

State labor legislation enacted in 1992

Recent legislative trends continued with significant laws in a wide array of labor standards areas, such as child labor, parental leave, sexual harassment, discrimination due to disability or sexual orientation, and genetic testing

Richard R. Nelson

Trends in State labor legislation continued in 1992 to further restrict child labor, provide unpaid parental leave for the birth or adoption of a child or for the serious illness of a family member, prohibit sexual harassment in the workplace, and ban discrimination because of the use of lawful products outside the workplace.¹

Legislation also was enacted conforming with provisions of the Federal Americans with Disabilities Act, and in the emerging areas of genetic testing and prohibition of employment discrimination because of sexual orientation. Restrictions on drug testing of workers and increases in State minimum wage rates, two issues that received major legislative attention in recent years, were addressed in only a few jurisdictions in 1992.

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

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Wages. Minimum wage was subject to considerably less activity in 1992 than in the last several years when it was one of the most active areas of State legislation. In the only new action, the Wisconsin minimum wage rate was increased administratively. Rates also increased in nine other jurisdictions as provided for in previous legislation.² While a majority of the States now match the Federal hourly rate of \$4.25, as of January 1, 1993, higher rates will be in effect in Alaska, Connecticut, the District of Columbia, Hawaii, Iowa, New Jersey, Oregon, Rhode Island, and the Virgin Islands.

Overtime pay policies for State employees in Utah were made to conform to overtime requirements of the Federal Fair Labor Standards Act. New overtime policies for certain public employees also were adopted in Mississippi and West Virginia.

The Hawaii prevailing wage law was amended to permit periodic increases in the prevailing wage rate during the life of a public works contract. The Maine Department of Labor is to study various ways of considering the value of fringe benefits provided by the employer in the calculation of the prevailing wage.

In Tennessee, the Commissioner of Labor was authorized to enter into reciprocal agreements with the labor department or corresponding agency in other States to collect wage claims and judgments; 22 States now have this authority.³

Other wage payment and collection measures included amendments in six States authorizing public employee payroll deductions for various purposes, changes in frequency of payment requirements in Arizona and Massachusetts, and a change in the amount of weekly earnings required for the executive, administrative, or professional employee exemption from various sections of the New York law. Guam strengthened enforcement of its wage payment law with measures including authorizing the Director of Labor to file a labor lien on an employer's property and order the bank accounts of an employer frozen; imposing a collection fee on employers to offset the costs of enforcement; and making private sector employers subject to damages of triple any wages due.

Family issues. Parental leave was once again an active area of legislative interest at the Federal and State levels. Vermont enacted a law permitting—in the private or public sector—an unpaid leave of absence for either parent for the birth or adoption of a child, for the employee's own serious illness, or to care for a seriously ill child, parent, or spouse. Alaska and Georgia enacted similar legislation for various public sector employees. The Minnesota law was amended, and studies of family leave or related issues were requested in Nebraska, New Mexico, and Virginia.

Child labor. As in the last several years, child labor was the subject of much interest and concern. Most of the measures enacted in 1992 reflected the trend toward making these laws more restrictive by limiting permissible hours of work, expanding applicability of certain provisions to include additional minors, or strengthening penalty provisions. Among these measures, North Carolina adopted nightwork restrictions for 16- and 17-year olds during the school year, and Virginia replaced emergency agricultural employment regulations with new rules that, among other changes, increase from 16 to 18 the minimum age for employment in several hazardous occupations. California reduced the permitted work hours for 14- and 15-year-olds to conform to Federal standards.

Amendments to the Indiana law adopt the Federal Fair Labor Standards Act prohibited hazardous occupations for minors under 18, bring the permitted work hours for 14- and 15-year-olds into conformance with the Federal law, adopt civil money penalties for violation, and provide for revocation of a minor's employment certificate if school attendance drops. Louisiana also adopted administratively assessed civil money penalties. Alaska now requires work breaks for minors, and made provision for the employment of minors of any age in the entertainment industry.

Changes in the Wisconsin regulations eased nightwork restrictions for minors under age 16 and made school week work hours and nightwork hours more restrictive for 16- and 17-year-olds.

Revised regulations adopted in Washington State, effective February 1, 1993, will limit the work of 16- and 17-year-olds during the school year, reduce the permissible weekly hours for 14- and 15-year-olds, and declare additional occupations hazardous for minors under age 18.

Equal employment opportunity. Thirty-four States and Puerto Rico enacted legislation addressing one or more forms

of employment discrimination. Among the more noteworthy of these were new laws in California, New Jersey, and Vermont banning discrimination in employment on the basis of sexual orientation⁴ (an anti-gay rights ballot measure was approved in Colorado and another was defeated in Oregon); California adopted a ban on discrimination against persons testing positive for the HIV virus; Oklahoma and Pennsylvania eliminated the upper age limit in age discrimination provisions; and several States enacted provisions to help eliminate sexual harassment in the workplace.⁵

An executive order permits State workers in Massachusetts to use sick and bereavement leave for the illness or death of an unmarried partner on the same basis as such leave is provided for married workers. A number of laws also were enacted concerning employment discrimination because of disability. California, Indiana, Kentucky, Pennsylvania, and Puerto Rico adopted laws containing some provisions similar to those in the Federal Americans with Disabilities Act. Most of these laws, and a new provision in Minnesota, require employers to make reasonable accommodation to an individual's disability. New Jersey amended the prohibition against discrimination because of disability to specifically include persons suffering from AIDS or HIV infection. The laws in Missouri, Ohio, and Pennsylvania now specifically exclude from coverage the illegal use of, or addiction to, a controlled substance.

Rhode Island established a Commission on Women to promote women's rights and opportunities, and Maine adopted a Nontraditional Occupation Act.

New York barred discrimination because of various legal activities outside the workplace during nonworking hours including political activities, use of legal consumable products, legal recreational activities, and union membership.

Illinois, Minnesota, North Carolina, and Wisconsin prohibited discrimination because of the lawful use of any product outside the workplace; Missouri barred discrimination because of the use of lawful alcohol or tobacco products, and West Virginia and Wyoming adopted a similar prohibition because of the use of tobacco products.

Employee testing. Breaking with the trend of the last few years, major laws were not enacted this year concerning drug, alcohol, or AIDS/HIV testing of employees. On the other hand, genetic testing emerged as an issue: Iowa and Wisconsin barred such testing as a condition of employment, labor union membership, or licensure (these two laws join an earlier enactment Oregon adopted in 1989).

Private employment agencies. States made a few changes regulating the private employment agency industry. Louisiana re-established the Private Employment Service Advisory Council, which was abolished in 1989. The Louisiana law also was amended to provide for the refund of fees to job applicants under certain conditions, as was the North Carolina law. Virginia adopted several changes, including a requirement that employment counselors be registered with the Department of Commerce.

In a related development, Georgia placed restrictions on labor pools furnishing temporary employees for short-time assignments of casual, unskilled labor.

Whistleblowers. Rhode Island and Washington adopted whistleblower laws protecting the jobs of employees who report law violations. The Rhode Island law is of general application, while in Washington, where previously enacted laws apply to other employees, the new law applies to local government employees. North Carolina consolidated separate provisions into a new Retaliatory Employment Discrimination provision, and a few other States amended their laws.

Other legislation. Among other significant measures, Delaware employers are to give workers an unpaid meal break if they work consecutively seven and one-half hours or more, Florida requires employees on specified State agency contracts to have access to hospitalization and medical insurance ben-

efits, and several States enacted legislation amending laws granting a preference to State resident contractors on bids for public contracts. Nebraska and South Carolina measures encourage employers to grant leave for bone marrow donors, and Tennessee provides paid leave for State employees who are American Red Cross disaster service volunteers. Louisiana renamed the Department of Employment and Training the Department of Labor.

Hawaii banned employers from granting permanent employment to individuals who perform bargaining unit work during a strike or lockout, while a U.S. District Court ruled unconstitutional a similar law enacted in Minnesota in 1991.

The following is a summary, by jurisdiction, of labor legislation enacted in 1992.

Alabama

Wages. The State enacted a law authorizing voluntary payroll deductions from salaries or wages of State employees for donations to the Foster Care Trust Fund.

