

## State labor legislation enacted in 1995

*Child labor regulations, prevailing wages, family leave, and restrictions on employee-leasing firms and on drug and alcohol testing were important issues that were the subject of legislation the past year*

Richard R. Nelson

State labor legislation enacted in 1995 covered a wide variety of employment standards and included many important laws.<sup>1</sup>

Among new laws passed were several significant prevailing wage and child labor measures, as well as legislation affecting the structure of State labor departments, repealing two private employment agency regulatory laws, and enacting right-to-work measures. Prevailing wage laws also were the subject of major court decisions in three States.

**Wages.** A majority of the States proposed legislation in 1995 to enact minimum-wage laws or to increase minimum rates. Despite this interest, only one new increase was enacted: a measure, adopted in Massachusetts over the Governor's veto, that raised the State rate to \$4.75 per hour, with a further increase to \$5.25 scheduled for Jan. 1, 1997. Also, a rate increase to \$4.75 an hour took place in Vermont on Jan. 2, 1996, as provided for in a prior law.

In addition to Massachusetts and Vermont, rates higher than the Federal were already in effect in Alaska, Connecticut, the District of Columbia, Hawaii, Iowa, Massachusetts, New Jersey, Oregon, Puerto Rico (for a limited number of occupations), Rhode Island, the Virgin Islands, and Washington.

Maine raised to \$5.15 an hour the upper limit that the State rate may be raised to match any Federal increases. In other developments, New Hampshire and North Dakota eliminated language equating the minimum wage with a living wage; New Hampshire made workers whose employment is subject to the Federal Fair Labor Standards Act now also

subject to the State minimum-wage law and removed all references to wage boards and their powers and duties; and new exemptions were added to the laws of Delaware, Montana, and Oregon.

For the third consecutive year, there were several significant prevailing wage developments. Enforcement of the Michigan law ceased as the result of a court decision holding it invalid because of preemption by the Employee Retirement Income Security Act, and a ruling in Oklahoma voided that State's law, holding its use of federally determined rates an unconstitutional delegation of authority. Major changes to the prevailing wage laws, including revised rate determination procedures, were made in Arkansas, Indiana, and Oregon. Other changes included increasing the dollar threshold amount for coverage in Indiana and Oregon; authorizing civil penalties in Arkansas and Oregon; and establishing a fee on contracts in Oregon, to be used to conduct surveys and administer the law. The changes in Indiana have not taken place, because enforcement has been enjoined by a court decision.

Other prevailing wage activities included establishing an enforcement fund in New York; changing the disposition of penalty monies collected in Montana; and, in Delaware, providing protection for employees who make complaints or participate in investigations under the law. In Utah, a State without a prevailing wage law, a measure was adopted to prohibit the State or any local government from requiring the payment of a prevailing wage.

Wage payment laws were amended to change requirements regarding the frequency of regular payments in Arizona, Delaware, Maine, North Dakota, and Utah and requirements regarding the time allowed for final payments in Louisiana, North Dakota, Oregon, and Utah. Lists of authorized voluntary payroll deductions were expanded in Arkansas, Geor-

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

gia, Illinois, South Carolina, and Texas. In Indiana, procedures were established for recovering amounts overpaid to employees. The Delaware wage payment law was amended to exempt Federal employees and employees of the State or any political subdivision.

The North Dakota law authorizing the labor department to enter into reciprocal agreements with other States for collection of wage claims and judgments will now also permit agreements with other countries or nations, including Indian nations.

*Family issues.* Parental leave was once again an area of State legislative interest, although not to the same extent as before passage of the Federal Family and Medical Leave Act in 1993. Teachers in North Carolina may now use up to 12 weeks of leave following the birth or adoption of a child. A new family leave law was enacted in Oregon replacing the State family and medical leave, parental leave, and pregnancy leave laws. The Hawaii law was strengthened by the addition of enforcement procedures and remedies.

*Child labor.* Child labor was a major topic of legislation in 1995, with recent trends to strengthen enforcement and penalty provisions and to restrict hours of employment and hazardous occupations continuing. These trends are reflected in several changes in the Alabama law, including revising prohibited hazardous occupations to conform to Federal requirements and giving the labor department responsibility for declaring occupations hazardous, extending coverage to additional occupations, requiring work permits to age 18, adding restrictions on the employment of models under age 18, requiring meal breaks for children, and increasing the minimum age requirement for street trade occupations. In Texas, door-to-door sales by minors under age 14 is now prohibited unless the child is accompanied by a parent or guardian. Missouri gave rulemaking authority to the Department of Labor and Industrial Relations, conformed the State's daily hours and nightwork restrictions for 14- and 15-year-olds to Federal standards, restricted work in the entertainment industry, and authorized civil penalties, with fines collected going to a new Child Labor Enforcement Fund.

Among other changes, in Oregon, minors aged 14 through 17 are no longer required to obtain work permits. Instead, employers will be required to apply for annual certificates to employ such minors. Wisconsin administratively changed from 4 to 5 the number of hours a day 16- and 17-year-olds may work during school weeks.

Employment opportunities were expanded in Arkansas, Montana, Nebraska, Ohio, Oregon, Texas, and Washington.

In North Dakota, school-to-work transition programs will be exempt from employment certificate requirements and restrictions on hours of work for 14- and 15-year-olds. Nevada will provide a partial exemption from the business tax for businesses which employ pupils in an approved program that combines work and study.

*Equal employment opportunity.* As in past years, various

forms of employment discrimination were the subject of legislation in many States. In the more significant of these provisions, Rhode Island now prohibits employment discrimination because of sexual orientation, sex discrimination was added to the list of prohibited activities for State employees in Arkansas, and amendments were made to veterans' preference provisions in Arkansas and Louisiana. Louisiana also made changes in the law granting leave for military service. In Maine, a ballot measure that would have barred local gay rights ordinances was defeated.

In Colorado, reasonable workplace accommodations are to be made for disabled applicants or employees who are accompanied by dogs that assist them, and Montana provided for the adoption of administrative rules governing the use of personal assistants by disabled individuals. Restrictions on the use of genetic information were eased in Oregon, and greater latitude in resolving discrimination complaints was given to enforcing agencies in Iowa and North Dakota.

*Employee testing.* A few States enacted laws relating to drug and alcohol testing of employees. A law of general application was enacted in Alabama providing for the implementation of drug-free workplace programs. Among other legislation, laws requiring testing of employees in certain limited occupations were enacted in California and Georgia, labor organizations in Maine may now test their members for substance abuse, and the law placing restrictions on drug and alcohol testing in Montana was amended to permit testing where an employer has reasonable grounds to believe that an employee contributed to a job-related accident.

Genetic testing as a condition of employment, membership in a labor organization, or licensure was prohibited in New Hampshire.

Maine employees or job applicants may not be required to have an HIV test or reveal if they have had such a test, except when based on a bona fide occupational qualification.

*Employee leasing.* The leasing of employees continued as an issue of legislative interest, with a new law enacted in Montana adopting standards for the operation, regulation, and licensing of firms engaged in this practice and establishing their responsibility for the payment of wages, benefits, payroll-related taxes, and workers' compensation premiums. Amendments revised surety requirements in New Mexico and, in Arkansas, prohibited attempts by employee-leasing firms to evade the act.

*Private employment agencies.* Laws providing for the licensing and regulation of private employment agencies were repealed in Delaware and Montana, and a repeal measure was vetoed in Oregon. Other actions reduced from three to one the classes of licenses issued in North Dakota, expanded exemptions in Illinois, changed the fee structure for clients in Louisiana, and amended the Arkansas law with respect to fees that can be charged employers.

*Preference.* The Washington statute requiring a preference

in favor of residents in the hiring of employees on public works contracts was repealed. Among the statutes enacted was a new law granting a preference, in Maine, in favor of State residents on contracts for goods and services and amendments to preference provisions in Idaho, Mississippi, and Nevada.

**Worker privacy.** Among laws enacted with respect to worker privacy, the Montana law requiring licensing of polygraph examiners was repealed, polygraph-testing laws were amended in Alabama and Texas, and laws pertaining to the confidentiality of personnel records were adopted in Connecticut, Florida, and Nevada.

Continuing a recent trend, Indiana, Louisiana, Maine, New Mexico, and Oregon provided immunity from civil liability for employers who provide information about the job performance of a current or former employee to a prospective employer. The Georgia law of this kind was amended to extend coverage.

**State labor departments.** State labor departments and offi-

cial were the subject of an unusually large amount of legislative attention in 1995. In North Dakota, beginning Jan. 1, 1999, the commissioner of labor will be appointed rather than elected, and in Oregon, the commissioner of labor is scheduled to become a nonpartisan rather than a partisan office. New duties or authority was given to the labor departments in Arkansas, Florida, Maryland, and Oklahoma. Particularly important was reestablishment of the Employment Standards Unit of the Maryland Division of Labor and Industry.

