

State labor legislation enacted in 1997

Minimum wage rates rose in a majority of the States, while other labor laws were enacted to modify family leave, protect employers disclosing job performance information, and ban employment discrimination because of genetic testing

Richard R. Nelson

A greater volume of State legislation was enacted in 1997 than in the past few years.¹ Laws of major significance were enacted in several employment standards subject areas, including the traditional fields of minimum wage protection, prevailing wage and child labor as well as in newer areas of parental leave, immunity from liability for providing job information, restrictions on drug and alcohol testing, and bans on employment discrimination because of sexual orientation or genetic testing. A few important court decisions also affected employment standards laws.

This article provides a summary of significant enactments in labor legislation. It does not, however, 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 State labor legislation and activity again this year as it was last year. Minimum wage rates were increased under Federal law and in 31 States, the District of Columbia, and Guam.

Much of the State activity was in response to the Federal minimum wage rate increases enacted August 20, 1996. New laws, wage orders, or administrative actions raised rates in 12 States in 1997.² Ten of these rates match the \$5.15 per hour

Federal minimum wage rate that became effective September 1, 1997. Rates also rose in eight States and Guam where the jurisdiction adopts the Federal rate by reference,³ and in six States and the District of Columbia where the jurisdiction links the rate to that of the Federal.⁴ Rates increased in an additional five States as the result of prior law, administrative action, or successful ballot measures.⁵

As of January 1, 1998, minimum wage rates higher than the Federal standard are in effect in Alaska, Connecticut, the District of Columbia, Hawaii, Massachusetts, Oregon and Vermont.

Permissible tip credit provisions, which allow employers to use tips received by employees to meet a portion of the minimum wage, were revised in Colorado, Idaho, Maryland, Michigan, North Carolina, North Dakota, and Vermont.

Louisiana enacted a law prohibiting any parish or municipality from establishing a minimum wage rate, and an Arizona law prohibits any political subdivision from adopting a rate that exceeds the Federal minimum wage rate. Neither Arizona or Louisiana have State minimum wage laws.

Other significant minimum wage and overtime developments include elimination of overtime pay after eight hours a day for workers under four wage orders in California; exempting agricultural employees from overtime pay requirements in Rhode Island; and permitting limited use of compensatory time off in lieu of overtime pay in Michigan. Boston, Duluth, Los Angeles, and New Haven were among cities enacting "living wage" measures that establish a minimum wage rate in contracts led by the jurisdiction.

The Michigan prevailing wage law is again being enforced following a court decision reversing an earlier ruling that had

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held the law "invalid and unenforceable." State public works prevailing wage laws are currently in effect in 31 States.

Several bills were introduced this year to enact, repeal, or modify prevailing wage laws. Among those enacted, coverage of the Montana law applicable to public construction contracts was expanded to include public works service contracts. Coverage was reduced in Ohio where the prevailing wage law will no longer apply to public school construction.

Issues of liability for unpaid or underpaid prevailing wages were addressed in California and Oregon, and contractors in Nevada will now be liable for a civil penalty for failure to report each worker employed on the public work to the labor commissioner and the public body awarding the contract.

Other significant wage legislation included enactment of an Unpaid Wages Protection Act in New York; an amendment in California making penalties in the payment of wages law applicable to failure to pay agricultural workers; and amendments to North Dakota provisions relating to investigation and enforcement of wage claims to allow the labor commissioner to consider any offsets, deductions, or counterclaims asserted by an employer during the investigation.

Virginia became the 28th State to adopt legislation permitting reciprocal agreements with other States for the collection of claims for wages, fringe benefits, and penalties.

Family issues. Coverage of the Maine Family Medical Leave law was expanded to include employees who work for smaller sized firms.

As the result of new legislation, administration and enforcement of the Washington family leave law and a law in Nevada applicable to State employees is going to stop unless the Federal Family and Medical Leave Act is either repealed or amended to provide less leave than is provided under the State law.

In related legislation, Vermont employers are now to allow 24 hours of leave in a 12-month period for employees to participate in school functions, go to medical appointments, and to meet similar obligations. The California law permitting leave to attend school functions was extended to include child day care functions.

Child labor. More child labor legislation was enacted in 1997 than in the past few years. Much of what was enacted permits children to work at either younger ages, for longer hours, or in additional occupations. Longer hours will be permitted in specific instances in Illinois, Maine, Michigan and Oregon. Minors may work at a limited number of additional occupations in Arkansas, California, Maine and Utah. Provision was made in California for excusing children from school while working in the entertainment or allied industries.

Wyoming eliminated the requirement for a work permit for children under age 16 and replaced it with a requirement that the employer maintain a proof of age. In New Hampshire, 17-year-olds who have graduated from high school or

have earned a general equivalency diploma will be exempt from the youth employment law.

Restrictions were added in some jurisdictions as in Guam where limits were placed on the hours of employment of 16- and 17-year-olds during non-school nights and restrictions were placed on minors employed in theatrical employment, and in Florida where employment involving nudity was prohibited.

Equal employment opportunity. Bans on various forms of employment discrimination were again adopted by several State legislatures. For example, Arizona, North Carolina and Texas continued a recent trend by passing laws banning employment discrimination against individuals based on the results of genetic test results. Another trend continued with Maine and New Hampshire banning employment discrimination because of sexual orientation. New York and Oregon made it an unlawful discriminatory practice not to provide reasonable accommodations to workers with disabilities.

Rhode Island will now require all employers of 50 or more to promote a workplace free of sexual harassment. Also, its ban on age discrimination now applies to all individuals over age 40. Several Louisiana employment discrimination provisions were consolidated in a new chapter, and employment discrimination because of sickle cell trait was added as a prohibited form of discrimination. Coverage of the Alabama law, banning various forms of employment discrimination, was expanded to include municipalities and counties. On-the-other-hand, this law was amended to reduce coverage from employers of 15 or more to employers of 20 or more.

Drug and alcohol testing. Several significant laws were enacted relating to the regulation of employee drug and alcohol testing. Comprehensive laws of general application were enacted in Alaska and Mississippi, and a law applicable to the private sector was adopted in Idaho. Coverage of the Montana drug and alcohol testing act was expanded to include the public sector.

Testing also will be required of applicants for employment with the Arizona Department of Public Safety, applicants for jobs maintaining or operating public vehicles in Louisiana, Mississippi Department of Corrections employees, and school bus drivers in Missouri.

In other legislation, amendments to the Rhode Island law included the addition of conditions where an employee whose testing indicates any continued use of controlled substances may be terminated, and the Maryland law relating to job related drug testing was amended to authorize the use of hair specimen testing for testing of applicants.

Worker privacy. Over the last few years, several States have passed legislation providing immunity from civil liability for employers who provide information about the job performance

of a current or former employee to a prospective employer. Laws of general application of this kind were enacted this year in Iowa, Nevada, North Carolina, North Dakota, and Oregon. Laws regulating the release of employee personal information were adopted or amended in Maine, North Carolina, and Oregon.

Private employment agencies. The trend to lessen regulation of private employment agencies continued this year with Oregon repealing licensing and related requirements for all agencies and Arkansas exempting employer fee-paid firms from licensure requirements.

Among other legislation, North Dakota modified the requirement for a refund to employees if a job ends or the employee is fired or laid off before the end of 90 calendar days. Also, temporary employment services in Texas may not discriminate against individuals who have not graduated from high school or earned a graduate equivalency diploma.

Preference. Developments relating to residential preferences in awarding public construction contracts occurred in Pennsylvania and Arkansas. The Pennsylvania law requiring contractors on State-funded public works projects to employ only State residents was ruled unconstitutional. In Arkansas, a law was adopted barring counties from allowing a resident preference in the awarding of construction contracts unless a preference is authorized by State law.

Whistleblower. A new whistleblower law was enacted in Louisiana barring reprisal against an employee who discloses an unlawful workplace act or practice, testifies or provides information before a public body, or refuses to participate in an unlawful employment act or practice. The Colorado whistleblower law was amended to increase penalties for those engaging in retaliatory conduct, and the North Dakota law was

amended to change the role of the labor department when there is a violation and to permit civil action by employees.

State labor departments. State labor departments were the subject of several important pieces of legislation in 1997. For example, the Utah Industrial Commission was eliminated and replaced with a Labor Commission, the Louisiana Department of Labor was reorganized, and the name of the Wisconsin Department of Industry, Labor and Job Development was changed to the Department of Workforce Development.

The Maine Bureau of Labor Standards was strengthened as the Director was given rule-making authority for all wage and hour and other related laws that the Bureau is charged with enforcing.

Among other developments, a Council on Undocumented Aliens was established within the New Jersey Department of Labor with responsibility for studying the undocumented alien worker population in the State, and the New York Labor Commissioner is to assist the Office for the Prevention of Domestic Violence in adopting and promoting a model domestic violence employee awareness and assistance policy.

Other laws. Among other laws of interest, job protection was provided for employees absent from work because of National Guard duty in Colorado and North Carolina and because of civil air patrol service in Minnesota. Public employers in Maryland may not require an employee to live in the State as a condition of employment. Minnesota made it unlawful to assault an occupational safety and health investigator while engaged in the performance of his or her work. Various archaic provisions pertaining to the employment of women were repealed in Arkansas, including provision of accessible seats at worksites.

The following is a summary, by jurisdiction, of labor legislation enacted in 1997.

Alabama

Wages. The State legislature recognized April 11, 1997 as National Pay Inequity Day 1997. On this day American women's wages for 1997, when added to their 1996 earnings, equaled what men earned in 1996 alone. Government officials, law enforcement agencies, business and industry leaders, educators, and all people of Alabama were asked to recognize the value of women's skills and contributions to the labor force, and employers were urged to review their wage-setting practices and to insure that all employees, particularly women and people of color, are paid fairly for their work.

Equal employment opportunity. An amendment to the law banning employment discrimination expands coverage by now including municipalities and counties. However, coverage was eliminated for some workers by making the law now apply to employers with 20 or more employees in the current or preceding calendar year, rather than those with 15 or more workers as was previously provided.

Other laws. A resolution was adopted designating September 1-7, 1997 as Union Label Week in recognition and in honor of those emblems which signify commitment to quality and dignity in the American workplace.

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 \$5.25 per hour to \$5.65 on September 1, 1997.

Employee testing. A comprehensive law was enacted regulating employer drug and alcohol testing programs. An employer may only carry out testing or retesting for the presence or use of drugs or alcohol after adopting a written policy and informing employees of the policy. The policy must include: a statement of the employer's policy on employee

drug and alcohol use; a description of those employees or prospective employees subject to testing; a description of testing methods and collection procedures to be used; the consequences of a refusal to participate in the testing; the right of an employee to explain a positive test result; and a statement of the employer's policy regarding the confidentiality of test results. Testing is permitted for investigation of possible employee impairment, investigation of workplace accidents, and for maintenance of safety and productivity. Employers may also require employees to undergo random drug testing. Procedures were established for the collection of samples, testing procedures and confidentiality of results. Employees have a right to a confirmatory drug test after an initial positive drug test. An employer may take adverse employment action based on a positive test or the refusal of an employee to provide a sample for testing. Protection from litigation is provided for employers with established drug and alcohol programs for actions taken in good faith based on positive test results.