Equal employment opportunity. The term "minority," for purposes of affirmative action programs, is now to include American Indians and Alaskan Natives.

Alaska

Wages. Overtime pay requirements will no longer apply to certain individuals employed as community health aides by local or regional health organizations.

Family issues. A new law requires public sector employers of 21 or more employees to grant up to 18 weeks of paid or unpaid family leave in a 24-month period to care for the employee's child, spouse, or parent who has a serious health condition or because of the employee's own serious health condition, and up to 18 weeks in a 12-month period because of pregnancy and child birth or adoption. Persons requesting leave are to give advance notice, if possible, and may be required to use their accrued paid leave before unpaid leave is granted. Employers are to maintain coverage under any group health plan for employees on leave; however, the employee may be required to pay all or part of the costs during a period of unpaid leave. Upon return, employees are entitled to reinstatement in the same or an equivalent position unless the employer's business circumstances have changed to make it impossible or unreasonable. Teachers are subject to separate reemployment requirements and may not be entitled to the leave if their district or attendance area has established that a variance is necessary to avoid a hardship based on the lack of qualified, available substitute teachers or the lack of available housing for replacement teachers from outside the community.

Child labor. An amendment to the child labor law permits a minor of any age to be employed as a performer in the entertainment industry, and specifies that provisions concerning times, hours, or days of work will not be applicable. The labor department was authorized to adopt implementing regulations. Another amendment provides that, with certain limited exceptions, minors scheduled to work for 6 consecutive hours or more are entitled to a break of at least 30 minutes during the course of the work shift. A minor who works for 5 consecutive hours without a break is entitled to a break of at least 30 minutes before continuing to work.

Equal employment opportunity. Private and public sector employers of 15 or more employees are now required to post, in prominent and accessible locations in the workplace, a notice prepared by the State Commission for Human Rights that includes the Federal definition of sexual harassment, advises employees of the names, addresses, and telephone numbers of the State and Federal agencies to which inquiries and complaints concerning sexual harassment may be made, and lists the deadlines for filing a complaint. Employers may be fined up to \$500 for failure to comply.

The State Senate adopted a resolution requesting the governor to direct the State Commission for Human Rights to vigilantly enforce the law prohibiting discrimination in employment based on age.

Preference. The State amended the law providing for resident preference in the awarding of State contracts to increase from 10 percent to 15 percent the bid preference received by State contractors who offer services through a nonprofit program to increase employment opportunities for individuals with disabilities. Also, resident bidders who are sole proprietorships owned by a person with a disability, or who have 50 percent or more disabled employees, will re-

ceive a 10-percent bid preference.

Whistleblower. Legislators and legislative employees are prohibited from taking reprisals, or harassing or discriminating against any legislative employee who reports to a legislative committee or other government entity conduct that the person reasonably believes to be a violation of State law. Complaints of such retaliation may be brought to the legislative committee and to the courts in a civil action.

Other laws. A resolution was adopted requesting the Department of State and U.S. Department of Labor to interpret the Immigration Act of 1990 to provide the maximum protection for the American work force by restricting the ability of foreign vessels to employ foreign crews to do the work of American longshoremen. The Department of Labor was asked to specifically review and rescind exemptions that permit the use of foreign crews in various ports in the State.

Arizona

Wages. A law requiring that wages be paid at least twice a month was amended to permit employers whose principal place of business is outside the State and whose payroll system is centralized outside the State to make monthly payments to supervisory employees and to professional, administrative, or executive employees or outside salespersons. This provision will not apply to employees whose salaries are subject to provisions of collective bargaining agreements.

Arkansas

Wages. A previous law raised the minimum wage from \$3.65 to \$4 per hour on July 1, 1992. Also, effective July 1, 1992, employees of hotels, restaurants, and tourist attractions with an annual sales volume of less than \$500,000 must be paid overtime at time and one-half their regular rate after 40 hours rather than 44 hours in a workweek.

Equal employment opportunity. The State adopted a resolution urging Congress to amend Federal law to remove the congressional exemption from sexual harassment statutes and all other laws from which they exempt themselves.

Preference. The 3-percent preference for in-State contractors granted on bids for public improvement contracts will now apply only to highway projects.

California

Wages. The U.S. Supreme Court on June 8 declined to review a ruling by the U.S. Court of Appeals for the Ninth Circuit upholding the authority of the California labor commissioner to impose State overtime requirements for seamen working on territorial waters and high seas off the California coast, and maritime employees working primarily on high seas off the California coast. The Appeals Court held that State law was not preempted by the section of the Federal Fair Labor Standards Act exempting seamen from overtime, and also ruled that California could apply its more generous overtime pay requirements (daily overtime) to employees on the high seas on vessels that do not engage in foreign, intercostal, or coastwide voyages, whether or not the employees are exempt from overtime under the Federal law.

A civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation may be assessed employers who fail to maintain required payroll data or who fail to furnish employees with an itemized statement of wages earned, hours worked, and deductions. Applicability to multiple violations in a citation will make possible greater civil penalties than previously, where penalties were assessed for the first violation and for each subsequent violation.

Child labor. With amendments to the State child labor law applicable to 14- and 15-year-olds, the maximum permitted daily and weekly hours of work, the time that work may start, and the latest permissible night-work hours conform to those in the Federal Fair Labor Standards Act. It also was specified that the hours and nightwork limits do not apply to any minor employed to deliver newspapers to consumers. A provision that allows a 13 year-old who has completed the sixth grade, has been identified as a potential school dropout, and is participating in a school district-sponsored employment program to work up to 2 hours a day and 4 hours a week was amended to require that the employment program be conducted on school premises.

The section of the child labor law exempting minors who appear in certain lim-

ited entertainment performances from the requirement to obtain an entertainment work permit and limits on hours and other restrictions was amended to also exempt the appearance of a minor at any one event during a calendar year for 4 hours or less on the day before school or on a day when school attendance is not required, if a parent or guardian is present, and if the minor does not directly or indirectly receive any compensation.

Agriculture. Civil action was authorized for injunctive relief by an aggrieved employee against an unlicensed farm labor contractor and against any grower who contracts with an unlicensed farm labor contractor.

Current laws and regulations regarding wages, hours, and working conditions, employee housing and transportation, collective bargaining and field sanitation were added to the farm labor contractors' examination, and employees of farm labor contractors who supervise workers must be trained in laws and regulations applicable to farm labor contractors. The labor commissioner is to maintain a telephone line to inform employees about farm labor contractors who have a history of violations.

Equal employment opportunity. A new measure authorizes the Fair Employment and Housing Commission to levy fines or assess compensatory damages for pain and suffering up to a combined total of \$50,000 for victims of employment discrimination and sexual harassment. The commission had lost its power to award damages in December, 1990, when the State Supreme Court ruled that it had no clear statutory authority to award punitive or compensatory damages.

The State codified administrative policy prohibiting employment discrimination based on actual or perceived sexual orientation. Religious organizations and employers of fewer than five employees are excluded from coverage. The law specifies that it does not require or permit the use of quotas or other such affirmative action.

A new law requires employers to obtain an information sheet on sexual harassment from the Department of Fair Employment and Housing and distribute the information to employees or provide equivalent information. Among other requirements, information provided is to define sexual harassment and specify its illegality, explain the complaint procedure of the employer and legal remedies available to the employee, and give directions on how to contact the department and Fair Employment and Housing Commission. The law also requires the department's poster on discrimination to include sexual harassment as an illegal activity.

The law requiring employers to provide temporary transfer rights to a pregnant em-

ployee to a less strenuous or hazardous position for the duration of her pregnancy, if she so requests and if a transfer can be reasonably accommodated, was amended to remove an exemption for employers subject to Title VII of the Federal Civil Rights Act of 1964. This amendment expands coverage of the law to employers of 15 or more employees (previously the law covered employers of between 5 and 14 employees).

A new law brings State law into conformance with the Americans with Disabilities Act. Among the provisions, mental disabilities were added to the list of protected classes in the Fair Employment and Housing Act. Applying provisions of the act to unlawful employment practices by employers against individuals with a mental disability is limited to employers of 15 or more employees, the State, and its municipalities and political subdivisions, with application to employers of between 15 and 24 employees scheduled to take effect July 15, 1994. The law also provides for a study to determine the desirability of including employers with between 5 and 14 employees under these provisions.