In a major development, the Ohio Department of Industrial Relations was abolished, and its functions were transferred to other agencies. Certain specified safety functions were transferred out of the labor department in Montana, and the registration of farmworker camp operators and related activities were transferred from the Oregon Bureau of Labor and Industries. A work group was also formed to develop a plan to transfer functions of the Oregon bureau to other agencies.

The following is a summary, by jurisdiction, of labor legislation enacted in 1995.

## Alabama

**Hours.** The commissioner of the Department of Conservation and Natural Resources was authorized to designate the calendar work week for the department's law enforcement officers.

**Child labor.** Several significant changes were made in the child labor law. Among these, prohibited hazardous occupations were revised to conform closely to Federal requirements; new occupations were added to the list of prohibited occupations, and several occupations that formerly were prohibited up to age 16 are now prohibited to age 18; restrictions were added for minors under age 16 in occupations involving working at heights above 6 feet, as well as working in junkyards, scrap metal yards, or lumberyards; persons under age 18 were prohibited from performing nude in any business establishment; changes were made in provisions regulating work in places where alcohol is sold; and the labor department rather than the board of health was given responsibility for declaring occupations hazardous. In addition, domestic service employment and work in the grading or handling of agricultural products will now be covered by the law, work permits are required to age 18, restrictions were added on the employment of models under 18 years of age, and meal breaks will be required for 14- and 15-year-olds. The age requirement for street trade occupations was increased from 12 to 14, and the minimum age for delivering newspapers was increased from 10 to 12. The penalty for street trades violations was increased from a range of \$10 to \$50 per violation to \$100 to \$500 per violation. A whistleblower provision was adopted protecting employees and others from being discriminated against for disclosing information, making a charge, or refusing to obey an illegal order.

**Drug and alcohol testing.** Provision was made for implementing drug-free workplace programs for workers in the State. Such programs are to include

a written policy statement given to employees and applicants informing them of the employer's policy on employee substance abuse and identifying types of testing that may be required and the consequences of a positive, confirmed test result; a requirement for testing applicants following an offer of employment and for testing under other situations, including testing on grounds of reasonable suspicion and testing when an employee has caused or contributed to an on-the-job injury; provision of an employee assistance program or a resource file of providers of assistance; employee education programs on substance abuse; and supervisor training programs. Employers with acceptable drug-free workplace programs will qualify for a 5-percent discount on workers' compensation premiums.

**Worker privacy.** The law prohibiting the use of polygraph testing of State employees will now allow testing of prospective employees.

**Other laws.** An employee of a State agency who is a certified disaster services volunteer of the American Red Cross may, with agency recommendation and approval from the Governor, be granted leave from work with pay for up to 15 workdays annually to participate in specialized disaster relief services for the American Red Cross without loss of seniority, pay, vacation time, sick leave, or accumulated earned overtime.

## Alaska

**Wages.** Provisions requiring employers in violation of minimum-wage and overtime requirements to pay the amounts due and an additional equal amount as liquidated damages were amended to allow the court to award a lesser amount of damages or no liquidated damages at all if the defendant shows that the act or omission giving rise to the violation was made in good faith and that the employer had reasonable grounds for believing that he or she was not in violation. Failure to inquire

into Alaska law will not be a basis for a claim of good faith in considering penalties.

**Child labor.** A minor under the age of 18 may not be employed or allowed to work in any capacity on the premises of a business that offers adult entertainment. Violators will be guilty of a class A misdemeanor for a first offense and a class C felony for second and subsequent offenses.

## Arizona

**Wages.** The director of the Department of Public Safety was authorized to establish alternate work periods for the purpose of determining overtime compensation for employees of the air rescue section of the department. The alternate work period established may not exceed 28 days or 160 hours.

The law governing payment of wages to employees was amended to require employers to personally deliver or mail a continuing employee's wages no later than 5 days after the end of the most recent pay period. An employer may pay a continuing employee's overtime or exception pay up to 15 days after such wages are earned.

## Arkansas

**Wages.** Payroll deductions for dues for the Arkansas Rehabilitation Association and fees for participation in the State Employees Benefit Corporation were added to the list of payroll deductions authorized for State employees. Riders' fees for participation in the Arkansas State Employees' Association Van-Pool Program were removed from the list.

Among several significant changes in the State's prevailing wage law, prevailing wages are now to be the wages paid for similar work in the county or locality where the work is performed, rather than in the county only, as before. "Locality" is defined as a specific county or a specific group of counties in the same geographic area of the State. The powers of the director of the department of labor to en-

force the law were expanded to include the following: specific authority to enter and inspect construction sites and other places of business and to institute legal actions for unpaid wages and penalties; authority to assess civil penalties of up to \$1,000 for each violation, replacing criminal penalties for violations of the law; and authority to make any contractor or subcontractor determined to have violated the law ineligible to bid on or be awarded any public works contract or to perform any construction work in any manner for any public body for a period of 2 years from the date of the final administrative determination. Contractors and subcontractors are to keep records of the addresses, social security numbers, and work classifications of workers, in addition to previously required information. All payroll or wage records submitted to the department are to be kept confidential.

**Child labor.** The child labor law was amended to allow children under age 16 to work in bowling alleys.

**Equal employment opportunity.** Discrimination because of sex was added to the list of forms of discrimination that constitute grounds for dismissal if practiced by a State employee.

The law providing for veterans' preference in appointment to or employment in a State position will now cover qualified veterans who served on active duty in Lebanon from Aug. 25, 1982, through Feb. 26, 1984, the Persian Gulf conflict after Aug. 2, 1990, and those who will serve in any future conflicts as specified by Presidential proclamation or Federal law.

**Employee leasing.** A new section was added to the law regulating employee-leasing firms prohibiting attempts by such firms, or others who lease employees, to evade the provisions of the act by claiming to be the sole employer of the employees.

**Private employment agencies.** The law regulating private employment agencies was revised with respect to fees that can be charged employers. Restrictions on agencies were removed, permitting them to charge an employer more than one fee for any one placement and to increase the fee that may be charged employers when employment lasts less than 90 calendar days. It was also specified that, without an actual job placement, an employment agency may both contract with an employer on a fee-paid basis to pay for placement services for an employee and charge an employer for a retained services contract to search for prospective applicants.

**Other laws.** The duties relating to amusement rides and amusement attractions were transferred from the Arkansas Insurance Department to the Arkansas Department of Labor.

School districts are to grant a leave of absence with full pay for up to 1 year to any school employee absent from duty in a public school as a result of personal injury from an assault or other violent criminal act committed against the employee during the course of employment.

All individuals working in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for

subsequent delivery or distribution, are to be considered independent contractors rather than employees. Previously, only those under the age of 18 were not considered employees.

### California

**Hours.** Nonunion workers in underground mines and in smelters may now hold elections, supervised by the labor commissioner, to decide whether to work more than 8 hours in 1 day. The labor commissioner is required to investigate any claims of election misconduct and to validate a request for a neutral third party to conduct the elections.

**Family issues.** The law providing that peace officers and certain other specified members of the Public Employees' Retirement System, as well as employees subject to the County Employees' retirement law, are entitled to leave of absence with pay while disabled by a job-related injury or illness was amended to provide that any such leave of absence taken by a peace officer will not be considered family care and medical leave or reduce the time authorized for that leave.

**Child labor.** The child labor law was amended to make violations relative to the minimum age and geographical limits for door-to-door sales and violations involving work in gasoline service stations Class A violations. The same amendment removed the provision that musicians who are minors must obtain permission to perform from the mayor of the town in which they perform and also raised the maximum civil penalty for child pornography violations from \$5,000 to \$7,500.

**Drug and alcohol testing.** Taxicab operators regulated by cities or counties, charter-party carriers of passengers and passenger stage corporations regulated by the Public Utilities Commission, and employees of transportation services and passenger jitney services regulated by the San Diego Metropolitan Transit Development Board will be required to participate in programs that test for the use of controlled substances and alcohol.

**Worker privacy.** A person who, by subpoena duces tecum, seeks the production of employment records of an employee that are maintained by the employee's current or former employer must give notice to the employee by delivering a copy of the subpoena, the affidavit supporting the issuance of the subpoena, and the specified notice to the employee.

**Other laws.** In support of employee fitness programs as a means of reducing absenteeism in the workplace and employee turnover while bolstering employee morale and commitment, October 1995 was proclaimed as Workplace Fitness Month in the State.