Arizona

Wages. No political subdivision of the State will be permitted to establish, mandate, or otherwise require a minimum wage rate that exceeds the Federal minimum wage. Arizona does not have a State minimum wage law.

Despite this legislation, on September 17, the State Supreme Court ruled that an initiative could be placed on the ballot, in the November general election, that would establish a minimum wage rate in Tucson of \$7.00 an hour. This ballot initiative was defeated.

Equal employment opportunity. It was made an unlawful employment practice for an employer to fail or refuse to hire, to discharge, or to otherwise discriminate against any individual based on the results of a genetic test received by the employer.

Employee testing. The law relating to drug testing of employees was amended to permit testing of applicants for employment with the State Department of Public Safety.

Other laws. The conditions under which an employee may make a claim of constructive discharge were codified. These conditions are: a) evidence of outrageous conduct (in-

cluding sexual assault, threats of violence to the employee, continuous discriminatory harassment, or similar kinds of conduct) by an employer or managing agent of the employer if such conduct would compel a reasonable employee to resign and b) evidence of objectively difficult or unpleasant working conditions that would compel a reasonable employee to resign if the employee notifies the employer of the conditions in writing and the employer fails to respond in writing to the employee's concerns within 15 days. An employer's right to a 15-day notice is forfeited if the employer fails to provide written notice to employees of their responsibility.

Arkansas

Wages. New legislation increased the State minimum wage rate from \$4.25 per hour to \$4.75 on July 1, 1997, and to \$5.15 on October 1, 1997.

The Department of Labor's authority to initiate legal action to recover wages due to employees under the minimum wage and prevailing wage laws was amended to specify that action may not be brought until after notice and opportunity for hearing as provided by the Administrative Procedures Act and entry of a final administrative order. Following any appeals, the director is entitled to enforce his or her final administrative order in court. The director's findings of fact shall be conclusive in these proceedings.

Child labor. The child labor law was amended to exempt employees of churches caring for children during short periods of time while parents are attending church services or functions. The child labor law will also not apply to any child employed for purposes of domestic labor defined as occasional, irregular, or incidental work related to and in or around private residences including, but not limited to babysitting, petsitting, and similar household chores, and manual yard work. Domestic Labor does not include industrial homework; work for a third party, such as a sitting service; or anything determined to be hazardous by the Director of the Department of Labor.

The act regulating greyhound racing franchises was amended to allow the employment of persons under age 18 at these facilities.

Private employment agencies. The law regulating private employment agencies was

amended to exempt from licensure requirements those agencies that contract with employers to recruit employees without charge to the prospective employee.

Preference. No county is to allow preferences in the awarding of construction contracts unless a bidding preference for firms that reside in the county or in the State is authorized by a State law.

Other laws. Various archaic provisions pertaining to the employment of women were repealed. These included provision of accessible seats at the worksite, and a requirement for either suitable lunchrooms at the establishment or a 1-hour meal break for female employees.

In lieu of actual inspection of an operational amusement ride by the Department of Labor, an authorized insurance carrier providing coverage for the amusement ride may provide a safety inspection report to the department. The inspection must be made at any new location and before operation begins.

A resolution was adopted requesting county and city governments in the State to adopt policies similar to those of the Federal and State governments that require prospective employees, who must register with the selective service system, to certify compliance with the Military Selective Service Act as a condition for employment.

California

Wages. The State minimum wage rate rose from \$4.75 per hour to \$5.00 on March 1 as the result of passage of Proposition 210 in the November 1996 general election. It rose again to \$5.15 per hour on September 1 as the result of an order, issued in 1996 by the State Industrial Welfare Commission, adopting Federal minimum wage rate increases.

The State rate will increase to \$5.75 on March 1, 1998 as the result of Proposition 210.

The State Industrial Welfare Commission adopted regulatory changes on April 11 to eliminate overtime pay after 8 hours a day effective January 1, 1998 for workers under wage and hour orders applicable to the manufacturing industry; professional, technical, clerical, mechanical and similar occupations; public housekeeping industry; mercantile industry; and transportation industry. Daily overtime requirements found in the other 10

orders remain unchanged. Overtime payment is required for all employees working more than 40 hours per workweek. The commission also eliminated the 54-hour workweek exemption for personal attendants, individuals who are responsible for children under 18 years of age receiving 24-hour care, and resident managers of homes for the elderly. The exemption remains for camp counselors. Employees working under the five orders where daily overtime was eliminated may now voluntarily waive a meal period when working more than 8 hours in any one day.

A concurrent resolution was adopted declaring that the action of the Industrial Welfare Commission, in amending various wage orders to eliminate the requirement to pay overtime compensation for work in excess of 8 hours per day, is in conflict with the intent of the legislature, exceeds the Commission's authority, and eliminates employee protections.

The legislature also voted to eliminate funding for the Industrial Welfare Commission in the State's 1997-98 budget, forcing the Commission to cease operation on August 11.

The prevailing wage law was amended to make subcontractors who violate prevailing wage payment requirements, on public works projects, liable for applicable penalties and amounts due their workers who were paid wages less than, and in violation of, prevailing wage requirements. If a worker, employed by a subcontractor is not paid the prevailing wage, the prime contractor of the project is not liable for any penalties or amounts otherwise due unless the prime contractor had knowledge of that failure of the subcontractor. Contractors are required to withhold moneys due a subcontractor in an amount sufficient to pay the wages that are the subject of a claim filed with the Division of Labor Standards Enforcement if the body awarding the contract has not withheld sufficient moneys to pay the wage claims. Unpaid wages determined owed to workers who cannot be located by the Labor Commissioner are to be deposited in the Industrial Relations Unpaid Wage Fund.

A resolution was adopted declaring that the legislature has relied on long-established definitions of the general prevailing rate of per diem wages in amending and extending the State prevailing wage law on numerous occasions, and that it would be contrary to the intent of the legislature for those definitions to be changed by administrative action.

The law that prohibits an employer from paying any employee a wage less than the minimum rate, fixed by an order of the Industrial Welfare Commission was amended to increase the amount of the civil penalty from \$100 to \$250 for any subsequent violation of the same specific offense.

Penalties in the payment of wages law for failure to pay wages when due will now apply for failure to pay agricultural employees. Agricultural employees will now also be covered by the provision generally entitling an employee, who quits his or her employment after providing a 72-hour notice, to immediate payment, and an employee who quits without providing notice to payment within 72 hours.

Family issues. The law permitting parents, guardians, or grandparents having custody of children in kindergarten through grade 12 to take leave to participate in school activities was amended to also provide this leave to participate in activities of a licensed child day care facility. The maximum hours that may be taken off by an employee were changed from 40 hours each school year to 40 hours each year, not exceeding 8 hours a month. These parents, guardians, or grandparents are also protected from discharge, threats of discharge, demotion, suspension, or other discrimination because they use this leave. The law is applicable to employers of 25 or more employees.

Child labor. A pupil who holds a work permit to work for a period of not more than 5 consecutive days in the entertainment or allied industries is to be excused from school while working in such employment for up to 5 absences per school year. The pupil must receive instruction from a certified studio teacher during the absence from school. Pupils also are to be excused from school to participate with a nonprofit performing arts organization in a performance for a public school audience for up to 5 days a school year with approval of their parents or guardians. School districts are to allow these pupils to complete all assignments and tests missed during the absence.

The child labor law was amended to permit minors aged 14 and 15 to be employed in providing sports-attending services (such as bat boys and bat girls) at professional baseball games until 12:30 a.m. during any evening preceding a nonschool day and until 10 p.m. on any evening preceding a school

day. These students may not work for more than 5 hours on any school day, for more than 18 hours during any week while school is in session, for more than 8 hours on any nonschool day, or for more than 40 hours during any week that school is not in session. Employment must be with the prior written approval of either the child's school district or the county board of education of the county in which that school district is located. The school authority that issues a participating child's work permit is required to monitor the academic achievement of the child and to ensure that his or her educational progress is being maintained or improves during the period of employment.

Agriculture. Every occupant of employee housing is required to properly use the facilities furnished and to comply with the relevant maintenance and sanitation provisions of the Employee Housing Act. Deliberate or negligent actions, or both, by the occupants do not constitute a cause of action against the property owners, nor do they relieve the owner from repairing the property prior to new occupants moving in.

Colorado

Wages. Minimum Wage Order No. 21 was adopted raising the minimum wage rate from \$4.75 to \$5.15 per hour on October 1, 1997, 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.

Hours. Intrastate ready-mix concrete truck operators are not permitted to drive more than 70 hours during 7 consecutive days, if the employing motor carrier does not operate every day in the week, or more than 80 hours during 8 consecutive days if the employing motor carrier operates motor vehicles every day of the week. Twenty-four consecutive hours off duty will constitute the end of any 7 or 8 consecutive-day period. Within a 7-day workweek all hours of service after 60 hours are to be voluntary beginning the next scheduled work day.

School attendance. The law requiring the compulsory school attendance of children 7 to 16 years old was amended to also apply to

6-year-old children who have been enrolled in a public school in the first grade or higher and have not been withdrawn. If a child is not in compliance, the courts may issue orders to the child or the child's parent or both to compel compliance with the requirements. Attendance requirements and enforcement provisions will not apply in cases where a parent chooses to withdraw a 6-year-old child from school.

Worker privacy. The antiblacklisting statute was amended to allow lending institutions, acting in good faith, to disclose information about a theft, embezzlement, or other infraction by a current or former employee in response to a request for references. It is presumed that such institutions act in good faith unless it is shown by a preponderance of the evidence that they intentionally or recklessly disclosed false information about the employee. The institution is no longer required to send a copy of the reference to the last-known address of the applicant for whom the reference is given.

Employee leasing. The employee leasing company regulatory law was amended to recognize employee leasing companies as the co-employer or employing unit (for purposes of State law) if the firm meets several tests. These tests include assigning employees to the locations of worksite employers; retaining the right to set the employee's rate of pay and to pay employees from its own account; retaining the right to direct and control the employees; having the right to discharge, reassign, or hire employees for the worksite employer; and being responsible for withholding and paying applicable taxes and payments to employee benefit plans.

Small employer insurance carriers now may give a discount to small firms that have contracts with employee leasing companies.

Whistleblowers. Among amendments to the law providing State employees with protection from retaliation for disclosure of information, an employee alleging retaliation must file a written complaint with the State personnel board within 30 days after becoming aware of a disciplinary action. Requirements and procedures were specified for the State personnel board to respond to the complaint and to conduct an investigation. The penalty for an appointing authority or a supervisor engaging in retaliatory conduct was changed

from causing an entry in the authority's or supervisor's personnel record to receiving a disciplinary action that remains a permanent part of the authority's or supervisor's personnel file. The disciplinary action is to be appropriate depending on the nature and severity of the retaliatory conduct involved, ranging from a mandatory minimum of 1-week suspension up to and including termination.

Other laws. Members of the State national guard who are absent from work because of active service for State purposes will now be entitled to reemployment rights and benefit retention. Reemployment and benefit retention rights previously applied only to leave from work for military training.

Connecticut

Wages. By law, the State minimum wage rate automatically increases to ½ 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 \$4.77 per hour to \$5.18 on September 1, 1997, when the Federal rate increased to \$5.15.

