

State labor legislation enacted in 2004

Laws concerning worker privacy, workplace violence and security, prevailing wages, drug and alcohol testing, employee discharge, child labor, hours worked, wage payments, and plant closings were among major pieces of legislation enacted or revised during the year

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States enacted a lesser volume of labor legislation¹ in 2004 than in recent years, due, in part, to an increased focus on budget issues. Forty-four States and the District of Columbia met in regular session, while the remaining States (Arkansas, Montana, North Dakota, Nevada, Oregon, and Texas) were not scheduled to meet in regular session this year. However, some of the latter did meet in special sessions dedicated to various issues. California, Connecticut, Illinois, Louisiana, Maine, Maryland, Oklahoma, Rhode Island, Tennessee, and Virginia enacted a significant number of laws having to do with labor issues.²

Volume aside, the legislation that was enacted by the States addressed a significant number of employment standards areas and included many important measures. Worker privacy was the “hot-button” issue of the year, with more than 30 pieces of legislation enacted, while issues such as workplace violence and security, a variety of prevailing-wage issues, drug and alcohol testing in the workplace, the discharge of employees, child labor issues regarding hours of work permitted, payment of wages to employees, and plant closings were all included in new or amended legislation enacted in 2004. The legislation covers 23

separate labor-related areas of interest.

As of January 1, 2005, minimum-wage rates were higher than the Federal standard in Alaska, California, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Maine, Massachusetts, New York, Oregon, Rhode Island, Vermont, and Washington. Of the 43 States with minimum-wage laws, only 2 (Kansas and Ohio) have rates lower than the Federal rate of \$5.15 per hour.³

This section briefly summarizes, by category, a number of the legislative activities that resulted in laws enacted or amended by the various State legislatures during the past year. Following the summary are more comprehensive descriptions of each State’s legislative activities over the year.

Minimum wage. States with previously scheduled increases in the minimum wage for January 1, 2005, were Illinois, with a new rate of \$6.50 per hour; Oregon, \$7.25 per hour; Vermont, \$7.00 per hour; and Washington State, \$7.35 per hour. Subsequently, the District of Columbia (\$6.60 per hour) and New York State (\$6.00 per hour) passed legislation that also made the new rates effective on January 1, 2005. Earlier in 2004, Maine raised its minimum wage to \$6.35 per hour. Florida voters approved a ballot measure

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creating a minimum wage applying to all employees in the State covered by the Federal minimum wage. The State minimum wage will start at \$6.15 per hour, with an effective date that is yet to be determined. Nevada voters also approved a minimum-wage ballot measure, requiring employers to pay employees \$5.15 per hour worked if the employer provides health benefits or \$6.15 per hour worked if the employer does not provide health benefits. Because the ballot issue in Nevada was a constitutional amendment, voters will have to approve the measure again in 2006 in order for it to take effect. The Common Council of Madison, Wisconsin, enacted a local ordinance raising the minimum wage to \$5.70 per hour effective January 1, 2005, with additional raises scheduled for several years thereafter.

The stipulated salary for those individuals classified as bona fide executive, administrative, or professional employees in Alaska is now required to be 2 times the State minimum wage for the first 40 hours of employment each week.

Connecticut amended the percentages of the minimum wage that could be recognized as gratuities for tipped employees in the hotel/restaurant and other industries, while Massachusetts placed restrictions on employers' handling and distribution of tips or service charges provided directly to employees or via credit card payment of the customer's bill.

Georgia preempted all locally established wage rates or employment benefits requiring employers to pay employees or provide benefits not otherwise required under Federal or State law.

Overtime wages. The State overtime law of Kentucky was amended to exclude workers employed by third-party employers or agencies other than the families or households using those workers' services when such workers provide in-home companionship services for sick, elderly, or convalescing persons. These workers are among persons considered exempt from entitlement to overtime compensation.

Hospitals in West Virginia may not require a nurse, either directly or through coercion, to accept any assignment of overtime, except in emergent, unforeseen situations. In addition, hospitals in the State may not take action against a nurse for refusing to accept an overtime assignment at the facility if the nurse declines to work the additional hours because doing so may, in the nurse's judgment, jeopardize patient or employee safety. Connecticut hospitals also are now prohibited from requiring nurses, nurse's aides, or physician's assistants to work additional hours beyond a predetermined schedule set up at least 48 hours prior to the start of the shift in question, except in certain circumstances.

Prevailing wage. Prevailing-wage laws pertaining to public

works construction projects currently exist in 32 States and the Federal Government.⁴

California law now stipulates that employees of nonprofit organizations who are employed with specially issued licenses or certificates are entitled to holiday pay when they perform work for contractors providing personal services on any State holiday that the State facility in which the services are being provided is closed. California law also was amended so that, effective January 1, 2007, instead of a hearing officer being appointed to review penalty assessments for violations of public work contracts, the State director of industrial relations is required to appoint an administrative law judge for the conduct of those hearings.

In Connecticut, persons or firms appearing on the Federal Contract Debarment list shall be liable for a civil penalty for each day or part of a day in which such persons or firms perform any work on any contract with the State or any of its agents. Delaware no longer requires contractors to submit copies of weekly sworn payroll records to the Department of Labor, but rather to maintain such records and produce a certified copy to the department upon its request. In order to be considered a responsible bidder, any Illinois contractor must comply with various Federal and State statutes, have a valid identification number, and participate in an applicable, approved, and registered apprenticeship or training program.

Employers who violate the New Jersey prevailing-wage law may now be referred by the commissioner of labor to the State attorney general, or a designee, for investigation and prosecution. Custom fabrication in New Jersey is now included within the definition of "public work" and is subject to the State Prevailing Wage Act, regardless of whether the fabrication is or is not done on the site of the public work.

New Mexico now prohibits unregistered contractors from bidding on public works projects subject to the Public Works Minimum Wage Act. In Rhode Island, employees or former employees, under a private right of action, may bring a civil suit for appropriate injunctive relief or actual damages, including reasonable attorneys' fees and costs of the action, within 3 years after the occurrence of the alleged wage or benefit violation.

The Tennessee Prevailing Wage Commission has been urged to continue its efforts to develop an Internet application for the submission of survey forms by contractors.

Agriculture. Florida raised the farm labor contractor certificate-of-registration fee and also raised the amount of civil penalties that may be charged for minor and major registration violations. New York law now requires that any employer engaged in agriculture notify its employees in writing of the conditions of employment utilized by that employer.

The Washington State Department of Labor and In-

dustries is now responsible for collecting and analyzing data from those agricultural employers required to implement a monitoring system for employees who handle certain types of pesticides.

Child labor. The daily and weekly hours of work permitted for minors working during nonschool periods in agricultural packing sheds located in a specific county of California were amended.

Illinois minors under 16 years may not sell tobacco in any of its forms at any retail establishment selling tobacco products, unless the establishment is a family-owned business and the salesclerk is the son or daughter of the owner. Also in Illinois, designated adults, as well as parents or guardians, are now permitted to accompany their 12- or 13-year-old minor who is officiating youth sports activities for a not-for-profit youth club or a municipal parks and recreation department.

Louisiana modified the hours of work permitted for nongraduate minors under 16 years, those 16 years of age, and those 17 years of age.

Michigan no longer prohibits minors from engaging in any construction work or operations they perform as an unpaid volunteer, so long as such activity is performed under adult supervision for a charitable housing organization. The Department of Labor in New York is now responsible for issuing child labor employment permits affecting child performers.

State departments of labor. The Connecticut labor commissioner is now empowered to subpoena people and records deemed necessary to investigate complaints related to employee personnel, along with medical records kept by private-sector employers, but records obtained by such a subpoena are exempt from disclosure.

The Department of Labor and the Department of Commerce in the State of Idaho have been combined into a new agency entitled the Department of Commerce and Labor. In Kansas, the Department of Human Resources has had its name changed to the Department of Labor. The Maryland secretary of labor, licensing, and regulation has been added to the Advisory Council on Offender Employment Coordination.

Discharge of employees. In California, employers are required to submit written reports within 30 days to the local Emergency Medical Service agency director when an emergency medical technician-paramedic is terminated or suspended for disciplinary cause or reason or when the emergency medical technician-paramedic resigns following notice of an impending investigation.

Illinois now requires police officers to be decertified or have their waiver (of completion of training requirements

pending certification) revoked if, while under oath, the officer knowingly and willingly made false statements as to a material fact pertaining to an element of the offense of murder. New Hampshire employers may prorate, on a daily basis, the salaries of employees who, hired after the start of the regular pay period, terminate their employment of their own accord before the end of a pay period or are terminated for cause by the employer.

Members of the Oklahoma State Police Pension and Retirement System who terminate their employment for the purpose of serving as a police officer with the Department of Defense in a war zone may purchase service credit, not to exceed 1 year, for time served with the military or the Department of Defense in a war zone. Tribal police officers commissioned by a State of Oklahoma law enforcement agency pursuant to a cross-deputization agreement with the State or a political subdivision thereof must comply with the specified training requirements as certified by the Council on Law Enforcement and Training.

Tennessee amended its code regarding the discharge of higher education employees in order to provide a consistent and equitable method of reducing the workforce when necessary. Employers in the State of Washington may not discharge or discipline reserve officers because of leave taken related to an alarm, a fire, or an emergency call.

Finally, the Department of Workforce Development in Wisconsin is now required to promulgate rules specifying a grievance procedure for resolving complaints of alleged violations of the Wisconsin Works (W-2) Program, which prohibits employers from discharging a regular employee in order to create a W-2 position.

Drug and alcohol testing. Nurse staffing agencies in the District of Columbia are now required to be licensed by the Department of Health before providing or referring support to a health care facility. Also, any such agency must document the fact that those individuals referred or provided by the agency have satisfactorily completed all drug screening and background checks required by law or requested by the client.

In order to be eligible for the award of a State contract for the construction or improvement of a publicly owned property, contractors and subcontractors in Idaho must provide a drug-free workplace program that complies with the provisions of the law and must maintain the program throughout the duration of the contract. In Illinois, charter bus services used to regularly transport students must demonstrate the physical fitness of their drivers by having them submit the results of a medical examination, including tests for drug use. Indiana now requires childcare providers to maintain and make available, at the facility and to their employees or volunteer caregivers, copies of drug-testing

results conducted for the provider. Iowa amended the law regarding private-sector drug testing to include the definition of a “controlled positive test result,” excluding alcohol testing, as the result of a blood, urine, or oral fluid test wherein the level of controlled substances in the specimen meets or exceeds nationally accepted standards for determining detectable levels of controlled substances.

Louisiana amended its law to make clear that samples other than urine, including blood, saliva, and hair, may be used for workplace drug testing, as long as the testing is done in specific certified laboratories. Maine employers with more than 50 employees may request, require, or suggest that employees submit to a substance abuse test on a random or arbitrary basis if the employees are not covered by a collective bargaining agreement and the employer has developed a written policy prior to establishing any substance abuse testing program.

In Mississippi, an employee may be required by his or her employer to submit to a drug test, as long as, prior to the implementation of a drug-testing program, the employer has provided the employee with at least 30 days’ notice in the form of a written policy statement containing information about grounds on which the employer could require the employee to submit to the drug test. In Tennessee, neither a newly hired employee nor a currently working employee may serve as a driver for a childcare center until the employee has undergone a drug test and received a negative report, which is then provided to the center.

Equal employment opportunity. Arkansas adopted a resolution condemning all public and private wage discrimination practices while reaffirming the State’s commitment to equal pay for equal work. California amended the various State employment discrimination provisions to conform to those outlined in the Fair Employment and Housing Act, which also includes prohibitions against discrimination based upon race, color, sex, religion, marital status, national origin, ancestry, physical or mental disability, medical condition, age, or sexual orientation.

Delaware eliminated the Equal Employment Review Board and replaced it with a State Right to Sue in Superior Court after administrative remedies for combating discrimination by employers, employment agencies, or labor organizations have been exhausted. Louisiana created the State Commission on Employment of Mental Health Consumers to develop a plan to address barriers that prevent persons with mental illness from seeking, obtaining, and maintaining employment. In addition, Louisiana created the Equal Pay Commission for the purpose of studying and reporting on the factors affecting wage disparities, in both the public and private sectors, between men and women, and between minorities and nonminorities.

Maine instituted an Employee Suggestion System for State employees and now protects employees from discrimination by supervisors or other persons in authority because the employee, acting in good faith, has suggested savings or efficiencies. Massachusetts made it unlawful for employers to discriminate against any person in employment, reemployment, retention, promotion, or benefits on the grounds that that person has an obligation to join a uniformed military service of the United States, including the National Guard.

The duties of the New Hampshire Legislative Ethics Committee have been expanded to include the investigation of allegations of improper conduct against members and of retaliation against employees who make good-faith allegations of sexual harassment. Tennessee amended the State’s equal-pay law by instituting compensatory and punitive damages against employers who knowingly violate the law.

Employee leasing. Rhode Island law was amended to require the registration of professional employer organizations, staff leasing companies, registered staff leasing companies, employee leasing companies, and other organizations with the Division of Taxation. The law also requires the division to regulate these entities and stipulates a fee that should be charged for their initial and subsequent annual registration.

Family issues. State employees in Connecticut are now entitled to a maximum of 24 weeks of medical leave in any 2-year period to serve as an organ or bone marrow donor. Private employees in the State are entitled to a maximum of 16 weeks of medical leave in any 24-month period to serve as an organ or bone marrow donor.

The Hawaii House of Representatives adopted a resolution to require the Department of Labor and Industrial Relations to enforce the State Family Medical Leave Law in accordance with the intent of the legislature and to provide a status report to the legislature.

Garment industry. The commissioner of labor is now required to publish quarterly reports that list the names of all registered apparel industry manufacturers and contractors in New York and all such entities that were found to be in violation of registering.

Genetic testing. Neither the State of Washington, nor its political subdivisions, nor persons, firms, or corporations may require any employee or prospective employee to submit genetic information or to submit to screening for genetic information as a condition of employment or continued employment.

Hours worked. Several States dealt with laws regarding the restoration and maintenance of various utilities during periods of emergency. Indiana now exempts public utility employees and employees of contractors or subcontractors of the utility from the maximum hours of service permitted under Federal regulations when they are engaged in intrastate maintenance during a service interruption emergency relief effort. New Jersey also amended its hours-of-service provisions for drivers of commercial motor vehicles, while New York now exempts telephone utility truckdrivers involved in the emergency restoration of telephone service from the law's limitations on hours of labor or service. Finally, Oklahoma exempted its utility service vehicles engaged in intrastate commerce on an emergency basis from the hours-of-service regulations established by the U.S. Department of Transportation.