Employment discrimination against individuals testing positive for the HIV virus was banned and "HIV positive" was added to the list of protected disabilities covered by the Fair Employment and Housing Act. Employers are to make reasonable accommodations to the physical disability of an applicant or employee unless employers can demonstrate that an accommodation would produce undue hardship on its operations. A city, county, or district attorney with a local anti-AIDS/HIV discrimination unit as of March 1, 1991, may bring a civil action against an employer, labor organization or employment agency named in a complaint filed by the Department of Fair Employment and Housing.

A resolution was adopted asking that an advisory committee be established to initiate a performance review of State agencies to identify ways to control costs and save money in State government operations. The resolution also asks that every effort be made to ensure that the racial, ethnic, and gender composition of the advisory committee reflect the composition of the population of the State.

Worker privacy. The provision specifying that home addresses and home telephone numbers of State employees are not considered to be public records and are not open to public inspection was amended to also apply to employees of a school district or county office of education.

Whistleblowers. Legal protection of employees of private employers from discharge or any other form of retaliation for reporting a

violation of a State or Federal statute or regulation was amended to also protect employees of the State, cities and counties, school districts, community college districts, municipal or public corporations, and the University of California.

Other laws. Voters defeated Proposition 166, on the ballot in the general election in November, which would have amended the State Constitution to require employers to provide health care coverage for most employees and dependents.

Colorado

Equal employment opportunity. Voters approved Constitutional Amendment Number 2, on the ballot in the general election in November. The measure amends the State Constitution to prohibit the State and any of its political subdivisions from adopting or enforcing any law or policy that provides that homosexual, lesbian, or bisexual orientation, conduct or relationships constitutes or entitles a person to claim any minority or protected status, quota preferences, or discrimination. This ban rescinds local gay rights protections on the books.

Plant closings. A resolution was adopted urging Congress to enact legislation to fund and provide other support for workers in their efforts to make transitions to jobs outside of nuclear weapons production when plants such as the Rocky Flats Nuclear Weapons Plant are closed, operations are reduced, or missions changed. The resolution also states that a partnership should be developed between government, labor, and management with the goal of providing reasonable transitions to alternative and comparable paying jobs in the work force when layoffs occur, and that a Labor Management Team assisted by the Governor's Job Training Office should be convened to implement this partnership.

A separate resolution asks the Secretary of the U.S. Department of Energy to fully fund the Rocky Flats Local Impacts Initiative, formed by three surrounding counties and the cities within the counties that are affected, to plan and execute a successful transition for the workers and the plant site.

Other laws. An employer that provides fair and unbiased information about a current or former employee's job performance, upon request by a prospective employer or by a current or former employee, will be immune from civil liability because of such disclosure. The employee who is the subject of such an inquiry is to be sent a copy of the information provided.

Connecticut

Wages. Among the provisions of a new act concerning bidding on and management of

certain Department of Public Works building projects that cost \$12.5 million or more, general contractors and specialty prime contractors awarded contracts are to submit sworn certified payrolls weekly to the construction manager or general contractor. The construction manager or general contractor is to review these payroll records and include in each application for payment, submitted to the Commissioner of Public Works, a sworn statement reporting compliance by the specialty prime contractors, general contractor and construction manager with this act and with laws requiring payment of prevailing wage rates on State building contracts.

The law requiring the elimination of wage inequities in the State service, including sex-based inequities, was amended to change the date for compliance from June 30, 1993 to June 30, 1994.

Equal employment opportunity. Employers of three or more employees must now post information concerning the illegality of sexual harassment and remedies available to victims. In addition, employers of 50 or more must now provide all supervisory employees with 2 hours of training and education, including information concerning Federal and State sexual harassment laws and remedies available to victims.

Discharge. The public sector is now covered by the law prohibiting private sector employers from discharging, disciplining, or otherwise penalizing an employee for informing another employee that he or she is working in or exposed to a hazardous condition or for refusing in good faith to be exposed to such a condition.

Other laws. The Labor Commissioner is now authorized to request the Attorney General to bring an action in Superior Court for injunctive relief requiring compliance with any statute, regulation, order or permit administered, adopted, or issued by the Commissioner.

A statewide traffic management program was established to meet the requirements of the Federal Clean Air Act. Beginning in 1994, employers of 100 or more located in specified areas will be required to submit a compliance plan relating to employee commuting, including a description of transportation management programs used or to be adopted by the employer to reduce traffic congestion such as telecommuting, compressed work weeks, or commuter benefits or allowances.

Delaware

Wages. The wage payment and collection law was amended to provide that when the regular payday is within the pay period, pay-

ment must be made in full by the next regular payday for any overtime earned. If the pay period does not exceed 16 days, payment also must be made by the next payday to employees hired or resuming employment during the pay period, and to part-time or temporary employees with variable working time.

Hours. Employers are now required to provide employees with an unpaid meal break of at least 30 consecutive minutes if they work seven and one-half or more consecutive hours. The meal break is to be given after the first two hours of work and before the last two hours. The requirement will not apply to teachers or workplaces covered by a collective bargaining agreement or other written employer-employee agreement providing otherwise. Also, the Secretary of Labor is to issue rules for granting exemptions where compliance would adversely affect public safety; only one employee may perform the duties of a position; an employer has fewer than five employees on a shift at a single place of business; or where the continuous nature of an employer's operations requires employees to respond to urgent or unusual conditions at all times and the employees are compensated for their meal break periods. An administrative penalty of up to \$1,000 for each violation may be assessed an employer who discharges or discriminates against an employee for complaining or providing information to the Department of Labor pursuant to a violation of this requirement.

Other laws. All municipalities with populations of more than 50,000 that impose residency requirements as a condition of employment for municipal employees must hold a binding referendum on the policy at the next general election.

Florida

Child labor. The child labor law was amended to allow minors of any age to be employed in the herding, tending, and management of livestock during the hours they are not required by law to be in school.

Equal employment opportunity. Among amendments to the Civil Rights Act (formerly the Human Rights Act), courts may now award, in addition to back pay, compensatory damages including those for mental anguish, loss of dignity, and other intangible injuries, and also up to \$100,000 in punitive damages. The time limit for filing a complaint with the Commission on Human Relations was extended from 180 days to one year, and the Commission was transferred from the Department of Administration to the Governor's office. Public sector employees found to have violated the unlawful em-

ployment practices provisions are now subject to discharge.

Another amendment provides that it will not be an unlawful employment practice for an employer, employment agency, labor organization, or joint labor-management committee to take or fail to take an action on the basis of marital status if that status is prohibited under its antinepotism policy.

Whistleblowers. The Whistleblower's Act, which protects public sector employees and employees of independent contractors under contract with public agencies from employer retaliation for reporting any act or suspected act of malfeasance, misfeasance, gross waste of public funds, or neglect of duty, also will now cover reports of gross mismanagement and nonfeasance. Protection also was extended to applicants for employment with State agencies, and investigation procedures were established for the receipt of whistleblower information and for response to allegations of prohibited personnel actions.

Other laws. As part of an Employee Health Care Access Act, effective July 1, 1994, contractors and subcontractors will be required to ensure that every employee who works on a competitively bid State agency contract valued in excess of \$100,000, other than those subject to the Federal Davis-Bacon Act, has access to hospitalization and medical insurance benefits while employed on such agency contracts. Violation may result in liquidated damages, award of the contract to another contractor who has been in compliance, and debarment from other contracts for 3 years. Hospitalization and medical insurance benefits contributions may not be paid in lieu of the employee's regular wages for the type of work performed under the contract.

Georgia

Wages. An amendment to the education code affirms that, with written employee consent, school systems may make payroll deductions as designated for any organization, association, or corporation that has among its objectives educational, charitable, classroom instructional, legislative, legal, or professional development activities related to promoting and enhancing the welfare of the education profession and public school students and employees.

Family issues. A new law entitles State employees to a period of up to 12 weeks of unpaid family leave during any 12-month period for the birth or adoption of a child, to care for a seriously ill child, parent or spouse, or because of the employee's own serious health condition. Employees returning from such leave must be reinstated in the same job

or an equivalent position with equivalent benefits, pay, and other terms and conditions of employment, except that restoration can be denied to certain high-paid salaried employees if such denial is necessary to prevent substantial and grievous economic injury to the employer's operations and if specified notice requirements are met.