Several changes were made in the penalty provisions under the State prevailing wage law. The provision of a \$2,500 to \$5,000 fine for each offense of failure to pay the prevailing wage was amended to add that, for a first violation, a person will be disqualified from bidding on contracts with the State or any political subdivision until the contractor or subcontractor has made full restitution of the back wages owed and for an additional 6 months thereafter. For subsequent violations, the disqualification may increase to at least 2 additional years. The civil penalty that may be assessed in addition to other penalties provided for violation of the law was doubled to \$300 for each violation. Employers are now to file weekly certified payroll information monthly, rather than weekly, with the contracting agency. Failure to file the certified payroll is now a class D felony for which the employer may be fined up to \$5,000, imprisoned for up to 5 years, or both.

Hours. Drivers of commercial motor vehicles involved in emergency-related activities may now exceed the hours provided for under Federal law. Federal law prohibits driv-

ing more than 10 hours following 8 consecutive hours off duty or for any period after having been on duty 15 hours following 8 consecutive hours off duty. Driving is also prohibited for any individual who has been on duty 60 hours in any 7 consecutive days if the employer does not operate commercial motor vehicles every day of the week. Any individual who has been on duty 70 hours during any period of 8 consecutive days also is prohibited from driving if the employing motor carrier operates commercial motor vehicles every day of the week.

Child labor. The authority for minors age 15 and older to be employed in mercantile establishments, as baggers, cashiers or stock clerks under certain conditions, that was due to expire September 30, 1997, was extended to September 30, 2002.

Delaware

Wages. Because the State minimum wage rate is replaced with the Federal minimum rate if the Federal rate becomes higher than the State minimum, the State rate increased from \$5.00 per hour to \$5.15 to match the Federal rate on September 1, 1997.

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 \$5.75 per hour to \$6.15 on September 1, 1997.

Florida

Child labor. The section of the Alcoholic Beverages Law that regulates the employment of minors was amended to prohibit the employment of minors under age 18 if the employment involves nudity on the part of the minors.

As part of an act relating to student discipline and school safety, compulsory school attendance requirements were revised to require children over age 16 to file a formal declaration of intent to terminate school enrollment in order to be exempt from compulsory school attendance requirements. The declaration is to acknowledge that terminating school enrollment is likely to reduce the student's earning potential and must be signed by the child. The school district is to notify the child's parent or legal guardian of

the child's declaration. A child who reaches age 18 during the school year is not subject to compulsory school attendance beyond the date upon which he or she attains that age. Among other provisions, the Department of Highway Safety and Motor Vehicles is to withhold issuance of or suspend the driver's license or learner's permit of a student who fails to satisfy school attendance requirements. Also, penalties were adopted for employers who terminate an employee because he or she is attending school pursuant to a court order with a child who is a habitual truant.

Georgia

Agriculture. Resolutions were adopted urging the U.S. Congress to work with the U.S. Department of Labor to streamline the H2A permit program for agricultural employers.

Guam

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

Child labor. Minors 16 and 17 years of age may not work past 10 p.m. during a school night, not past 12 midnight during nonschool nights, and may not work before 6 a.m. on any day of the year.

Minors employed in theatrical employment (that is, motion pictures, theatrical, television, radio, singer, musician, or modeling) are not exempt from child labor provisions, and must obtain an employment certificate and submit a statement, signed by an authorized school official, stating that the attendance and school work of the minor is satisfactory. Such employment is not to exceed 6 consecutive days in any calendar week or more than 40 hours in any 1 week. Also, the combined hours of work and school is not to exceed 9 hours in any day. Such employment is not to injuriously affect the health, safety, and well-being of the minor or contribute towards his or her delinquency.

Hawaii

Wages. The law relating to vacation allowances on termination of employment was amended to provide that employees, hired after June 30, 1997, whose service is voluntarily or involuntarily terminated, are to

receive compensation in lieu of vacation allowance. This compensation will be computed using the employee's rate of pay and amount of accrued vacation time on the date of termination.

Idaho

Wages. New legislation increased the State minimum wage rate from \$4.25 per hour to \$4.75 on April 1 and to \$5.15 on September 1, 1997. The tip credit against the minimum wage for tipped employees was changed from 25 percent to 33 percent of the applicable minimum wage on April 1, and from 33 percent to 35 percent on September 1. Employers may pay employees under 20 years of age a minimum wage of \$4.25 an hour during the first 90 consecutive calendar days after employment. Employers are prohibited from displacing employees for purposes of hiring individuals at this lower wage.

Employee testing. A comprehensive Private Employer Alcohol and Drug-Free Workplace Act was enacted. The law specifies that it is lawful for a private employer to test employees or prospective employees for the presence of drugs or alcohol as a condition of hiring or continued employment. Also, the employer may use the results of a drug or alcohol test conducted by a third party as the basis for determining if an employee has committed misconduct. The private employer must have a written testing policy that includes: a statement that violation may result in termination; lists the types of tests an employee may be subject to; and is available for review by prospective employees. Requirements for sample collection and testing are specified, and employees are to have the right to explain positive test results and to request retests. Employees may be discharged because of a confirmed positive drug or alcohol test; the employee's refusal to provide a sample for testing; or for the alteration or attempt to alter a test sample. Discharge because of a positive test will result in denial of unemployment benefits. Testing is to be at the employer's expense and conducted on company time. Limitations were placed on employer liability for testing conducted in accordance with the act or for failure to test.

Illinois

Wages. The State minimum wage law adopts the Federal minimum wage rate by reference.

Therefore, the State rate rose from \$4.75 per hour to \$5.15 on September 1, 1997.

April 11, 1997 was proclaimed as National Pay Inequity Awareness Day in Illinois. Government officials, law enforcement agencies, business and industry leaders, educators, and all citizens of the State were called on to recognize the full value of women and people of color to the labor force and to ensure they are paid fairly for their work.

Child labor. An amendment was made to permit minors aged 14 or older, who are employed in recreational or educational activities by a park district or municipal parks and recreation department while school is in session, to work up to 3 hours per school day twice a week until 9 p.m. if the number of hours worked by the minor outside school does not exceed 24 per week. Work will be permitted until 10 p.m. during the school district's summer vacation, or if the school district operates on a 12-month basis, the period during which the minor is not in school. Without this exception, these minors could not work past 7 p.m. during the school year or past 9 p.m. during summer vacation. In addition, the prohibition on minors under age 16, working where alcoholic liquors are served, sold, manufactured, or bottled will no longer apply to work performed on property owned or operated by a park district if the employment is otherwise legal.

Equal employment opportunity. Among the provisions of a new Genetic Information Privacy Act, employers are to treat genetic testing information in a manner that is consistent with the requirements of Federal law, including but not limited to the Americans with Disabilities Act.

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 \$4.75 to \$5.15 on September 1, 1997.

Worker privacy. An employer or employer's representative who, upon request by or authorization of a current or former employee, provides work-related information about that individual is immune from civil liability unless the information provided: violates a civil right of the current or former employee; is

provided to a person who has no legitimate reason for receiving the information; is not relevant to the inquiry being made; is provided with malice; or is knowingly false.

Private employment agencies. Applications for employment agency licenses will no longer require the affidavits of two reputable State citizens, not connected with the applicant, certifying the good moral character and reliability of the applicant, or each member or officer if the agency is a firm or corporation. The affidavits will no longer certify that the applicant is a citizen of the United States.

Inmate labor. Provisions relating to prison inmate employment in private industry were amended to provide for the disposition of inmate wages. Following deductions for Federal, State, and local taxes and any other payroll deductions required by law, the Department of Corrections is to deduct 20 percent of the balance to be credited to the inmate's general account. The department will then deduct from remaining earnings whatever sums the inmate is legally obligated to pay for, such as: the support of dependents; court ordered restitution; 5 percent of the balance to the victim compensation fund; an amount the inmate is legally obligated to pay for any other financial obligation; and an amount determined to be the cost to the Department of Corrections for providing for the incarceration of the inmate.

Louisiana

Wages. A law was enacted prohibiting any parish or municipality from establishing a minimum wage rate. Louisiana does not have a State minimum wage law.

The section of the Wage Payment law regulating payment following the discharge or resignation of employees was amended. It now provides that vacation pay will be considered an amount due only if, in accordance with the employer's stated vacation policy, the employee is deemed eligible for, and has accrued the right to take vacation time with pay. The employee must not have taken or been compensated for the vacation time as of the date of the discharge or resignation.

The law making it generally unlawful for an employer to require forfeiting of an employee's wages earned upon discharge or resignation was amended. It now permits reimbursement, from wages payable, for the

costs of a pre-employment medical examination or drug test if the employee terminates the employment relationship sooner than 90 working days after his or her first day of work or never reports to work.

Any employee of the State or of a political subdivision in the State may authorize his or her employing department, office, or agency to withhold from his or her salary a specified amount for deposit into a Louisiana Student Tuition Assistance and Revenue Trust Program education savings account. The withholding request must be voluntary and in writing.

The section of the Private Works Act applicable to work performed by general contractors was amended to provide for assessment of civil penalties against contractors for failure to pay materialmen and laborers.

Child labor. The section of the child labor law relating to issuance of employment certificates for minors was amended to require written permission of the minor's parent or legal guardian prior to issuance.

Equal employment opportunity. Several employment discrimination provisions were consolidated in a new chapter to be known as the Louisiana Employment Discrimination Law. Among new provisions, employment discrimination against an individual because he or she has sickle cell trait was prohibited. The law, applies to employers with 25 employees or more, for prohibitions on discrimination because of pregnancy, childbirth, and related medical conditions. For employers having 20 employees or more, the law bans discrimination based on age or sickle cell trait. And for employers with 15 or more employees the law bans discrimination based on disability, race, color, religion, sex, and national origin.

Employee testing. The State is to require drug testing, as a condition of hiring prospective employees whose jobs would include operating a public vehicle, performing maintenance on a public vehicle, or supervising any public employee who operates or maintains a public vehicle. The State is also to implement a program of random drug testing of employees engaged in such work. "Public vehicle" is defined as including any motor vehicle, watercraft, aircraft or rail vehicle owned or controlled by the State.

Worker privacy. The law regulating certified stress analysts was amended to exempt, from licensing requirements, those peace officers who operate stress analysis instruments or devices in the course and scope of their official law enforcement duties. However, the Council on Peace Officers Standards and Training is to adopt standards and guidelines for the operation of such instruments and devices.

Whistleblowers. Employers are now barred from taking reprisal against an employee who, in good faith, and after advising the employer of the violation of law, discloses or threatens to disclose a workplace act or practice that is in violation of State law; provides information to or testifies before any public body conducting an investigation, hearing, or inquiry into any violation of law; or refuses to participate in an unlawful employment act or practice. An employee may bring a civil action in district court against an employer in violation. "Reprisal" includes firing, layoff, loss of benefits, or other discriminatory action.