### Colorado

**Equal employment opportunity.** All employers are to ensure that reasonable accommodations are made to make the workplace accessible to otherwise qualified persons with a disability who are applicants or employees and who are accompanied

by a dog that assists them, unless such accommodations would entail significant difficulty or expense for the employer. Also, the employer must permit a disabled employee to keep the dog with him or her at all times and may not discharge, refuse to hire, or otherwise discriminate against any disabled person because he or she is accompanied by the dog.

### Connecticut

**Wages.** The exemption from overtime requirements for individuals involved in the sale of automobiles was amended to add a definition of "automobile salespersons."

**Worker privacy.** Under the freedom-of-information act, sworn members of a municipal police department or of the Division of State Police within the Department of Public Safety, as well as employees of the Department of Correction, are among those whose residential address is not to be disclosed by their employers if they submit a written request to that effect and furnish a business address to the executive head of their department, agency, board, council, commission, or institution.

### Delaware

**Wages.** Inmates in the custody of the Department of Correction and inmates on work release who participate in programs sponsored by the Department of Correction were added to the list of those excluded from coverage by the State minimum-wage law. The exclusion does not apply to inmates employed by an employer other than the State or a political subdivision thereof.

A section added to the prevailing wage law prohibits any employer from discharging or otherwise discriminating against an employee because that employee has made a complaint under the law or has testified or otherwise cooperated in a complaint or investigation.

The law requiring public works contracts over \$10,000 to be subject to competitive bidding, but providing exceptions, including for unusual emergencies, was amended to ensure that requirements regarding prevailing wage rates and preferences for in-State workers be met.

Federal employees and employees of the State or any political subdivision thereof will be exempted from the wage payment law. In addition, a provision was added to the law allowing employers who pay their workers on or before the final day of a pay period that does not exceed 16 days to delay payment for overtime hours worked until the next pay period, for those employees hired or resuming employment during the first-mentioned pay period and for part-time or temporary employees with variable working time.

**Child labor.** The Department of Labor was exempted from paying filing fees for child labor actions filed in court.

**Private employment agencies.** The law providing for the licensing and regulation of private employment agencies was repealed.

**Other laws.** The law prohibiting employers from knowingly employing illegal aliens was repealed, in keeping with the Federal Immigration Reform

and Control Act, which preempts State law.

A State employee who is a certified disaster service volunteer of the American Red Cross may, with approval of the employing agency, be granted leave from work with pay, for up to 15 days annually, to participate in specialized disaster relief services. Such volunteers are exempted from overtime pay, shift differential pay, hazardous duty pay, and any other forms of pay or compensation that would be in addition to their regular pay while participating in the aforesaid services.

The code relating to alcoholic liquors was amended to provide for the imposition of penalties upon licensees who threaten or otherwise penalize employees who refuse to violate the rules of the Alcoholic Beverage Control Commission or statutes of the State.

## Florida

**Worker privacy.** The law listing university personnel records that are considered confidential was amended to include those portions of the records pertaining to sexual harassment investigations that identify or could lead to the identification of the complainant or a witness. Custodians of such records may release information from them only upon written authorization from the employee or upon a court order.

**Other laws.** A law was enacted to regulate labor pools in the State. Labor pools are businesses which operate labor halls that supply day laborers on a temporary basis to third-party users. According to the new law, day laborers may not be charged for safety equipment, clothing, accessories, or any other items required by the nature of the work either by law, by custom, or as a requirement of the third-party user; may not be charged more than a reasonable amount for lunch or for transportation to or from the work site; and may not be charged for cashing a paycheck. Workers are to be paid in cash or its equivalent and are to be furnished a written itemized statement showing each deduction from wages. Labor pools may not restrict the right of a day laborer to accept a permanent position with a third-party user. Labor pools must comply with all workers' compensation and occupational safety and health requirements. The law does not apply to farm labor contractors, employee-leasing companies, temporary help services, labor union hiring halls, and labor bureau or company employment offices employing individuals for their own use.

The Division of Labor, Employment and Training of the Department of Labor and Employment Security was renamed the Division of Jobs and Benefits.

The Division of Blind Services and its functions were transferred from the Department of Education to the Department of Labor and Employment Security.

As part of a measure providing for the privatization of public assistance benefit recovery activities of the Department of Health and Rehabilitative Services, the privatization contract is to require the contracting firm to give priority to the employment of career service employees of the department laid off due to the privatization. In addition, a task force composed of representatives from the Department of Health and Rehabilitative Serv-

ices, the Department of Labor and Employment Services, and the Department of Management Services will be established to assist laid-off employees in seeking reemployment.

## Georgia

**Wages.** The Georgia Housing and Finance Authority was authorized to withhold payments from employees, retirees, and dependents for participation in the State employees' health insurance plan.

Voluntary deductions for the purpose of facilitating employee purchases of transit passes and other fare-related media were added to the list of authorized payroll deductions for State employees.

**Drug and alcohol testing.** Applicants for employment in State colleges, universities, and other public institutions are now required to submit to a test for the use of illegal drugs. All positive results are to be reviewed by the medical review officer to determine whether there is an alternative medical explanation. Applicants who refuse to take such a test or who test positive and do not have any alternative medical explanation for the result will be disqualified for employment. Test results are to remain confidential and may not be a public record unless required by State or Federal law.

**Worker privacy.** The law providing immunity for certain categories of employers who disclose information regarding an employee's job performance was revised to extend coverage to banks, licensed home care providers, home health agencies, savings and loan associations, and credit unions and their employees.

## Hawaii

**Wages.** In a change to the State's prevailing wage law, a person or firm found in violation of the law within 2 years of a first violation will be subject to payment of a penalty of 10 percent of the total contract amount. Previously, the penalty was for an amount up to 10 percent. Also, beginning July 1, 1996, hearings held under the law will be conducted by the Department of Labor and Industrial Relations, rather than by the Labor and Industrial Relations Appeals Board.

**Family issues.** The State family leave law was amended to add procedures and remedies necessary for its enforcement. Among the procedures adopted were those for filing a complaint by an individual, the attorney general, or the labor department; for investigating and conciliating complaints; and for issuing compliance orders when violations are found. Also, procedures were added for employers found in violation of the law to appeal court orders. Actions to enforce the law or to recover damages are to be brought in court as civil actions. Courts are authorized to provide remedies, including recovery of lost wages and benefits, an equal amount as liquidated damages, and court costs. Injunctive relief may be provided as well. The law was also amended to include a stepchild or a legal ward within the definition of "child" for purposes of coverage, to revise the definition of "serious health condition," and to place limits on the substi-

tution of sick leave for family leave.

## Idaho

**Family issues.** The penalty that may be imposed on an employer who refuses to employ or takes disciplinary action against an absent parent who is subject to an income-withholding order was reduced from \$1,000 to a maximum of \$300.

**Preference.** The law pertaining to competitive bidding on public contracts was amended. Now, in the case of a tie bid where the competing firms have equal quality of goods, cities are authorized to give preference to goods produced and manufactured in the State or to bidders having a significant economic presence in the State.

**Other laws.** The State right-to-work law was amended to specify that it is applicable to all public and private employees, including employees of the State and its political subdivisions.

The law relating to leaves of absence of county officers will now permit the board of county commissioners to adopt a policy permitting officers who take such a leave to receive their regular salaries for absences not to exceed 4 weeks per year.

## Illinois

**Wages.** Several changes were made in minimum-wage rules. Among these, rules were established for punitive damage assessment through administrative hearings, definitions were adopted for "willful conduct" by employers and by volunteers, and the definition of "domestic service work" was changed to exclude, and therefore make subject to the law, those workers whose primary duty is to be a companion to individuals who are aged or infirm and those workers whose primary duty is to perform health care services in or about a private home.

The law authorizing local governmental agencies to make specified voluntary payroll deductions was amended to add community college districts to the definition of "local governmental agency."

**Child labor.** As provided for in earlier legislation, administrative rules were adopted establishing procedures for employers of children working in the entertainment industry to obtain waivers on work hours from the Department of Labor. Applications for such waivers must be signed and dated by the employer, a parent or guardian, and a union representative if a union represents the minor. The application is to include information on the age and address of the child, the work hours expected, the person designated to supervise the child at work, and descriptions of the work to be performed and the location of the work.

**Private employment agencies.** The section of the Private Employment Agency Act exempting firms that identify or recommend executive or professional employees for consideration at the prospective employer's expense was amended to apply to all such activities by eliminating the references to executives or professionals. It was also specified that the exclusion is not applicable to theatrical employment agencies or domestic service employment agencies.

**Other laws.** Any employee of the Department of Corrections will, upon request, be granted a leave of absence, without pay, to serve in an elected law enforcement position.