When specific criteria are met, Minnesota now exempts drivers transporting agricultural commodities from Federal regulations on truckdrivers' hours of service.

Inmate labor. The amended California Penal Code now permits persons assigned work in furlough programs to work in situations that allow them to retain or view a driver's license or credit card for no longer than the time needed to complete the transaction. Georgia increased the maximum allowed amount of earned time that can be awarded to an inmate who works on an authorized work detail. Louisiana permits inmates to perform manual labor, of their own free will, on buildings, improvements, or properties of certain tax-exempt organizations.

Offsite work. Virginia now requires the head of each agency to implement a comprehensive statewide alternative work schedule policy under which eligible employees of State agencies may participate in alternative work schedules. The agencies are required to have a goal of achieving not less than 25 percent of their eligible workforce participating in alternative work schedules by July 1, 2009.

Plant closing. A joint resolution was issued by the California legislature requesting that the President and Congress add a number of criteria to the list of essential criteria of military values that are used as the primary set of standards for nominating bases for closure or realignment. Also in California, State, Federal, and local government permanent career firefighters who have become unemployed within the last 48 months due to the closure of military bases may now be placed on a hiring list that authorizes them to be preferentially hired under the current law. The Maryland secretary of the Department of Business and Economic Development is responsible for designating a single point of contact within the department for issues relating to the

realignment and closure of military installations in the State. The owners of municipal airports in Minnesota are required to notify the commissioner of transportation of their intent to close an airport before or immediately upon the cessation of airport operations.

Illinois employers with 75 or more employees must provide written notice of a mass layoff, relocation, or downsizing of workers, 60 days before the order takes effect, to affected employees, representatives of such employees, and the Department of Commerce and Economic Opportunity. Failure to do so could result in the assessment of monetary damages. Employers, persons, corporations, or institutions in Tennessee that file for bankruptcy or cease to operate as a business shall provide notice of the bankruptcy to the clerk or the department responsible for tracking child support payments for employees of those filing for bankruptcy or ceasing to operate at least 10 days prior to the entity's cessation of operations as a business. Failure to comply may result in civil penalties being assessed for each employee affected.

Private employment agencies. In California, advanced-fee talent services are required to provide written disclosures to artists for specified services, to file a bond with the labor commissioner, and to maintain specified records. Maryland nursing referral service agencies engaged in the business of screening and referring home health aide services or other home health care services are permitted to receive a fee or other compensation for providing the service. In North Carolina, persons providing professional employer services to individuals other than temporary employees must be licensed whenever employment responsibilities are shared or allocated between a client company and a professional employer organization.

Rhode Island now considers as employers, and not independent contractors, all persons, firms, partnerships, corporations, limited-liability companies, or other legal entities that supply registered or licensed practical nurses to facilities requiring the services of such nurses. This employer entity is subject to all Federal and State laws that govern employee-employer relations. In addition, Rhode Island now prohibits employers and temporary staffing agencies from requiring their employees, as a condition of employment, (1) to provide transportation to other employees, (2) to charge an employee for transport services provided to that employee, and (3) to charge or collect fees from their employees for transportation services provided by other employees.

Time off from work The District of Columbia now requires each of its agencies, as well as independent agencies, to establish a voluntary leave transfer program under which

annual or universal leave accrued or accumulated by an employee may be transferred on an hour-for-hour basis within the agency to the annual or universal leave account of any other eligible employee.

Illinois volunteer firefighters who do not receive monetary compensation for their services to a fire department or protection district and who do not work for any other fire department for monetary compensation may not be terminated by an employer because they are absent from or late to their employment as a result of having responded to an emergency prior to the time they were to report to work. Maine State National Guard members who are on duty for more than 5 consecutive days may elect to be members of the State retirement system.

The Nebraska law requiring owners or operators of assembling plants, workshops, or mechanical establishments employing one or more persons to allow their employees not less than 30 consecutive minutes for lunch does not apply to employment covered by a valid collective bargaining agreement or any other written agreement between an employer and an employee. Employees in Oklahoma who are summoned to serve as jurors and who notify their employers of the summons in a timely manner, after having received the summons and prior to their appearance for jury duty, may not be terminated, removed, or otherwise subjected to any adverse employment action.

If a Virginia employer fails to comply with State requirements entitling employees to a leave of absence without penalty to participate in State-mandated military duty or service, the State attorney general may represent the employee regarding any employment benefits denied while the employee is fulfilling his or her military duty. In addition, persons in Virginia who serve on a jury shall not be required by any employer to work on the day of service.

Unfair labor practices. Maine enacted a law establishing a forestry rate proceedings panel consisting of forestry harvesters and haulers, forest landowners, and persons working in the public interest of the State in order to ensure a reasonable rate of compensation for the harvesting and hauling services of loggers and wood haulers by setting such a rate that, upon petition, is to be paid by a forest landowner for harvesting or hauling forest products in a specified area of the State.

Rhode Island enacted legislation making it an unfair labor practice for any employer in the State with 50 or more employees to deny leave to an eligible employee who is a victim of a crime or to discharge, threaten to discharge, intimidate, or coerce the employee because the employee takes leave to attend a criminal proceeding.

Wages paid. The Alaska Wage and Hour Law was amended

to provide an exemption for persons who permit students from the University of Alaska to gain practical work experience as employees of those persons while participating in a practicum. The amendment exempts any persons providing such experience from vicarious liability as an employer and exempts the student involved in the practicum from the State's Wage and Hour Act.

As of January 1, 2008, California will require employers to furnish each employee with an accurate itemized earnings statement. Employers in Delaware are now permitted to furnish pay statements electronically to employees, as long as the statements provide the same information currently required by State law and as long as they are in a form capable of being retained by the employee.

Louisiana employers who fail to pay their employees in a timely manner may be fined for a first violation, while a second such violation may result in the assessment of a fine and imprisonment. Rhode Island amended its law concerning back wage payment requirements to state that whenever an employee separates or is separated from an employer's payroll, the unpaid wages or compensation of the employee shall be due on the next regular payday at the usual place of payment.

Virginia now permits employers to pay wages by crediting prepaid debit cards or card accounts from which the employee is able to withdraw or transfer funds, as long as the employer has made full disclosure of any fees and as long as the employee has consented to such method of payment.

Worker privacy. California now requires that, when a subpoena is sent to a labor union for records related to a current or former member's employment, a notice be sent to the union member not less than 10 days prior to the date specified in the subpoena for the production of records, plus additional time if the service is by mail. School districts in Colorado are now required to submit, to the State Department of Education, certain identifying data for each unlicensed person they employ and to notify the department when the unlicensed employee is no longer employed by them.

The Delaware Code was amended to limit the dissemination of police, probation, and parole officer identifying information to criminal justice agencies for law enforcement purposes. The amendment also makes clear that such information is not available to the general public under the Freedom of Information Act. Florida's Public Records Law was amended to create an exemption for identifying and locating information on current and former Federal officials, their spouses, and children. Such information will no longer be publicly available. In addition, Florida now excludes from disclosure under the Open Government Sunset Review Act the personnel records of those employed in licensed facilities that provide direct patient care or security services for a wide

spectrum of individuals. In Idaho, when a health care provider has been terminated, either voluntarily or involuntarily, for adulteration or misappropriation of controlled substances, the employer must notify the provider's State professional licensing board within 30 days.

The Kentucky Revised Statutes were amended to provide that employers who furnish information about the job performance, professional conduct, or evaluation of a former or current employee to a prospective employer of that employee, at the request of the prospective employer, shall be immune from civil liability arising out of the disclosure, unless certain conditions obtain. The Maryland Public Ethics Law was amended so that financial disclosure statements may not include a listing of the employment or business entities of which a minor is the sole or a partial owner. In Minnesota, information about employees of secure treatment facilities, employees of correction facilities, or those involved in community supervision of offenders shall not be disclosed to patients, inmates, or others if facility or program administrators reasonably believe that the information will be used to harass, intimidate, or assault the employees.

Ohio now permits the Division of Liquor Control to provide information on individual Social Security numbers to various State and local law enforcement offices for specific reasons listed in the law. Oklahoma imposed new restrictions on the release of Social Security information. Utah now allows background checks of all applicants, not just peace officers, for employment with a law enforcement agency.

The Virginia tax commissioner is now permitted to provide to the commissioner of labor and industry, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of unpaid wages. West Virginia amended the State code regarding the privacy of records management and preservation by allowing the release of certain personal information to nongovernmental entities only for purposes authorized by Federal law or regulation.

Alaska

Minimum wage. The State regulations were amended so that, where the definition of an individual employed in a bona fide executive, administrative, or professional capacity for purposes of State law requires that the individual receive a minimum salary, the required minimum salary must be 2 times the State minimum wage for the first 40 hours of employment each week.

Wages paid. The State Wage and Hour Law was amended to provide an exemption for a person who permits a student of the University of Alaska to gain practical work

experience with the person while participating in a practicum. The person will be exempt from vicarious liability as an employer, and the student involved in the practicum will be exempt from the State's Wage and Hour Act. The exemptions are contingent on the supposition that the practicum is part of the student's curriculum and that the student receives no compensation. Occupations that are exempt from this ruling are agriculture; the catching of fish, shellfish, or other aquatic forms of animal or vegetable life; domestic service occupations, including babysitters; Federal and State government employees, including prisoners neither on furlough,

Workplace violence and security. In the continually expanding area of legislation addressing issues of workplace violence and security, the California State Vehicle Code was amended to require the Department of Motor Vehicles to complete a background check of an applicant's driving record prior to the applicant's submitting an application for an original commercial driver's license, or a renewal thereof, with hazardous-materials endorsement to the U.S. Transportation Security Administration. The background check is for the purpose of carrying out a security threat assessment. Idaho and Maryland also now utilize security check requirements for the drivers of motor vehicles transporting hazardous materials under the auspices of the Transportation Security Administration.

The Department of Motor Vehicles in California is permitted to require that fingerprint images and associated information from an employee or a prospective employee include access to confidential or sensitive information. The department also is granted decisionmaking authority regarding the issuance or denial of certain types of documents.

Kansas amended the State Public Information Act so that open meetings may now recess in order to discuss security measures that protect systems and facilities used in the transmission of energy; water or communication services; transportation systems; information systems of public bodies or agencies; certain other systems; and private property or persons. Employers in North Carolina are now permitted to file a petition for a no-contact order, without paying any filing fee, on behalf of employees who are victims of attempted injury, nonsexual contact, stalking, or threats. Tennessee no longer requires that persons being investigated pay the cost of background checks when applying for positions of trust as a State employee.

The discussion that follows, separated by State, presents detailed descriptions of the bills enacted or amended by State legislative bodies during the past year.

detained, nor confined in prison facilities; nonprofit occupations of a religious, charitable, cemetery, civic, or educational organization; taxicab drivers; and registered guides.

Arizona

Worker privacy. The statutes relating to homeowner associations were amended to provide exceptions to the State requirement that association meetings be open and records be public when the meetings and records deal with the activities undertaken by those associations. When meetings are

being held to discuss the personal, health, or financial information about a member of the association, an employee of the association, or an employee of a contractor of the association, the open-meeting requirement does not apply. In addition, the requirement does not apply when the meeting concerns matters relating to the job performance of, the compensation of, the health records of, or specific complaints against an employee of the association or an employee of a contractor of the association who works under the direction of the association. An exemption from disclosure also applies for financial and other records that relate to the aforementioned topics and categories of individuals.

Arkansas

Equal employment opportunity. A resolution was adopted by the House of Representatives that condemned all public and private wage discrimination practices and reaffirmed the State's commitment to equal pay for equal work. The resolution stated that all State agencies, boards, commissions, and institutions of higher learning should continue to follow the State Uniform Classification and Compensation Act.

California

Prevailing wages. The State Government Code relating to public contracts was amended to preserve the eligibility to bid on State contracts for contractors employing persons with developmental disabilities. Employees of nonprofit organizations who are employed in accordance with (1) a specially issued license under the State Labor Code, (2) a specially issued certificate under Section 214, Title 29, of the United States Code, or (3) a community rehabilitation plan as described in the State Welfare and Institutions Code are entitled to holiday pay if they perform work for contractors providing personal services on any State holiday that the State facility in which the services being provided is closed. Among these employees are janitors, housekeepers, custodians, food service or laundry workers, window cleaners, and security guards.

The law authorizing the imposition of civil wage and penalty assessments against contractors and subcontractors that fail to pay their workers the prevailing rate of per diem wages on a public works project was amended. The new language now requires

the director of industrial relations, for an extended period of time through January 1, 2007, to appoint a hearing officer to review the penalty assessment. However, effective January 1, 2007, the director is required to appoint an administrative law judge for these hearings. Beginning 60 days after being served with a civil wage and penalty assessment and continuing thereafter, the contractor shall be liable for liquidated damages in an amount equal to the wages, or portion thereof, that remain unpaid. If the assessment or notice subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. Also effective on January 1, 2007, the labor commissioner shall, within 30 days after a contractor or subcontractor is served with a civil wage and penalty assessment, afford the contractor or subcontractor the opportunity to meet with the labor commissioner or a designee thereof to attempt to settle any dispute regarding the assessment without the need for a formal proceeding.

Wages paid. Effective January 1, 2008, employers are required to furnish each employee with an accurate, comprehensive itemized earnings statement. Employees shall be afforded the right to inspect or copy the records pertaining to their employment upon reasonable request to the employer. If a written or an oral request for information relative to a current or former employee is received, the employer must reply within 21 calendar days from the date of the request. Employee records shall be kept on file by the employer for at least 3 years at the place of employment or at a central location within the State. The failure by an employer to permit a current or former employee to inspect or copy records within the allotted time entitles that employee or the labor commissioner to recover a \$750 penalty from the employer. An employee may also bring an action for injunctive relief to ensure compliance and is entitled to an award of costs and reasonable attorney's fees.