Other laws. The Department of Labor was reorganized. The Department will be composed of six offices, three of which are new. These are the current Office of the Secretary, Office of Management and Finance, and Office of Workers' Compensation, and the new Office of Occupational Information Services, Office of Regulatory Services, and Office of Workplace and Workforce Development. Among other changes, the State Job Training Coordinating Council was moved from the Office of the Secretary to the Office of Workplace and Workforce Development, and the Office of Regulatory Services will be responsible for the regulatory programs previously administered in the Labor Programs Division, including the Minor Laws unit and Private Employment Service unit.

It was made unlawful for a public servant to use the authority of his or her office or position, directly or indirectly, to compel or coerce any person or other public servant to engage in political activity.

Maine

Wages. The State minimum wage rate is replaced with the Federal minimum if the latter becomes higher than the State minimum. Because of this provision, the State rate in-

creased from \$4.75 per hour to \$5.15 on September 1, 1997.

The State minimum wage and overtime law was amended to provide that individuals must receive overtime pay if they are employed, directly or indirectly, for an egg processing facility or at such a facility that has more than 300,000 laying birds.

The Commissioner of Labor is to adopt rules in consultation with the Maine Human Rights Commission to implement law provisions prohibiting discrimination in pay on the basis of gender. The commissioner is to forward the final rules to the legislature's Joint Standing Committee on Labor by March 1, 1998.

Family issues. Coverage of the State Family Medical Leave law was expanded by reducing from 25 to 15 the number of workers required to be employed at a permanent worksite.

The Family Medical Leave law was amended to replace references to serious illness with references to serious health conditions and to add definitions of "health care provider" and "serious health condition." Health care provider is defined as a doctor of medicine or osteopathy who is licensed to practice medicine or surgery in the State or any other person determined by the Secretary of Labor to be capable of providing health care services. Serious health condition is defined as an illness, injury, impairment or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility or continuing treatment by a health care provider.

Child labor. The Child Labor Law was amended to allow a minor, under age 18 who is enrolled in school, to work up to 50 hours during any week that the approved school calendar is less than 3 days or during the first or last week of the school calendar, regardless of how many days school is in session for the week.

An exemption to the prohibited hazardous occupations section of the Child Labor Law, that had allowed minors under age 16 to work in retail establishments where any frozen dairy product or related food product is manufactured on the premises, was amended to limit this exemption to 15-year-olds. Minors 15 years of age who were previously allowed to work in kitchens, dining rooms, lobbies and offices of public lodging

establishments between June 15th and Labor Day, may now work in these places year-round. However, now these minors are prohibited expressly from working in areas not listed as permitted and from performing room service, making deliveries of any sort to hotel rooms, or entering the hallways to those rooms.

Agriculture. The Bureau of Labor Standards is to adopt rules for the protection of the health, safety, and welfare of agricultural workers who occupy housing owned or controlled by employers. The rules will apply to employers who provide housing to more than five employees, and whose minimum housing habitability standards are not already covered under the Federal Migrant and Seasonal Agricultural Worker Protection Act. Rules adopted are to be identical to those adopted under the Federal law. Provision was made for the bureau to gain entry into housing facilities. An employer in violation is subject to a civil penalty of from \$100 to \$1,000 for each violation with each day that the violation remains uncorrected following notice counted as a separate offense.

Equal employment opportunity. Discrimination, in employment, housing, public accommodations, and credit, on the basis of sexual orientation was added to the forms of unlawful discrimination prohibited under the State Human Rights Act. A religious corporation, association, or organization will be exempt from the ban.

Worker privacy. The law granting current or former employees the right to review and copy their personnel files, and establishing penalties for an employer's refusal to provide this opportunity, was amended to add procedures for the current or former employee to bring court action to collect penalties due and court costs.

The law regarding the personal information of State employees was amended to specify that any records that contain personal information are confidential and not open to public inspection. These records would include information pertaining to: an employee's race, color, religion, sex, national origin, ancestry, age, physical disability, mental disability and marital status; Social Security number; home telephone number and home address; and personal employment choices pertaining to elected payroll deduc-

tion, deferred compensation, savings plans, pension plans, health insurance and life insurance. When there is a work requirement for public access to personal information that is not otherwise protected by law, the Director of the Bureau of Human Resources, may make the determination to release the information upon the request of the employing agency.

Employee leasing. Registration of employee leasing firms is to be performed by the Department of Professional and Financial Regulation rather than the Department of Labor.

Discharge. The law, establishing sanctions for an employer's failure to respond within 15 days of an employee's written request for the reason he or she was terminated from employment, was amended. It now permits an employee to bring a court action against the employer for equitable relief, including an injunction, as the court may consider necessary. The employer also may be required to reimburse the employee for the costs of the suit.

Other laws. The Director of the Bureau of Labor Standards was given rulemaking authority for all wage and hour and other related laws that the Bureau is charged with enforcing.

The act providing that information and reports of the Director of the Bureau of Labor and Industry be confidential was amended. It now allows the director to release information and reports to other government agencies if he or she believes that the information will serve to protect the public or assist in the enforcement of local, State, and Federal laws. The director may also release information and reports to the public pertaining to final bureau action taken under the laws it administers.

The law establishing labor standards for persons required to work as a condition of receiving public assistance provides that: participants in the program cannot be assigned to a position that was previously filled by a regular employee who has been laid off; to a position created by terminating an employee; to an established position that is vacant; to a worksite where there is a labor dispute, including a strike or lockout; or to a work site in a manner that violates an existing contract or collective bargaining agreement or infringes on the promotional opportunities for any employees.

Maryland

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

Effective September 1, 1997, the amount of tip credit, that an employer may include as part of the minimum wage of tipped employees, was changed from 50 percent of the minimum wage to an amount not to exceed \$2.77 per hour.

Effective January 1, 1999, several changes will be made to the State prevailing wage law. Among these, overtime on public work contracts will be payable after 10 hours rather than 8 hours a day. Requirements for overtime pay after 40 hours a week and on Sundays and legal holidays were codified. The period of debarment for contractors and subcontractors who persistently and willfully violate the law will be increased from 1 to 2 years. Maximum liquidated damages for underpayments will be doubled from \$10 to \$20, and a \$50 fine will be established for failure to post wage rates. Another provision requires the Governor to include funding in the annual budget for each fiscal year beginning with Fiscal Year 1999 to provide for at least five additional Wage and Hour Investigator positions.

Employee testing. The law relating to job related drug testing was amended to authorize the use of hair specimen testing for pre-employment drug testing. Employers using hair specimens for pre-employment testing may not use a specimen that is longer than 1-½ inches measured from the human body and may not use the specimen for any purpose other than testing for controlled dangerous substances.

Employee leasing. The Maryland Health Insurance Reform Act will now be applicable to health benefit plans issued through a professional employer organization, co-employer, or any other organization that engages in employee leasing. In addition, the Health Care Access and Cost Commission, in conjunction with the Maryland Insurance Administration, is to conduct a study of ways to reduce administrative overhead associated with health insurance for small firms that lease employees. The Commission is to report the results of the study to the legislature by November 1, 1997.

Other laws. A county, Baltimore City, municipal corporation, or regional agency may not require an employee to reside within the State as a condition of employment. Discrimination in employment decisions between State residents and non-residents is prohibited.

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.

Michigan

Wages. New legislation was enacted increasing the State minimum wage rate from \$3.35 per hour to \$4.75 on May 1, 1997 and to \$5.15 on September 1, 1997. This minimum wage is payable to employees 16 years of age and over. The minimum hourly wage rate of tipped employees was raised from \$2.52 to \$2.65. An employer may pay a new employee who is under age 20 a training wage of \$4.25 an hour for the first 90 days of that employee's employment. An employer may not displace an employee in order to hire an individual at the training wage. In lieu of monetary overtime compensation, covered employees may now receive compensatory time off at a rate of not less than 1-1/2 hours for each hour of employment for which overtime pay would otherwise be required. Among several conditions for the use of compensatory time, 10 days of paid leave must be provided before compensatory time can be taken, its use must be requested in writing by the employee, employers must allow use of earned leave, and an employee may not accrue more than a total of 240 hours of such leave. The Department of Consumer and Industry Services may now investigate an establishment and file civil action against it to collect minimum wages for all employees who do not receive the appropriate rate of pay rather than only for an employee who files a complaint.

The State Department of Consumer and Industry Services resumed enforcement of the State prevailing wage law following a June 5, 1997 opinion by the U.S. 6th Circuit Court of Appeals that reversed a November 1994 decision which had declared the State's prevailing wage law "invalid and unenforceable."

The 1994 decision had ruled that the State's requirement for payment of prevail-

ing wages and fringe benefits on State construction projects was preempted by the Federal Employee Retirement Income Security Act of 1974 (ERISA).

Child labor. The Youth Employment Standards Act was amended to permit 16- and 17-year-olds employed in farming operations in the production of seed (detassaling, hand-pollination, roguing, hoeing) to work 62 hours a week and 11 hours a day for up to 6 weeks during a school vacation period with parental consent (48 hours per week for the remaining weeks). Minors who are 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. Minors aged 16 and 17 employed in agricultural processing (cleaning, sorting, or packaging of fruits and vegetables), who were previously authorized to work these longer hours, may now do so for 6 weeks rather than 4 weeks during school vacation.

Equal employment opportunity. Governor Engler issued an Executive Order providing for the establishment of the Michigan Commission on Genetic Privacy and Progress. The Commission will be in the Department of Community Health. It is to recommend model State statutory and administrative policies which protect the privacy of genetic information, and prevent discrimination because of such information in the areas of employment, health care, insurance, and government recordkeeping. A final report is to be made to the Governor and the legislature by November 15, 1998.

Striker replacements. A resolution was adopted asking the United States Congress to enact legislation to prohibit the hiring of replacement workers as an alternative to negotiations and settlements of labor disputes.

Minnesota

Wages. A new law increased the State minimum wage rate for employers of large establishments from \$4.25 to \$5.15 per hour, beginning September 1, 1997. The rate for employers of small establishments increased from \$4.00 to \$4.90 per hour, beginning January 1, 1998. The definition of "large employer" was amended to now apply to those enterprises whose annual gross volume of sales made or business done is not less than

\$500,000 (previously \$362,500). During the first 90 consecutive days of employment, an employer may pay new employees under age 20 a wage of \$4.25 an hour. An employer may not displace any employee, including a partial displacement through a reduction in hours, wages, or employment benefits, in order to hire an employee at the subminimum training wage. A tip credit is not permitted.

When a migrant worker quits or resigns, the wages or commissions earned and unpaid at the time of the resignation will become due and payable within 5 days of the end of employment.

Equal employment opportunity. The law was amended that makes it an unfair discriminatory practice for any employer, labor organization, employment agency, or other organization to intentionally engage in any reprisal against any person, who has: opposed a prohibited discriminatory practice, filed a charge of discrimination, or participated in any investigation or proceeding, or against any person because of his or her association with someone who is disabled or of a different race, color, creed, religion, sexual orientation, or national origin. The law now also applies to individuals who participate in the discrimination as perpetrators.

Employee testing. The form given an employee or job applicant by an employer before requesting a drug or alcohol test will no longer include a section where the employee or applicant can indicate any over-the-counter or prescription medication that he or she is taking or has recently taken, or any other information relevant to the reliability of, or explanation for, a positive test result. However, if an employee or job applicant tests positive for drug use, the employee must be given written notice of the right to explain the positive test.