"Bona fide labor dispute" was defined for purposes of exemptions, with regard to picketing occurring at the workplace during a bona fide labor dispute, from criminal law provisions prohibiting stalking and aggravated stalking. A "bona fide labor dispute" is defined as any controversy (1) concerning wages, salaries, hours, working conditions, or benefits, including health and welfare, sick leave, insurance, and pension or retirement provisions, (2) concerning the making or maintaining of collective bargaining agreements, or (3) concerning the terms to be included in such agreements.

### Indiana

**Wages.** Revisions to the prevailing wage law include increasing the threshold amount for coverage from \$5,000 to \$150,000, raising from three to five the number of members on the committee that determines wage rates for each public works project, and changing the wage determination method from the "prevailing wages paid in the locality for each class of work" to the "common construction wages paid on all construction in the county where the project is located."

The amendments were scheduled to be effective July 1, 1995, but a lawsuit was filed charging that the changes were made in violation of the State constitution's provision against combining legislation into one large bill. The Lake County Superior Court held the changes to be unconstitutional and enjoined enforcement of the amended law. The decision is being appealed.

Deductions to recover amounts overpaid to employees were added to the list of permissible deductions under the wage payment law. Employers are to give 2 weeks' notice before the deductions begin, limits are placed on the amount that may be deducted each pay period, and deductions may not be made for amounts under dispute.

A political subdivision may now make contributions to a nonqualified deferred compensation plan on behalf of eligible employees.

**Other laws.** The law permitting the commissioner of labor to enter and inspect places of employment was amended to prohibit the commissioner from entering and inspecting the premises of employers, with 10 or fewer employees, either in farming operations that do not maintain labor camps or who qualify for the small-business exemption based on the number of their employees and their low occupational injury rate. The exemption for small businesses does not apply in cases of imminent danger or health hazards, to actions authorized as the result of reports of employment-related accidents, or to complaints of discrimination against employees because of exercising their legal rights.

School employees may no longer be required to join or financially support a school employee organization through payment of fair share fees, representative fees, or other fees.

An employer who discloses information about the job performance of a current or former employee to a prospective employer may not be held liable for such disclosure in a civil complaint, unless the in-

formation was known to be false at the time of disclosure. Upon written request, an applicant may obtain copies of any written document from a prospective employer that was disclosed to that employer by a current or former employer and that may affect the applicant's possibility of employment.

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

### Iowa

**Equal employment opportunity.** The Civil Rights Commission may now use mediation in resolving complaints alleging unfair or discriminatory practices. The commission or a party to a complaint may request mediation of the complaint at any time during the resolution process. Mediation may also be discontinued at the request of any party or the commission.

**Other laws.** A State employee who is a certified disaster service volunteer of the American Red Cross may, with approval of his or her appointing authority, be granted a leave of up to 15 days annually to participate in specialized disaster relief services in the State without loss of pay, accrued leave, seniority, or health insurance benefits.

### Louisiana

**Wages.** An employee who resigns from his or her employment may now be paid by the next regular payday or no later than 15 days following the date of resignation, rather than within 3 days of the resignation, as was previously required. This stipulation will not apply if superseded under the terms of a collective bargaining agreement.

The section of the charitable gaming regulatory law that places limits on the wages that workers may receive will now permit employees or volunteers to be provided meals and beverages to be eaten on the premises, as long as the total value does not exceed \$15 per person.

**Equal employment opportunity.** The law providing a five-point veteran's preference in public employment was amended to include veterans who served on active duty in Korea, Vietnam, and the Persian Gulf War.

Several changes were made in the law regulating the granting of leave for, and the reemployment rights of, persons who discontinue their employment for duty in the uniformed services of the United States or of Louisiana. New sections provide that a person with military obligations is not to be denied employment, reemployment, promotion, or any other benefit because of that obligation. Discrimination is also prohibited against any person because of that person's taking an action to enforce protections of the Act. Another change prohibits employers from deducting the compensation paid to a replacement employee from the wages of the employee replaced and on leave, and still another modification provides that an employer will not be required to reemploy a person if such reemployment

would impose an undue hardship on the employer.

**Worker privacy.** Any employer who, upon request by a prospective employer or a current or former employee, provides accurate information about that employee's job performance or reasons for separation will be immune from civil liability and other consequences of the disclosure if acting in good faith. An employer will be considered to be acting in bad faith only if it can be shown that the information disclosed was knowingly false and deliberately misleading. Any prospective employer who reasonably relies on information about an employee's job performance or reasons for separation disclosed by a former employer will be immune from civil liability, including liability for negligent hiring, negligent retention, and other causes of action related to the hiring, based on the reasonable reliance, unless further investigation, including, but not limited to, a criminal background check, is required by law.

The law that allows law enforcement officers to have records of formal complaints against them expunged from their personnel files under certain circumstances was amended to exclude officers in municipalities having populations in excess of 450,000.

**Private employment agencies.** A table of maximum fees based on estimated gross annual earnings of an applicant was eliminated from the regulatory law governing the practices of private employment agencies and was replaced with a provision for the assistant secretary to regulate the reasonableness of fees charged to applicants, giving consideration to fee levels in effect in Louisiana and surrounding States. The maximum fee that may be charged an applicant, when procured employment is terminated for any reason within 90 days of the date employment began, was increased from 15 percent to 20 percent of the gross earnings of the applicant. Also, the maximum fee that may be charged when an employed applicant accepts employment, but fails to report to work on the new job, was increased from 15 percent to 20 percent of the fee for permanent employment on the new job if the applicant remains with his or her present employer.

**Whistleblowers.** The law protecting public employees from reprisal for disclosing violations of the law or improper acts was amended to provide that any public employee who is wrongfully suspended, demoted, or dismissed as an act of reprisal is to report the action to the Board of Ethics for Elected Officials or the Commission on Ethics for Public Employees and is to be reinstated to his or her employment with full entitlement to receive any lost income and benefits for the entire period of any suspension, demotion, or dismissal.

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

## Maine

**Wages.** The State minimum-wage law provides that whenever the Federal minimum wage is increased in excess of the State rate, the State rate is to be increased to the same amount, up to an established upper limit. This upper limit was increased to \$5.15 per hour from \$5. Also, a provision that prohibited the minimum-wage rate from exceeding the average hourly rate of the five other New England States was eliminated. The law was amended to codify a minimum hourly wage rate of \$4.25. This has been the effective rate in Maine since the Federal increase to that level in 1991.

The law that had required cities to pay their employees weekly unless the employees requested in writing to be paid in a different manner now provides that municipalities will pay their employees at least once every 2 weeks, unless the employee agrees to be paid less frequently.

**Employee testing.** A provision formerly limited to employees of health care facilities was expanded to provide that no employee or job applicant may be required, as a condition of beginning or maintaining employment, to submit to an HIV test or to reveal whether he or she has undergone an HIV test, except when based on a bona fide occupational qualification.

In a change to the substance abuse testing laws, a labor organization with a collective bargaining agreement in the State may conduct a program of substance abuse testing of its members. The program may include testing of new members and periodic testing of all members, but may not include random testing of members. Results may not be used to preclude referral to a job for which testing is not required or to otherwise discipline a member.

Responsibility for the approval of employee assistance programs was transferred from the Department of Human Services to the Office of Substance Abuse.

Employers, cities, or other political subdivisions are not required to pay the costs of rehabilitation programs when an employee is tested for alcohol and drugs because of testing mandated by the Federal Omnibus Transportation Employees Testing Act of 1991.

**Worker privacy.** An employer who discloses information about the job performance or work record of a former employee to a prospective employer will not be subject to civil liability for such disclosure or its consequences, unless the information was furnished with malicious intent and was known to be false or misleading.

**Preference.** In determining the lowest responsible bidder on contracts let by the State for goods and services, the director of the Bureau of General Services or any department or agency of the State is to add a percent increase on the bid of a nonresident bidder equal to the percent, if any, of the preference given to that bidder in the State where he or she lives.

**Other laws.** The law protecting persons, families, and landlords from harassment was revised to extend the protection to businesses and their employees as well. It was specified that the definition of

"harassment" does not include any act protected by labor relations laws.

## Maryland

**Discharge.** During any stage of a public employee's complaint, grievance, or other administrative or legal action that concerns State employment, the employee may not be subjected to coercion, discrimination, interference, reprisal, or restraint by or on behalf of the employer because of the employee's action. Violators will be subject to disciplinary action, including termination of State employment.

**Other laws.** The Employment Standards Unit of the Division of Labor and Industry was reestablished as of Dec. 1, 1994.

Under a reorganization of the executive branch of the State government, the duties, responsibilities, and functions of the Department of Licensing and Regulation and the Department of Economic and Employment Development were transferred and incorporated into the newly established Department of Labor, Licensing and Regulation and the Department of Business and Economic Development. The division of employment and training formerly in the Department of Economic and Employment Development was transferred and incorporated into the new Department of Labor, Licensing and Regulation.