Equal employment opportunity. The State renamed the Office of Fair Employment Practices the Commission on Equal Opportunity. The Commission is to be comprised of an Equal Employment Division and a Fair Housing Division. The Fair Employment Practices Board also was renamed the Board of Commissioners of the Commission on Equal Opportunity.

The Georgia Commission on Women was created, replacing the Commission on the Status of Women. Powers and duties were made more specific, with the Commission to study issues such as employment policies and their impact on the wage-earning capacity of women, educational needs of, and opportunities for, women, and women's health issues. The Commission also is to review and analyze the laws of the State and their impact on women. The number of Commission members was reduced from 115 to 15 and may now also include men.

Preference. The law providing for veterans' employment preference in State employment was amended to extend the preference to members of the National Guard and armed forces reserve who served on active duty in an "area of imminent danger" during Operation Desert Shield or Operation Desert Storm.

Other laws. Under a new law, labor pools furnishing temporary employees for short-time assignments of casual, unskilled labor may not charge workers fees for any equipment or transportation, and must inform the workers of assignments that involve exposure to hazardous chemicals and obtain their written consent.

Guam

Wages. Among measures to strengthen enforcement of the wage payment law, the Director of Labor, through the Attorney General's Office, was authorized to file a labor lien on any real or personal property of an employer and order the bank accounts of an employer frozen. The Department of Labor also may impose a collection fee on employers in the amount of 12 percent of unpaid wages due and collected to offset the costs of enforcement. Private sector employers who fail to pay wages when due or who underpay their employees are now subject to

payment of punitive damages to the employees in the amount of triple the wages due. Wages due may not be waived or compromised by an employee, and penalties, costs and attorney's fees resulting from violations may be waived or compromised by an employee only if all wages are paid in full and the action is approved in writing by the employee and his or her attorney. Knowingly and materially altering or falsifying payroll records to deprive an employee of wages rightfully due was made a felony. All deductions from wages must now be shown on an employee pay statement or check stub and a copy given to the employee.

Child labor. The child labor law now prohibits the employment of any minor under 18 in any occupation in violation of Federal laws.

Other laws. On October 1, 1992, an executive order approved rules and regulations for the certification of nonimmigrant alien temporary workers in Guam. The rules were promulgated by the Director of Labor as required by legislation approved on January 27. The law and rules establish the conditions under which such workers may be employed temporarily and housed in the territory because of a need for their skills that are not otherwise readily available. The Department of Labor is to disqualify from any nonimmigrant worker program employers who fail to pay the prevailing wage rate, may randomly test the skills of nonimmigrant temporary workers to assure that they have the skills set out in their labor certification, and is to require both repatriation and performance and payment bonds. Violations of the provisions with respect to the employment of aliens may result in civil or criminal penalties or disqualification from employing aliens under these programs. The governor is to establish a quota for temporary construction workers to confine their number to available job vacancies.

Hawaii

Wages. As the result of previous legislation, the minimum wage rose from \$3.85 to \$4.75 per hour on April 1, 1992, and from \$4.75 to \$5.25 per hour on January 1, 1993.

The prevailing wage law was amended to provide for periodic increases in the prevailing wage rate during the life of a public works contract matching any increases in subsequent determinations by the Director of Labor and Industrial Relations. This provision will not apply to Housing Finance and Development Corporation projects or county agency experimental and demonstration housing projects if the projects cost less than \$500,000 and the eligible bidder or developer is a private nonprofit corporation.

Equal employment opportunity. The law prohibiting discriminatory employment practices was amended to specifically authorize employees to bring civil action for sexual harassment or sexual assault and infliction of emotional distress or invasion of privacy related to such harassment or assault.

Striker replacements. It was made an unfair labor practice for a private sector employer to offer or grant permanent employment to an individual for performing work as a replacement for a bargaining unit member during a labor dispute, or based on employment or willingness to be employed during a labor dispute, to give employment preference to a person rather than another who was involved in the dispute. Public sector employers are prohibited from replacing any nonessential employee for participating in a labor dispute or from giving employment preference to an individual employed during a labor dispute rather than to an employee who was involved in the dispute.

Illinois

Equal employment opportunity. The State amended the Human Rights Act to require State agencies to include in their affirmative action plans a numerical hiring goal for the employment of qualified State residents with disabilities. Such a goal is to be based on the proportion of workers with disabilities in the State labor force as reflected in the most recent decennial census.

A new Right to Privacy Workplace Act makes it unlawful for an employer to refuse to hire an applicant or to discharge or otherwise discriminate against an employee in compensation, terms, or conditions of employment because of the use of lawful products off the employer's premises during nonworking hours, provided that such use does not impair the employee's job performance. An exception is made for employers that are nonprofit organizations with a primary goal or objective of discouraging the use of one or more such products by the general public. The law is to be administered and enforced by the labor department. The department, the applicant, or an employee may bring court action to enforce compliance.

Indiana

Child labor. Several changes were made in the child labor law, including those that bring the maximum school week hours and night work restrictions for 14- and 15-year-olds into compliance with the Federal Fair Labor Standards Act, and others that adopt the Federal prohibited hazardous occupations for minors under 18. A prohibition on work between 7:30 a.m. and 3:30 p.m. on school days by minors under age 18, without a written exception issued by the child's school,

was adopted; the ban replaces a prohibition on work by minors under age 14 while school is in session. Other significant amendments include replacing criminal penalties for violation of the law with civil money penalties, assessed by the department of labor, with funds received to be used to educate affected parties on the law; adding a decrease in the student's school attendance to a decrease in grade point average as an additional basis for revocation of an employment certificate; and permitting denial of a certificate to a child whose attendance is not in good standing or whose academic performance is not satisfactory.

Equal employment opportunity. The State enacted a measure containing some provisions similar to those in the Federal Americans with Disabilities Act. Although the State Civil Rights Act previously prohibited employment discrimination based upon disability, the new provisions include a requirement that employers make reasonable accommodation to the known physical or mental limits of an otherwise qualified individual with a disability. Employment discrimination is prohibited with respect to job application procedures, hiring, advancement or discharge, compensation, job training, or other terms, conditions, and privileges of employment. Until July 25, 1994, the law will be applicable to employers of at least 25 employees; after that date the law will apply to employers of 15 or more employees.

Iowa

Wages. By previous law, the minimum hourly wage rate was increased from \$4.25 to \$4.65 on January 1, 1992. On the same date, the minimum for the first 90 calendar days with an employer rose from \$3.85 to \$4.25.

Equal employment opportunity. It is unlawful for a State employee to sexually harass another State employee, a person in the care or custody of the State employee or a State institution, or a person attending a State educational institution. New employees are to receive, at the time of hiring or orientation, a guide that describes applicable sexual harassment prohibitions and grievance, violation, and disposition procedures.

In the November general election, voters rejected Constitutional Amendment Number 1, which would have amended the State Constitution to ensure equal rights for men and women.

Genetic testing. It was made unlawful for an employer, employment agency, labor organization, or licensing agency to solicit, require, or administer a genetic test to a person as a condition of employment, pre-employ-

ment application, labor organization membership, or licensure, or to adversely affect any person who obtains a genetic test. Enforcement is through civil action, and an individual may not be discharged, disciplined, or discriminated against for filing a complaint or testifying in any proceeding or action involving violations.

Kentucky

Hours. The House adopted a resolution directing the Interim Joint Committee on Labor and Industry to study temporary and part-time work. Items to be investigated include the extent to which such workers are used in the private and public sectors; the growth, if any, in the use of such workers in the State; fringe benefits needed by temporary workers, benefits that are offered, and the percentage of temporary workers who receive these benefits; whether State protections may be necessary for temporary workers; and whether increased employment of these workers should be encouraged or discouraged as a matter of State policy.

Equal employment opportunity. The Civil Rights Act, administered by the Commission on Human Rights, was amended to prohibit discrimination on the basis of an individual's disability. The amendments, containing some provisions similar to the Federal Americans with Disabilities Act, requires employers to make reasonable accommodation to an employee's or prospective employee's disability without undue hardship on the conduct of the employer's business. A physical or mental impairment that does not prevent performance of the job may not be used as the basis for an employer to refuse to hire, discharge or otherwise discriminate against an individual. The law also applies to the activities of employment agencies, licensing agencies and labor organizations. An existing prohibition against employment discrimination based upon physical disability is administered by the Department of Workplace Standards.