Worker privacy. Employers who provide information in conjunction with background investigations of applicants for employment with a law enforcement agency are immune from civil liability if the information is furnished without fraud or malice.

The law requiring employers to allow employees to review their personnel files was amended to provide that when an employee is separated from employment and he or she requests a copy of their personnel record, it is to be provided at no cost.

Private employment agencies. The section of the employment agency regulatory law requiring that surety bonds accompany license applications and required annual reports was amended to provide that the surety bond for a search firm will be required only for the first 5 years of registration.

Other laws. Employers are to grant a leave of absence without pay to employees for time spent rendering service as a member of the civil air patrol at the request of the State or any of its political subdivisions. The leave is not to unduly disrupt the operations of the employer.

In addition to agricultural inspectors, child protection workers, public health nurses, and probation or parole officers, it is now unlawful to assault an occupational safety and health investigator while engaged in the performance of his or her duty.

Mississippi

Employee testing. Provision was made to create drug-free workplace programs for employees in the State. These programs are to include a written policy statement given to employees and applicants informing them of the employer's policy on substance abuse, notifying them that the sale, possession, or use of alcohol or other drugs is prohibited in the workplace. Employers also are to provide information on how employees can obtain treatment, a general statement concerning confidentiality, identification of types of testing that may be required, and requirements for supervisory and employee training programs. Employers with acceptable drug-free workplace programs will qualify for a 5-percent discount on worker's compensation premiums if offered under the employer's workers' compensation insurance policy.

The Department of Corrections is to develop and implement a drug-testing program for its employees by July 1, 1997. A written policy for alcohol and drug testing of employees is to be developed to deter the use of alcohol and drugs at its facilities and to ensure an alcohol and drug-free environment at correctional facilities. Participation by employees is mandatory and the tests may be conducted randomly.

Missouri

Wages. The State minimum wage law adopts the Federal minimum wage rate by reference.

Therefore, the State rate rose from \$4.75 per hour to \$5.15 on September 1, 1997.

Child labor. The child labor law was amended to permit minors 12 years of age and older to operate lawn and garden machinery in domestic service at or around a private residence provided that there is an agreement for the performance of the work between the occupant of the private residence and the child, or the child's parent or legal guardian, and not with some other person, firm, or corporation.

Retail establishments, whose primary business is the sale of alcoholic beverages, who employ persons between 18 and 21 years old to stock or sell intoxicating liquor, must employ and have on the premises during working hours an employee 21 years of age or older.

Employee testing. An employer of a person licensed to operate a school bus must notify the Department of Revenue within 10 days of discovering that the person has failed to pass any drug, alcohol, or chemical test administered pursuant to any Federal or State law or regulation regarding the operation of a school bus. The Director of the Department of Revenue will confirm that the test was failed and then suspend the school bus permit of such person for 1 year from the date the determination is made.

Montana

Wages. The State minimum wage law adopts the Federal minimum wage rate by reference through administrative action. The State rate rose from \$4.75 per hour to \$5.15 on September 1, 1997 as the result of action taken in 1996.

Salespersons, parts persons, and mechanics employed by a business primarily engaged in selling replacement parts to wholesalers or ultimate purchasers, were added to the list of those excluded from the overtime compensation provisions of the Minimum Wage and Overtime Law.

The Minimum Wage and Overtime law was amended to exclude from coverage those persons placed as participants in authorized public assistance programs to develop employment skills, and those persons serving as licensed foster parents.

The law requiring payment of prevailing wage rates on public construction con-

tracts in excess of \$25,000 was amended to apply also to public works service contracts over that amount. The law will apply to contracts for maintenance of publicly owned buildings and facilities, including highways, roads and alleys; custodial or security services; grounds maintenance; the operation of public drinking water supply, waste collection, and waste disposal systems; law enforcement; fire protection; public school transportation; nursing, nurses aid, and medical laboratory technician services; material and mailhandling; food service and cooking; motor vehicle and construction equipment repair and servicing; and appliance and office repair and servicing. The provision for use of a weighted average rate, based on all hours of work of a similar character performed in a district, for determining prevailing rates was amended to provide that if the survey produces insufficient data, the rate may be established by the Commissioner of Labor and Industry using other information or methods established by rule. The rules must establish a process for determining if there is insufficient data generated, and must identify what constitutes insufficient data. The alternative methods of determining prevailing wage rates must provide for review and incorporation of data from work of a similar character conducted as near as possible to the original district.

The wage payment law was amended to provide that all employees separated from employment are to receive wages due on the next regular payday or 15 days from the date of separation, whichever occurs first. This requirement existed previously for public sector employees, but those in the private sector were to be paid within 3 days of separation. The requirement that employees separated for cause be paid immediately upon separation was amended to allow payment at the next regular payday or within 15 days where the employer has a written personnel policy that extends the time for payment of final wages. Also amended were provisions pertaining to employees separated because of an allegation of theft. In such cases, an employer no longer needs to obtain a court order to withhold final payment, but may now do so if the employee agrees in writing to the withholding or the employer files a report of the theft with the local law enforcement agency within 7 days of the separation. If court charges are not filed against the employee within 15 days of filing the report,

wages will be due and payable at the end of the 15-day period.

Employee testing. A Workforce Drug and Alcohol Testing Act, applicable to both the public and private sector, was adopted replacing the Private Workforce Drug and Alcohol Testing Act. Among other changes, a new definition of "employee" restricts drug or alcohol testing of existing employees to those in hazardous work environments, security positions, positions affecting public safety, or fiduciary positions, rather than the previous testing of any employee where the employer had reason to believe his or her faculties were impaired on the job as a result of alcohol consumption or illegal drug use. New amendments eliminated the reference to blood tests, restricting testing to urine samples and breath tests. Employers who are eligible and want to test employees must give them 60 days' notice of the intent to test and the extent of the testing; must have a program for regularly educating or providing employees with information on health and safety risks associated with the use of drugs and alcohol; and must train supervisors prior to testing employees suspected of being impaired on the job.

Inmate labor. The Department of Administration may exempt inmates, who provide labor on authorized construction projects, from the labor and wage requirements of the State public construction prevailing wage law. Payment for work may be based on knowledge and skill; attitude toward authority; physical effort; responsibility for equipment and materials; and regard for the safety of others. The maximum rate of pay must be determined by the appropriation established for each program, except that an inmate employed in a Federally certified prison industries program must be paid at a rate not less than the rate paid for similar work in the locality where the inmate performs the work.

Other laws. A resolution was adopted requesting the Department of Labor and Industry to explore, investigate, and report to the legislature on different approaches to an integrated dispute settlement process for employment-related issues. The Department is to invite the participation and involvement of interested, knowledgeable persons, including employers and employees from the pri-

vate and public sectors in the process of identifying and analyzing options.

Nebraska

Wages. New legislation increased the State minimum wage rate from \$4.25 per hour to \$5.15 on September 1, 1997. Employers may pay new employees under age 20 a training wage of \$4.25 per hour for 90 days from the date the new employee was hired. The training rate will not apply to seasonal or migrant workers.

Nevada

Wages. The State minimum wage law adopts the Federal minimum wage rate by reference through administrative action. The State rate rose from \$4.75 per hour to \$5.15 on September 1, 1997 as the result of administrative action taken in 1996.

The labor commissioner is to notify the State contractors' board after three substantiated claims for wages have been filed against a contractor within a 2-year period. The notification must include a copy of the final written decision of the labor commissioner with regard to each claim. Upon receiving this notification, the board is to require the contractor to file a bond or establish a cash deposit in an amount that it determines.

A contractor engaged on a public work project will now be liable for a civil penalty for failure to report each worker employed on the public work to the labor commissioner and the public body awarding the contract. Civil penalties were already provided for failure to pay wages due.

Any public body that advertises for bids for a public work project is to request an identifying number for the project, from the labor commissioner, and include that number in the advertisement for bids.

Family issues. The law providing for up to 12 weeks of unpaid leave upon request for State employees, who are the parents of a child under 6 months old or who have recently adopted a child, will now only be applicable if the Federal Family Medical Leave Act or a subsequent Federal law ceases to provide for a parental leave of absence of at least 12 weeks.

Child labor. A resolution was adopted urging businesses in Nevada not to sell prod-

ucts made through the labor of children. Also, the U.S. Congress was asked to address the problem of child labor, both in the United States and abroad, and to support the adoption of the International Labor Organization convention on the elimination of child labor.

Worker privacy. An employer who, at the request of an employee, discloses information to a prospective employer regarding the ability of the employee to perform his or her job now will be immune from civil liability for the disclosure and its consequences. Specifically, employers are immune when disclosing information on the diligence, skill or reliability with which the employee carried out job duties or an illegal or wrongful act committed by the employee. However, immunity is not granted when the employer acted with malice, recklessly or intentionally disclosed inaccurate or misleading information, or disclosed information in violation of a State or Federal law or in violation of an agreement with the employee.

The law providing for employee access to personnel records was amended to authorize an employee or person referred to an employer by a labor organization to submit written material for inclusion in his or her record of employment in direct response to any written entry in the records regarding the employee. Any written explanation must be reasonable in length, in a format prescribed by the employer, and maintained by the employer or labor organization in the records of employment. Employers and labor organizations are prohibited from maintaining a secret record of employment regarding an employee or person referred.

Other laws. The Department of Employment, Training and Rehabilitation and the Department of Human Resources are to enter into an agreement to provide job placement services to employers and recipients of temporary assistance for needy families.

A requirement that the Division of Industrial Relations of the Department of Business and Industry have a seal to authenticate its proceedings and orders was repealed.

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 \$4.75 per hour to \$5.15 on September 1, 1997.

The Wage Payment law relating to method of payment was amended to clarify that payment by electronic fund transfer is to be at no cost to the employee, and that payment by direct deposit requires the written authorization of the employee. A new section prohibits an employer and employee from entering into an agreement that work may be performed for less than the applicable minimum wage. If an employee elects to file a wage claim, the claim must be filed with the department no later than 18 months from the date wages were due.

Child labor. The section of the Youth Employment Law relating to employment certificates was amended to specify that an employer is to obtain certificates within 3 business days of the first day of the minor's employment.

A youth 17 years of age who has graduated from high school or has obtained a general equivalency diploma will be exempt from the youth employment law. A legislative committee was established to study the youth employment law and to report its findings and any recommendations for proposed legislation to the legislature by November 1, 1997.

Equal employment opportunity. Employers are barred from refusing to hire, discharging, or otherwise discriminating against an individual in compensation or in terms, conditions, or privileges of employment because of that person's sexual orientation. Additionally, labor organizations may not exclude an individual from full membership rights, expel the member or otherwise discriminate because of sexual orientation, and employment agencies may not discriminate on the basis of sexual orientation in any advertisements or applications for employment.

New Jersey

Wages. The wage payment law was amended to permit employees to authorize employers to withhold payments from their wages for employer-sponsored group or individual insurance or annuity programs.