Residency requirements are prohibited as a condition of employment for county, municipal corporation, and regional agency employees. County and municipal corporations also may not discriminate between residents and other citizens of the State in decisions pertaining to employment, promotion, demotion, layoffs, and discharges.

The law requiring employers to report employment-related accidents to the Commissioner of the Division of Labor and Industry was amended to require such reports when the accident results in the hospitalization of three, rather than five, employees. Reports are now to be made within 8 hours of the accident instead of 48, and the option of reporting in writing was eliminated. There was no change in the requirement for reporting the death of an employee.

The Governor was to establish a statewide telecommuting pilot program, beginning Oct. 1, 1995, and to remain in effect for 3 years, to allow State employees to work at a location other than a State office through the use of telecommunications technology.

## Massachusetts

**Wages.** As the result of new legislation, the State minimum-wage rate rose from \$4.25 per hour to \$4.75 on Jan. 1, 1996. An additional increase to \$5.25 is scheduled for Jan. 1, 1997.

**Child labor.** The law authorizing the commissioner of labor and industries to suspend the application or operation of any provision of the child labor law regulating, limiting, or prohibiting the employment of minors over age 16 was extended to July 1, 1996.

## Michigan

**Wages.** The Michigan Department of Labor has

ceased enforcing the State prevailing wage law. A December 1994 U.S. District Court decision held the law invalid and unenforceable on the basis that the portion providing for inclusion of benefits in the prevailing wage determination is preempted by the Employee Retirement Income Security Act. The Michigan ruling is similar to a 1993 U.S. District Court decision in Pennsylvania that was overturned in 1994 by the U.S. Court of Appeals for the Third Circuit. In Michigan, appeal is likely.

**Equal employment opportunity.** Where employers list racial or ethnic classifications on employment forms, applications, and other written documents or materials, the term "multiracial" is to be included as a classification, and the term "other" is to be excluded.

## Minnesota

**Other laws.** Employers who recruit individuals to move to Minnesota to work in the food-processing industry must provide those individuals with written disclosure, at the time of recruitment, of the terms and conditions of employment. The information provided is to include the nature of the work to be performed; the wage rate and any deductions to be made; the anticipated hours of work, including overtime; the duration of the work; the available employee benefits; transportation and relocation arrangements; and the availability and any costs of housing. The disclosure must be written in English and Spanish, dated and signed by the employer and the person recruited, and maintained by the employer for 2 years. The disclosure is not to be considered an employment contract.

Elections to fill vacancies in the offices of State senators or State representatives were added to the list of those elections for which employees are allowed time off to vote.

## Mississippi

**Family issues.** An act providing for a 25-percent income tax credit for employers furnishing child care for employees during their work hours was amended to include also the care of elderly dependents, certain disabled dependents, and dependent children between the ages of 12 and 18.

**Preference.** The law granting resident contractors a preference over nonresident bidders in the award of public contracts, in an amount equal to any preference given by the nonresident bidder's home State, was expanded to grant a preference as well in those instances where a nonresident's city, county, parish, province, nation, or political subdivision grants its contractors a preference over Mississippi contractors.

## Missouri

**Child labor.** Some major modifications were made to the child labor law, including giving rulemaking authority to the Department of Labor and Industrial Relations and changing the maximum daily hours of work permitted during the school term and the nightwork restrictions for 14- and 15-year-olds so as to conform to Federal law. Violators of the law will now be subject to civil



penalties, in addition to criminal penalties as before. Civil penalties will range from \$50 to \$1,000 for each violation, with each day a violation continues and each child illegally employed constituting separate violations. The amount of civil damages sought will be based on the nature and gravity of the violation. All money collected will go to a new Child Labor Enforcement Fund and will be used to enforce the child labor law and to investigate potential violations thereof.

No child under 16 years of age may now be employed in the entertainment industry without a work permit issued by the director of the Division of Labor Standards. Requirements for obtaining a permit were adopted, including presenting proof of age and the written consent of the child's parent or guardian. The parent or guardian, or someone designated by either of them, must be present at all times the child is at the place of employment. Meal and rest breaks are required. Restrictions are placed on required stunts, working with animals, working in close proximity to explosives, and working in other dangerous situations. School attendance requirements must be observed.

**Other laws.** A State employee who is a certified disaster service volunteer of the American Red Cross may, with approval of his or her appointing authority, be granted leave from work with pay to participate in specialized disaster relief services in the State, not to exceed a total of 25 full-time equivalent State employees for a total of 15 calendar days in any fiscal year for each employee. Certified disaster service volunteers are not to be discharged or otherwise discriminated against because of their status as such.

The Department of Labor and Industrial Relations, through the Division of Labor Standards, was given responsibility for enforcing a new law which requires that, in the construction of public facilities, including, but not limited to, sports stadiums and arenas, auditoriums, and assembly halls, the number of water closets provided for women must equal the number of water closets and urinals provided for men.

## Montana

**Wages.** Direct sellers, as defined by Federal law, and persons employed by licensed outfitters as guides, cooks, camp tenders, or stock handlers were added to the list of those exempt from State minimum-wage and overtime requirements.

Persons employed as radio announcers, news editors, or chief engineers by employers in a second- or third-class city or a town were added to the list of those individuals exempted from overtime pay requirements.

Money forfeited as penalties for failure to pay standard prevailing wages is now to be deposited in the employment security account, rather than in the unemployment insurance administration account. Monies collected are to be used for enforcement of the State prevailing wage law.

Service charges, defined as an arbitrary fixed charge added to a customer's bill by an employer in lieu of a tip in the food, beverage, and lodging industry, are to be considered wages under the payment-of-wages law. Service charges must be distributed directly to the nonmanagement employee

preparing or serving the food or beverage or to any other employee involved in related services, under a tip pool agreement.

**Child labor.** Minors employed as officials or referees for nonprofit athletic organizations were added to the list of those exempted from the child labor law. Minors under age 14 may not officiate at adult events or activities.

**Equal employment opportunity.** The Department of Labor and Industry and the Department of Social and Rehabilitation Services are to adopt administrative rules governing the use of personal assistants by persons with disabilities. The rules are to authorize a person with a disability to act as the employer, for the purposes of selection, management, and supervision, of a personal assistant, although the personal assistant is the employee of another person or entity. The rules are to reflect both the rights and the protections guaranteed to workers under existing labor law and are to ensure that consumers of personal assistant services have day-to-day control, supervision, and direction over those services.

**Drug and alcohol testing.** The law regulating drug and alcohol testing was amended to authorize testing as a condition of continued employment when an employer has reasonable grounds to believe that an employee may have contributed to a job-related accident that caused death or personal injury or property damage in excess of \$1,500. A written finding must be made to determine whether the employee was the direct or proximate cause of the accident. The written record of a blood or urine test of an exonerated employee must be removed from the employee's personnel record and destroyed.

**Worker privacy.** The law requiring polygraph examiners to be licensed was repealed.

**Employee leasing.** A Professional Employer Organizations and Groups Licensing Act was enacted establishing standards for the operation, regulation, and licensing of employee-leasing firms. A license will be required to operate in the State, and requirements, including fees, a minimum age, the provision of information on owners, partners, officers, or directors of the firm, and financial responsibility, were adopted for applying for the license. The new law also includes provisions dealing with the renewal of a license, the denial of an application for or renewal of a license, and the suspension or revocation of a license. License fees collected are to be used to implement the act. Information is to be disclosed to clients on the services provided, the administrative fee, and the respective rights and obligations of the parties. Leasing firms are responsible for the payment of wages, workers' compensation premiums, payroll-related taxes, and employee benefits. Deceptive practices are prohibited, including making up or circulating information that misrepresents the benefits, advantages, conditions, or terms of an employee-leasing arrangement or that is otherwise untrue, deceptive, or misleading. Provision was made for the issuance of reciprocal limited licenses to firms licensed and in

good standing in a State that provides a similar privilege to Montana firms.

**Private employment agencies.** The Employment Agency Act was repealed.

**Inmate labor.** A section of the criminal procedure law relating to probation, parole, and clemency was amended to require the Department of Corrections and Human Services to notify the employer of a probationer or parolee if that person has been convicted of an offense involving theft from an employer.

**Other laws.** As part of an act generally revising industrial safety laws, the licensing of construction blasters, boiler and steam engine operators, and crane and hoist operators and the responsibility for boiler safety and inspections were transferred from the Department of Labor and Industry to the Department of Commerce.