The Cabinet for Workplace Development was requested to create a pilot site to serve as a model to implement requirements of the Americans with Disabilities Act, and career training institutions and institutions of higher education were asked to review their curricula to ensure that the curricula contain the best practices regarding the education and training of disabled persons.

Louisiana

Wages. Teachers and other school employees may now authorize their employing school board to deduct from their wages dues to any organization of teachers or other school employees. Such authorization must be voluntary and made in writing, and will

not apply to a school board operating under the terms of a collective bargaining agreement.

Public employees may now authorize their employers to deduct from their wages payment of dues to a professional State or local law enforcement or firefighter association to which they belong that is located or operates a chapter in the jurisdiction.

Child labor. Among several amendments to the child labor law, violators will now be subject to civil penalties of up to \$500 imposed by the Department of Labor, in addition to criminal penalties. Criminal penalties were increased. The secretary of labor was empowered to enforce the civil penalty provisions and adopt and promulgate such rules and regulations and conduct such investigations necessary for enforcement. The requirement that employers keep employment certificates on file also was amended to add work permits, and exempt from this requirement those minors employed in approved federally funded youth training programs (an exemption from the entire child labor law for these minors was eliminated).

The State repealed a requirement that minors under age 16 must obtain a statement of physical fitness to receive an employment certificate. Modeling and photographic advertisement were added to the list of occupations requiring a written permit issued by the Department of Labor for exemption from the prohibition on employing minors under age 16 in theatrical performances or exhibitions, and permit application requirements were revised.

The prohibition on work by any person under age 18 in an establishment where the sale of alcoholic beverages is the main business was amended to permit employment by a person under 18 who is a musician performing in a band on the premises under written contract for a specified period of time, and the musician is under direct parental supervision.

As part of a law relating to horse racing, applicants seeking a license as a jockey, apprentice jockey, exercise person, groom, or hot walker are now required to be at least 16 years of age. Minors are not to be employed in any manner about racetracks except in these occupations.

Equal employment opportunity. The Louisiana Commission on the Status of Women and the Women's Division of the former Department of Employment and Training were abolished.

Private employment agencies. Among amendments to the private employment services law, the Assistant Secretary of Labor is now authorized to order such services to re-

fund fees to job applicants in appropriate cases, and the services are prohibited from obtaining a power of attorney or assignment of wages from job applicants. The Private Employment Service Advisory Council, abolished in 1989, was re-established.

Preference. A resolution was adopted urging businesses located or locating in Louisiana to give preference in hiring to citizens.

Inmate labor. Prisoners in parish jails and inmates in State facilities may now assist political subdivisions with removal of weeds and grass in addition to other work permitted previously. This work is not to reduce the work force of any highway maintenance gang or cause the layoff of any classified employee.

Other laws. In a reversal, the Department of Employment and Training was renamed the Department of Labor, which had been changed in 1989 to Department of Employment and Training.

Maine

Wages. The Department of Labor is to study alternative ways of revising the prevailing wage law to include the value of fringe benefits provided by the employer in the calculation of the prevailing wage. As part of the study, procedures used under State law are to be compared with those used under the Federal Davis-Bacon Act. Officials will examine the possibility of administrative savings by using local data compiled by the U.S. Department of Labor as the basis for determining the prevailing wage under the State law without compromising its purposes. Also to be considered are the scope and impact of the law, verification and enforcement activities, occupational classifications, and possible alternative funding sources. A final report is to be submitted to the Legislature by January 31, 1993.

Child labor. Among amendments to the child labor law, the provision limiting 16- and 17-year-olds to no more than 4 hours of work daily when school is in session will now permit work up to 8 hours on the last scheduled day of the school week. In addition, restrictions on the hours of employment will not apply to high school graduates or emancipated minors. An exemption from the hours restrictions for any occupation that does not offer continuous year round employment was removed and an exemption added for work performed as a summer camp employee in a children's camp. A new provision specifies that only one work permit may be issued to a minor at any given time if school is in session, while two may be issued for the summer vacation period.

Equal employment opportunity. A new Non-traditional Occupation Act calls for the Department of Labor to encourage pursuit of nontraditional occupations. Among its duties, the Department is to provide necessary support services to participants including payment for dependent care costs, training materials, and travel payments. The department also is to work with community organizations to develop ongoing support systems for participants who receive training in nontraditional occupations, and is to regularly report on measurable goals and progress achieved. Nontraditional occupations are defined as counting among the occupation's workforce 25 percent or less who are female for female participants or male for male participants.

Striker replacements. A resolution was adopted in late 1991 directing that a commission be established to study the use of professional strikebreakers in labor disputes, and to evaluate the effects on collective bargaining. Of specific concern is the possible impact on the balance of bargaining power between employees and employers, and whether strikebreakers contribute to the potential for violence during labor disputes. If such a connection was found, the commission was to investigate and recommend ways to reduce this potential for violence.

Massachusetts

Wages. The wage payment law that previously required employers to pay employees weekly will now also allow biweekly payments. Employers changing to biweekly payments are to give employees written notice at least 90 days before the first payment. This law also repealed a provision enacted in 1991 that exempts employees of cities, towns, counties, regional school districts, or other political subdivisions of the Commonwealth from the law.

Child labor. The prohibition on work by minors under age 16 in hazardous occupations was amended to add work in gasoline service stations to the list of such activities, but with an exception permitting employment solely to dispense gas and oil and to provide courtesy service outside the service bay area of the station.

Equal employment opportunity. On September 23, 1992, the governor signed an executive order extending sick and bereavement leave to State workers in a "relationship of mutual support" on the same basis as to married employees. Under the order, State workers will be entitled to up to 4 days of paid bereavement leave upon the death of a person with whom the employee had a relationship of mutual support, and 10 days of ac-

crued sick leave in the event of the serious illness of that person. A relationship of mutual support is defined as a relationship between two unmarried individuals each competent to contract, characterized by mutual caring and emotional support; an agreement to share basic living expenses; a sharing of living quarters and an intent to do so indefinitely; a mutual assumption of responsibility for each other's welfare; and a mutual expectation that the relationship is exclusive and will endure. The executive order also directs the Department of Personnel Administration to adopt regulations and policies by November 1, 1992 to eliminate discrimination on the basis of sexual orientation in the benefits provided to employees under its jurisdiction. A State law enacted in 1989 bans discrimination on the basis of sexual orientation.

Michigan

Equal employment opportunity. Among the provisions of an appropriation measure for the Department of Labor is a requirement that it establish and maintain an affirmative action program based on approved guidelines. Similar requirements also appear in the appropriation measures for several other agencies.

Minnesota

Family issues. The law requiring employers to grant employees unpaid family leave was amended to authorize the Department of Labor and Industry's Division of Labor Standards to receive complaints, conduct informal investigations, and attempt to resolve complaints by informing employers and employees of the law and directing employers to comply. In addition to leave to attend school conferences and classroom activities as before, parents must now be granted leave to attend child care or pre-kindergarten conferences or activities or observe or monitor the services or program if such activity cannot be scheduled during nonwork time. The Division is to submit an annual report to the Legislature on complaints, rate of complaint resolution, and rate of repeat complaints against employers.

Equal employment opportunity. Each employer of 25 or more part-time or full-time employees (effective July 1, 1994, the number is to be 15) is now required to make reasonable accommodation to the known disability of a qualified disabled person unless it can be demonstrated that doing so would pose an undue hardship (the reasonable accommodation requirement previously applied to employers of 50 or more full-time employees). Also, reassignment to a vacant position was added to the forms of accommodation listed. In addition, new restrictions

were applied to collection, maintenance and release of employee medical history information.

All State agencies are to adopt a goal of zero tolerance of violence. Each agency is to develop a plan to eliminate any potential for violence in and around the workplace, including the elimination of sexual harassment, and assuring that all areas around the workplace are safe for employees and guests, including areas between the workplace and parking facilities.