Alien workers. A Council on Undocumented Aliens was established within the Department of Labor consisting of 14 public members and the commissioner or the commissioner's designee as chair. The coun-

cil is to make a study of the undocumented alien population in the State. It would include, but is not limited to an estimate of whether the number of undocumented aliens is increasing, decreasing or relatively stable. The study would determine the source countries of the aliens and the paths of entry into and exit from the State. It would determine factors that are considered attractors for undocumented aliens and factors that maintain the presence of these aliens once in the State. The council also is to determine the impact of the presence of undocumented aliens on the employment opportunities of persons legally in the State, and to recommend to the Department and the Legislature remedial action or legislation or both with respect to this impact.

New York

Wages. An Unpaid Wages Protection Act was enacted. Among its provisions, any employee, or union representative, may file a complaint with the labor commissioner, regarding a wage payment, minimum wage, or agricultural minimum wage violation. Each employee who files a complaint must be given a written description of the anticipated processing of the complaint, including investigation, case conference, potential civil and criminal penalties, and collection procedures; is to be notified in writing in advance of any case conference and given the opportunity to attend; and is to be notified in writing of any award and collection of back wages and civil penalties, and any intent to seek criminal penalties. An employer's failure to keep adequate records will not be a bar to filing a complaint by an employee. The provision requiring actions to recover wages to be begun within 6 years was amended to specify that all employees have the right to recover full wages and benefits accrued during the 6 years before commencing such action, whether the action is instituted by the employee or the commissioner. An employer who fails to pay wages will now be guilty of a felony for a second offense (a first offense remains a misdemeanor). Also, an employer previously found in violation, or whose violation is willful or egregious will be liable for wages due plus an additional sum, as a civil penalty, of double the total amount found to be due.

Child labor. The law relating to the employment of minors was amended to allow a minor

12 or 13 years of age to be employed as a bridge caddie at a bridge tournament, when not required to be in school. An employment certificate will not be required for this work.

Equal employment opportunity. It was made an unlawful discriminatory practice for an employer, licensing agency, employment agency, or labor organization to refuse to provide reasonable accommodations to the known disabilities of an employee, prospective employee, or participant in a job training program. Reasonable accommodation to a disability includes provision of an accessible worksite, acquisition or modification of equipment, support services for persons with impaired hearing or vision, job restructuring, and modified work schedules. However, such accommodations may not impose an undue hardship on the operation of the business, program or enterprise.

Other laws. The provision establishing a public work enforcement fund was amended to specify that all moneys transferred to and accumulated in the fund can only be used for enforcement of labor laws by the labor department.

The labor commissioner is to assist the Office for the Prevention of Domestic Violence in adopting and promoting a model domestic violence employee awareness and assistance policy. This model plan is to include the establishment of a definite corporate policy statement recognizing domestic violence as a workplace issue as well as promoting the need to maintain job security for those employees currently involved in domestic violence disputes.

North Carolina

Wages. New legislation increased the State minimum wage rate from \$4.25 per hour to \$4.75 on August 1, 1997, and to \$5.15 on September 1, 1997 by adopting the Federal Fair Labor Standards Act rate. The Federal maximum tip credit against the minimum wage was also adopted (\$2.62 on August 1, 1997 and \$3.02 on September 1, 1997) replacing a 50-percent provision. Persons employed as computer systems analysts, computer programmers and software engineers were added to the list of those exempt from minimum wage, overtime and record keeping requirements.

Equal employment opportunity. It was made unlawful for any person, firm, or public agency in the State to deny employment to any person or to discharge any person from employment because the person has requested genetic testing or counseling services, or because of genetic information obtained concerning the person or a member of his or her family.

Worker privacy. An employer who discloses information about a current or former employee's job history or job performance to a prospective employer upon request of the prospective employer or the current or former employee is immune from civil liability for the disclosure or any consequences of the disclosure unless the information disclosed was knowingly false.

The Public Hospital Personnel Act of 1997 includes sections governing the privacy of the personnel records of public hospital employees. Matters of public record are an employee's name, age, date of original employment, current position title, current salary, date of the most recent increase or decrease in salary, date of the most recent change in position classification, the office to which the employee is currently assigned, and the educational history, qualifications and certifications of licensed medical providers. All other information contained in an employee's personnel file is confidential and subject to inspection only in certain specified limited instances.

Other laws. A new section was enacted prohibiting discrimination against persons who serve in the State National Guard. Any member of the State National Guard who performs or has an obligation to perform Guard service is not to be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer because of his or her National Guard membership or service obligation. An employer is not obligated to pay the wages of a member of the State National Guard during the member's period of active service.

North Dakota

Wages. The State minimum wage rate was raised administratively from \$4.75 per hour to \$5.15 to coincide with the Federal minimum wage increase. The State's 33-percent

tip credit allowance was retained, requiring a \$3.45 per hour minimum cash wage payment to tipped employees. The State does not allow a training wage for employees under 20 years of age.

The authority of the labor commissioner to issue special licenses to employ certain disabled workers at less than the minimum wage was expanded to apply to those participating in vocational education or related programs and to community rehabilitation programs for the disabled that represent and place these individuals for the purpose of training, learning, or employment.

Summaries of wage orders, rather than the actual language, are now to be mailed to every employer affected and posted by them.

Provisions relating to investigation and enforcement of wage claims by the labor commissioner was amended to allow the commissioner to consider any offsets, deductions, or counterclaims asserted by an employer during the investigation.

Hours. A law was enacted to provide for exemptions from Federal hours of service provisions for intrastate commercial drivers (defined as drivers who will be operating a commercial motor vehicle within the State for a period of 7 consecutive days). Intrastate drivers not subject to Federal hours of service limitations are: drivers of authorized emergency vehicles; drivers who operate motor vehicles with a gross vehicle weight rating of no more than 26 thousand pounds and not transporting hazardous materials; and tow truck drivers, operating at the request of a law enforcement officer. Other intrastate drivers may not drive more than 12 hours following 8 consecutive hours off duty, or for any period after having been on duty longer than 15 hours. They are also generally prohibited from driving if they have been on duty for 70 hours within 7 consecutive days. Hours of service limitations do not apply to an intrastate driver when transporting property or passengers during a declared emergency.

Child labor. Employment certificates under the child labor law will no longer include information on the child's place of birth, the color of his or her hair and eyes, height and weight, and any distinguishing facial marks. Certificate information will now be limited to the date of birth, a description of job du-

ties and responsibilities, and signatures of the employer and parent or guardian.

Students 14 and 15 years of age who are participating in approved school-to-work programs will now be subject to the employment certificate and maximum hours restrictions of the child labor law. Provisions that had exempted these students were eliminated.

Equal employment opportunity. A requirement, that employers who are subject to the equal pay law keep a copy of the law posted in a conspicuous place at the workplace, was repealed.

Worker privacy. An employer who discloses information about a current or former employee's job history or 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 law.

Private employment agencies. The section of the private employment agency law providing for a refund to employees if an employment position terminates or the employee is fired or laid off before the end of 90 calendar days will not apply in two situations. Namely, no refund is provided in cases in which the employee has a signed contract accepting an employment position, but he or she does not start work or the employee is terminated for gross misconduct.

Whistleblower. The law prohibiting employer retaliation against an employee who reports a violation of law to a government body or law enforcement official was amended to modify the role of the department of labor, in the event of a violation, from one of investigating complaints and assuring compliance to one of conciliation. An employee asserting a violation may now bring a civil action for injunctive relief or actual damages, or both, within 90 days of the alleged violation or after exhausting any process provided by collective bargaining or employment contract. The court may order reinstatement

and/or up to 2 years of back pay.

Other laws. Statutes pertaining to information that must be furnished to the Department of Labor were amended to clarify that the information provided relating to investigations and determinations of wage claims and discrimination charges along with other information collected from employers is exempt from the open record laws of the State.

Ohio

Wages. The State public works prevailing wage law will now exempt public improvements and construction undertaken by public school districts and educational service centers. For a 5-year period, the Legislative Budget Office of the Legislative Service Commission is to monitor and study the effects of the prevailing wage exemption. It is to determine the amount of money saved by school districts and educational service centers due to the exemption, the impact of the exemption on the quality of public school building construction in the State, and the impact of the exemption on the wages of construction employees working on the construction of public school buildings in the State.

Oklahoma

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

Child labor. The law prohibiting minors from being in establishments where alcoholic beverages are sold was amended. It now allows the employment of musical bands who have musicians under age 21 if each such musician is either accompanied by a parent or legal guardian or possesses a written, notarized affidavit from the parent or legal guardian giving the underage musician permission to perform in designated bar or lounge areas.

Oregon

Wages. The State minimum wage rate rose from \$4.75 per hour to \$5.50 on January 1, 1997 and to \$6.00 on January 1, 1998 as the result of passage of Ballot Measure 36 in the November 1996 general election. The rate will increase to \$6.50 on January 1, 1999.

The minimum wage law was amended to permit the Commissioner of the Bureau of Labor and Industries to assess a civil penalty of up to \$1,000 for willful violations of minimum wage law provisions and rules adopted relating to subminimum wages, recordkeeping, posting, discrimination prohibitions, and minimum employment conditions (including rest and meal period provisions). No civil penalty may be assessed for violations of rules pertaining to the payment of overtime wages. Amounts collected as penalties may first be applied toward Bureau of Labor and Industries costs, with the remainder, if any, used by the Division of State Lands for the benefit of the State Common School Fund.

Provisions relating to hours of labor and overtime on public contracts were amended to limit work on these contracts (including prevailing wage contracts) to 10 hours on any one day. Overtime provisions were revised, allowing contractors who have adopted work schedules of 4 consecutive days (Monday through Thursday or Tuesday through Friday) to pay daily overtime after 10 hours a day are worked rather than after 8 hours in a day. Contractors who have not adopted 4-day work schedules must continue to pay overtime for hours worked in excess of 8 a day. The requirement to pay overtime for work performed on Saturdays, Sundays, and other legal holidays was retained. Employers must give written notice to employees who work on public contracts of the number of hours per day and days per week that they may be required to work. Contractors who willfully falsify payroll records to avoid the payment of overtime required by law are liable to the employees affected in the amount of their unpaid overtime wages and an additional amount equal to twice the unpaid overtime wages as liquidated damages.

The prevailing wage law was amended to require the labor commissioner to rely on annual independent wage surveys in determining prevailing wage rates. The commissioner may consider additional information such as collective bargaining agreements, other independent wage surveys and prevailing wage rates determined by appropriate Federal agencies or agencies of adjoining States if it appears that the data derived from the survey alone are insufficient to establish rates.

The State prevailing wage law also was amended to make public agencies liable for unpaid prevailing wages only when the agency fails to include in any contract docu-

ments (the advertisement for bids, request for bids, contract specifications, accepted bid, or elsewhere in the contract documents), a statement requiring payment of at least the prevailing rates of wage. In addition, the liability of the public agency was modified to be joint and several with any contractor or subcontractor that had notice to comply with the law, rather than exclusive liability.

The law requiring the payment of earned wages and benefits to employees upon employment termination was amended. It now provides that it will not apply to payment for earned, but unused, holiday, sick, vacation, or other leave benefits when a termination of employment results from the sale of a business and the purchaser employs or continues the employment of an individual employed at the business. To qualify, on the first day of an individual's continued employment, the purchaser of the business must credit the individual with all such earned, but unused accrued leave, and the leave, when used, must be paid at a rate not less than the rate at which the leave was earned.

