demand Management Program was created to replace a repealed mandatory program that had been enacted to bring the State into compliance with traffic reduction requirements of the Federal Clean Air Act. The Federal requirements have been repealed by Congress. Any affected employer who elects to participate in the new program is to submit a plan to the State Department of Transportation describing measures to be implemented to encourage the use of carpooling, mass transit, vanpooling, bicycling, walking, telecommuting, flextime, compressed work weeks, and other measures that reduce the dependence on, and use of single occupancy vehicles, or alter the timing of travel to other, less congested periods or both. Participating employers with an approved plan will be eligible for tax credits and other assistance.

New Mexico

Wages. The Director of the Labor and Industrial Division of the Labor Department may now file wage claims up to the jurisdictional limit of magistrate and metropolitan courts (currently \$5,000) without referring the claim to the district attorney. Previously, wage claim cases exceeding \$200 were sent to the district attorneys.

New York

Agriculture. Every grower or processor employing paid farm or food processing workers must provide them with safe drinking water. Previously, this requirement applied only to those employing more than four workers.

Apparel industry. The law establishing a special task force to enforce labor laws in the apparel industry applies to any manufacturer or contractor in the apparel industry who ships, delivers, or sells any apparel, or sections of apparel, who knew or should have known that the goods were produced in violation of minimum wage and payment of wages laws. Retailers who sell such items produced in violation of minimum wage and payment of wages laws also will be held in violation unless they acquired the apparel or sections of apparel without notice from the labor commissioner of the law violations and with the written assurance of the manufacturer or contractor that the goods were produced legally. The State Supreme Court, upon petition of the attorney general, may restrain the shipping, delivery, sale or purchase by any apparel manufacturer, contractor, or retailer if it is shown that the goods were produced or sold during the previous 180 days in violation of the apparel industry task force law.

Registration requirements for manufacturers or contractors in the apparel industry were revised to add, to previously required information, the name, home address, and Social Security number of each owner or partner, or, if the registrant is a corporation with shares not listed on a national securities exchange or regularly quoted in an over-the-counter market, this information must be provided for each officer and each of the 10 largest shareholders. The requirement to furnish information on any conviction for a labor law violation within the last year was changed to require information on convictions within the last 3 years and to apply to violations by any owner or partner or by any officer and the ten largest shareholders of corporations whose shares are not listed on an exchange or traded regularly in an over-the-counter market.

Genetic testing. It was made an unlawful discriminatory practice for employers, labor organizations, employment agencies, and licensing agencies to require or administer genetic tests to an individual as a condition of employment, referral, licensure, or labor organization membership. An employer may require a genetic test if it is directly related to the occupational environment such that an employee with a particular genetic characteristic may be at an increased risk of disease as a result of working in that environment.

Labor relations. A provision was enacted prohibiting the use of State funds to train managers and supervisors regarding methods to discourage union organization.

Other laws. The State Administrative Procedure Act was amended to require that every State agency that adopts rules and regulations that may have a substantial impact on jobs and employment opportunities do so in a manner that, consistent with the objectives of applicable laws, ensures the preservation of existing jobs and promotes the development of new employment opportunities for State residents, including opportunities for self-employment.

The law prohibiting employers from unlawfully penalizing crime witnesses, who miss work to appear in court, was amended to also apply to crime victims for time spent consulting with the district attorney or otherwise exercising rights under the criminal procedure law. "Victim" includes the aggrieved party or the aggrieved party's next of kin if the aggrieved party dies as a result of the offense.

North Carolina

Wages. Several studies were authorized including a study by the Legislative Research Commission of issues relating to increasing the State's minimum wage, and a study by the State Auditor of salary levels of the State Industrial Commission.

North Dakota

Wages. The State minimum wage rate was raised administratively from \$4.25 per hour to \$4.75 to coincide with the Federal minimum wage increase. The State's 33-percent tip credit allowance was retained, requiring a \$3.18 per hour minimum cash wage payment to tipped employees. The State will not allow a training wage for employees under 20 years of age.

Ohio

Worker privacy. An employer who, upon request by an employee or a prospective employer of that employee, provides information about that employee's job performance will be immune from civil liability and other consequences of the disclosure if acting in good faith. Immunity will not apply where knowingly false or deliberately misleading information is supplied or where the information is given with malicious purpose or violates any civil rights of the employee.