It is now unlawful for an employer to refuse to hire a job applicant or discharge or discipline an employee or applicant because of the use of food, alcoholic or nonalcoholic beverages, tobacco, or other lawful consumable products outside the workplace during nonworking hours. Use may be restricted if the restriction relates to a bona fide occupational requirement or is necessary to avoid a conflict of interest or appearance of such a conflict with any responsibilities owed by the employee to the employer. Employers also may provide a health or life insurance plan that makes distinctions between employees for the type or cost of coverage based upon the employee's use of lawful consumable products if different premium rates charged reflect the actual differential cost to the employer. In the event of violation, an applicant or employee may bring a civil action for damages.

Striker replacements. On October 1, 1992, the U.S. District Court of Minnesota held the State's striker replacement law to be unconstitutional. The court ruled that the 1991 law is preempted by the Federal National Labor Relations Act and is therefore unconstitutional under the Supremacy Clause of the U.S. Constitution. The State law had made it unlawful for an employer to hire, or threaten to hire, permanent replacement workers in the event of a lockout by an employer or during a strike by employees.

Mississippi

Wages. The law prescribing the powers of municipal governing authorities was amended to specifically allow municipal employees to be paid up to double their regular rate of pay or receive up to double the regular rate of compensatory time for work performed on holidays.

Child labor. The law permitting persons under age 21 to work around alcoholic beverages in activities limited to clearing or bus-ing tables will also now permit work by those under 21 in stocking, bagging, or otherwise handling purchases of alcoholic beverages. Persons aged 18 to 21 may now wait tables and take orders for and serve alcoholic beverages, but may not tend bar.

Inmate labor. Inmates who participate in public service work programs may now perform such service for nonprofit charitable organizations and as before, perform these tasks for counties, municipalities, or the State.

Missouri

Equal employment opportunity. Among several changes in the Human Rights law, the term "handicap" for purposes of prohibited discrimination may not include current, illegal use of, or addiction to, a controlled substance, but may include a person who is participating in or has successfully completed a supervised drug rehabilitation program and is no longer using drugs.

It was made an improper employment practice for an employer to refuse to hire, discharge, or otherwise discriminate against an individual with respect to compensation, terms or conditions of employment because the individual uses lawful alcohol or tobacco products outside the workplace during nonwork hours, unless such use interferes with the duties and performance of the employee, coworkers, or operation of the employer's business. This provision will not apply to religious organizations and church-operated institutions, and not-for-profit organizations whose principal business is health care promotion.

Nebraska

Family issues. A resolution was adopted asking the Business and Labor Committee of the Legislature to conduct an interim study of methods of maintaining and improving worker productivity in view of changing family structures and roles. Specifically, the study is to examine incentives for employee retention, such as flexible benefit packages, employment options in providing emergency medical leave, flextime, and other employment options in scheduling employee hours, and the costs associated with each of these options.

Equal employment opportunity. A resolution was adopted asking that a select committee of senators be formed to continue a study of the congressional policy and legislative policies of other States pertaining to sexual harassment in the workplace; the workload and staffing needs of the State's Equal Opportunity Commission; the difficulties of filing, investigating, and prosecuting a sexual harassment claim; and other aspects of sexual harassment in the workplace when necessary.

Other resolutions were adopted asking the Business and Labor Committee of the Legislature to conduct interim studies of various factors relating to the economic status of women and their families and of age discrimination in workplaces in the State.

Other laws. As part of a law providing for education and recruitment of potential bone marrow donors, employers are to be encouraged to grant paid leaves of absence to employees who seek to undergo a medical procedure for bone marrow donations.

A resolution was adopted asking that the Business and Labor Committee of the Legislature conduct an interim study of the feasibility of giving the Department of Labor responsibility for State and Federal job training programs.

Another resolution asked the Judiciary Committee of the Legislature to study and evaluate the use and effect of work assignments on incarcerated offenders and the issues surrounding the feasibility and possible methods of expanded private industry involvement in the employment of offenders.

New Hampshire

Child labor. Among other amendments to the law regulating employment of minors in establishments where liquor is served, the minimum age at which minors may be employed in dining and lounge areas to clean tables, remove empty containers and glasses, and assist in stocking was increased from 15 to 16, and the minimum age for employment as a waiter, waitress, or hostess serving liquor in dining rooms was increased from 16 to 18.

Equal employment opportunity. The State Legislature amended the Law Against Discrimination, adding a prohibition against sexual harassment in employment and a requirement for employers to permit a female employee to take a leave of absence, with reinstatement rights, for the period of temporary physical disability resulting from pregnancy, childbirth, or related medical conditions. Both provisions had been included in regulations of the Human Rights Commission. In addition to its previously delegated authority, beginning January 1, 1993, the Commission was authorized to order compensatory damages in cases of unlawful discriminatory practices, and to assess administrative fines of up to \$10,000 for a first violation, \$25,000 for a second violation within 5 years, and \$50,000 for three or more violations during a 7-year period.

The governor is to consider the balance between men and women among the population served or regulated when making an appointment or filling a vacancy in a State office, agency, commission or board to reflect that balance in the membership of that body.

Preference. Contractors bidding on projects at the Port of Portsmouth that are funded through the Port Authority or the State are encouraged to employ the maximum pos-

sible number of State residents.

Whistleblowers. The law protecting whistleblowers against retaliation by their employer for reporting violations of law or participating in an investigation of allegations of violations by the employer, was amended to specifically authorize the Commissioner of Labor to now award back pay in addition to reinstatement, fringe benefits, seniority rights, and injunctive relief.

Other laws. Public assistance recipients or applicants, otherwise required to seek employment as a condition of receiving such aid, may not be required to cross any lawful picket line in connection with any strike, lock-out, or labor dispute to apply for a job.

New Jersey

Wages. By previous law, the State minimum wage rate rose from \$4.25 to \$5.05 per hour on April 1, 1992.

Equal employment opportunity. The Law Against Discrimination was amended to specifically include in the prohibition against discrimination on the basis of disability, persons suffering from AIDS or HIV infection. Equal employment opportunity, but not affirmative action, is now required for persons identified solely by their affectional or sexual orientation.

New Mexico

Wages. A Public Works Apprenticeship and Training Act was adopted requiring contractors and subcontractors on public works construction projects to contribute to a fund for approved building trades apprenticeship and training programs in the State. Employer contribution requirements will be included with minimum wage determinations issued by the labor department on all such projects. Civil penalties and contract ineligibility are provided for in the event of employer non-compliance.

Family issues. A resolution was adopted requesting the Commission on the Status of Women to schedule hearings in all regions of the State on the need for providing family medical leave to employees, and its impact on employees and employers.

Agriculture. A State Senate resolution calls on the employment security division of the labor department to forward to the appropriate Federal agency any rights violations by employers with regard to adequate housing and sanitary facilities for migrant farmworkers.

Preference. A resolution calls on the State Highway and Transportation, Labor, and

Human Services departments, and the State associated general contractors to reduce unemployment and welfare payments by expediting the expenditure of Federal-aid highway funds to boost the State's economy, and by employing, to the maximum extent possible, State residents who are unemployed or receiving public assistance.

New York

Wages. As the result of previous legislation, the State minimum wage rate for farmworkers increased from \$3.80 to \$4.25 an hour on January 1, 1992.

The exemption from various sections of the wage payment and collection law for persons employed in bona fide executive, administrative, or professional capacities will now apply only to those whose weekly earnings are more than \$600.

Child labor. Principals of unregistered non-public schools were authorized to issue employment certificates and revoke such certificates for cause.

Students enrolled in cooperative work experience programs approved by the Department of Education were granted an exception from the 4-hour maximum limit on hours worked on any day preceding a school day. The students may now be employed for a maximum of 6 hours on those days if the work hours occur solely pursuant to the work experience program.

The section of the child labor law permitting 12- and 13-year-olds to be employed for up to 4 hours a day in the hand harvest of berries, fruits and vegetables between June 21 and Labor Day of each year was amended to now also allow such work by the minors during the remainder of the year at times when school attendance is not required by the education law. The work is to be limited to no more than 4 hours a day and must be performed between 9 a.m. and 4 p.m.

School attendance. The compulsory school attendance law requiring attendance to age 17 was amended to specify that students are to remain in school until the end of the school term in which they become 17 years of age.