Child labor. The State Wage and Hour Commission is to issue special permits for the employment of children under 16 years of age in agriculture for longer than 10 hours for any one day when the Commissioner determines that such hours of work will not be detrimental to the health and safety of the children employed. Otherwise, no child under age 16 is to be employed for longer than 10 hours a day, nor more than 6 days a week.

The authority of the Commissioner of the Bureau of Labor and Industries to impose civil penalties of up to \$1,000 for each violation of the child labor law on persons not regulated under the Federal Fair Labor Standards Act was amended to apply also to those regulated by the act.

The Commissioner may not impose a civil penalty when the person has already paid a civil penalty to the U.S. Department of Labor for violation of the child labor provisions of the Fair Labor Standards Act if the civil penalty involves the same factual circumstances. Any such penalty previously imposed will be refunded.

Agriculture. The labor commissioner was given authority to issue subpoenas, administer oaths, obtain evidence and take testimony in enforcing the farm labor contractor and farmworker camp laws.

The Department of Consumer and Business Services rather than the Bureau of Labor and Industries now is responsible for enforcing building, health, and safety standards at farmworker camps.

Equal employment opportunity. The law prohibiting discrimination in employment by reason of disability was amended to bring it into conformance with the Federal Americans With Disabilities Act. The law prohibits employers from discriminating against an employee because he or she associates with an individual who has a physical or mental impairment. It prohibits employers from asking applicants to submit to a pre-employment medical examination and making inquiries into the nature and severity of the applicant's disability. The law defines what constitutes reasonable accommodation for purposes of the requirement that employers make reasonable accommodation to the known physical or mental limitations of an otherwise qualified disabled person who is a job applicant or employee. Reasonable accommodation is to include: making existing facilities used by employees readily accessible to and usable by disabled persons; job restructuring, part-time, or modified work schedules; acquisition or modification of equipment or devices; appropriate adjustment or modification of examinations, training materials or policies; and the provision of qualified readers or interpreters. Such actions are not to impose an undue hardship on the operation of the employer's business.

The Oregon Department of Administrative Services, in conjunction with the Oregon Disabilities Commission, is to conduct a study to assess the number of persons with disabilities in the State work force, make recommendations to remedy any underrepresentation, and report those recommendations to the legislature by February 14, 1999. The study is to include an assessment of the barriers to increasing employment of persons with disabilities from the perspective of both the applicant and the State government employer, and recommendations for change in the current personnel system to increase the employment of persons with disabilities by State government. Various provisions relating to the Vocational Rehabilitation Division and the certification of severely handicapped persons were repealed.

Worker privacy. An employer who discloses information about a former employee's job

performance to a prospective employer upon request of the prospective employer or of the former employee 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 is rebutted by showing that the information disclosed by the employer was knowingly false or deliberately misleading, was given with malicious purpose or violated any civil right of the former employee. An action for defamation may not be brought against an employer by a terminated employee based on a claim that in seeking subsequent employment the former employee will be forced to reveal the reasons given by the employer for the termination.

The law on disclosure of public records was amended. The records, which are exempt from disclosure, are to include the addresses and phone numbers of public body employees, volunteers, judges, and district attorneys that are contained in their personnel records.

Private employment agencies. Licensing and licensing-related requirements for all private employment agencies were repealed. The Bureau of Labor and Industries retains regulation of and enforcement authority over those private employment agencies that charge fees to applicants for employment (employer-fee-paid only agencies are now exempt from all regulations). Limited liability corporations were added to the definition of employment agency. In addition to any other penalty, the Commissioner of the Bureau of Labor and Industries may assess a civil penalty of up to \$2,000 against any person, firm, organization, limited liability company or corporation that violates the law.

Professional placement services, professional employment organizations and temporary employment agencies will be considered employers for purposes of participation in the JOBS Plus Program that provides employment opportunities for welfare recipients. Agreements involving these agencies will require a three-party agreement between the professional placement service, professional employment organization, or temporary employment agency; the organization where the participant has been placed to perform services; and the State of Oregon.

Other laws. A law was enacted declaring that it is State policy to encourage State

agencies to allow employees to telecommute when there are opportunities for improved employee performance, reduced commuting miles or agency savings. Each State agency is to adopt a written policy defining specific criteria and procedures for telecommuting. Biennial reports are to be made on the status and effectiveness of telecommuting efforts.

Pennsylvania

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

Equal employment opportunity. The Office for the Deaf and Hearing Impaired in the Department of Labor and Industry was renamed the Office for the Deaf and Hard of Hearing. In addition, the Advisory Council for the Deaf and Hearing Impaired was renamed the Advisory Council for the Deaf and Hard of Hearing and the sunset date for the council was eliminated.

Preference. On August 1, the U.S. Court of Appeals for the Third Circuit ruled unconstitutional a State law requiring contractors on State-funded public works projects to employ only Pennsylvania laborers and mechanics.

Puerto Rico

Wages. Among changes made in 1996 to the Commonwealth minimum wage law, the law will now exempt "artisans" from the minimum wage provisions. The definition of artisans is limited to craftspersons who specialize in traditional Puerto Rican arts and crafts. Such persons would include those who carve religious and native figures from Puerto Rican folklore; those who make traditional musical instruments, pottery, weaving, and ceramics; and others.

Automobile salespersons who are paid on a commission or commission plus salary basis will now be exempt from overtime provisions. Unlike the Federal law, the exemption is contingent on commission earnings equivalent to at least time and one-half the applicable statutory minimum wage.

Discharge. The law which prohibits firing workers without just cause was amended in

1996 to increase the amount of severance pay to which a worker fired without just cause is entitled. Payments are now to be 1 month's salary for a worker who is fired within the first 5 years of employment; 2 month's salary for a worker who has at least 5 years, but fewer than 15 years of employment; and 3 month's salary after 15 years of employment, plus an additional indemnity equivalent to 1 week for each year of service.

Rhode Island

Wages. The State minimum wage rate increased from \$4.75 per hour to \$5.15 on January 1, 1997 as the result of prior legislation.

The minimum wage and overtime law was amended to exempt agricultural employees from overtime pay requirements.

Child labor. A resolution was adopted creating a special House Commission to study alternatives for students leaving school before age 17. The Commission is to report its findings and recommendations to the House of Representatives by March 25, 1998.

Equal employment opportunity. The ban on age discrimination in the Fair Employment Practices law will now apply to all individuals over 40 years of age. An upper limit of age 70 was eliminated.

All employers with 50 or more employees and all employment agencies are to promote a workplace free of sexual harassment. Each employer is to adopt a policy against sexual harassment. Such a policy must 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 or for cooperating in an investigation of a complaint for sexual harassment; a description and examples of sexual harassment; a statement of the consequences for employees who are found to have committed sexual harassment; a description of the process for filing internal complaints 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 employment discrimination enforcement agencies, and directions on how to contact them. All current and new employees are to receive a written copy of the employer's policy. Employers are encouraged to conduct education and training programs for supervisors and managers and employees.

Employee testing. The law regulating urine, blood, or other bodily fluid or tissue testing, as a condition of continued employment, specifies that employees testing positive are not to be terminated, but are instead to be referred to a substance abuse professional. This section was amended to provide that additional testing may be required by the employer in accordance with a referral, and that an employee whose testing indicates any continued use of controlled substances may be terminated. Other changes provide that authorized pre-employment testing of prospective employees may include testing of other bodily fluids or tissue in addition to blood and urine as before, and specify that all positive test results are to be confirmed by a Federally certified laboratory.

Private employment agencies. Temporary employment agencies will now be required to post a bond in the amount of \$10,000 with surety to cover payroll and other taxes. Those agencies that have been certified by the Division of Taxation for at least 2 years will be exempt from the bonding requirement. A temporary employment service is defined as an organization that hires its own employees and assigns them to clients to support or supplement the client's work force in work situations including but not limited to employee absences, temporary skill shortages, seasonal workloads and special assignments and projects.

Other laws. A resolution was adopted urging the U.S. Congress to enact the Jobs creation and Infrastructure Restoration Act of 1997. The bill would provide \$250 billion for emergency public works jobs over a 5-year period with priority for hiring given to welfare recipients, the long-term unemployed, victims of plant closures, youth and unemployed building trades workers.

South Carolina

Other laws. Regulations of the Department of Labor, Licensing and Regulation, Residential Builders Commission, relating to licensing of residential builders were approved by the legislature.

South Dakota

Wages. The minimum wage law was amended to increase the hourly rate from

\$4.25 to \$4.75 on April 1, 1997, and to \$5.15 on September 1, 1997. The tip credit provision was changed to match the Federal requirement of a \$2.13 per hour cash wage for tipped employees (the law previously permitted a 50-percent credit toward the minimum wage). The State also adopted the Federal subminimum opportunity wage for 18- and 19-year-olds (the State law does not cover minors under age 18).

The act that specifies the time when wages are due to employees after separation or resignation was amended. In those instances in which an employer separates an employee from the payroll, the wages will now be due and payable not later than the next regular stated pay day for which those hours would have normally been paid rather than within 5 days of separation as before. In the case of a resignation, the wages are also now due and payable not later than the next regular stated pay day for which those hours would have normally been paid.

Tennessee

Other laws. The Institute for Labor Studies established within the Department of Labor was renamed the Institute for Labor-Management Studies. In addition, a representative from business with at least 5 years of experience in labor-management relations is to be appointed to the Institute's executive steering committee.

Texas

Wages. The act, which criminally penalizes an employer who, at the time of hiring an employee, intends to avoid payment of wages earned and fails to make payment upon request, was amended. It now also applies to cases in which an employer intends to avoid payment of wages to a current employee, intends to continue to employ the employee, and fails, after demand, to pay those wages. An employer now commits a separate offense for each pay period during which the employee earns wages that the employer fails to pay.

Employers who are required by State or Federal law to deduct from an employee's wages an amount garnished under a withholding order, may deduct monthly an administrative fee in addition to the amount required to be withheld.

Family issues. The Work and Family Poli-

cies Clearinghouse was authorized to assign an employee to serve as a work-family facilitator who will be responsible for assisting State agencies in developing work policies that help agency employees meet their work and family responsibilities.

Equal employment opportunity. Religion and age were added to the list of those prohibited forms of employment discrimination that can be the motivating factors for an employment practice, if combined with objective job-related factors to attain diversity in the employer's work force, and not be considered to be an unlawful employment practice.

Employment discrimination on the basis of genetic information concerning an individual or because of the refusal of the individual to submit to a genetic test was prohibited. It will be an unlawful employment practice: 1) if an employer fails or refuses to hire an individual, discharges an employee, or otherwise discriminates against an individual with respect to compensation or the terms, conditions, or privileges of employment; 2) if a labor organization excludes or expels from membership or otherwise discriminates against an individual; or 3) if an employment agency classifies or refers for employment, fails or refuses to refer for employment, or otherwise discriminates against an individual.

Worker privacy. A peace officer may not be suspended, discharged, or subjected to any other form of employment discrimination because he or she refuses to submit to a polygraph examination as part of an internal investigation regarding the conduct of the peace officer. Exceptions are permitted in cases which the complainant submits to and passes a polygraph examination; the peace officer is ordered to take an examination by the head of the law enforcement organization if the subject matter of the complaint is confined to the internal operations of the organization or if the head of the organization believes that the circumstances are extraordinary and that the integrity of the peace officer or the law enforcement organization is in question.