Hours worked. The Business and Professional Code relating to cytotechnologists was amended so that these specialists are not required to examine more than 80 gynecologic slides in a 24-hour period when performing a manual review of slides. Laboratories reviewing slides while using automated or semiautomated screening devices approved by the Food and Drug Administration are to follow the

workload requirements established by the Clinical Laboratory Improvement Amendments. It is also now required that slides reviewed with the use of automated or semiautomated screening devices approved by the Food and Drug Administration and requiring full manual review be counted against the applicable 80-slide, 24-hour limit. Finally, it is required that, when such specialists are represented by a labor organization, the maximum workload limitations be negotiated between the employer and the labor organization.

Child labor. The provision in the child labor law authorizing the commissioner to permit the employment of minors 16 and 17 years of age to work up to 10 hours per day and more than 48, but not more than 60, hours in a week during peak season has been extended until 2008. The exemption is applicable only during nonschool periods in agricultural packing sheds located in Lake County.

Discharge. Under the revised Health and Safety Code, employers are now required to report in writing to the medical director and authority of the local emergency medical services agency and provide all supporting documentation within 30 days when (1) an emergency medical technician-paramedic is terminated or suspended for disciplinary cause or reason, (2) an emergency medical technician-paramedic resigns following notice of an impending investigation based upon evidence indicating a disciplinary cause or reason, or (3) an emergency medical technician-paramedic is removed from paramedic duties for disciplinary cause or reason following the completion of an internal investigation. In addition, fines of up to \$2,500 per violation may be assessed any emergency medical technician-paramedic found to have committed certain actions that did not result in actual harm to a patient. However, fines may not be imposed if the technician-paramedic has previously been disciplined by the authority for any other act committed within the immediately preceding 5-year period.

Equal employment opportunity. Legislation was enacted that changed employment discrimination provisions in various State codes to conform with those codes prohibiting discrimination as outlined in the Fair Employment and Housing Act. Whereas the various codes had prohibited discrimination in employment on different bases, such as race, color, sex, religion, and marital

status, the Act prohibits discrimination on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation. The Federal nondiscrimination policy now applies to the protected classes enumerated in the Act in relation to service in the State Military Reserve in positions that do not require Federal recognition.

Worker privacy. When a subpoena for documents is sent to a labor union for records related to a current or former member's employment, a notice must be sent to the union member not less than 10 days prior to the date specified in the subpoena for the production of the records, plus additional time if the employee has been subpoenaed by mail. This requirement is the same as that pertaining to when a subpoena for documents is sent to an employer for records related to a current or former employee's employment. In that case, too, a notice must be sent to the employee. Such notice provides the worker the opportunity to oppose and prevent the disclosure of personal information.

The State Business and Profession Code relating to horseracing was amended and now provides that every employer of backstretch workers shall, upon request, submit, in writing or electronically, to the administrator of the welfare program for backstretch workers, any employment records necessary for the prompt payment of benefits and proper administration of the program.

The State bar, which provides for the licensing and regulation of attorneys and is a public corporation, shall conspicuously publicize to its members in the annual dues statement and other appropriate communications, including its Web site and electronic communications, that its members have the right to limit the sale or disclosure of information about them that is not reasonably related to regulatory purposes. In those communications, the State bar shall note the location of the bar's privacy policy and shall outline the simple procedure by which a member may exercise his or her right to prohibit or restrict the sale or disclosure of the aforementioned information. On or before May 1, 2005, the bar shall report to the applicable committees on judiciary regarding the procedures that it has in place to ensure that members can appropriately limit the use of the said information.

Inmate labor. The amended State Penal Code now permits persons assigned to

furlough programs to work in situations that allow them to retain or look at a driver's license or credit card for no longer than the time needed to complete an immediate transaction, but not in any position that may require the deposit of a credit card or driver's license as insurance or surety. Any person confined who has access to any personal information shall disclose the fact that he or she is confined before taking any personal information from anyone.

Employment agency. Persons who are seeking to become actors or actresses or who are performing as such and rendering services on the legitimate stage or in the production of motion pictures, radio or musical artists, directors, writers, composers, and extras may engage advanced-fee talent agencies. Such agencies, which charge or receive an advance fee from an artist for specified services, are required to provide a written disclosure to the artist, file a bond with the labor commissioner, and maintain certain specified records. They may not charge an artist for photographs or lessons. Among the services provided by these agencies is procuring, offering, promising, or attempting to procure auditions, employment, or engagements for the artist. The payee has no direct or indirect financial interest in the third party and does not accept any referral fee or other consideration for referring the artist. The payee also may receive advanced fees for managing or directing the development or advancement of the artist's career and for providing career counseling, career consulting vocational guidance, aptitude testing, evaluation, or planning in preparing the individual for employment as an artist.

Right to work. The amended law enacted by the State now requires the State's Fiscal Crisis Management Assistance Team to review (1) district teacher hiring practices, (2) teacher retention rates, (3) the percentage of provision of highly qualified teachers, and (4) the extent of teacher misassignment. The team also is to provide recommendations on how to improve in each of these areas. In addition, the law requires the Commission on Teacher Credentialing to report, by April 15 of each year, to the legislature and the Governor, the number of classroom teachers who received credentials, internships, and emergency permits in the previous fiscal year. The county superintendent of schools must annually monitor and review school-district-certified employee assignment practices. This law also rescinds the basic skills proficiency test

requirement for those out-of-State-prepared teachers who have had comparable, certifiable training.

Plant closing. A joint resolution was issued by the State legislature requesting that the President and the Congress add the two criteria of "intellectual capital" and "total mission support" to the list of essential criteria of military values that the federally enacted Base Closure and Realignment Commission will use as its primary set of standards for nominating bases for closure or realignment.

Federal, State, and local government permanent civilian career firefighters who lost their employment within the past 48 months due to the closure of military bases may now be placed on a hiring list that authorizes preferential hiring provisions under current law. Also, those laid-off workers have had their names added to the State Firefighter Joint Apprenticeship Program's eligibility list for a period of 48 months.

Workplace violence and security. The State Vehicle Code was amended to require the Department of Motor Vehicles to complete a background check of each applicant's driving record prior to the applicant's submitting an application for an original commercial driver's license with hazardous-materials endorsement, or a renewal thereof, to the U.S. Transportation Security Administration for a security threat assessment. In addition, the department is required to issue or restore a hazardous-materials endorsement to an applicant who has had an endorsement denied, suspended, revoked, or cancelled upon receiving confirmation from the Transportation Security Administration that the applicant does not pose a security threat.

The State Department of Motor Vehicles may now require fingerprint images and associated information from an employee or a prospective employee whose duties include or would include any of the following: (1) access to confidential information in the department's database, (2) access to confidential or sensitive information provided by a member of the public, including, but not limited to, a credit card number or a Social Security account number, (3) access to cash, checks, or other accountable items, (4) responsibility for the development or maintenance of a critical automated system, and (5) making decisions regarding the issuance or denial of a license, endorsement, certificate, or indicia.

Other laws. The Labor Code Private Attorneys General Act of 2004 was amended by enacting specified procedural and administrative requirements that must be met prior to bringing a private action to recover civil penalties for violations of the State Labor Code. Now, aggrieved employees must provide written notice of violations to the Labor and Workforce Development Agency and to their employer. Such violations include, but are not limited to, violations of wage and hour overtime laws; child labor laws; agricultural, entertainment, and garment industry labor laws; and public works laws. If the agency fails to act within certain specified timeframes, and if the employer has not abated each violation alleged, the aggrieved employee may pursue a civil action.

Colorado

Child labor. The State child labor law was amended so that individuals under 18 years are now permitted to serve as directors of nonprofit corporations.

Worker privacy. Each school district is now required to submit the name, date of birth, and Social Security number of each nonlicensed person employed by the district to the Department of Education, which will create and maintain a database of the information. The school district shall notify the department when a nonlicensed employee is no longer employed by the school district, and the department shall purge the employee's information from the database at least annually. Beginning in 2005, on or before August 30 of each year, the department shall submit, to the State Bureau of Investigation, a list of all persons employed by each school district in the State for the preceding year.

All information maintained by the State Deferred Compensation Committee that is contained in the State deferred compensation plan records of participants, former participants, inactive participants, recipients of benefits, and their dependents that specifically identify any financial information of such persons shall be kept confidential by the committee. Confidentiality does not apply when the monies in such a deferred compensation plan are subject to due legal process.

Connecticut

Minimum wage. The hotel and restaurant

industry in the State is now required to recognize, as part of the minimum fair wage, gratuities in an amount that is (1) equal to 29.33 percent of the minimum fair wage per hour for persons, other than bartenders, who are employed in the hotel and restaurant industry, including a hotel restaurant, who customarily and regularly receive gratuities, (2) equal to 8.2 percent of the minimum fair wage per hour for persons employed as bartenders who customarily and regularly receive gratuities, and (3) not to exceed 35 cents per hour in any other industry.

Overtime health care. Hospitals are now prohibited from requiring nurses, nurse's aides, or physician's assistants to work additional hours beyond a predetermined work schedule that is set up at least 48 hours prior to the start of the work shift, except under certain conditions. The prohibition does not apply to (1) a nurse participating in surgery, until the surgery is completed, (2) a nurse working in a critical care unit, until another employee beginning a scheduled work shift relieves the nurse, (3) a public health emergency, (4) an institutional emergency such as adverse weather, catastrophe, or widespread illness, or (5) a nurse covered by a collective bargaining agreement containing provisions addressing the issue of mandatory overtime. An individual can volunteer to work additional hours, but refusal to do so cannot be grounds for dismissal, discrimination, discharge, or any other penalty or adverse employment decision.

Prevailing wage. No general contractor entering into a contract with the State or any of its agents will award construction, remodeling, refinishing, refurbishing, alterations, or repair contracts for any State highway project to the persons or firms appearing on the Federal Contract Debarment list for a period of up to 3 years from the time their names initially appeared on the list. Further, prior to performing any of the previously listed types of work, under a contract, persons, firms, corporations, partnerships, and associations must submit a sworn affidavit to the general contractor attesting to the fact that the persons or organizations listed hold less than a 10-percent interest in a firm appearing on the list. Any person or firm that appears on the list shall be liable to the State Department of Labor for a civil penalty of \$1,000 for each day or part of a day in which such person or firm performs any work under any contract with the State or any of its agents.

Family issues. The State Family Medical Leave Act was amended so that State employees shall be entitled to a maximum of 24 weeks of medical leave of absence within any 2-year period in order for such employees to serve as organ donors or bone marrow donors. Prior to beginning the leave, any permanent employee requesting such leave shall be required to provide sufficient certification from his or her physician of the proposed organ or bone marrow donation and of the probable duration of the employee's recovery period. Private employees shall be entitled to a total of 16 weeks of leave during any 24-month period in order to serve as an organ donor or a bone marrow donor.

Worker privacy. The disclosure of voice mails under the Freedom of Information Act requires each public agency to open its records concerning the administration of such agency to public inspection, including records containing information in its personnel files, birth records, or confidential tax records, to the individual who is the subject of such information. Nothing in the Act shall require any public agency to transcribe the content of any voice-mail message and retain such record for any period of time. The name and address of, and any related identifying information concerning, a sexual harassment complainant in any internal sexual harassment investigation conducted by an affirmative action officer or other designated person on behalf of a State agency shall be confidential and shall be disclosed only upon order of the Superior Court. The exception to this requirement pertains to the disclosure of the name of the sexual harassment complainant to the accused during the State agency's sexual harassment investigation, wherein the agency may disclose the name of the complainant to other persons participating in the investigation.

Plant closing. The general statutes regarding the Department of Public Utility Control were amended so that the costs for protecting displaced workers now include those reasonable costs incurred, prior to January 1, 2008, by an electric distribution company or an exempt wholesale generator of electricity and arising from the retraining of a former employee of an unaffiliated exempt wholesale generator when the employee was involuntary dislocated on or after January 1, 2004, from the wholesale generator, except for cause.

Department of Labor. The labor com-

missioner is now empowered to subpoena people and records deemed necessary to investigate complaints related to employee personnel and to medical records kept by private-sector employers. In cases of refusal to obey such subpoenas, upon the commissioner's request, the superior court is empowered to issue an order enforcing the subpoena. Documents obtained by such a subpoena are exempt from disclosure under the Freedom of Information Act.

Delaware

Prevailing wage. The State code relating to prevailing-wage requirements in public construction contracts was amended so that, instead of requiring contractors to automatically submit copies of weekly sworn payrolls to the Department of Labor, the contractors and subcontractors are now required to maintain payroll records and produce a certified copy of the information, upon request, to the Department of Labor. The records are to be maintained for a period of 2 years from the last day of the workweek covered by the payroll.

Wages paid. Employers may now furnish pay statements electronically to employees, so long as the electronic statement provides the same information currently required by the Wage Payment and Collection Act and is in a form capable of being retained by the employee. Because many employees may not have access to a computer, employers furnishing statements electronically must also provide employees with the option of receiving the statement in written form.

Equal employment opportunity. The Equal Employment Review Board has been eliminated and replaced by a corresponding "State Right to Sue" in superior court. The alleged injured party may invoke "State Right to Sue" after he or she has exhausted administrative remedies for combating discrimination by employers, employment agencies, or labor organizations. A charge of discrimination shall be filed within 120 days of the occurrence or discovery of the alleged unlawful incident. Joint labor-management committees controlling apprenticeship or other training or retraining programs, including on-the-job training programs, shall be in violation of the law if they utilize any factor such as race, marital status, genetic information, color, age, religion, or national origin to discriminate against potential employees or take adverse actions if the employee has testified, assisted, or partici-

pated in any manner in an investigation, proceeding, or hearing to assist in the enforcement of the provisions of the law. It shall not be an unlawful practice for employers to classify employees by religion, genetic information, age, sex, or national origin in those instances in which these factors are a bona fide occupational qualification that is reasonably necessary to the normal operation of that particular business or enterprise. At the end of the administrative process put in place by the "State Right to Sue," when the charge has been dismissed, or a no-cause determination has been issued, or conciliation efforts have failed, a "State Right to Sue" notice shall be issued. In these cases, the State superior court has jurisdiction and authority to provide relief.

Worker privacy. The State code was amended by the addition of an act limiting the dissemination of the names and identification numbers of police, probation, and parole officers to designated criminal justice agencies for law enforcement purposes. The amendment clarifies the fact that such information is not available to the public pursuant to the Freedom of Information Act. Information from criminal history records shall include a random identification number that is unique and permanent to each arresting officer as a surrogate for the officer's agency or department-issued identification number.