The Commissioner of Labor and Industry was added as an 11th member of the Interagency Coordinating Council for State Prevention Programs. The council is to develop, through interagency planning efforts, a prevention program delivery system that will strengthen the healthy development, well-being, and safety of children, families, individuals, and communities.

## Nebraska

**Child labor.** Coverage under the child labor law was expanded to include employment generally, rather than employment in a list of specified places of business. Also, the Department of Labor was authorized to issue special permits waiving child labor law requirements for children employed as performers in musical and theatrical presentations, including motion picture, theater, radio, and television productions. The written consent of a parent or guardian is required as a condition of issuing a waiver.

Minors 16 years of age or older may now handle all alcoholic liquor, rather than only beer, in the course of their employment, and such work will no longer be limited to grocery stores. Limitations on places of employment were also eliminated for employment involving the removal and disposal of alcoholic liquor containers for the convenience of the employer and customers.

**Other laws.** Employers of 100 or more who have more than 10 percent non-English-speaking employees who speak the same language must provide an interpreter at the work site for each shift, to explain and respond to questions regarding the terms, conditions, and daily responsibilities of employment and to serve as a referral agent to community services for the non-English-speaking employees. Also, employers who recruit non-English-speaking persons who live more than 500 miles from the place of employment must furnish the employees with written information about the job, in both English and the employee's language, including information on minimum weekly hours, hourly wages, the nature of the work, any transportation and housing to be provided and their costs, and the physical demands and hazards of the job. If



such an employee resigns within 4 weeks and requests return transportation to the place of recruitment, the employer must provide it at no cost to the employee. The provisions relating to non-English-speaking employees are not applicable to agricultural workers or individuals employed as child care providers in private homes. The commissioner of labor is authorized to interview employers, representatives, agents, and employees and to inspect the records of an employer relating to the total number of employees, the total number of non-English-speaking employees, and the services provided to non-English-speaking employees.

### **Nevada**

*Wages.* The prevailing wage law was revised to exempt from coverage those contracts under which a private developer, for the benefit of a private development, constructs a water or sewer line extension that qualifies as a public work and for which the developer will be reimbursed by a public body for a portion of the costs of the project.

The law prohibiting deductions from the salaries of State employees for service as volunteer firefighters during working hours was amended to extend this protection to State employees serving as volunteer certified emergency medical technicians or volunteer reserve members of a police department or a sheriff's office.

*Child labor.* A new measure provides a partial exemption from the business tax for businesses that employ pupils as part of a program, supervised by a school district, that combines work and study. In calculating the total number of hours worked by all employees, the business may exclude the total number of hours worked by the pupil in a given quarter and an equal number of hours worked by one full- or part-time employee in the same quarter.

*Worker privacy.* The personnel records of employees of public utilities, motor carriers, or brokers may not be examined, except when doing so is a matter of public safety or the Public Service Commission determines that examining such records is necessary to protect the interests of the public.

*Preference.* Provisions giving a 5-percent preference in awarding public works contracts to responsible contractors who have paid local sales and use taxes and motor vehicle privilege taxes for the previous 5 years will now be inapplicable to contracts for public works expected to cost less than \$250,000.

*Inmate labor.* Provisions authorizing the director of the Department of Prisons to make deductions from the wages of inmates were amended to specify that the deductions will be made only where the offender's hourly wage is equal to or greater than the Federal minimum wage and to revise the order of priority of the deductions.

*Whistleblowers.* State agencies are prohibited from taking adverse actions against employees who testify or seek to testify before a house or committee of the legislature on their own behalf. Unlawful actions include threatening the employee with dis-

missal or otherwise intimidating, threatening, coercing, or influencing the employee. A State employee who testifies on his or her own behalf rather than for the State agency is to make that fact clear on the record before beginning any testimony.

### **New Hampshire**

*Wages.* The minimum-wage law was amended to remove an exemption to the requirement for payment of the State minimum hourly rate for employees whose employment is subject to the Federal Fair Labor Standards Act; to eliminate a requirement that nursing home employees receive time and one-half overtime pay for hours worked in excess of 40 a week; to repeal provisions equating the minimum wage with a fair or living wage; and to eliminate all references to wage boards and their powers and duties.

Compensatory time off is to be available to public sector employees following approval in a collective bargaining or other employer-employee agreement. Employers may not have a policy of requiring the use of compensatory time within a certain period to avoid loss of such time, must pay for unused compensatory time upon termination of the employee, and must honor requests for use of leave unless the time off would unduly disrupt agency operations. Limitations were enacted on the amount of compensatory leave that may be accrued before overtime must be paid.

Records compiled by the commissioner of labor as the result of interviews with employees in wage claims cases are not to be disclosed, except when such information is necessary for public officials to perform their duties.

*Genetic testing.* It was made unlawful for any employer, labor organization, employment agency, or licensing agency to directly or indirectly solicit, require, or administer genetic testing as a condition of an individual's employment, membership in a labor organization, or licensure, or to use any results of genetic testing to affect terms, conditions, or privileges of employment, to affect membership in a labor organization, or as the basis for termination of such employment, membership, or licensure.

### **New Mexico**

*Employee leasing.* Among changes to the employee-leasing act are revisions to surety requirements, for employee-leasing contractors, establishing a bond requirement of \$25,000 for those contractors residing and registered in the State prior to Sept. 30, 1993. The bond for those registered after that date will remain at \$100,000. A section was also added to the law requiring compliance with worker's compensation laws and stating that the employee-leasing contractor and the client are to be considered coemployers of leased workers for purposes of the Worker's Compensation Act.

*Other laws.* Employers who, upon request and in good faith, provide a reference on a former or current employee will be immune from liability for comments about the employee's job performance. Immunity will not apply where knowingly false or deliberately misleading information is supplied or where the information is given with malicious pur-

pose or violates any civil rights of the employee.

### **New York**

*Wages.* The State comptroller is to establish a public work enforcement fund. Each State agency or public benefit corporation entering into a public works contract for any construction, reconstruction, renovation, repair, maintenance, or other improvement is to transfer 0.0167 of 1 percent of the total cost of the contract to the fund. The money collected is to be used by the labor department to enforce labor laws.

*Family issues.* The labor commissioner is to study the issue of employees separated from employment due to acts of domestic violence. A report that includes policy recommendations is to be submitted to the legislature by Jan. 15, 1996.

*Other laws.* Employers of 20 or more employees must grant leaves of absence to employees who seek to undergo a medical procedure to donate bone marrow. The combined length of the leaves granted to an individual employee will be determined by the physician, but may not exceed 24 work hours, unless agreed to by the employer. An employer may not retaliate against an employee for requesting or obtaining this leave.

New York City firefighters who are certified disaster service volunteers of the American Red Cross will be granted paid leave from work to participate in specialized disaster relief operations, upon written request for the services by the American Red Cross and upon the approval of the fire commissioner. Paid leave provided is not to exceed a total of 100 days for all participating members during any fiscal year.

### **North Carolina**

*Family issues.* Teachers are now authorized to use up to 12 weeks of annual leave, personal leave, or leave without pay to care for a newborn child or for a child placed with the teacher for adoption or foster care. The leave may be for consecutive workdays during the first 12 months after the date of birth or placement of the child, unless the teacher and local board of education agree otherwise.

*Drug and alcohol testing.* Procedural requirements for the administration of examinations testing for controlled substances were amended. Examiners will now have the option of either having an approved laboratory perform both the screening and confirmation tests, as was previously required, or performing the screening test at the work site for prospective employees, provided that samples test positive for drug use are sent to an approved laboratory for confirmation.

*Inmate labor.* The law governing the State prison system was amended to repeal a provision authorizing the Department of Correction to inspect mines in which convicts are employed.

### **North Dakota**

*Wages.* The law pertaining to standards that the commissioner of labor may adopt was revised to

eliminate language equating the minimum wage with a living wage. The law now prohibits paying employees less than the State minimum wage.

The authority of the Department of Labor to enter into reciprocal agreements with other States for the purpose of wage claims and collections was expanded to permit reciprocal agreements with other countries or nations, including Indian nations.

The wage payment law will now require employers to pay employees monthly, rather than either semimonthly or on regularly agreed-upon paydays, as before. Employers may not require employees to deposit their checks directly into a financial institution.

The law establishing requirements for final payment to employees separated from payroll before the current payday was amended to eliminate the requirement that employers pay such employees within 24 hours. Employees in this category are to be paid within 15 days or on the next regularly scheduled payday, whichever comes first.

*Child labor.* School-to-work transition programs, approved by the commissioner of labor, will now be exempt from the State child labor law employment certificate requirements and hours-of-work restrictions for 14- and 15-year-olds.