Oklahoma

Wages. The State minimum wage law adopts the Federal minimum wage rate by reference. Therefore, the State rate rose from \$4.25 per hour to \$4.75 on October 1, and will increase again to \$5.15 on September 1, 1997.

Equal employment opportunity. The Task Force on Prevention of Genetic Discrimination was created to study other State laws and any model laws that are related to genetic discrimination. It was asked to make recommendations to the Oklahoma Legislature by January 1, 1997, regarding proposed legislation that it finds necessary to prevent discrimination based on genetics, specifically regarding insurance and employment.

Worker privacy. Employees of the State Bureau of Investigation who are employed as polygraphers will now be subject to the licensing requirements of the Polygraph Examiners Act. Those persons employed before the July 1, 1996, effective date of this amendment may become licensed without undergoing the testing and training requirements provided for in the law. Bureau of Investigation employees hired after that date will be required to meet the testing and training requirements prior to licensure.

Oregon

Wages. Ballot Measure 36 to raise the State's \$4.75 per hour minimum wage rate to \$5.50 on January 1, 1997; to \$6 on January 1, 1998; and to \$6.50 on January 1, 1999 was passed in the November 1996 general election.

Pennsylvania

Wages. The State minimum wage law adopts the Federal minimum wage rate by reference. Therefore, the State rate rose from \$4.25 per-

hour to \$4.75 on October 1, and will increase again to \$5.15 on September 1, 1997.

Agriculture. The Department of Agriculture rather than the Department of Environmental Resources now has responsibility for administering and enforcing the Seasonal Farm Labor Act.

Equal employment opportunity. The act establishing the Delaware River Joint Toll Bridge Commission was amended to require the Commission to adopt equal opportunity employment and competitive hiring practices.

Private employment agencies. The Department of Labor and Industry's authority to supervise public and private employment agencies was expanded to include modeling and theatrical agencies also. Provisions were adopted limiting fees that can be charged applicants to 10 percent of the amount earned for each job secured through the modeling or theatrical agency, and providing that fees may not be charged until an assignment has been secured and accepted.

Puerto Rico

Wages. In 1995, a public policy was established requiring payment of the Stateside Federal minimum wage to all covered workers. The Minimum Wage Board was prohibited from setting any wage rate that exceeds the Federal minimum wage. A grandfather clause guarantees the rights of employees currently paid at higher rates pursuant to Mandatory Decrees and provision was made for employees who are subsequently hired in industries covered by the Mandatory Decrees to also receive the higher rates. Uniform vacation and sick leave benefits were established, with provision made for greater existing benefits.

Payment of wages by check, direct deposit, or electronic funds transfer was authorized. Previously, cash payments were required. The direct deposit or electronic funds transfer must be voluntary and with the employee's prior authorization. Wages are to be paid at intervals not exceeding 15 days rather than weekly as before.

Hours. Under a 1995 amendment, employers and employees were authorized to enter into flexible hours arrangements by voluntary mutual agreement. An employee who rejects a flexible work schedule will continue to use the previous work schedule and is not to be subject to reprisal because of the refusal. An employee must have at least 12 consecutive hours off between the end of one shift and the beginning of the next. The shift must be worked consecutively. An employer may allow an employee to adjust starting and quitting times for reasons of personal convenience without incurring the obligation to pay the double-time daily overtime premium that would otherwise accrue when the employee reported for duty the next day without having had the minimum rest period between shifts. Changes also were made in rest period requirements.

Rhode Island

Wages. Legislation was enacted increasing the minimum wage rate from \$4.45 an hour to \$4.75 on September 1, 1996, and to \$5.15 on January 1, 1997. The allowance for gratuities as part of the hourly wage rate for waiters and waitresses who receive tips was changed from 35 to 50 percent of the applicable minimum wage, but with a provision that the cash wage received from the employer be not less than \$2.89 per hour.

It was specified that the Director of Labor may administer oaths, examine witnesses, issue subpoenas, and enter any place of employment at all reasonable hours for the purpose of inspecting wage records and seeing that all requirements regarding payments by contractors are met. Interest payable by employers on wages or supplements found to be due was increased from 6 to 12 percent per annum from the date of the underpayment. The prior authorization for a civil penalty of up to 25 percent of the total amount found to be due was replaced with a requirement for a civil penalty of three times the total amount found to be due. The provision that a civil penalty of more than \$10,000 would be considered a felony was replaced with a provision that a civil penalty of more than \$5,000 will be a misdemeanor punishable by up to 1 year in prison and/or a fine of up to \$1,000. A minimum 18-month period of ineligibility for bidding on or being awarded work by a public agency was established for firms found in willful violation. Penalties were also increased where a firm is found to have willfully made a false or fraudulent representation concerning certified payroll records.