Similar legislation provides that an employee of the Department of Criminal Justice who is the subject of a written complaint made by or filed with the department may not be suspended, discharged, or subjected to any other form of employment discrimination by the department because he or she refuses to take a polygraph examination.

Private employment agencies. A temporary employment service may not deny an applicant for, or placement in, a job to an individual solely because the individual has not earned a high school diploma or graduate equivalency diploma, unless the job or the client requires such education as necessary to perform the duties of the position.

Other laws. Any rule adopted by the Board of Criminal Justice that regulates the possession and use of tobacco products by Department of Criminal Justice employees must provide that employees of the department are permitted to use tobacco products during work hours at times and locations designated by the board. Permitted smoking areas are to be in locations that do not negatively affect the comfort or safety of any employee or inmate.

Utah

Wages. An administrative rule, adopted in 1996, provided for an increase in the State minimum wage rate from \$4.75 per hour to \$5.15 on September 1, 1997.

Child labor. Sections of the alcoholic beverage control act prohibiting the employment of minors by restaurants licensed to sell or dispense alcoholic beverages were amended to allow minors to be employed in these establishments to operate cash registers or other sales recording devices.

Employee leasing. The Employee Leasing Company Licensing Act was amended to add, to the criteria for classification as an employee leasing company, a requirement that the firm receives funds from a client company or leasing company employees from which it is obligated to pay taxes, insurance, or benefits on behalf of the employees. Added to the qualifications for licensure were criminal background checks of company owners, officers or directors and a certified audit by an independent certified public accountant showing at least \$50,000 net worth as starting capital. To maintain the license, the employee leasing company must submit an annual certified audit. Other new provisions require specified State agencies to inform the Department of Commerce if an employee leasing company fails to comply with the law, make these companies legally responsible for workers' compensation, and allow the Department of Commerce to seek judicial intervention if the financial

condition of a licensee or unlicensed company is impaired to the extent of posing a significant threat to the public.

Inmate labor. Work programs for inmates of the State prison will now also be offered to inmates of county jails. Private businesses that provide services, agricultural products, or manufactured products for export are to pay inmates wages that are determined by the Department of Corrections, but are not to displace local Utah workers as a result of the employment of inmates.

Discharge. As part of a law amending the judicial code, a section was added providing that an employer may not discharge an employee or otherwise coerce the employee regarding employment because he or she attends a deposition or hearing in response to a subpoena. An employer in violation is guilty of criminal contempt and upon conviction may be fined up to \$500 or imprisoned for up to 6 months or both. In addition, the employee may bring a civil action for recovery of wages lost as a result of the violation and for an order requiring reinstatement.

Other laws. The State Industrial Commission was eliminated and replaced with a Labor Commission effective July 1, 1997. Among changes: the three-commissioner form of government was replaced by a single commissioner appointed by the governor; a labor relations board was created with duties including prevention of unfair labor practices; an appeals board to the Labor Commission was established; and the Department of Employment Security was transferred into the newly created Department of Workforce Services.

Vermont

Wages. The State minimum wage rate was increased from \$5.00 per hour to \$5.15 on July 1, 1997 and to \$5.25 on October 1, 1997. The training wage, authorized in 1996 legislation, was eliminated. The Commissioner of Labor and Industry was directed to adopt rules to be effective July 1, 1997. It amended the minimum wage order affecting the hotel, motel, tourist place and restaurant industry by making the tip credit rate 45 percent of the State minimum wage rate. The State basic wage rate for these industries was thereby established as \$2.83 per

hour on July 1, 1997, and \$2.89 on October 1, 1997.

Family issues. Employees now will be entitled to take unpaid leave to participate in preschool or school academic activities of the employee's child, stepchild, foster child or ward. Employees can take up to 4 hours in any 30-day period and not to exceed 24 hours in any 12-month period. They can use this unpaid leave to attend a parent-teacher conference; to accompany a child, parent, spouse or parent-in-law to routine medical or dental appointments; to accompany a parent, spouse or parent-in-law to other appointments for professional services related to their care and well-being; to respond to a medical emergency involving the employee's child, parent, spouse or parent-in-law; or other similar activities. An employer may require that leave be taken in a minimum of 2-hour segments. Employees are to provide the employer with as much notice as possible, but at least 7 days before leave is to be taken except in the case of an emergency. At the employee's discretion, he or she may use accrued paid leave, including vacation and personal leave.

Virginia

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

The minimum wage law was amended to clarify that it adopts the current Federal minimum wage rate and training wage provisions.

The U.S. Congress was urged to amend the Federal Fair Labor Standards Act to provide an overtime exemption for Emergency Medical Service employees similar to that provided for fire, police and corrections employees.

The wage payment law was amended to authorize the Governor to enter into reciprocal agreements with other States and the District of Columbia for the collection of claims for wages and other demands upon claims filed with the Department of Labor and Industry.

The Joint Legislative Audit and Review Commission was directed to study pay equity in the State work force. It is to determine which State jobs are segregated by gender; within each pay grade, if there is a wage gap between the jobs that are dominated by

men and the jobs that are dominated by women; the size of any wage gap found; and if male- and female-dominated job classes at the same grade level have the same or similar qualifications. Findings and recommendations are to be submitted to the Governor and the 1998 Session of the General Assembly.

Child labor. The Department of Education, in cooperation with the Departments of Labor and Industry and Taxation, was directed to study ways to encourage business participation in school-to-work transition initiatives, mentoring, and apprenticeship programs. Among items to be considered are the feasibility and appropriateness of providing financial incentives, such as tax credits, to encourage business participation in such initiatives. Also to be considered are potential business liability and labor law concerns. Findings and recommendations are to be submitted to the Governor and the 1998 Session of the General Assembly.

A resolution was adopted directing the Standing Subcommittee on School Dropout Prevention to study the potential impact of lowering the compulsory school attendance age and the use of in-school suspensions on school drop-out in the public schools.

Agriculture. The Commissioner of Labor and Industry is to establish an Interagency Migrant Worker Policy Committee comprised of representatives from State agencies who are involved with migrant and seasonal farmworkers and their employees. The membership of the existing Interagency Migrant Worker Policy Committee, created by executive orders will be transferred to the Interagency Migrant Worker Policy Committee established by the Commissioner. The Committee is to coordinate its activities with the Migrant and Seasonal Farmworkers Board appointed by the Governor.

Washington

Wages. The overtime provisions of the minimum wage law were amended to create conformity between State overtime pay standards and Federal Fair Labor Standards Act standards for retail commissioned salespersons. These individuals will be exempt from the requirement for time and one-half overtime pay, for hours worked in excess of 40 a week. This is provided that their regular rate

of pay is more than one and one-half times the State minimum wage rate and if more than one-half of their compensation for a representative period, of not less than 1 month, is derived from commissions on sales of goods or services.

The list of those commissioned salespeople exempt from overtime pay requirements of the minimum wage law was amended to add those who sell farm implements to ultimate purchasers. To be exempt, these salespersons, like other exempt commissioned salespersons, must be paid the greater of an hourly rate, not less than the State minimum wage rate and overtime pay of one and one-half times that hourly rate for all hours worked over 40 in a week; or a straight commission, a salary plus commission, or a salary plus bonus applied to gross salary.

Family issues. A new section was added to the family leave law providing that the Department of Labor and Industries is to stop administering and enforcing the law unless the Federal Family and Medical Leave Act is either repealed or amended so that it provides less family leave than that which is provided under the State law. In determining whether the Federal law provides the same or more leave, the Department is to consider only if the total period of leave allowed under the amended Federal law is 12 or more workweeks in a 24-month period, and if the types of leave authorized under the amended Federal law are similar to those provided in the State law. An employee's right under State law to be returned to a workplace within 20 miles of the employee's workplace when leave commenced will remain in effect.

Agriculture. The Industrial Safety and Health Act was amended to define "agricul-

ture," for purposes of regulation, as farming, including the cultivating and tillage of the soil; dairying; the production, cultivation, growing, and harvesting of any agricultural or horticultural commodity; the raising of livestock, bees, fur-bearing animals, or poultry; and any practices performed by a farmer or on a farm, in connection with the farming operations, including but not limited to preparation for market and delivery to storage, market, or carriers for transportation to market. It was specified that "agriculture" does not include a farmer's processing for sale or handling for sale a commodity or product grown or produced by someone other than the farmer or the farmer's employees.

Equal employment opportunity. State agencies are encouraged to participate in supported employment programs designed to give persons with developmental disabilities a greater chance to fill positions in the general work force. The Department of Social and Health Services, along with the Department of Personnel and the Office of Financial Management is to identify agencies that have positions and funding to implement supported employment activities within their existing budgets. The supported employment positions will not count against an agency's allotted full-time equivalent employment positions. Such programs are not to displace current employees or abrogate any reduction-in-force rights.

West Virginia

Wages. Legislation was enacted increasing the State minimum wage rate from \$4.25 an hour to \$4.75 on October 1, 1997, with a further increase to \$5.15 scheduled for September 1, 1998. A training wage of \$4.25 per hour may be paid to employees, under age 20, first hired after October 1, 1997. The training

wage may not be paid for a cumulative period of more than 90 days per employee. New businesses are exempt from this 90-day limit.

Wisconsin

Wages. The State minimum wage rate for adult workers was increased from \$4.75 per hour to \$5.15 on September 1 by administrative action. The agricultural rate, opportunity wage, and tip credit rate remain unchanged.

Other laws. The name of the Department of Industry, Labor and Job Development was changed to the Department of Workforce Development.

Wyoming

Child labor. The Child Labor Law was amended to eliminate the requirement for a work permit for minors under the age of 16 and to replace it with a requirement that employers maintain a proof of age document for employed minors. The acceptable forms of proof of age include a birth certificate; a properly prepared immigration and naturalization form I-9, showing the age of the child; or any other document, approved by the Department of Employment, showing the age of the child. Age 14 is established as the minimum age for employment, except for farm or domestic work or lawn and yard service, except that it will not be unlawful for a child under age 14 to be employed in a non-hazardous occupation outside of school hours by his or her parents, grandparents, or legal guardian, or by a business owned by his or her parents, grandparents, or legal guardian. The maximum fine for violating the child labor law was increased from \$100 to \$750. □

Footnotes

¹ The Kentucky legislature met in special session only in 1997 and did not enact any labor legislation. The District of Columbia, Indiana, Kansas, Massachusetts, and New Mexico 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 November 7, 1997.

² The 12 States are: Arkansas, Colorado, Idaho, Michigan, Minnesota, Nebraska, North Carolina, North Dakota, South Dakota, Vermont, West Virginia, and Wisconsin.

³ The rates rose in Guam, Illinois, Maryland,

Missouri, Montana, Nevada, Oklahoma, Pennsylvania, and Virginia.

⁴ Rates increased in Alaska, Connecticut, Delaware, District of Columbia, Iowa, Maine, and New Hampshire.

⁵ The five States are: California, Massachusetts, Oregon, Rhode Island, and Utah.