*Equal employment opportunity.* The law prohibiting discrimination in employment was amended to permit physical examinations and investigations into the medical history of prospective employees only after a conditional offer of employment is made. In addition, these examinations and investigations will be permitted only if required of every new employee in the same job category. Finally, all medical histories obtained must be collected and maintained separate from nonmedical information and must be kept confidential.

It was made an unfair labor practice to interfere with, restrain, intimidate, or coerce employees who choose to work during a labor strike or to do the same to the families of such employees.

The department of labor may now attempt to resolve complaints of discriminatory employment practices through informal advice, negotiation, or conciliation, rather than being required to hold a hearing in each instance.

*Private employment agencies.* Class-two and class-three employment agency licenses were eliminated, leaving only the single class-one license. Amendments also were made to clarify the terms "permanent" and "temporary" employment and under what circumstances refunds of service charges paid will be required.

*Other laws.* Beginning Jan. 1, 1999, the commissioner of labor will be appointed by the Governor, rather than elected.

## Ohio

*Child labor.* The child labor law was amended to reenact an exemption for children working as actors or performers in motion pictures or in radio and television productions. A similar provision enacted in 1993 as part of a workers' compensation measure was declared unconstitutional in 1994 by the Ohio Supreme Court as having been adopted in

violation of the State constitution's one-subject rule.

*Other laws.* The Department of Industrial Relations was abolished, and its functions were transferred to the Department of Commerce and Natural Resources, the Bureau of Workers' Compensation, and the Bureau of Employment Services.

New provisions were adopted for bringing and processing employment intentional tort actions against employers charged with deliberately and intentionally injuring, causing an occupational disease in, or causing the death of an employee.

## Oklahoma

*Wages.* The Oklahoma Supreme Court struck down the State's prevailing wage law as being unconstitutional. The court held that the law's provision for the State's use of Federal Davis-Bacon wage rates was a delegation of authority in violation of the State constitution.

*Other laws.* The commissioner of labor now has the authority to employ a general counsel, an assistant general counsel, a deputy commissioner for enforcement and safety, and a deputy commissioner for labor and compliance. The commissioner also was given sole authority to issue permits and licenses for participation in professional boxing contests and professional boxing exhibitions held or given in the State. Previously, the Department of Labor and other State boxing commissions or associations of State boxing commissions approved by the Department of Labor had this authority. The department now also has jurisdiction over amateur boxing matches and closed-circuit telecasts of professional boxing events in the State.

## Oregon

*Wages.* Individuals employed as live-in resident managers by licensed adult foster homes, managers of mobile home parks, and inmates performing labor were added to the list of those not covered by the State minimum-wage law.

Amendments were made to the law establishing exemptions from overtime pay requirements for local government employees. The law will now apply also to employees of a people's utility district. It will no longer cover employees working less than 10 hours in any 1 day where workers are directly employed on the basis of a 4-day workweek.

Among several major changes made in the State prevailing wage law were a requirement for the Bureau of Labor and Industries to conduct wage surveys, authorization for the labor commissioner to impose civil penalties of up to \$5,000 for each violation of the law, and an increase in the dollar threshold amount for eligible projects from \$10,000 to \$25,000, with a prohibition added on dividing up projects for the purpose of staying under the \$25,000 threshold. The law establishes a fee on contracts falling within its scope equal to one-tenth of 1 percent of the contract price, but not more than \$5,000 or less than \$100. Fees collected will be used to conduct wage surveys and to administer the law. The bureau may contract with other public or private parties to conduct the surveys. Other provisions require the development of education programs and the appointment of a labor-management

advisory committee to assist in administering the law. Employers who pay prevailing wage rates on public works projects are prohibited from reducing their employees' wages on exempt projects so as to offset the prevailing wage payment, and parties other than the contractor or subcontractor are prohibited from paying or subsidizing prevailing wage payments to employees.

The law establishing requirements for payment of final wages when employment terminates was changed to require that employees who are discharged or terminated be paid not later than the end of the first business day after the discharge or termination, rather than immediately. Employers may not withhold any portion of the wages of such employees, except for deductions for the repayment of a loan made to the employee by the employer, which the employee has voluntarily signed an agreement to repay.

Final orders issued for the collection of unpaid wage claims will now be recorded in the County Clerk Lien Record in any county in the State. Upon being recorded, the order will become a lien upon any interest in real property of the persons against whom the order is issued.

*Family issues.* A new family leave law was enacted to replace the State family and medical leave, parental leave, and pregnancy leave laws. The new consolidated law requires employers of 25 or more employees to grant up to 12 weeks of unpaid family leave a year to workers who have been on the job at least 6 months and who work at least 25 hours a week, to care for a seriously ill parent, parent-in-law, son, daughter, or spouse; to take time off because of a personal illness; or to care for a child who is suffering from an illness or injury that is not a serious health condition, but that requires home care. Additionally, any worker with at least 6 months on the job (with no 25-hour-a-week threshold) is entitled to take time off to care for a newborn, a newly adopted child, or a newly placed foster child who is under age 18, or for an adopted or foster child older than 18 who is incapable of self-care because of a mental or physical disability. An additional 12 weeks of leave may be authorized for female employees for illness, injury, or a condition related to pregnancy or childbirth. Leave taken under the State law must be taken concurrently with any leave taken under the Federal Family and Medical Leave Act. As before, upon termination of the leave, employees must be reinstated to the same or an equivalent job without loss of any employment benefits. Special rules were established for the use of leave by teachers. The new law does not limit any rights employees may be entitled to under a collective bargaining agreement or an employer policy. The law will be administered by the Bureau of Labor and Industries.

*Child labor.* Significant changes were made to those sections of the child labor law dealing with work permits. The requirement that minors aged 14 through 17 obtain work permits was eliminated. The requirement that employers file an employment certificate for each minor hired was also eliminated and was replaced with a provision to apply to the Wage and Hour Commission for an annual employment certificate to employ minors. Employers are to furnish information on the estimated or average

number of minors to be employed during the year, the activities they are to perform, and the machinery or other equipment they are to use.

A section was added to the child labor law specifying that 16- and 17-year-olds may be employed by a farmer to operate power-driven machinery in connection with their employment on a farm in the processing of agricultural commodities in an agricultural warehouse if each such minor has completed an approved training program in the safe operation of the machinery.

**Agriculture.** The registration of farmworker camp operators, the revocation or suspension of registrations, and rulemaking authority were transferred from the Bureau of Labor and Industries to the Department of Consumer and Business Services.

Among amendments to the farm labor contractor law, the license application process was revised to no longer accept letters of credit as a proof of financial ability to pay wages. Applicants must furnish a surety bond or a cash deposit. The four levels of bond or deposit, ranging from \$10,000 to \$90,000, depending on the number of workers employed, were reduced to two levels: \$10,000 for contractors employing up to 20 employees and \$30,000 for those employing 21 or more employees. Provision was made for lowering the amount of the required bond or deposit for licensed contractors who have been in compliance with their payment obligations and other laws. New sections were added allowing the employee of a licensed farm labor contractor to be licensed as a farm labor contractor, subject to the employee's endorsement and subject to meeting other specified conditions. The definition of "farm labor contractor" was amended to include those who recruit, supply, or employ workers to gather evergreen boughs, yew bark, bear grass, salal, or ferns from public lands for sale or market prior to processing or manufacture.

Employers with 10 or fewer agricultural employees will be exempted from inspection or investigation of their work site under the Oregon Safe Employment Act if certain conditions are met. These include requirements that, within the preceding 2 years, there has been no work-site accident resulting in death and no serious disabling injury from a violation of the Act or rules adopted; that the employer and principal supervisors annually attend 4 hours of instruction on agricultural safety rules and procedures at a course conducted or approved by the director of the Department of Consumer and Business Services; and that the agricultural activities are inspected once every 4 years by a safety consultant and all violations found are corrected within 90 days of the inspection.

**Equal employment opportunity.** The law making it an unlawful employment practice for an employer to discriminate against an employee because of genetic information will now permit employers to use such information, with the approval of the employee or applicant in question, solely to determine a bona fide occupational qualification, as defined by rules adopted by the commissioner of the Bureau of Labor and Industries.

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

formance to his or her prospective employer upon the request of either the prospective employer or the former employee will be presumed to be acting in good faith and will be immune from civil liability for the disclosure or its consequences. Immunity will not apply if it is shown that the employer provided knowingly false or deliberately misleading information or that the information was given with malicious purpose or violated any civil right of the former employee.

**Other laws.** Beginning with the next general election, the elected office of commissioner of the Bureau of Labor and Industries will be a nonpartisan rather than a partisan office.

Representatives of the Bureau of Labor and Industries, the Employment Department, the Department of Consumer and Business Services, the Economic Development Department, the Oregon Department of Administrative Services, and the Department of Justice are to meet jointly in a work group to develop a plan to transfer the functions of the Bureau of Labor and Industries to the other agencies represented.