Hours. The law requiring work permits for work on Sundays and holidays was amended to provide that any manufacturer of wall-covering products, who operates for 7 continuous days per week, 24-hours per day and who has obtained the required permits for Sunday and holiday work, will be exempt from the requirement that the work on Sundays be voluntary if the manufacturer increases employment by at least 10 percent within 1 year of its conversion to continuous operation from noncontinuous operation.

Individuals employed as part of 24-hour, 7-day-a-week telephone customer service and sales operations in the banking or financial services industries were added to the list of those employees exempt from the requirement for a permit to work on holidays and Sundays. In addition, the definition of "economic necessity," for purposes of exemption from the law, was amended to add 7-day-per-week operations where this is the prevailing industry practice in the provision of banking or financial services.

Family issues. Any employer who allows employees to use their sick time or sick leave after the birth of a child is now to allow the same

time to be used for the adoption of a child under age 17.

Child labor. A School-to-Work Transition Act was adopted to establish a State framework within which State departments can create an interagency mechanism to develop, implement, and maintain a Statewide system of school-to-work transition. The act would promote the formation of local partnerships that link school and work among high schools and post-secondary educational institutions; private and public employers; labor organizations; Government; community-based organizations; parents; students; State educational, training, human service and economic development agencies. It will provide all students with opportunities to participate in education and training programs to prepare for further education, as well as high-skill, high-wage careers.

Equal employment opportunity. No employer, employment agency, or licensing agency may refuse to hire any applicant, or discharge an employee or discriminate against him or her with respect to any matter related to employment because he or she has sought protection under laws protecting victims of domestic abuse.

Employee testing. The law generally prohibiting urine and blood testing as a condition of employment was amended to clarify the section permitting drug testing in which an employer has reasonable grounds to suspect drug use. Testing will be permitted only if the employer has promulgated a drug abuse prevention policy; employees testing positive are not terminated on that basis, but instead referred to a licensed substance abuse professional; and results of any test are kept confidential, except for disclosing the results of a "positive" test only to other employees with a job-related need to know.

Worker privacy. An employer that, upon request by a prospective employer or a current or former employee, provides fair and unbiased information about a current or former employee's job performance is presumed to be acting in good faith, and is immune from civil liability for the disclosure and the consequences of the disclosure, unless it is shown that the information disclosed was knowingly false; deliberately misleading; disclosed for a malicious purpose; or violated the current or former employee's civil rights.

Other laws. A new Department of Labor and Training was established by a transfer of the functions of the former Department of Labor and Department of Employment and Training. The head of the Department will be the Director of Labor and Training who will be appointed by the governor.

South Carolina

Agriculture. The Migrant Farm Workers Commission was renamed The Migrant and

Seasonal Farm Workers Commission and a member was added to represent the interests of migrant or seasonal farmworkers. If adequate State funds are available, the South Carolina Employment Security Commission will contract to provide a pre-occupancy housing inspection program and report the inspection results to the Migrant and Seasonal Farm Workers Commission before October first of each year.

Equal employment opportunity. It was made an unlawful employment practice under the State Human Affairs Law for employers, employment agencies, labor organizations, or joint labor-management training committees to discriminate against applicants, employees or members because of disability. These organizations are prohibited from conducting a medical examination or making inquiries of a job applicant concerning the existence of, or the nature or severity of any disability, except those pre-employment inquiries that may be made about the ability of an applicant to perform job-related functions. Medical examinations will also be permitted where they are required of all entering employees regardless of disability. Reasonable workplace accommodation is to be made for individuals with disabilities unless doing so would result in an undue hardship. Disability does not include the use of alcohol or illegal drugs.

Worker privacy. An employer will be immune from civil liability for the disclosure of an employee's or former employee's dates of employment, pay level, and wage history to a prospective employer, or for responding in writing to a written request for information about a current or former employee from a prospective employer, concerning written employee evaluations, personnel notices that record the reasons for separation, whether the separation was voluntary or involuntary, and information about job performance. The immunity from civil liability will not apply when an employer knowingly or recklessly releases or discloses false information.