Equal employment opportunity. State lawmakers enacted legislation banning employers or employment agencies from refusing to hire, employ or license, or discharge or otherwise discriminate against an employee in compensation, promotion, or terms or conditions of employment for engaging in specified legal activities outside the workplace during nonworking hours. Such discrimination is barred against workers for participation in political activities, except professional journalists or indi-

viduals whose participation is prohibited by Federal law, for the legal use of consumable products, because of legal recreational activities, or because of an individual's membership in a union or exercise of rights under the Federal National Labor Relations Act or the State Public Employees' Fair Employment Act. Exceptions to the law apply to activities that create a material conflict of interest related to the employer's trade secrets or proprietary information, and to activities that violate conflict of interest or ethics provisions in State law or collective bargaining agreements.

Also as part of the law, an organization or employer may offer a health, disability or life insurance policy that makes distinctions between employees for the type or cost of coverage based upon the employee's recreational activities or use of consumable products, if the different rates charged employees reflect a differential cost to the employer. In addition to other remedies, violators may be subject to civil penalties of \$300 for a first violation and \$500 for each subsequent violation.

The Department of Education was given the responsibility of stimulating the development of programs intended to furnish opportunities for integrated employment, including supported employment and paid competitive work to individuals with severe disabilities. The Department also is to coordinate with other State agencies responsible for furnishing necessary services to such individuals.

Other laws. The Division of Alcoholism and Alcohol Abuse was authorized to assist in establishing and maintaining employee assistance programs designed to help employees and their families with problems that may interfere with job performance. The problems specified include alcohol and substance abuse, emotional, marital, family, and other personal problems.

North Carolina

Wages. The minimum wage was increased from \$3.35 to \$3.80 per hour on January 1, 1992, and to \$4.25 on January 1, 1993. The \$3.35 per hour training wage was increased to 85 percent of the minimum wage on January 1, 1993 and is scheduled to expire by April 1, 1993.

Child labor. The youth employment law was amended to provide that, during the regular school term, a youth under 18 years of age who is enrolled in school may not be employed between 11 p.m. and 5 a.m. when school is scheduled the next day. Sixteen- and 17-year-olds may work beyond these hours with written parental and school approval. The exemption in the law for em-

ployment covered by the Federal Fair Labor Standards Act will not apply to this new provision. Provisions already in the law establish more restrictive requirements for 14- and 15-year-olds.

Equal employment opportunity. All State agencies are to develop and submit to the State Personnel Director an equal employment opportunity plan that includes goals and programs providing positive measures to assure equitable and fair representation of State residents in State employment. The Director is to provide technical assistance, training, oversight, monitoring, evaluation, support programs and reporting to assure that the State government's work force at all occupational levels reflects the State's population.

The governor is to ensure that minorities and women are represented in appointments to the State Building Commission.

Failure or refusal by an employer to hire an applicant or to discharge or otherwise discriminate against an employee in compensation, terms, or conditions of employment because of the lawful use of any product outside the workplace during nonworking hours, provided that such use does not adversely affect job performance or the safety of other employees, is now an unlawful employment practice. Employers may restrict the use of such products if the restriction relates to a bona fide occupational requirement or if the restriction relates to the fundamental objectives of the organization.

The law also permits employers to discharge, discipline, or take other action against an employee because of his or her failure to comply with the employer's substance abuse prevention program or the recommendations of substance abuse prevention counselors provided by the employer.

The antidiscrimination law allows employers to provide a health or life insurance plan that distinguishes between employees for the type or cost of coverage based upon the employee's use of lawful products if the different premium rates charged reflect the actual differential cost to the employer. In the event of violation of any part of this law, an applicant or employee may bring a civil action to obtain an order requiring reinstatement or an offer of employment, lost wages and benefits, damages, and attorney's fees.

Private employment agencies. Job applicants paying a placement fee to a private personnel service for a position that is compensated in whole or in part on a commission basis, are now entitled to a refund from their employer of a portion or all of the fee paid if they fail to earn at least 80 percent of the compensation amount stated by the employer in the written job order.

Inmate labor. The Department of Correction was directed to seek approval from the U.S. Department of Justice's Bureau of Justice Assistance, and to develop a program of manufacturing or other industries in State prison facilities by private enterprises to be administered through the Correction Enterprises operation. Inmates participating in the program are to be paid at least the prevailing hourly minimum wage rate.

Whistleblowers. Separate provisions prohibiting retaliation against employees for filing complaints, initiating investigations, or testifying under the wage and hour, occupational safety and health, workers' compensation, or mine safety and health laws were consolidated under a new Retaliatory Employment Discrimination provision administered by the Commissioner of Labor. The Commissioner is authorized to receive, investigate and conciliate complaints, and file civil actions or issue right-to-sue letters in cases where complaints cannot be informally resolved. The court may award relief including injunctions, reinstatement, restoration of full benefits and seniority, compensation for lost wages and other economic losses, and in cases of willful violations, treble the amount of lost wages and other economic losses.

Ohio

Equal employment opportunity. Among various changes to the Civil Rights Law, the prohibition against employment discrimination on the basis of disability was amended to specifically exclude actions by an employer, employment agency, personnel placement service, labor organization, or joint labor-management committee on the basis of illegal use of a controlled substance by an employee, applicant, or other person.

Oklahoma

Wages. State employees may now request a voluntary payroll deduction for payment of legal services insurance premiums. The insurance company must be regulated by the State Insurance Commissioner and a minimum participation of 500 State employees is required.

Equal employment opportunity. Prohibitions against employment discrimination based upon age will now apply to all persons age 40 and older, instead of only those between 40 and 70 years old.

Worker privacy. Among several new provisions relating to State government personnel, it was specified that State employee home addresses, home telephone numbers, and social security numbers are not to be open to public inspection or disclosure.

Oregon

Equal employment opportunity. Voters in the November general election defeated ballot measure 9, a proposed constitutional amendment to limit gay rights.

Pennsylvania

Equal employment opportunity. In late 1991, the Human Relations Act was amended to conform with the Federal Americans with Disabilities Act, including provisions relating to pre-employment inquiries, accessibility requirements, and coverage of persons associated with people with disabilities. The illegal use of, or addiction to, a controlled substance is excluded from the definition of disability. The upper age for coverage of the age discrimination provisions was removed, the Human Relations Commission was authorized to obtain injunctions in enforcing the law, and protection against discrimination was extended to certain independent contractors.

A resolution was adopted calling upon the Department of Labor and Industry to review its practices to determine whether, and to insure that, Federal regulations concerning preference and priority in hiring veterans are being followed to promote employment opportunities.

Puerto Rico

Wages. As the result of a previous mandatory decree, the minimum wage rate for employees in the watching and protective service industry rose from \$3.65 to \$3.80 per hour on June 5, 1992.

Equal employment opportunity. Several provisions similar to those in the Federal Americans with Disabilities Act were among December 1991 amendments to a law prohibiting discrimination because of physical or mental disability by public and private institutions. The law now specifically covers sensory disabilities.

Another measure made it unlawful to discriminate in employment against individuals with physical, mental, or sensory disabilities in institutions funded by the State.

A late 1991 law made it unlawful to discriminate against married couples by refusing to employ husband and wife at the same time. The law extends to applicants for employment and to employees in the same firm who eventually become married.

Whistleblowers. A December 1991 amendment ratifies and confirms public policy by specifying that protection of the law prohibiting discharge or other discrimination against public or private sector employees for testifying before a court includes those instances in which an employee is summoned to appear before the Legislature, any

of its commissions, the court, or an administrative law judge.

Other laws. Legislation was enacted concerning the rights of temporary employees and regulation of employment agreements between temporary employees and their employers. Among other provisions, the laws address the employment relationship of the employee with both the business placing such workers and the client-company, and the entitlement to vacation and sick leave.

Rhode Island

Wages. The minimum wage law was amended to increase from one to three years the length of time that employers are required to maintain on their premises a record of the name, address, and occupation of each employee. Employers also must keep information on each employee's wage rates and hours worked, and such other information the director of labor considers necessary.