Any public employee who is a certified disaster service volunteer of the American Red Cross may now be granted a leave of absence, not to exceed 15 workdays annually, to participate in disaster relief service in the State without loss of pay, seniority, vacation time, sick leave, or accrued overtime.

#### Rhode Island

**Wages.** The section of the payment-of-wages law requiring those employers found in violation of wage payment requirements to pay the director of labor an administrative fee equal to 25 percent of any payment made to the director on an employee's behalf will now apply also to payments made directly to employees.

**Hours.** The law requiring the payment of overtime wages for work on holidays and Sundays was amended to provide that any manufacturer which operates three shifts or begins its workweek on Sundays may begin the shift or start the workweek at 11 P.M. on Sunday and not be required to pay its employees premium pay during the 1-hour period between 11 P.M. Sunday and midnight.

**Equal employment opportunity.** The Fair Employment Practice Act was revised to make it an unlawful employment practice for any employer, employment agency, or labor organization to discriminate against an employee or applicant because of his or her sexual orientation.

The law making it an unlawful employment practice for an employer to include on any application for employment a question asking whether the applicant has ever been arrested or charged with any crime was amended to permit such questions on applications for law enforcement agency or related positions.

**Whistleblowers.** The Rhode Island Whistleblower Act was repealed and then reenacted with only a few changes related to coverage.

**Other laws.** A State employee who is a certified disaster service volunteer of the American Red

Cross may, with approval of his or her supervisor, be granted a leave of up to 10 working days annually to participate in specialized disaster relief services in the State without loss of pay, accrued leave, or seniority.

#### South Carolina

**Wages.** State employees may now authorize their employers to withhold from their wages membership dues for the South Carolina Troopers' Association or the South Carolina Law Enforcement Officers' Association. None of the dues deducted may be paid to any national or multi-State association or group.

#### Tennessee

**Child labor.** Children who serve as pages for the General Assembly during the school year may be granted excused absences for the time missed from school. Approval or disapproval will be at the discretion of the principal of the child's school.

**Other laws.** An act relating to medicine and surgery was amended to specifically allow a person, corporation, organization, or other entity to employ a physician to treat only the entity's employees, retirees, and their dependents.

#### Texas

**Wages.** New procedures were adopted for wage claims filed with the Employment Commission pertaining to notice of delinquency in the payment of wages, penalties, interest, or other amounts due; to the responsibilities of those who receive the notice, including those who control or possess any of the delinquent person's assets or who owe a debt to the delinquent person; and to the authority of the commission to place a lien on the delinquent person's assets.

Voluntary deductions from the wages of county employees for payments to charitable organizations were added to the list of payroll deductions authorized in those counties with a population of 20,000 or more.

**Child labor.** Among changes in the enforcement provisions of the child labor law, the Employment Commission is authorized to go back 2 years in inspecting places of business where it believes that a child was employed and in collecting information concerning the employment of the child. The commission is also authorized to administer oaths and affirmations, take depositions, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, or other records considered necessary to enforce the law. Provision was made for the collection of penalties from persons determined to be delinquent, including the possibility of placing a lien on the property of the delinquent person. Administrative penalty provisions adopted earlier were codified.

The list of prohibited hazardous occupations was amended to add door-to-door sales by minors under 14 years of age, unless accompanied by a parent or guardian. The prohibition does not apply to sales for charitable, nonprofit organizations or to fund-raising activities of clubs or organizations sponsored by a public or private school. The prohibition also does not apply to a child younger than

14 selling items or services as a self-employed person with the consent of a parent.

A new section to the child labor law provides that the operation of a motor vehicle by a child for a commercial purpose is not a hazardous occupation if the child has a valid driver's license, is not required to obtain a commercial driver's license for the work, works under the direct supervision of his or her parent or guardian in a business owned or operated by the parent or guardian, and operates a vehicle having no more than two axles that does not exceed a gross vehicle weight rating of 15,000 pounds.

**Worker privacy.** Firefighters or police officers who are under an internal investigation regarding their conduct may not be required to submit to a polygraph examination, except when a complainant submits to and passes such an examination or when the head of the department considers the circumstances to be extraordinary or believes that the integrity of the department or the officers is in question. The results of such examinations relating to a complaint under investigation are not admissible in a proceeding before the Fire Fighters' and Police Officers' Civil Service Commission or a hearing examiner.

**Other laws.** An employee may not be required to participate in an employer trip reduction plan (a plan to reduce the number of trips an employee makes to and from work, to combat pollution) adopted under a rule of the Texas Natural Resource Conservation Commission as required by the Federal Clean Air Act if the employee travels no more than 30 miles one way from home to work or spends not longer than 1 hour traveling one way from home to work.

**Utah**

**Wages.** Utah does not have a prevailing wage law. New provisions were adopted to prohibit the State or any political subdivision from requiring a contractor, subcontractor, or supplier or carrier of materials employed on public works construction projects to pay its employees a prevailing wage or minimum wage of any type or specified employee benefits, except when required by State or Federal law. State agencies that award contracts also may not require these persons to become a party to any project labor agreement, collective bargaining agreement, or other agreement in order to bid on, negotiate, or be awarded a contract or to perform work on such projects.

Among amendments to the wage payment law, the maximum wage claim that the Industrial Com-

mission may accept was set at \$10,000; wages due an employee who resigns may now be paid on the next regular payday, rather than no later than 72 hours after the resignation, or at the time of the resignation if 72 hours' advance notice was given; and the provision requiring wages to be paid semi-monthly was revised to require payment at regular intervals, but in periods no longer than semimonthly. Provision was made for setting aside the wage payment requirements of the Act by mutual agreement if approved by the Industrial Commission.

**Other laws.** An employer who, in good faith, provides information about the job performance, professional conduct, or evaluation of a former or current employee to a prospective employer, at the request of that employer or the employee, is not civilly liable for the disclosure or for the consequences of providing the information.

**Vermont**

**Wages.** The minimum hourly wage increased from \$4.50 to \$4.75 on Jan. 2, 1996, as the result of previous legislation.

**Virginia**

**Equal employment opportunity.** The Human Rights Act will now permit independent or private court action to enforce its provisions in those instances in which an employer employing more than 5, but fewer than 15, persons discharges any employee on the basis of race, color, religion, national origin, sex, or age. The court may award up to 12 months' backpay with interest. In any case in which the employee prevails, the court will award attorney's fees from the amount recovered, not to exceed 25 percent of the backpay awarded. The court will award no other damages, compensatory or punitive, nor will it order reinstatement of the employee.

**Whistleblowers.** The list of items subject to the grievance procedures provided for State employees was amended to add retaliation against an employee for reporting, in good faith, an allegation of fraud, waste, or abuse to the State Employee Fraud, Waste and Abuse Hotline.

**Washington**

**Wages.** The section of the minimum-wage law providing for exceptions from overtime compensation requirements was revised to specify that the payment of compensation or provision of compensatory time off in addition to a salary will not be a

factor in determining whether an executive, administrative, or professional employee is exempt from coverage under the law.

**Child labor.** Licensees holding nonretail-class liquor licenses will now be permitted to allow their employees between the ages of 18 and 21 to stock and handle beer or wine if there is an adult 21 years of age or older on duty on the premises supervising these activities.

**Preference.** The general law relating to public works and contracts was amended to repeal the provisions requiring a preference for hiring resident employees.

**West Virginia**

**Wages.** Rules are to be adopted regarding overtime compensation for conservation officers. The rules are to provide for the awarding of 1-1/2 hours compensatory time for each hour of overtime worked in lieu of cash.

The law authorizing voluntary deductions from the wages of State employees will now allow payroll deductions to be made either once or twice a month at the option of the employee, rather than only once a month as before.

**Other laws.** The law prohibiting employers from discharging employees for time lost from employment because of emergency duty as a volunteer firefighter was amended to expand the definition of "emergency" to include situations beyond responding to a fire and cleaning up spills of hazardous or toxic materials.

**Wisconsin**

**Child labor.** By administrative action, the maximum number of hours per day that may be worked by 16- and 17-year-olds during school weeks was raised from 4 to 5. Eight hours may still be worked on the last school day of the week and on nonschool days. □

**Footnote**

<sup>1</sup>The Kentucky legislature met only in special sessions in 1995 and did not enact any labor legislation. The District of Columbia, Guam, Kansas, New Jersey, Pennsylvania, South Dakota, and Wyoming did not enact significant legislation in the fields covered by this article. Information about Puerto Rico and the Virgin Islands was not received in time to be included in the article, which is based on information received by Nov. 3, 1995.