Workplace violence and security. A resolution was passed urging Congress to amend the Maritime Transportation Security Act of 2002 so that it will be applicable only to workers who have been convicted of felonies that can be demonstrated to constitute clear threats to the facilities at which the workers are employed or seek employment. Current provisions of the Act stipulate that persons convicted of a felony within the last 7 years are precluded from working at America's ports.

District Of Columbia

Minimum wage. The District increased its required minimum wage to \$6.60 per hour.

Time off. The District of Columbia's Comprehensive Merit Personnel Act of 1978 was amended and now requires each agency, independent or otherwise, to establish a voluntary leave transfer program under which annual or universal leave accrued or accumulated by an employee

may be transferred on an hour-for-hour basis within the agency to the annual or universal leave account of any other eligible employee. Recipient employees may use contributed annual or universal leave in the same manner as if the leave had accrued to them, provided that any annual, universal, sick, or advanced leave shall be exhausted before any transferred leave may be used by the affected employee. Each agency, independent or otherwise, shall maintain an accounting of the voluntary leave transfer program and the leave records of both the recipient employee and the leave contributor.

Drug and alcohol testing. Nurse staffing agencies, which are now required to be licensed by the Department of Health before providing or referring support to a health care facility, must verify and document the fact that nursing personnel, home health aides, and personal care aides provided or referred by the agency have satisfactorily completed all drug screening and all background checks required by law or requested by the client, before the aforementioned personnel are referred to a health care facility or agency or to an individual.

Florida

Agriculture. Under an old act newly named and relating to agricultural and migrant labor, the farm labor contractor certificate-of-registration fee has been raised from \$75 to \$125. Civil penalties for minor violations now range from warnings for first violations to a range of fines increasing from \$250 to \$2,500. Penalties for major violations range from \$750 to \$2,500 or revocation of the certificate for multiple violations within a 2-year period. The Department of Business and Professional Regulation may now refuse to issue certificates of registration where (1) payment of the applicant's fine assessed by the department is overdue or (2) the contractor has had a Federal certificate of registration denied, suspended, or revoked. The department may permanently revoke or refuse to issue or renew a certificate of registration if, within the last 5 years, the applicant or certificate holder has been convicted of a crime under specific State or Federal laws. Contractors also are required to designate an agent who must be available during regular business hours, Monday through Friday, to accept service of process and other official or legal documents on behalf of the contractor. The receipt and acceptance of a certificate of registration as a farm labor contractor

constitutes unconditional permission for, and acquiescence by, the contractor to inspection by department personnel of books, ledgers, and all other documents related to the performance of the contractor's farm labor activities. The department shall develop and implement, for a farm labor contractor, a best-practices incentive program that establishes certain requirements for the contractor to meet in order to qualify for the incentives bestowed as a result of the designation.

Worker privacy. The State's Public Records Law was amended to create an exemption from the public records requirements for identificatory and locational information on current and former Federal officials, their spouses, and their children. Thus, information regarding U.S. attorneys, assistant U.S. attorneys, judges of the U.S. court of appeals, judges of the U.S. district courts, and Federal magistrates is exempt from disclosure. Such information, including home addresses, telephone numbers, Social Security numbers, photographs of the officials or their spouses or children, addresses of the places of employment of the officials' spouses, and the names and locations of schools and daycare facilities attended by the officials' children, is prohibited from being released as a part of the public record. In addition, the Social Security numbers of agency employees are exempt from disclosure by the employing agency, except that nonemploying custodial agencies shall maintain the exempt status of Social Security numbers only if the employee or employing agency of the employee submits a written request for confidentiality to the custodial agency.

The personnel records of those employed in licensed facilities that provide direct patient care or security services for a wide spectrum of individuals, including, among others, prisoners, criminal suspects brought for treatment by local law enforcement officers prior to incarceration, patients under the influence of drugs or alcohol, and patients who have been admitted for treatment for mental illness (including involuntary admissions), are exempt from disclosure under the Open Government Sunset Review Act. Should any of these individuals gain access to personal information of such employees, the information could be used to threaten, intimidate, harass, or cause physical harm or other injury to the employees who provide direct patient care or security services or to their families. This amended law maintains that the home addresses, telephone numbers, and photographs (but not the Social Security numbers) of employees, along with similar

information (but, again, not their Social Security numbers) on their spouses and children, as well as information on the places of employment of spouses and the names and locations of schools and daycare facilities attended by the children of such persons, are confidential.

Georgia

Minimum wage. All mandates that require an employer to pay any or all of its employees a wage rate or provide employment benefits not otherwise required under State or Federal law, but that have been adopted by any local government entity, are preempted. No local government entity may adopt, maintain, or enforce, by charter, ordinance, purchase agreement, contract, rule, regulation, or resolution, either directly or indirectly, a wage rate or employment benefit mandate. However, any local government entity may offer its own employees employment benefits.

Worker privacy. Public disclosure shall not be required for records that would reveal the home addresses or telephone numbers, Social Security numbers, or insurance or medical information of employees of the State Department of Revenue.

Inmate labor. An amendment to the State code was enacted in order to change provisions relating to the earned-time allowances of inmates in county correctional facilities and to increase the maximum amount of earned time that may be awarded when an inmate does work on an authorized work detail. The sheriff or custodian may authorize the award of not more than 4 days' credit for each day's work on an authorized work detail. Such increased credit for performance on a work detail shall not apply to inmates incarcerated for a second or subsequent offense of driving under the influence, for a misdemeanor of a high and aggravated nature, or for a crime committed against a family member.

Hawaii

Prevailing wage. A resolution was adopted urging the State congressional delegation to ensure that, when privatization construction contracts are let under the Residential Communities Initiative at military bases located in the State, (1) at least 80 percent of Federal expenditures for the contracts stay in Hawaii through the hiring of local

construction firms and local laborers; (2) inquiries are made and, if necessary, cause investigations to be initiated so that the piecework systems and rate fixing do not act to circumvent the Davis-Bacon Act; and (3) steps are taken to ensure that local contractors are not underbid by mainland firms for the contracts falling under the initiative.

Family issues. The State House of Representatives adopted a resolution requiring the Department of Labor and Industrial Relations to enforce the State Family Medical Leave Law in accordance with the intent of the legislature. The department is to provide the legislature with a status report on (1) the adoption of rules that are consistent with the legislative intent, (2) the number of employers that are self-insured for temporary disability insurance and that have denied employees the use of sick leave for family leave purposes, and (3) the number of employees who are covered by an employer's self-insured temporary disability insurance plan and who have been denied the use of sick leave for family leave purposes.

Other laws. Counties within the State may enter into a formal agreement with the State government to extend its deferred compensation retirement plan and the plan's provisions to part-time, temporary, and seasonal or casual employees of the county. Such an agreement may be entered into, provided that the agreement designates one of the county agencies to coordinate the plan locally and provided that the agreement acknowledges that fees may be levied on the county to cover costs incurred by the State for county plans.

Idaho

Wages paid. The State tax law was amended so that employers who are required to withhold, collect, and pay income taxes on the wages or salaries of their employees, but who fail to make a timely payment of the income taxes as required, may be subject to the State Tax Commission's treating the failure as a failure to file a return, and the commission may take authorized administrative and judicial actions for such failure.

Drug and alcohol testing. In order for contractors to be eligible for the award of any State contract for the construction or improvement of any public property or publicly owned building within the State,

(1) they must provide a drug-free workplace program that complies with the provisions of the law and is otherwise constitutionally permitted for employees, including temporary employees, and maintain the program throughout the duration of the contract; and (2) they may subcontract work under State construction contracts only to those subcontractors meeting requirement (1). Contractors that submit a bid for a State construction contract and that are required to comply with the provisions of the Employer Alcohol and Drug-Free Workplace Act shall submit an affidavit, along with the bid, verifying the contractor's compliance with the provisions of this section of the act.

Worker privacy. When a health care provider has been terminated, either voluntarily or involuntarily, for adulteration or misappropriation of controlled substances, the employer shall furnish written notice of the termination to the health care provider's State professional licensing board within 30 days of the event. Employers who provide such information in good faith shall not be held civilly liable for the disclosure or the consequences of providing the information. Professional licensing boards shall maintain such notices of termination for 15 years from the date of receipt by the board. Before hiring such workers, prospective employers of health care providers shall request, in writing, that the professional licensing board furnish the prospective employers any notice of termination maintained by the board with respect to the health care provider.

Workplace security. The State transportation law concerning motor vehicle drivers of hazardous materials was amended and now requires licensees applying for a hazardous-material endorsement of a driver's license to have a security background records check and to receive clearance from the Federal Transportation Security Administration before the endorsement can be issued, renewed, or transferred. Applicants for endorsement shall provide either proof of U.S. citizenship or proof of a lawful, permanent U.S. residence, as well as a valid alien registration number from the Federal Bureau of Citizenship and Immigration Services.

Department of Labor. The State's Departments of Labor and Commerce have been joined in a new agency entitled the Department of Commerce and Labor. The director of the new department shall have

all the powers and duties as may have been or could have been exercised by his or her predecessors in law and shall be the successor in law to all contractual obligations entered into by his or her predecessors in law.

Other laws. The tax credit for employers who hire new employees was increased to \$1,000 per employee. The credit shall apply to employees who, in the calendar year ending in the taxable year for which the credit is claimed, receive annual earnings at an average rate of \$12.50 or more per hour worked and who, during such calendar year, were eligible to receive employer-provided coverage under an accident or a health plan.

Illinois

Minimum wage. The State's minimum wage rose to \$6.50 per hour as scheduled.

Overtime. Employees of a governmental body who are excluded from the definition of "employee" under the Fair Labor Standards Act of 1938 are not subject to receiving compensation at a rate of not less than 1½ times their regular rate of pay. Other employees who are exempt from receiving this overtime rate of pay are those employed in a bona fide executive, administrative, or professional capacity, including any radio or television announcer, news editor, or chief engineer, as defined by or covered by the Act and the rules adopted under it, as both existed on March 30, 2003, but who are compensated at the salary specified in Title 29 of the Code of Federal Regulations, as proposed in the *Federal Register* on March 31, 2003, or with a greater amount of salary as may be adopted by the U.S. Department of Labor. A governmental body in the State is not in violation of the Act if the body provides compensatory time pursuant to Section 7 of the Act, as now or hereafter amended, or is engaged in fire protection or law enforcement activities and meets the requirements of Sections 7 and 13 of the Act, as now or hereafter amended.

Prevailing wage. The law concerning bidding requirements for contractors on construction contracts was amended. In order for a contractor to be considered a responsible bidder for a construction contract, (1) the contractor must comply with all laws concerning the bidder's entitlement to conduct business in the State; (2) the contractor must comply with

all applicable provisions of the Prevailing Wage Act; (3) the contractor must comply with the applicable chapters of the U.S. Code dealing with equal employment opportunities; (4) the contractor must have a valid Federal employer identification number or a valid Social Security number; and (5) the contractor and its subcontractors must participate in applicable apprenticeship and training programs approved and registered by the U.S. Department of Labor's Bureau of Apprenticeship and Training. The provisions of these amendments shall not apply to any federally funded construction project if such application would jeopardize the receipt or use of Federal funds in support of such a project.

Child labor. No minor under 16 years may sell tobacco in any of its forms at a retail establishment selling tobacco products. This restriction does not apply to a sales clerk in a family-owned business, upon proof that the sales clerk is a son or daughter of the owner. Tobacco products sold in single packs must be sold from behind the counter, in an age-restricted area or a sealed display case. These restrictions do not apply if tobacco-related products are sold in an establishment that (1) derives at least 90 percent of its revenue from tobacco and tobacco-related products, (2) does not permit persons under 18 years to enter the premises unless accompanied by a parent or legal guardian, and (3) posts a sign on the main entrance prohibiting the admission of such persons. A violation of this act is a petty offense for which the court shall impose a fine of not less than \$100 or more than \$1,000.

The requirement in the child labor provisions that a parent or guardian accompany a 12- or 13-year-old minor who is officiating youth sports activities for a not-for-profit youth club, park district, or municipal parks and recreation department has been amended so that it is also satisfied if an adult designated by the parent or guardian accompanies the minor.

Time off. The State Service Men's Employment Tenure Act was amended to be titled "The Service Member's Employment Tenure Act." The act affects the reemployment rights of employees who leave a public utility to enter the military service of the United States. It was established that, when an employer knowingly violates the provisions of this act, a business offense has been committed that is punishable by a fine of not less than \$5,000 and not more than \$10,000.

Volunteer firefighters who do not receive monetary compensation for their services to a fire department or fire protection district and who do not work for any other fire department for monetary compensation may not be terminated by their employers because they are absent from or late to their employment in order to respond to an emergency prior to the time they are to report to work. However, employers may charge, against their employees' regular pay, any time that their employees lose as a result of responding to an emergency. Employers may require their employees to provide them with a written statement from the supervisor or acting supervisor of the volunteer fire department stating the time and date of the emergency. Employees are expected to make a reasonable effort to notify their employers of such an emergency. Any employer who violates this act is liable to civil action brought by the affected employee for reinstatement to his or her former position, payment of back wages, and reinstatement of fringe benefits and seniority. Civil action must be commenced within 1 year after the date of the employer's violation.

Discharge. The State Police Training Act was amended. A police officer shall now be decertified or have his or her waiver (of completion of training requirements pending certification) revoked if, while under oath, the officer knowingly and willfully made false statements as to a material fact pertaining to an element of the offense of murder. If an appeal is filed, the determination of decertification or revocation of waiver shall be stayed. In the case of an acquittal on a charge of murder, a verified complaint may be filed, within two 2 years, by the defendant or by a police officer with personal knowledge of perjured testimony. Within 30 days, a determination will be made on whether the complaint is without merit or whether further investigation is warranted. The accused officer shall not be placed on unpaid status because of the filing or processing of the verified complaint, until there is a nonappealable order sustaining his or her guilt and certification is revoked. Nothing restricts the public employer from pursuing disciplinary action against the officer in the normal course of events and under procedures then in place.

Drug and alcohol testing. The State School Code was amended by adding a section which specifies that, when charter bus services are provided solely for the purpose of regularly transporting students,

the drivers must demonstrate physical fitness to operate the school buses by submitting the results of a medical examination, including tests for drug use, to a State regulatory agency.