South Dakota

Wages. Employees separated from an employer's payroll are to be paid not later than the next regular payday. Previously, payment was required within 5 days of the time of separation.

Worker privacy. An employer who discloses written information about the job performance of an employee or former employee to a prospective employer of that person, at the written request of the prospective employer, the employee, or former employee, is presumed to be acting in good faith and may not be held liable for the disclosure or its consequences. Good faith is presumed unless it is shown that the employer knowingly, or maliciously, disclosed false or deliberately misleading information or disclosed information subject to a

nondisclosure agreement or information that is confidential under any Federal or State law.

Other laws. A State employee who is a certified disaster service volunteer of the American Red Cross may, with approval of the employing agency, be granted leave from work with pay, for up to 10 days annually, to participate in disaster relief services during a State declared disaster without loss of vacation, sick leave, bonus, advancement, and other benefits.

Tennessee

Family issues. The law allowing State employees to use up to 30 days of sick leave for maternity leave was amended to allow use of sick leave for paternity leave also. In the event both parents are State employees, the total sick leave used for maternity and paternity leave is limited to 30 days.

Employee leasing. Among several amendments to the State Employee Leasing Act, staff leasing companies will be required to demonstrate proof of compliance with all workers' compensation laws and to notify leased employees of the insurance benefits provided and of the identity of the insurer. Provision is made for a committee to consider a plan to allow staff leasing companies to insure themselves. Other changes eliminate the provision stating that leased employees are employees of the client for purposes of employer liability insurance; permit the Commissioner of Commerce and Insurance to impose a civil penalty of \$1,000 for each violation; permit a nonresident applicant who is licensed in another State with similar licensing requirements to be licensed by reciprocity; and delete the 12-month limit for suspension of licenses. An applicant for a license will have a 60-day opportunity to clear up any problems when an application is denied. The Commissioner is to notify the State Department of Labor and each client of any license revocation or suspension.

Private employment agencies. The law regulating and requiring registration of employment agencies was repealed and replaced with a new Employment Agency Act that does not require registration. Several prohibited activities are specified and provision is made for refunds of fees when work is terminated by an employer through no cause of the candidate within 4 weeks of beginning work. The Consumer Affairs Division within the Commerce and Insurance Division is to investigate violations and bring action under the State Consumer Protection Act. If no recruiting fee is charged for services rendered, the law will not apply to employee trade associations that provide jobs for public school teachers and administrators; employment services established and operated by the State or the United States; labor unions; musician booking agencies; associations finding employment for nurses; any licensed health care

provider; and any public or private college or university in the State.

Utah

Wages. An administrative rule was adopted, increasing the State minimum wage rate from \$4.25 per hour to \$4.75 on October 1, with a further increase to \$5.15 scheduled for September 1, 1997. Minor employees under age 18 may be paid \$4.25 per hour for the first 90 days of employment with an employer. Employers of tipped employees are to pay a minimum cash wage of at least \$2.13 per hour. They can take a tip credit against the minimum wage for the difference if an employee's tips and the cash wage equal or exceed the minimum hourly wage requirement. Previously, the permitted credit was 50 percent of the applicable minimum wage.

Family issues. The State Board of Education, local school boards, school community councils, and school directors are to work with employers to develop policies and programs that would allow for greater employee participation in the public education system during school hours.

Other laws. Several functions, including employment security and job training, were transferred to a new Department of Workforce Services. A determination is pending as to whether the Industrial Commission should become part of the new Department. A decision will be made during the 1997 legislative session. The Industrial Commission is responsible for administering labor, workplace safety, workers' compensation, and antidiscrimination laws.

Vermont

Wages. The minimum hourly wage was increased from \$4.75 to \$5 on January 2, 1997 with a further increase to \$5.15 scheduled for January 2, 1998. These rates in excess of \$4.75 an hour will not be required for the first 90 calendar days of employment for employees who have no prior experience at the type of job in question and who are not displacing other workers. The tip credit rate, applicable to the hotel, motel, tourist, and restaurant industry was increased on January 2, 1997, from \$2.61 to 47 percent of the basic minimum rate for a minimum cash hourly wage of \$2.65. It will rise to 48 percent of the basic minimum rate on January 2, 1998, for an hourly minimum cash wage rate of \$2.68.