Worker privacy. The Department of Public Health shall establish and administer a nursing workforce database. The objective of maintaining such a database shall be to track the State's nursing workforce, and the database shall contain information that may be released under the Freedom of Information Act. Among the information to be collected are (1) current and projected population demographics and available health indicators to project the demand for nursing services; (2) data that will be used to create a dynamic system for projecting nurse workforce supply and demand; (3) information on workforce issues such as the diversity, educational mix, and geographic distribution of the nursing workforce, as well as information on the number of nurses needed; (4) current and projected numbers of nursing faculty required to educate the nurses who will be needed; (5) data on nursing education programs, applications, enrollments, and graduation rates; (6) data needed to develop collaborative models between nursing education and practice in order to identify nursing competencies, educational strategies, and models of professional practice; and (7) data on nurse practice settings, practice locations, and specialties. The department may not disclose any of its data in a manner that would allow the identification of a particular health care professional or facility. A report to the Governor regarding the development and effectiveness of the use of the database shall be made no later than January 15, 2006.

Plant closing. Legislation was enacted that requires employers with 75 or more employees to provide written notice of a mass layoff, relocation, or employment loss, 60 days before the order takes effect, to affected employees, representatives of affected employees, and the Department of Commerce and Economic Opportunity, along with the chief elected official of each municipal and county government within which said employment action occurs. Failure to provide such notice makes the employer liable for backpay at the employee's average regular rate of pay, along with the value of the cost of any benefits to which the employee would have been entitled. Liability is calculated up to a maximum of 60 days or one-half the number

of days that the employee was employed by the employer, whichever period is smaller. Employers also may be subject to a \$500 civil penalty for each day the violation continues.

Indiana

Hours worked. The State Utilities and Transportation Code was amended and now exempts employees of a public utility or of a subcontractor or contractor thereof from the maximum hours of service they are permitted to work under Federal regulations. This exemption applies when the individual (1) holds a commercial driver's license and (2) operates a commercial motor vehicle as a utility service vehicle while engaged in intrastate maintenance or repair work during an emergency involving an interruption of the utility's service.

Drug and alcohol testing. The State Human Services Code was amended to require childcare providers to offer, maintain, and make available to the State, at no expense thereto, copies of drug-testing results for employees or volunteer caregivers at the facility where the provider operates the childcare service.

Worker privacy. Individual records and information on membership in the Public Employees Retirement Fund are now confidential, except for the name and the number of years of service of a participant in the fund.

Iowa

Drug and alcohol testing. The law regarding private-sector employee drug testing was amended to include the definition of "controlled positive test result" to mean, with the exception of alcohol testing, the result of a blood, urine, or oral fluid test in which the level of controlled substances or metabolites in the specimen analyzed meets or exceeds nationally accepted standards for determining detectable levels of controlled substances. If nationally accepted standards for oral fluid tests have not been adopted by the Federal Substance Abuse and Health Services Administration, the standards for identifying detectable levels of controlled substances for purposes of determining a confirmed positive test result shall be the standard that has been established by the Federal Food and Drug Administration for the measuring instru-

ment used to perform the oral fluid test. Under the revised law, “samples” shall include only urine, saliva, breath exhalations, and blood.

Kansas

Worker privacy. Any person applying for employment as a law enforcement officer is required to disclose any arrests, convictions, or diversions⁵ and shall allow the State Law Enforcement Training Commission to obtain expunged records in order to determine the applicant’s eligibility. Furthermore, when any law enforcement officer leaves his or her position, the responsible agency would make a report explaining the circumstances surrounding the termination or resignation. The report shall be available to the terminated officer upon written request and also shall be available to any law enforcement agency to which the terminated officer later applies for a position as a police or law enforcement officer. This legislation, which is intended to prevent the hiring of police officers who were terminated for cause in other jurisdictions, mandates the establishment, by the director of the State Law Enforcement Training Commission, of a registry to be a resource for all agencies that appoint or elect police or law enforcement officers to use in reviewing employment applications. The registry shall be made available only to those agencies which appoint or elect police or law enforcement officers.

Workplace security. The State Public Information Act was amended. Upon a formal motion to do so, open meetings may now recess, but not adjourn, in order to discuss security measures that protect (1) systems, facilities, or equipment used in the production, distribution, or transmission of energy, water, or communication services; (2) transportation and sewer or wastewater treatment systems, facilities, or equipment; (3) a public body or agency, a public building or facility, or the information system of a public body or agency; or (4) private property or persons. The purpose of the amendment is to protect against criminal acts intended to intimidate or coerce civilians, influence government policy, or affect the operation of government through mass destruction, assassination, kidnapping, or the disruption of public services.

Department of Labor. The Department of Human Resources has had its name changed to the Department of Labor. The duties of

the Employment and Training Administration under the Department of Human Resources have been transferred to the Division of Workforce Development in the Department of Commerce. The remaining duties of the Department of Human Resources stay with the newly named Department of Labor.

Kentucky

Overtime. The State overtime law was amended in order to exclude individuals who are employed by a third-party employer or agency, other than the associated family or household, to provide in-home companionship services for a sick, elderly, or convalescing person. Now, those individuals are considered exempt from entitlement to overtime compensation. The services in question may include household work related to the care of the aged or infirm person, along with general household work, as long as the household work is incidental and the time spent doing it does not exceed 20 percent of the total weekly hours worked. The services do not include those related to the care and protection of the aged or infirm which require and are performed by trained personnel, such as a registered or practical nurse.

Worker privacy. The State Revised Statutes were amended to provide that employers who furnish information about the job performance, professional conduct, or evaluation of a former or current employee to a prospective employer of that employee, at the request of the employee or prospective employer, shall be immune from civil liability arising out of the disclosure. This immunity is in place unless the plaintiff in a civil action proves that (1) the employer disclosed the information knowing that it was false, with reckless disregard of whether it was true or false or with the intent to mislead the prospective employer, or (2) the disclosure of the information by the employer constitutes an unlawful discriminatory practice. This amended code does not create a new cause of action or substantive legal rights against an employer, nor does it limit an employer’s immunity from civil liability or defenses established in another section of the State Revised Statutes or available under common law.

Louisiana

Wages paid. The State wage payment law was amended and now excludes those

persons considered exempt pursuant to the Federal Fair Labor Standards Act from being included in the definition of the term “employee.” In addition, those employers who fail to pay their employees in the timely manner required may be fined not less than \$25 or more than \$250 for each day they remain in violation of the law. A second such violation may, in addition to incurring the same fines, subject a person to imprisonment of not less than 10 days.

Child labor. The section of the State child labor law concerning permissible hours of work was amended. Minors 16 years of age who have not graduated from high school are now prohibited from being employed or from being permitted or suffered to work between the hours of 11:00 P.M. and 5:00 A.M. prior to the start of any schoolday. Minors under 16 years who have not graduated from high school shall not be employed or suffered or permitted to work between the hours of 7:00 P.M. and 7:00 A.M. prior to the start of any schoolday or between the hours of 9:00 P.M. and 7:00 A.M. on any day. Minors employed in the dairy industry are exempt from this restriction. No minor 17 years of age who has not graduated from high school shall be employed or permitted or suffered to work between the hours of 12:00 A.M. and 5:00 A.M. prior to the start of any schoolday. Minors who have taken and passed a General Education Development (GED) test and who have been awarded a high school equivalency diploma from the State Department of Education will be considered to have graduated from high school.

Equal employment opportunity. A resolution was adopted that created the State Commission on Employment of Mental Health Consumers, to study and develop a plan to address barriers that prevent persons with mental illness from seeking, obtaining, and maintaining employment. The plan shall be submitted to all appropriate parties prior to the convening of the 2005 regular legislative session.

The State has created the Equal Pay Commission for the purpose of making a full and complete study of the factors affecting wage disparities, in both the public and private sector, between men and women, as well as between minorities and nonminorities. The Commission will investigate such factors as the segregation of men and women and of minorities and nonminorities, lower wages of occupations

traditionally dominated by women and minorities, child-rearing responsibilities, and the consequences of such disparities on the economy and affected families. The commission also will propose actions and legislation that are likely to lead to the elimination and prevention of such disparities. The commission shall report its findings and recommendations. Sunset for the commission is July 1, 2006.

Drug and alcohol testing. The law pertaining to drug and alcohol testing was amended to specify that samples other than urine, including blood, saliva, and hair, may be used for workplace drug testing. All drug testing of samples collected in the State, including its territorial waters and any other location to which the laws are applicable, shall be performed in specific certified laboratories if both of the following conditions apply: (1) as a result of such testing, mandatory or discretionary negative employment consequences will be rendered to the individual and (2) drug testing will be performed for any or all classes of marijuana, opioids, cocaine, amphetamines, and phencyclidine.

Inmate labor. Inmates may now perform manual labor, of their own free will, on buildings, improvements, or properties of tax-exempt organizations, including (1) posts and organizations of past or present U.S. Armed Forces members, auxiliary units or societies, and trusts and foundations if such posts or organizations are organized in the United States or its possessions (membership must comprise specific categories of persons, and no part of net earnings must inure to the benefit of a private shareholder); and (2) any association organized before 1880 in which more than 75 percent of its members are past or present members of the Armed Forces and a principal purpose of which is to provide insurance and other benefits to veterans or their dependents.

Other laws. When individuals lose health insurance coverage as a result of their employer's going out of business and terminating a health benefits plan, and those individuals are eligible for the Health Coverage Tax Credit under Federal law, the Department of Insurance shall administer the Federal Health Coverage Tax Credit Program to ensure that the individuals in question have access to affordable health insurance. The department shall establish a pilot program to increase access to affordable health insurance and shall

coordinate with health insurance issuers, health maintenance organizations, employers, or other entities to facilitate coverage for those who are eligible.

Maine

Minimum wage. The scheduled increase in the minimum wage was implemented, and the State minimum wage is now \$6.35 per hour.

Prevailing wage. Permits and contracts issued for the harvesting of timber from reserved and nonreserved public lands shall now include a provision requiring that persons engaged in timber harvesting on such lands be compensated at rates not less than the most recently issued prevailing-wage and piece rates and equipment allowances established for the pulpwood and logging industry, as determined by the Department of Labor, Bureau of Labor Standards. If the department does not determine a prevailing-wage or piece rate for a timber-harvesting occupation, the director of the department may establish those rates, applicable only to permits and contracts on public reserved and nonreserved lands governed by the law, by referring to prevailing rates and allowances in the industry for that occupation or type of equipment.

Time off. State National Guard members who are on duty for more than 5 consecutive days may elect to be members of the State Retirement System. In addition, if one of the parents of a minor is a member of the National Guard or the U.S. Armed Forces Reserves on orders to report to active duty for a period of more than 30 days, a temporary guardianship that would otherwise expire is automatically extended until 30 days after the parent is no longer under active-duty orders or until an order of the court so provides. The extension of the guardianship is in effect as long as the parent's service is in support of an operational mission for which members of the affected components of the Reserve have been ordered to active duty without their consent or if the forces are activated during a period of war declared by Congress or a period of national emergency declared by the President or Congress.

Equal employment opportunity. The State established the Employees Suggestion System, whereby State employees in classified service are eligible for cash or honorary

awards for submitting suggestions that would result in substantial savings, improvements, or efficiencies in State operations. State supervisors or other persons in authority may not discriminate against an employee regarding the employee's terms, conditions, location, or privilege of employment because the employee, acting in good faith, has suggested savings or efficiencies.

Drug and alcohol testing. Employers who employ 50 or more employees not covered by a collective bargaining agreement and who have instituted or appointed an employee committee responsible for developing a written policy prior to establishing any substance abuse testing program that applies to all employees may request, require, or suggest that employees submit to a substance abuse test on a random or arbitrary basis. Union employees working for such an employer are covered only in conjunction with a collective bargaining agreement. The committee testing policy must be approved by the Department of Labor. Committee membership must include a medical review officer and must be appointed from a cross section of those eligible to be tested. Only entities not subject to the employer's influence, such as the medical review officer, may select employees for testing. Employers may not discharge, suspend, demote, discipline, or otherwise discriminate (for example, with regard to compensation or working conditions) against an employee for participating or refusing to participate in such an employee committee. Employees who show initial confirmed positive results shall be provided with an opportunity to participate in an employee assistance program if the employer has such a program.

Worker privacy. Records in the possession of the State Retirement System and containing home contact information pertaining to its members, recipients of benefits, trustees, nontrustee members of board committees, and staff are confidential and not subject to public disclosure. This exclusion from disclosure does not apply to the home contact information about a retirement system member or recipient of benefits if that person has signed a waiver of confidentiality regarding such information.

Unfair labor practice. The State enacted a law establishing a forestry rate proceedings panel with members representing the forest products harvesters and haulers, the forest landowners, and the public interests

of the State. Upon petition, the panel will set a reasonable rate of compensation for harvesting and hauling services of loggers and wood haulers, to be paid by a forest landowner in a specified area of the State. Individual forest product haulers and harvesters may join together to bargain with forest landowners over prices and terms of contracts. Petitions may be filed with the panel by a forest landowner or a person representing at least three harvesters or haulers in order to initiate proceedings to determine reasonable rates of compensation. While one or more harvesters or haulers may negotiate a rate with a forest landowner for an area defined by the State, any agreement reached is contingent upon review and approval by the panel. Where panel rates are not applicable, forest landowners and haulers or harvesters may determine their own compensation rate agreement.

Maryland

Child labor. Employers in Garrett County who possess licenses to sell alcoholic beverages are no longer restricted from hiring individuals who are under 18 years, as long as those individuals do not handle the alcoholic beverages during the course of their duties.

Whistleblower. A law was enacted providing employees of contractors hired by the State with whistleblower protections. Specified employers that enter into State procurement contracts are required to provide written notice of particular protections and remedies to employees. These employers may not take or refuse to take any personnel action as a reprisal against an employee because the employee (1) discloses information that he or she reasonably believes affords evidence of an abuse of authority, gross mismanagement, or a gross waste of money, (2) objects to or refuses to participate in any activity, policy, or practice in violation of the law, or (3) seeks a remedy under this law following a disclosure under item (1). The employee may bring a civil action in the county where (1) the alleged violation occurred, (2) the employee resides, or (3) the employer maintains its principal office in the State. Such action shall be brought within 1 year of the time the alleged violation occurred or within 1 year of the time the employee first became aware of the alleged violation.