The State minimum wage rate is replaced with the Federal minimum if it becomes higher than the State minimum. Because of this provision, the legislated increase to \$5.15 will become effective on September 1, 1997, rather than January 1, 1998.

Employee leasing. A comprehensive employee leasing company regulatory law was enacted establishing standards for the operation, regula-

tion, and licensing of these firms. A license granted by the commissioner of labor and industry will be required to operate in the State, and requirements, including fees, provision of information on controlling persons, minimum age, recordkeeping, and financial responsibility, were adopted for applying for the license. The law also includes provisions dealing with the renewal of a license, and the denial, suspension or revocation of a license.

A portion of the license fees collected is to be used to implement the act. Leasing firms are responsible, along with client companies, for the payment of wages, workers' compensation premiums, unemployment insurance premiums, and employee benefits.

Notification of the employment arrangement is to be provided to all leased employees within 10 days after executing the agreement. Employee leasing companies are also to implement an employee grievance system and provide each leased employee with a manual that outlines the terms and conditions of employment. Unprofessional conduct is prohibited, including occupational advertising that is intended or tends to deceive the public. An employee leasing company is not to reassign leased employees or take any other action for the purpose of interfering with the terms and conditions of any collective bargaining agreement or organizational activity.

Virginia

Wages. The State minimum wage law adopts the Federal minimum wage rate by reference. Therefore, the State rate rose from \$4.25 per hour to \$4.75 on October 1, and will increase again to \$5.15 on September 1, 1997.

Participants in the Full Employment Program, created as part of a new welfare-to-work law, are to be placed in full-time employment when appropriate, and paid by the employer at an hourly rate not less than the Federal or State minimum wage, whichever is higher. Employers will be reimbursed for a portion of the wages paid.

Private employment agencies. The law providing for the licensing and regulation of private employment agencies was repealed and the Employment Agency Advisory Board was eliminated.

Inmate labor. The State Crime Commission was directed to study the propriety of paying prisoners for work with the aim of both providing job training and experience and reducing some of the costs of confinement.

Discharge. The Act relating to the dismissal of teachers was amended to specify that if disability is used as the reason for a teacher being dismissed or being placed on probation, the medical evidence must be in compliance with Federal law. Also, "incompetency," as a basis for dismissal, was defined to include performance that is documented to be consistently less than satisfactory.

Washington

Agriculture. The Department of Agriculture and the Department of Labor and Industries are to coordinate adoption, implementation, and enforcement of a common set of worker protection standards related to agricultural pesticide application and handling in order to avoid inconsistency and conflict in the application of those rules. These departments are also to coordinate investigations with the Department of Health. Standards adopted are to be at least as effective as the Federal worker protection standards adopted by the U.S. Environmental Protection Agency.

Employee testing. Provision was made to implement drug-free workplace programs for workers in the State. Such programs are to include a written policy statement given to employees and applicants, informing them of the employer's policy on employee substance abuse and identifying types of testing that may be required and the consequences of a positive, confirmed test result. Drug-free workplace programs provide a requirement for testing applicants who are offered employment and for testing under other situations, including reasonable suspicion and when an employee has caused or contributed to an on-the-job injury; provision of an employee assistance program; employee education programs on substance abuse; and supervisor training programs. Employers with acceptable drug-free workplace programs will qualify for a 5-percent discount on workers' compensation premiums.

West Virginia

Other laws. A State employee who is a certified disaster service volunteer of the American Red Cross may, with approval of his or her immediate supervisor, be granted a leave of up to 15 workdays annually to participate in specialized disaster relief services without loss of pay, accrued leave, earned overtime compensation, or seniority.

Wisconsin

Wages. The State minimum wage rate for adult workers was increased from \$4.25 per hour to \$4.75 on October 1, by administrative action, as directed by the Governor. The wage rate for adult agricultural workers was increased to \$4.55 per hour. There was also an adjustment of the rates used to assign a value to meals and lodging received as compensation. In addition, the rule repeals the current definition of "probationary employee" and adopts an opportunity wage of \$4.25 per hour applicable to employees under 20 years of age during the first 90 days of employment. The minimum cash wage payable to tipped employees remains at \$2.33 per hour (except for those persons, 20 years of age, in their first 90 days of employment, who will be paid \$2.13 per hour).