Worker privacy. Applicants for positions

with, or employees of, the State's Internal Investigative Unit of the Department of Public Safety and Correctional Services are not exempt from being subject to the use of a lie detector or a similar test for employment purposes.

The State Public Ethics Law was amended so that financial disclosure statements may not include a listing of a minor child's employment or business entities of which the child is the sole or partial owner. This amendment is effective unless the place of employment or the business entity is subject to the regulation or authority of the agency that employs the individual or unless the place of employment or the business entity has contracts in excess of \$10,000 with the agency that employs the individual.

Employment agency. A nursing referral service agency (now licensed by the Department of Health and Mental Hygiene instead of the Department of Labor Licensing and Regulation) consisting of one or more individuals engaged in the business of screening and referring, directly or in accordance with contractual arrangements for the purpose of providing nursing services, home health aide services, or other home health care services at the request of the client, is permitted to receive a fee or other compensation for providing the service.

Plant closing. The Secretary of Business and Economic Development shall designate a division, an agency, an office, or some other entity within the Department of Labor to be the single point of contact for issues relating to the realignment and closure of military installations in the State.

Workplace violence and security. Licensed operators of commercial vehicles must obtain a State-issued endorsement to operate a commercial motor vehicle that is required to be placarded for hazardous materials. Applicants must apply to the Criminal Justice Information System Central Repository for a national and State criminal history records check, and the Transportation Security Administration of the Department of Homeland Security must approve the issuance of the endorsement. If a record of criminal history is reported to the central repository after the date of the records check, the repository shall provide information on the operator's criminal history to the Transportation Security Administration, and the operator shall be provided with a revised printed statement

of the same information. The operator may contest the contents of the printed statement.

Department of Labor. The Secretary of Labor, Licensing, and Regulation has been added to the Advisory Council on Offender Employment Coordination. The council provides guidance on (1) developing transitional supports and expanding employment opportunities for offenders in institutional and community settings; (2) transferring successful institutional programs and services that prepare offenders for employment in community settings; (3) increasing job placement and retention rates for all offenders under correctional control; (4) improving the coordination of employment services; (5) developing and implementing a business mentoring program; and (6) conducting mock job fairs in institutions and the community. The council shall exist until the end of August 31, 2007.

Massachusetts

Minimum wage. No employer or other person shall demand, request, or accept, from any wait staff, service employee, or bartender, any payment or deduction from a tip or service charge given to such employee by a patron. The employer may not retain or distribute, in any manner inconsistent with the law, any tip or service charge given directly to the employee. The employer may not require the employee to participate in a tip pool through which the employee remits any wage, tip, or service charge for distribution to any person who is neither on the wait staff nor a service employee or bartender. An employer may administer a valid tip pool and may keep a record of the amounts received for bookkeeping or tax-reporting purposes. If an employer or other person submits a bill or charge to a patron that imposes a service charge or tip, the total proceeds of that service charge or tip shall be remitted only to the wait staff employees in proportion to the service provided by those employees. Any service charge or tip remitted by a patron or person to an employer shall be paid to the appropriate employees by the end of the same business day and in no case later than the time set for the timely payment of wages. Any violation shall result in restitution for any tips accepted, distributed, or retained, with interest at the rate of 12 percent per year. The employer shall have violated the law and shall be punished or subject to a civil citation if (1) the employer is maintaining records for a tip pool

and the employee is not allowed to inspect those records pertaining to him- or herself or (2) the employer discharges or in any manner penalizes or discriminates against an employee because the employee has made a complaint to the attorney general or to any other person conducting an investigation and is seeking rights under this law.

Equal employment opportunity. The General Law of the State was amended by making it an unlawful practice for an employer, an employment agency, the commonwealth, or any of its subdivisions, by itself or its agents, to deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment to a person who is a member of a uniformed military service of the United States (including the National Guard) or who applies to perform, or has an obligation to perform, service in a uniformed military service of the United States (again, including the National Guard) on the basis of that membership, application, or obligation. In addition, the State has established a commission on veterans' employment rights that shall be responsible for investigating whether veterans are subjected to employment discrimination on the basis of their status as veterans. The commission shall report its finding annually on March 1 to the Secretary of Veterans Affairs.

Michigan

Child labor. The State Youth Employment Standards Act was amended so that it no longer prohibits a minor from engaging in any construction work or operations performed as an unpaid volunteer if such construction work or operations are performed under adult supervision for a charitable housing organization.

Minnesota

Wages paid. Any city in the State may now use an electronic time-recording system if the governing body of the city adopts policies to ensure that the time-keeping and payroll methods are accurate and reliable.

Hours worked. The State Motor Carrier Act was amended to exclude Federal, State, and local governments from the definition of a "person" as a "motor carrier" as defined by the act. The amendment also corrected

references in the State law that incorporates Federal regulations on truckdrivers' hours of service. As amended, the law now stipulates that its hours criteria do not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes, as long as the transportation is limited to an area within 100 miles of the source of the commodities or the distribution point for the farm and is conducted during the planting and harvesting seasons within the State, as determined by the State.

Equal employment opportunity. The State affirmative action provisions were amended. The commissioner shall establish a statewide affirmative action goal for each of the Federal Equal Employment Opportunity occupational categories applicable to State employment. For the purposes of affirmative action, a "Goal Unit" is the group of jobs in an agency or agency subdivision assigned to one of the Federal Equal Employment Opportunity occupation categories applicable to State employment. The amendment also struck a number of factors from being considered in setting affirmative action goals. The remaining factors to be considered are (1) the percentage of members of each protected class in the recruiting area who have the necessary skills and (2) the availability for promotion or transfer of members of protected classes in the recruiting area population.

Worker privacy. Information about employees of secure treatment facilities or corrections facilities, or information about those involved in the community supervision of offenders, shall not be disclosed to patients, inmates, or others if administrators reasonably believe that the information will be used to harass, intimidate, or assault the employees. Such information includes home addresses or telephone numbers, the locations of employees during nonwork hours, the locations of employees' immediate family, the education and training of the employee, the employee's prior employment, and payroll timesheets that may disclose future work assignments scheduled for the employee.

Plant closing. The owner of a municipal airport is required to notify the commissioner of transportation of the owner's intent to close the airport before or immediately upon cessation of operations at the airport. The owner shall schedule a public hearing to take place within 90 days following the giving of notice to the commissioner and shall also provide public notice of the

hearing a minimum of 30 days before it is to take place.

Mississippi

Drug and alcohol testing. Any employee who may be required by an employer to submit to a drug test shall be provided, at least 30 days prior to the implementation of a drug-testing program, a written policy statement from the employer that contains information about the grounds on which an employee may be required to submit to a drug test and about any actions the employer may take against an employee on the basis of a confirmed positive test. The written policy must contain information on (1) confidentiality, (2) procedures for employees to confidentially report the use of prescription or nonprescription medications prior to being tested, (3) the positions within the company that are subject to testing, (4) the consequences of refusing to submit to a drug test, (5) opportunities for assessment and rehabilitation if an employee has a confirmed positive test result, and (6) how the employee can contest the accuracy of the results, as well as a list of all drugs for which the employer might test. Employees may be requested by the employer to sign a statement that the drug policy has been read and understood.

Missouri

Worker privacy. The State's sunshine law was amended to exclude from disclosure the names of private sources donating or contributing money to the salary of a chancellor or president at all public colleges and universities in the State, as well as the amount of money contributed by the source. This exclusion is not in effect where the disclosure is otherwise required by law.

Nebraska

Time off. The law requiring all persons, firms, or corporations owning or operating an assembling plant, workshop, or mechanical establishment employing one or more workers to allow all of their employees not less than 30 consecutive minutes for lunch in each 8-hour shift does not apply to employment that is covered by a valid collective bargaining agreement or another written agreement between an employer and employee.

Worker privacy. Employers who hire or

rehire any employee are now required to submit additional information to the State Department of Labor concerning the employee. A copy of the employee's Federal w-4 or any form previously approved by the department shall be submitted, with the date of hire or rehire inscribed upon it. This additional information shall be submitted within 20 days of the date of hire or rehire or, if the reports are transmitted electronically, by 2 monthly transmissions, if necessary, that are not less than 12 days or more than 16 days apart.

New Hampshire

Discharge. An employer may prorate, on a daily basis, the salary of an employee who, hired after the beginning of a pay period, terminates employment of his or her own accord before the end of a pay period or is terminated for cause by the employer. No employer may withhold or divert any portion of an employee's wages, unless the employer is required or empowered to do so by State or Federal law or the employer has a written authorization by the employee for deductions for a lawful purpose, which now includes (1) voluntary contributions to cafeteria plans or flexible benefit plans, (2) childcare fees by a licensed childcare provider, (3) parking fees, and (4) amounts paid for pharmaceutical items or gift shop and cafeteria items purchased on the site of a hospital by hospital employees.

Equal employment opportunity. The duties of the State Legislative Ethics Committee have been expanded to include the investigation of allegations of improper conduct, including sexual harassment against members or retaliation against employees who make good-faith allegations of sexual harassment, that may reflect upon the legislature, relating to the conduct of individuals in the performance of their duties as members, officers, or employees of the legislature.

Worker privacy. Payroll accounts and the information contained therein are now exempt from the trustee process.

New Jersey

Overtime. The State Senate adopted a resolution urging the U.S. Department of Labor to repeal the rule changes that could allow employers to reclassify workers, without just cause, as being exempt from earning overtime pay.

Prevailing wage. The State prevailing-wage law was amended. When the commissioner of labor finds that an employer has violated provisions of the act, the matter may be referred to the attorney general or his or her designee for investigation and prosecution. An employer commits a crime if the employer knowingly pays one or more employees employed in public work subject to the provisions of the act at a rate less than the rate required pursuant to the act. A violation wherein the contract amount is \$75,000 or above constitutes a crime of the second degree, while a violation in which the contract amount exceeds \$2,500, but is less than \$75,000, is a crime of the third degree, and a violation wherein the contract amount is \$2,500 or less is a crime of the fourth degree. In addition, the employer shall be deemed to have caused loss to the employees in the amount by which the employees were underpaid and shall be subject to the provisions regarding fines and restitution to victims, as well as to other pertinent provisions.

The prevailing-wage law concerning custom fabrication in public work was amended. Custom fabrication is now encompassed within the definition of "public work" and includes mechanical insulation and plumbing, heating, cooling, ventilation, and exhaust duct systems used in public work. Also, according to the newly amended law, custom fabrication is subject to the State Prevailing Wage Act, regardless of whether the fabrication is or is not done on the site of the public work. Contractors or subcontractors engaged in custom fabrication are not regarded as suppliers of materials and therefore are not granted the latter's exemption from the provisions of the act.

Each worker employed in the construction or rehabilitation of facilities under the administration of the Casino Reinvestment Development Authority, the State Educational Facilities Authority, or the State Health Care Facilities Financing Authority shall be paid not less than the prevailing-wage rate for the work's craft or trade, as determined by the commissioner of labor.

Hours worked. The provisions of the Surface Transportation Assistance Act pertaining to hours of service are applicable to commercial motor vehicles weighing 26,000 pounds or less and operating in intrastate commerce. Therefore, when an operator has been on duty continuously for 12 hours or longer or has been on duty for 12 hours in the aggregate during any 16

consecutive hours, that person shall have at least 10 consecutive hours off. Those same provisions do not apply to a vehicle designed to transport 16 or more passengers, driver included, to a vehicle used in the transportation of hazardous materials and required to be placarded, or to a vehicle that displays a hazardous-materials placard.

New Mexico

Prevailing wages. Unregistered contractors are now prohibited from bidding on public works projects that are subject to the Public Works Minimum Wage Act. In addition, registered contractors may not list unregistered subcontractors in bid proposals for a public works project subject to the Act. Neither the State nor any political subdivision thereof may accept bids from unregistered contractors. Parties required to be registered pursuant to the Act may have their registration cancelled, revoked, or suspended with conditions for failure to comply with the registration provisions or for good cause. Injunctive relief may be sought in district court for failure to comply with provisions of the Act.

New York

Minimum wage. The State minimum wage was increased to \$6.00 per hour.

Hours worked. The State's transportation law was amended to exempt telephone utility truckdrivers engaged in the restoration of telephone service from the portion of the law relating to limitations on hours of labor or service. This exemption applies to those persons whose primary employment is not as a driver of a motortruck, but who drive only as an incidental part of their employment and who are engaged in the emergency restoration of telephone service.

Child labor. Besides recently assuming the responsibility of being the issuing agency for all employment permits affecting child performers, the State Department of Labor will now oversee the requirements for such permits. All child performers shall have such a permit listing the true and stage names and the age of the child, along with the name, address, and written consent of the parent or guardian. No permit shall allow a child to participate in an exhibition, rehearsal, or performance that is harmful to the welfare, development, or proper education of the child. A permit may be revoked

by the department for good cause.

Agriculture. Farmworkers in the State must be notified in writing of the conditions of employment every employer shall utilize. The employer shall be subject either to the farm work agreement established by the commissioner, which includes job service recruitment or placement orders and a farm labor contract or migrant labor registration, or to an agricultural employment contract executed by the employer or its representative with the representative of a foreign government.

Garment industry. The commissioner of labor is now required to publish quarterly reports setting forth the names of all registered manufacturers and contractors in the apparel industry, as well as all such manufacturers and contractors who were found to be in violation of registration requirements.

Worker privacy. Whenever an application is submitted for licensure endorsement or a limited permit in any profession regulated by the State Board of Regents and there is a determination that the applicant has been subject to disciplinary action by another jurisdiction, the Regents shall evaluate the conduct of the applicant and may deny him or her endorsement or the issuance of a limited permit. This determination shall be made on the basis of an evaluation of the infraction within the State. Conduct covered includes practicing the profession beyond its authorized scope with gross incompetence or negligence and the relinquishment (voluntarily or otherwise) of the applicant's professional license in another jurisdiction after a disciplinary action.

North Carolina

Prevailing wage. Under the State's industrial revenue bond program, resident manufacturers enter into financing agreements with a local financing authority that issues tax-free revenue bonds, with the proceeds used by the company to finance land, buildings, and equipment. The amounts paid by the company must be sufficient to pay the debt service on the bonds. As a result of newly enacted State legislation, in order to qualify for the financing, manufacturers are no longer required to pay an average weekly manufacturing wage that either is above the average weekly manufacturing wage in the county or is at least 10 percent above the average weekly manufacturing wage in the State.

Worker privacy. Evidence of statements made and conduct occurring in the mediation of a personnel matter involving the University of North Carolina or a constituent institution shall not be subject to discovery and shall be inadmissible in any administrative or judicial proceeding of any action, except a proceeding to enforce a signed settlement. No mediator or person in training to become a mediator, nor any participant in a mediation of a personnel matter, shall be compelled to testify or produce evidence with respect to mediation in a civil proceeding.

Employment agencies. A person providing professional employer services to individuals other than temporary employees and where employment responsibilities are shared or allocated must be licensed. Two or more entities under the control of a parent organization may combine to seek the issuance of a single license. An applicant for licensure shall file, with the commissioner, a surety bond in the amount of \$100,000 in favor of the State. In lieu of a surety bond, an applicant may submit an irrevocable letter of credit. Before the issuance of the initial license, each applicant for a limited or professional organization license shall pay a nonrefundable application fee of \$1,000 to the commissioner. Each applicant shall pay the commissioner a fee of \$500 for a renewal of the license. The commissioner may also issue a limited license to a person who seeks to offer limited professional employer services. The licensee reserves the right to hire, fire, and discipline the assigned employees, in addition to maintaining an employee benefits plan. The commissioner may conduct an examination of a licensee as often as the commissioner considers it appropriate and may take disciplinary action against a licensee for such violations of the law as committing crimes that involve dishonesty or breach of trust, engaging in professional employer services without a license, failing to provide notice in writing of the discontinuance and replacement of insurance coverage, bribing an agent of the State, and committing fraud or intentional misrepresentation. The commissioner may issue a cease and desist order to a person or group that violates any provision of the law.

Workplace violence and security. Legislation was enacted that allows employers, on behalf of employees who are victims of attempted injury, nonconsensual sexual contact, stalking, or threats, to file a petition for a no-contact order without

paying any filing fee. To determine safety concerns, the employee must be consulted prior to the seeking of the order. On the basis of their level of participation or cooperation, employees who are targets of unlawful conduct and who are unwilling to participate in the process shall not face disciplinary action. The orders are effective for not more than 10 days, as the court fixes, unless, within the time so fixed, the temporary civil no-contact order, for good cause shown, is extended for a like or longer period if the respondent consents. Violations of the no-contact order may result in a fine or imprisonment.

Ohio

Worker privacy. The State Revised Code was amended to allow the Division of Liquor Control to provide the Social Security number that the division possesses of an individual to the Department of Public Safety, the Department of Taxation, the Office of the Attorney General, or any other State or local law enforcement agency if such department, office, or agency requests the number from the division to conduct an investigation, implement an enforcement action, or collect taxes.

Oklahoma

Hours worked. The State Motor Carrier Safety and Hazardous Materials Transportation Act now exempts, on an emergency basis, utility service vehicles that are owned or operated by utilities regulated by the Corporation Commission or electric cooperatives and that are engaged solely in intrastate commerce within the State from the hours-of-service regulations promulgated by the U.S. Department of Transportation, effective June 26, 2003, until June 27, 2006. The hours-of-service regulations that were applicable in the State immediately prior to June 26, 2003, shall remain applicable to utility vehicles engaged solely in intrastate commerce in the State until June 26, 2006. If Federal laws or regulations are amended at any time to exempt utility service vehicles from the hours-of-service requirements, any exemption shall be effective in the State for the duration of the exemption. The Department of Public Safety may enter into agreements with State and local emergency management agencies and with private parties establishing procedures for complying with Federal codes and regulations that provide an exemption from the hours-of-service

regulations during certain emergencies.

Time off. Employees summoned to serve as jurors and who notify their employer of the summons in a timely manner after its receipt and prior to their appearance for jury duty may not be terminated, removed, or otherwise subject to any adverse employment action as a result of such service. The employees may not be required or requested to use annual, vacation, or sick leave for time spent responding to a summons for jury duty, participating in the jury selection process, or actually serving on a jury. The court shall automatically postpone and reschedule the service of a summoned juror who is employed by an employer with five or fewer full-time employees, or their equivalent, if another employee of that employer has been summoned to appear during the same period.

Discharge. Tribal police officers commissioned by a State law enforcement agency pursuant to a cross-deputization agreement with the State or any political subdivision thereof shall comply with the training requirements as certified by the Council on Law Enforcement Education and Training. Any cross-deputized tribal officer certified by the council who fails to meet the annual training requirements shall be subject to having his or her certification suspended after the peace officer and employer have been provided with written notice and a reasonable time to comply with the requirements. Suspension of peace officer certification shall be reported to the district attorney for the jurisdiction in which the officer is employed.

Members of the State's Police Pension and Retirement System who terminate their employment for the purposes of performing service as a police officer on a contract basis for the U.S. Department of Defense or Department of State in a war zone may purchase service credit, not to exceed 1 year, for the period during which the member performed services for either of such entities or a branch of the United States military. Within 1 year of becoming reemployed by a participating employer in the system, the member must make payment for all required employer and employee contributions for the period of service during which the member was privately employed. Such purchased service credit shall be counted for purposes of vesting, calculating the normal retirement date, computing the retirement benefit of the member, and determining the member's

eligibility to participate in the Deferred Option Retirement Plan or its alternative.

Worker privacy. With the exception of the State or any political subdivision thereof, employing entities shall not (1) publicly post or display the Social Security number of an employee, (2) print an employee's Social Security number on any card required for the employee to access information, products, or services provided by the employing entity, (3) require the employee to transmit his or her Social Security number over the Internet, unless the connection is secure or the number is encrypted, (4) require the employee to use his or her Social Security number to access an Internet Web site, unless a password or unique identifier is also required to access the site, or (5) print the employee's Social Security number on any materials mailed to the employee, unless the number is required to be on the document by State or Federal law. Employees may provide the employing entity with written permission to use their Social Security numbers for any of the aforementioned purposes.

The results of reviews or investigations initiated by the State Board of Veterinary Medical Examiners on account of citizen complaints or allegations of violations of the State Veterinary Practice Act shall be kept confidential by the board, its employees, independent contractors, appointed committee members, and other agents. Information obtained as a result of such a review or investigation shall not be deemed to be a record as defined in the State's Open Records Act. Such information shall be considered competent evidence in a court of competent jurisdiction only in matters directly relating to actions of the board and the affected individual or entity as a result of the board's obtaining the information. Such information shall not be admissible as evidence in any other type of civil or criminal action.

Oregon

The State implemented a scheduled minimum-wage increase to \$7.25 per hour.

Pennsylvania

Discharge. The State enacted the Confidence in Law Enforcement Act, which established procedures for the termination of law enforcement officers convicted of an offense graded as a felony or serious misdemeanor committed either within or outside the jurisdiction of the officer's home State. When a certified copy of a conviction is

provided at any law officer's termination proceeding, the introduction of the document shall, in and of itself, be sufficient evidence to justify the termination of the officer.

Other laws. The Sign Language Interpreter and Transliterator State Registration Act was enacted. The act requires individuals providing sign language interpreting and transliterating services to persons who are deaf or hard of hearing to register with, and pay a registration fee to, the State. The act also imposes duties on the Office for the Deaf and Hard of Hearing in the Department of Labor and Industry. Conviction of failure to register could result in a fine not to exceed \$300 or in imprisonment for not more than 90 days, or both, for a first violation. Convictions for a second violation shall result in a fine of not less than \$300, but not more than \$1,000, or imprisonment for not more than 90 days, or both.

Rhode Island

Prevailing wage. Employees or former employees, under a private right of action, may bring a civil action for appropriate injunctive relief or actual damages, including reasonable attorney's fees and costs of the action, within 3 years after the occurrence of the alleged wage or benefit violation. The employer shall be liable for the amount of unpaid wages or benefits, plus interest. The court shall award affected employees liquidated damages in an amount equal to 2 times the amount of unpaid wages or benefits owed. The affected employers may still bid on other contracts and may be terminated for failure to pay agreed-upon wages. Any person, firm, or corporation found to have willfully made a false or fraudulent representation relative to wage obligations owed shall be required to pay civil penalties ranging from \$1,000 to \$3,000 per representation. Employers may not discharge or otherwise discriminate against an employee for making a complaint or participating in an investigation, and if they do, the employee can be compensated up to 2 times the amount of backpay and reasonable attorneys' fees.

Wages paid. Employers of 50 or more persons and with establishments located within ¼ mile of a State public transit service that provides a parking subsidy to employees shall offer a parking cash-out program that provides their employees with the option of receiving subsidized parking or a monthly transit pass. Employers may require em-

employees participating in the program to certify that they will comply with guidelines established by the employer to avoid neighborhood parking problems. Employees who do not comply with the guidelines will no longer be eligible for the program.

The State law concerning the requirements for the payment of back wages was amended to stipulate that, whenever an employee separates or is separated from an employer's payroll, the unpaid wages or compensation of the employee shall be due on the next regular payday at the usual place of payment. In addition, for employees who separate from an employer's payroll after completing at least 1 year of service, any vacation accrued or awarded shall become wages payable in full or on a prorated basis with all other due wages on the next regular payday for the employee. Finally, employers who fail to comply with the legal requirements concerning the payment of back wages shall be punished by a fine of not less than \$400. If the director of labor and training requires the employer to place the amounts due employees in a special account in trust for the employees and paid on order of the director, the employer shall also pay the director an administrative fee of 25 percent of the amount due the employees. Subsequent violations shall result in an administrative fee of 50 percent.

Time off. Every employer in the State with 50 or more employees shall allow an employee who is a victim of a crime to leave work to attend court proceedings related to the crime, provided that the employee has given the employer a copy of notification of the proceedings. An employer may not dismiss an employee who is a victim of a crime because the employee exercises his or her right to leave work; however, the employer is not required to compensate said employee. The employee may elect, or the employer may require the employee, to use the employee's accrued paid vacation, personal, or sick leave. The employee shall not lose seniority or precedent while absent from employment; however, the employer may limit the leave if it creates an undue hardship to the employer's business.

Equal employment opportunity. Applications for all initial licenses and renewals of licenses shall include a section requesting optional data on the race and ethnic background of the applicant. Individual data shall be held confidential. Only aggregate data on race and ethnic background may be disseminated by the Department of Health.

Employee leasing. The State law entitled "Businesses and Professions" was amended to require the regulation and registration, with the division of taxation, of professional employer organizations, staff leasing companies, registered staff leasing companies, employee leasing companies, and others. The term "professional employer service" is defined as the service of entering into coemployment relationships in which all or a majority of the employees provide services to a client or to a division or work unit of a client. All professional employer service employees are covered under the Businesses and Professions law. A fee of \$500 shall be charged for initial registrations and \$250 for subsequent registrations. All registrations shall be completed every August 1. The aforesaid organizations shall also post a bond or securities with a minimum market value of \$50,000.

Employment agencies. Applications provided to applicants for nursing licenses or license renewals shall include an optional section requesting data on the race and ethnic background of the applicant, provided, however, that the applicant shall in no way be required to furnish the information. If provided, the data shall remain confidential and shall be released only in the aggregate.

Legislation was enacted that prohibits an employer or agency hiring the services of a temporary placement staffing agency from (1) requiring the employer's or agency's employees to provide transportation to other employees as a condition of employment, (2) charging an employee for transport services provided to that employee, or (3) charging or collecting fees from employees for transportation services provided by other employees, the employer, or a subcontracted transportation company. However, an employer may purchase public transportation bus passes and deduct not more than 50 percent of the actual cost of a bus pass from the employee's total daily wages, provided that the employee voluntarily participates and the employer has written authorization, in the employee's primary language, to deduct the cost. In addition, an employer may offer transportation services and charge a fee, payable to the employer only (and not to exceed the actual cost of transportation or \$3 per day, whichever is smaller), provided again that the participation is voluntary and that written authorization in the employee's primary language has been given. Upon determining that a violation has occurred, a written notice initially shall be

sent. If a subsequent violation occurs within 3 years of the first violation, said employer shall be subject to a \$1,500 fine. For a third violation within 3 years, the fine may not exceed \$2,000. Any violation occurring more than 3 years from the date of a previous violation shall be considered a first violation.

Any person, firm, partnership, corporation, limited liability company, or other legal entity that supplies registered or licensed practical nurses to facilities requiring the services of such persons (nursing pools) shall be considered an employer and not an independent contractor and shall be subject to all State and Federal laws that govern employer-employee relations. All nursing pools must be registered with the Department of Health, must pay the appropriate \$500 yearly fee, and are exempt from paying any additional registration fee. The department shall set standards for employee bonding, appropriate staff professional certification and licensure, and liability insurance. Unregistered nursing pools shall be subject to a penalty of \$100 for each day of operation for the first offense, and any subsequent violations shall result in a daily fine of \$150.

Unfair labor practice. Legislation was enacted that makes it an unfair labor practice for any State employer with 50 or more employees to deny leave to an eligible employee who is a victim of a crime or to discharge, threaten to discharge, intimidate, or coerce the employee because the employee takes leave to attend a criminal proceeding. The employer is not required to compensate an employee who is a victim of a crime when the employee leaves work to attend court proceedings related to the crime. If an employee leaves work to attend such proceedings, the employee may elect, or the employer may require the employee, to use the employee's paid vacation, personal leave, or sick leave. Employers may limit the leave provided if the employee's leave creates an undue hardship to the employer's business. The employee shall provide the employer with a copy of the notification of court proceedings prior to leaving work, and employees may not lose seniority or precedence while absent from employment.

South Carolina

Inmate labor. Trial judges may now waive their right to receive notification about the release of prisoners on work release programs if the judges place their waiver in

writing and forward it to the correct departmental authority.

Other laws. The Department of Health and Environmental Control may take enforcement action against the holder of an emergency medical technician certification anytime it is determined that the holder (1) no longer meets the qualifications set by the department, (2) has failed to provide to patients emergency medical treatment of a quality deemed acceptable by the department, or (3) is guilty of misconduct as outlined by the department's rules and regulations. Further, the department is authorized to suspend a certificate pending the investigation of any complaint or allegation regarding the commission of an offense that would be considered misconduct.