Several major changes were made in the State prevailing wage laws. The dollar threshold

amount for coverage was raised from \$11,000 to \$30,000 for a municipal or State building project that requires only a single trade, and from \$110,000 to \$150,000 for those projects needing more than one trade to complete the work. These amounts will be adjusted annually beginning after December 1, 1997.

"Area" for purposes of determining State and municipal rates was defined as the county in which a proposed project is located or, if less than 500 hours of work in a particular trade have been performed in that county, then contiguous counties. Also, the prevailing wage will now be the rate paid for a majority of the hours worked in any area for any classification or, if no majority exists, a weighted average calculated, using the top 51 percent of wages, measured by hours worked; the Department of Workforce Development will be solely responsible for determining the proper classification of employees under all prevailing wage laws; overtime after 8 hours a day was changed to start after 10 hours a day and 40 hours a week, Monday through Friday, and for all work on Saturday, Sunday and 6 designated holidays; the definition of "site-of-work" was clarified; and the requirement to determine minimum truck rental rates was deleted.

Provision was made for an annual survey to determine prevailing wage rates. Employers who fail to reply to the survey will be barred from requesting either a recalculation or administrative review of any rate determined.

Worker privacy. An employer who, on the request of an employee or a prospective employer of the employee, provides a reference to the prospective employer is presumed to be acting in good faith and is immune from all civil liability that may result from providing the reference. The presumption of good faith may be rebutted only by a showing that the employer knowingly provided false information in the reference, that the employer made the reference maliciously, or that the reference was made in violation of antidiscrimination provisions.

Polygraph testing is permitted for prospective employees of law enforcement agencies.

Inmate labor. Counties may establish work camps for the reformation and employment of persons sentenced to the county jail. Prisoners assigned to a work camp may volunteer to perform meaningful work at paid employment in the community or work on a project that serves the public interest or has a charitable purpose and is operated by a nonprofit organization. The work may not result in the displacement of employed persons from their jobs or the replacement of workers on strike or locked out of work. Part of the wages earned may be used to reimburse the county for the expenses of maintaining the prisoner.

Whistleblowers. The University of Wisconsin Hospitals and Clinics Authority will now be covered by laws prohibiting retaliatory action by a governmental employer against employees for disclosing information on violation of any

State or Federal law or regulation, mismanagement, abuse of authority, a substantial waste of public funds, or a danger to public health and safety.

Other laws. The Bureau of Child Support and the Office of Child Care were transferred from the Department of Health and Family Services to the Department of Industry, Labor, and Job Development.

The Division of Hearings and Appeals in the Department of Administration now has authority to hold administrative hearings for the Department of Industry, Labor, and Job Development.

The law establishing building requirements to facilitate use by physically disabled persons was amended to prohibit the Department of Industry, Labor, and Human Relations from adopting a rule requiring the provision of unisex toilet rooms in any public building or place of employment.

Wyoming

Worker privacy. An employer who, in good faith, discloses information about a former employee's job performance to a prospective employer or to an employer of the former employee will be immune from civil liability for the disclosure or for the consequences resulting from the disclosure. The employer is presumed to be acting in good faith, unless it can be shown that the information disclosed was knowingly false or deliberately misleading or given with malicious intent.

Private employment agencies. A temporary service contractor who finds work for a temporary worker is only entitled to collect a fee from an employer who hires the worker for a permanent position, if the employer is notified in writing of the existence and the amount of the fee prior to the date of services being rendered.

Other laws. Various archaic and superseded provisions pertaining to the employment of women were repealed. These included limitations on hours of work with overtime required after 8 hours a day or 48 hours a week, daily rest periods, provision of accessible seats at the worksite, and nightwork hours restrictions for females between 16 and 18 years old. □

Footnotes

¹ The Arkansas, Montana, Nevada, North Dakota, and Texas legislatures did not meet in 1996. The Oregon legislature met in special session only and did not enact any labor legislation. Guam and Nebraska did not enact significant legislation in the fields covered by this article. Information about the Virgin Islands was not received in time to be included in the article, which is based on information received by December 5, 1996.

² Delaware, Idaho, Illinois, Maryland, Michigan, Ohio, Rhode Island, South Carolina, South Dakota, Wisconsin, and Wyoming.