Tennessee

Prevailing wage. The State Prevailing Wage Commission has been urged to continue its efforts to develop an Internet application for the electronic submission of survey forms by contractors and to periodically update the General Assembly on the progress of such development.

Plant closing. Any employer, person, corporation, or institution that files for bankruptcy or ceases to operate as a business shall provide notice to the clerk or the department responsible for tracking child support payments for employees of those filing for bankruptcy or ceasing to operate at least 10 days prior to the entity's cessation of operations as a business. The entity shall provide notice regarding the termination of employment to the clerk, the department, or the office in the State or in any other State to which the withheld income was to be sent. Any such notice shall include the names of any affected employees subject to an income assignment, the last known address of each of those employees, and the names and addresses of any new employer or source of income of those employees. Failure to comply subjects the entity to payment of any amounts due, up to the accumulated amount of the monetary assignment, as well as a civil penalty of \$100 per employee for the first failure to comply, \$200 per employee for the second failure to comply, and \$500 per employee for each occurrence thereafter.

Hours worked. The State Emergency Management Agency is now authorized to declare a state of emergency, or to declare a state of emergency prospectively in anticipation of an emergency, in order that

certain commercial vehicles engaged in the distribution of electric power, the supply of fuel, or the provision of telecommunications services to residences and businesses may carry out their services. The declaration of the state of emergency is for the purpose of triggering the emergency-relief-effort portion of the hours-of-service regulations promulgated by the Federal Motor Carrier Safety Administration.

Time off. Jurors may now request, prior to each day's service, that the person responsible provide each juror's employer with a statement which shows the number of hours the juror spent serving if service has been less than 3 hours.

Discharge. The State code concerning the discharge of those employed in higher education was amended. Policies governing reductions in force at institutions of higher education shall be adopted by the Board of Regents of the University of Tennessee and the State Board of Regents. The policies shall provide a consistent and equitable method of reducing the workforce when necessary. At a minimum, the policies shall (1) apply to regular, nonfaculty employees, (2) provide a written rationale for any reduction in the workforce, (3) identify the functional areas affected, review the budget implications involved, and develop specific written criteria to be used in identifying duties that will be reassigned or eliminated, (4) provide for such factors as institutional and positional length of service, unit needs in selecting affected employees, and qualifications necessary to perform the remaining duties of the affected unit, (5) require written notice to affected employees as far in advance as possible, and (6) afford an opportunity for affected employees to receive notification when vacancies for similar positions at their former campuses occur.

Equal employment opportunity. The State equal-pay law was amended to institute compensatory and punitive damages for employers who knowingly violate the law. A first violation knowingly committed by an employer shall result in the employer's reimbursing the affected employee the unpaid wages and up to an equal amount of liquidated damages. A second such violation shall result in the employer's reimbursing the employee the unpaid wages and up to double the amount of unpaid wages as liquidated damages. A third such violation shall result in the employer's being liable to the employee the unpaid wages and up to

three times the amount of unpaid wages as liquidated damages.

The State Occupational Safety and Health Administration may now initiate investigations and enforcement actions relating to allegations of discrimination under the law regarding local governments' duties to employees.

Drug and alcohol testing. Neither newly hired employees nor current employees may serve as a driver for a childcare center until they have undergone a drug test and received a negative result for illegal drug use.

Workplace violence and security. There is no longer a requirement that persons being investigated pay the cost of background checks when applying for positions of trust as a State employee.

Utah

Drug and alcohol testing. State labor code provisions related to drug testing were amended by defining "test-related information" as information received by the employer through the employer's drug- or alcohol-testing program. Information covered under the definition includes interviews, reports, statements, memoranda, and test results. Such information shall be disclosed to the Division of Occupational and Professional Licensing and may be used only in a proceeding related to an action taken by the division in whole or in part on the basis of test-related information. The employer may be examined as a witness in regard to test-related information when the division is taking such action.

Worker privacy. Each school district and school shall maintain a list at each school identifying and distinguishing between teachers and associate teachers and shall make the list available for review by any person upon request.

The State Public Safety Code was amended to allow background checks on all applicants, not just peace officers, for employment with a law enforcement agency. In addition, the code now (1) requires that training academies provide background information on applicants to law enforcement agencies and (2) protects the academies from civil liability for disclosing information to law enforcement agencies evaluating the applicants with the aim of hiring them. Such background information includes (1) the record of any final action

based on an investigation concerning the applicant's qualification for certification as a peace officer and (2) notice of any pending or ongoing investigation regarding the applicant's certification as a peace officer.

Virginia

Wages paid. The State code concerning the time and method of payment of wages to employees was amended. Employers may now pay wages by credit to prepaid debit cards or card accounts from which the employee is able to withdraw or transfer funds, as long as the employer has made full disclosure of any applicable fees and provided that the employee has consented to such method of payment. This amendment eliminated the requirement that payments of wages by prepaid debit cards be deposited into a trust account.

Time off. When employers fail or refuse to comply with State requirements entitling employees to leaves of absence from their respective nongovernmental duties without loss of seniority, accrued leave, or efficiency rating in order to participate in State-required military duty or service, the State attorney general, upon a request from the affected employee, may represent the employee personally or through an assistant.

Employee eligibility for participation in the State Sickness and Disability Program shall be suspended when the employee is placed in a nonpay status if such status is due to a suspension pending investigation or the outcome of employment-related court action.

The State code now stipulates that no person who is summoned to serve on a jury shall be required to work on the day of his or her jury duty.

The employee day-of-rest exemption that was inadvertently permitted earlier in the regularly scheduled legislative session does not apply to persons engaged in (1) transportation, (2) public services and utilities, manufacturing, processing, or plant operations of all types, (3) publishing, including the sale and distribution of the products, (4) servicing, fueling, selling of parts and supplies, or repair of motor vehicles, boats, or aircraft, (5) the operation of motion picture theaters or the production of radio and television programs, (6) medical services or other services provided on an emergency basis, (7) sports, athletic events, and the operation of historic, entertainment, or recreational facilities, including the sale or rental of boats and swimming, fishing, or boating equipment,

(8) agriculture, including the operation of nurseries or florist establishments, (9) the preparation and sale of prescription and nonprescription drugs or the sale of medical, hygienic, and baby supplies, (10) wholesale food warehouses or ship chandleries, (11) restaurants or delicatessens, (12) janitorial, custodial, or like services, (13) the operation of hotels, motels, funeral homes, or cemeteries, (14) mining and supporting facilities, (15) the sale of tobacco and related products, (16) a drugstore in which the majority of the sales receipts consist of prescription and nonprescription drugs and health and beauty aids, (17) the sale of novelties, cameras, photo supplies, antiques, pictures, paintings, art supplies, souvenirs, animals as pets, or pet supplies, and (18) the sale or leasing of noncommercial real property or mobile homes and the sale of modular, panelized, or other prefabricated houses.

Worker privacy. Upon entering into a written agreement, the tax commissioner is now permitted to provide, to the commissioner of labor and industry, such tax information as may be necessary to facilitate the collection of unpaid wages.

Department of Labor. The definition of "commissioner" within the State code was amended to mean the commissioner of labor and industry. Except where the context clearly indicates the contrary, any reference to the commissioner shall be construed to include his or her authorized representatives.

The Migrant and Seasonal Farmworkers Board and the Interagency Migrant Worker Policy Committee were transferred from the Department of Labor and Industry to the Commonwealth Employment Commission. The committee shall coordinate its activities with the board. All agencies of the Commonwealth Employment Commission shall be required to cooperate with the committee upon request.

Offsite work. The head of each State agency is now required to implement a comprehensive statewide policy under which eligible employees of State agencies may participate in alternative work schedules. The policy shall include model guidelines, rules, and procedures for participation in alternative work schedules and may include an incentive program to encourage State employees to participate in such schedules. The policy shall allow employees to participate without diminished employee performance or delivery of service. Each agency head shall set annual

percentage targets for the number of positions eligible for alternative work schedules. All agencies shall have a goal of not less than 25 percent of its eligible workforce participating in alternative work schedules by July 1, 2009.

Washington

Minimum wage. The State's minimum wage, as scheduled, rose to \$7.35 per hour.

Agriculture. The State Department of Labor and Industries must collect and analyze data from agricultural employers that are required to implement a monitoring program for employees who handle category I or category II organophosphate or *N*-methyl-carbamate pesticides. The data collection and analysis will enable the department to determine whether mandatory testing is warranted and, if so, what thresholds or exposure to pesticides should trigger mandatory testing. The department shall report its findings on January 1 of 2005, 2006, and 2007.

Discharge. Employers may not discipline or discharge reserve officers from employment because of leave taken that is related to a fire alarm or an emergency call. Any reserve officer who believes that he or she was discharged or disciplined in violation of this law may file a complaint alleging the violation with the director within 90 days of the alleged violation.

Genetic testing. A law was enacted that prohibits any person, firm, or corporation, as well as the State or any of its political subdivisions or municipal corporations from requiring, directly or indirectly, that any employee or prospective employee submit genetic information or submit to screening for genetic information as a condition of employment or continued employment. This information does not include that obtained from (1) routine physical measurements, including chemical, blood, and urine analysis, unless conducted purposefully to diagnose genetic or inherited characteristics; and (2) results from tests for abuse of alcohol or drugs or for the presence of HIV.

Worker privacy. Certificated and classified school district employees who apply to another school district must sign a release authorizing the disclosure of any information on sexual misconduct, including any related documents in their personnel file.

Employees who refuse to sign the release shall not be hired by any school district within the State. Hiring school districts must request any information about that employee's sexual misconduct, including related documents, from all of the applicant's previous school district employers. The information must be provided within 20 days of receipt of the request. The school districts that provide such information are granted immunity when the information is provided in good faith. Wrongful disclosure of such information is a misdemeanor. Applicants may be employed on a conditional basis, pending a review of any information on sexual misconduct. School districts are not permitted to enter into employment contracts or severance agreements that call for sealing records of verbal or physical abuse or sexual misconduct. This prohibition does not apply to existing contracts or agreements.

West Virginia

Overtime health care. Hospitals are now prohibited from mandating a nurse, directly or through coercion, to accept an assignment of overtime, and hospitals are also prohibited from taking action against a nurse solely on the grounds that the nurse refuses to accept an overtime assignment at the facility if the nurse declines to work additional hours because doing so may, in the nurse's judgment, jeopardize the safety of patients or employees. Nurses may be mandated (1) to continue on duty in overtime status due to an unforeseen emergent situation that jeopardizes the safety of patients or (2) to complete a single patient-care procedure already in progress. Employers, however, may not construe this amendment as permitting the employer to use a staffing pattern as a means to require a nurse to complete a procedure or to use on-call time as a substitute for mandatory overtime.

Equal employment opportunity. The State code concerning equal employment opportunity was amended to require that the State police superintendent file an annual report with the legislature on or before the first day of January of each year. The report shall include a summary of the efforts, and the effectiveness of those efforts, intended to recruit women, African-Americans, and other minorities into the ranks of the State police.

Worker privacy. The State code regarding the privacy of the management and preservation of public records was amended. Personal information about State employees, such as their home addresses, Social Security numbers, credit and debit card numbers, driver's license numbers, and marital status or maiden name, is considered confidential and should be released to nongovernmental entities only for purposes authorized by Federal law or regulation. In addition, personal information maintained by State entities on non-State employees, such as their Social Security numbers and credit or debit card numbers, can be released only for such purposes as are authorized by Federal law or regulation.

Other laws. In addition to State residents, employees of licensed State bingo organizations who are residents of a bordering State and whose county of residence is contiguous to the county in which the bingo operation is conducted, or who are residents of a bordering State and who reside within 35 miles of the county in which the bingo operation is conducted, may participate in any manner in the conduct of any bingo game or operate any concession in conjunction with the occasion of a bingo game.

Wisconsin

Minimum wage. The Madison Common Council adopted a Minimum Wage Ordinance

raising the minimum wage for workers in the community to \$5.70 on January 1, 2005, and then to \$6.50 in 2006, \$7.25 in 2007, and \$7.75 plus indexing in 2008. It is expected that the raise will benefit up to 17,000 low-wage workers in the community.

Prevailing wage. On January 1, 2004, the prevailing-wage threshold amount for coverage under the State prevailing-wage laws for State and municipal contracts was changed administratively from \$180,000 to \$186,000 for contracts in which more than one trade is involved and from \$37,000 to \$38,000 for contracts in which a single trade is involved. On January 1, 2005, these amounts were changed administratively to \$200,000 for contracts in which more than one trade is involved and \$41,000 for contracts in which a single trade is involved.

Discharge. The Department of Workforce Development is required to promulgate rules specifying a grievance procedure for resolving complaints of alleged violations of the Wisconsin Works (w-2) Program, which prohibits an employer participating in the program from creating a w-2 employment position by terminating the employment of a regular employee or by filling a position that is vacant because a non-w-2 employee is on strike, on layoff, or engaged in a labor dispute.

Wyoming

Other laws. A law was enacted extending active-duty military rights and protections to members of the State National Guard ordered to active duty or training by the State or Federal government for a period of more than 30 consecutive days. Those persons who knowingly violate these protections shall be guilty of a misdemeanor punishable by a fine not to exceed \$1,000.

Notes

¹ Not included in the volume of labor legislation tracked in this article are laws dealing with most occupational safety and health issues, employment and training, labor relations, employee criminal background checks (except for those dealing with security issues), living wages, and economic development.

² Alabama, South Dakota, and Vermont did not enact significant labor legislation in 2004. Information about Guam, Puerto Rico, and the Virgin Islands was not received in

time to be included in the article, which is based upon information received by November 12, 2004.

³ Several tables displaying State labor law information, including a table on State minimum-wage rates and a table on State prevailing-wage laws, along with a number of tables concerning child labor issues, are available on the Internet at the U.S. Department of Labor, Employment Standards Administration, website; visit <http://www.dol.gov/esa/programs/whd/state/state.htm>.

⁴ *Ibid.*

⁵ Diversions are those occurrences wherein a defendant fulfills certain obligations, such as payment of restitution, court costs, costs associated with the diversion itself, the cost of residence in a specified facility, maintenance of gainful employment, and participation in educational, social, vocational, or psychological programs or other rehabilitative services. The prosecutor shall act to have any criminal charges against the defendant that are associated with diversions dismissed with prejudice.