Equal employment opportunity. The State amended the Fair Employment Practices law to specifically provide that proving an unlawful employment practice does not require direct evidence of unlawful intent and the methods used to prove such practices are not limited by the law. In addition, complainants are not required to prove physical harm or physical manifestation of injury to be awarded compensatory damages in cases of intentional discrimination.

The law prohibiting employment discrimination against persons with disabilities was amended to include employment by a public entity or employer covered by the Federal Americans with Disabilities Act.

The authority of the State personnel administrator to prepare, without examination, special lists of prospective employees eligible for State service was amended to include those with mental and physical impairment. Appeals to the personnel appeal board alleging discrimination on the basis of disability also will no longer apply solely to physical handicap.

A Rhode Island Commission on Women was established to promote rights and opportunities for all women. The Commission is to study, recommend, and promote action on issues related to women, including employment, economic development, and the quality of individual and family life. The Commission is responsible for, among other matters, evaluating, monitoring, and proposing Federal and State legislation, and advising legislators on issues relating to women.

A committee is to be formed to meet monthly and discuss affirmative action in State government. The committee is to formulate a plan that addresses affirmative action and draft legislation to correct deficiencies.

A resolution was adopted requesting cities and towns to grant employment preference to Desert Storm veterans when filling city and town positions.

Whistleblowers. Employers are prohibited from discharging or otherwise discriminating against an employee because the employee has reported a violation to the Department of Labor or is requested by the Department to participate in an investigation, hearing, inquiry, or court action. This provision is applicable to the wage payment, minimum wage, child labor, equal pay, industrial homework, and Sunday business laws. Civil court action is to be used to enforce the law.

Other laws. The State is barred from entering into any new contract with an employer during a strike against the employer, provide any other economic benefit, or make any favorable administrative ruling that might lead to the financial gain of an employer whom the National Labor Relations Board has found guilty of an unfair labor practice.

South Carolina

Equal employment opportunity. A resolution was adopted recommending that State agencies employ qualified persons with handicapping conditions as temporary and permanent employees when positions are available.

Preference. A manufacturer headquartered in the State that meets a \$10 million payroll in the State and produces a product made or processed from raw materials into a finished product will now be considered a resident of the State for purposes of receiving a preference on bids on public contracts let under the Consolidated Procurement Code.

Other laws. As part of a new Bone Marrow Donor Act, public and private sector employers of 20 or more employees at one job site in the State may grant paid leaves of absence to employees seeking to undergo medical procedures to donate bone marrow. Employers are prohibited from retaliating against an employee for requesting or obtaining a paid leave of absence for this purpose.

South Dakota

Child labor. Restrictions on the daily, weekly, and nightwork hours of work for children under age 16 will not apply to roguing or detasselling of hybrid seedcorn during nonschool days and nonschool weeks.

Preference. The State amended the provision granting a preference to resident bidders on public contracts against the bid of a non-

resident bidder from a State that enforces or has a preference for resident bidders in an amount equal to the preference given by that State. The amended provision specifies that the preference will apply to contracts involving Federal funds unless expressly prohibited by law. The provision, previously applicable only to the Bureau of Administration, will now also apply to contracts let by other State agencies and political subdivisions of the State.

Tennessee

Wages. The Commissioner of Labor was authorized to enter into reciprocal agreements with the labor department or corresponding agency in other States to collect wage claims and judgments. The Commissioner also was authorized to bring court action upon the written request of an agency of another State provided the other State by legislation or reciprocal agreement will bring action in such cases arising in the State.

Drug, alcohol testing. A resolution was adopted asking that a special House committee be created to study the use of employee drug and alcohol testing policies for all licensed hospitals in the State.

Jury duty. The State amended the law governing absences from employment because of required jury duty to now apply to the State and local governments. Among the provisions of this law, employers are prohibited from discharging or otherwise discriminating against an employee for serving on jury duty if they have been given the required advance notice.

Other laws. The State repealed the law barring employers from knowingly hiring an employee of another employer.

A State employee who is a certified disaster service volunteer of the American Red Cross may now be granted leave from work with pay, for up to 15 work days annually, to participate in such activities.

Utah

Wages. Overtime pay policies for State employees were established in conformance with the overtime requirements of the Federal Fair Labor Standards Act. Policies for nonexempt employees also were established.

Child labor. The Industrial Commission was given specific responsibility to determine and establish the hours and conditions of labor and employment for occupations in which minors are employed.

Equal employment opportunity. When making appointments to boards, committees, bureaus, commissions, councils, or other

entities, officials must strongly consider qualified applicants whose sex is under-represented.

Whistleblowers. The State amended the law protecting public employees from reprisal for reporting the waste of public funds, property, or personnel, or a violation of law, to provide protection only if the report is made in good faith as demonstrated by communicating the information to the State auditor.

Other laws. A resolution directed the Legislative Management Committee to assign appropriate interim committees to study numerous labor- and nonlabor-related subjects, including constitutional review of the 8-hour work day; preparation of a sexual harassment act; the State preference law for domestic contractors, and development of a preference system for Utah companies; tip pooling; and parental leave for employee involvement in their children's education.

Vermont

Family issues. The State Legislature replaced a maternity leave law with a parental and family leave law that applies to the private and public sectors. The law requires employers of 10 or more individuals for the purposes of parental leave, and 15 or more for the purposes of family leave, to provide employees with up to 12 weeks of unpaid leave in a 12-month period for the birth or adoption of a child, for an employee's own serious illness, or to care for a seriously ill child, parent, or spouse. Employees are to give reasonable written notice of intent to take leave. Employees returning from such leave must be reinstated in the same or a comparable position with no loss of seniority unless the employer can demonstrate that during the period of leave the employee's job would have been terminated or the employee laid off for reasons unrelated to the leave, or that the employee performed unique services and hiring a replacement during the leave, after giving reasonable notice to the employee, was necessary to prevent substantial economic injury to the employer's operation.

Equal employment opportunity. It is now an unlawful employment practice, except in the case of a bona fide occupational qualification, for an employer, employment agency, or labor organization to discriminate on the basis of sexual orientation. Religious organizations are exempt from coverage, and the law may not be construed to change the definition of family or dependent in an employee benefit plan.

The Governor's Committee on Employment of the Handicapped was renamed the Governor's Committee on Employment of People with Disabilities. The Department of

Social and Rehabilitation Services was renamed the Department of Aging and Disabilities. Persons who had been referred to as physically, mentally, emotionally and otherwise handicapped are now referred to as people with disabilities.

Virginia

Wages. Previous legislation raised the minimum hourly wage on July 1, 1992 from \$3.65 to \$4.25, matching the Federal rate.

Family issues. A resolution was adopted requesting the Department of Education to study parental leave time to promote parental involvement and service in public schools. Among its duties, the Department is to recommend ways to encourage businesses to grant employees who are parents, guardians, and custodians of school-age children leave time for participation in school activities, and recommend ways to promote parental involvement in public schools and to form school-business partnership programs.

Child labor. A regulation governing the employment of minors in agriculture took effect on July 1, 1992, replacing an emergency regulation effective July 1, 1991. Like the previous regulation, the revised rule specifies hazardous occupations prohibited for minors under age 16, prohibits work by these children during school hours, and establishes meal period and recordkeeping requirements. The major new feature was increasing the minimum age from 16 to 18 for employment in several hazardous occupations.

Agriculture. The law regulating the operation of migrant labor camps was amended to specifically exempt small businesses that are exempt from the Federal Fair Labor Standards Act and Migrant and Seasonal Worker Protection Act.

Equal employment opportunity. A resolution was adopted urging Congress to pass the Equal Rights Amendment, introduced in 1991, to guarantee equal rights for women.

Private employment agencies. The employment agency licensing law was amended to give specific rulemaking authority to the Department of Commerce rather than the Board of Commerce. The list of prohibited agency activities was deleted from the statute and is to be included in regulations. Employment counselors are now required to be registered with the Department. Refunds to job applicants when employment terminates in less than 12 weeks will not be required if the applicants have misrepresented their qualifications.

Other laws. A measure provides for jail in-

dustry programs in correctional facilities to provide paid employment opportunities for inmates. Criteria were established for eligibility, compensation, disposition of money collected, and restriction on sales of goods and services. Sales are to be made only to public agencies, localities, and certain non-profit organizations, except artistic products crafted by the participants.

Washington

Wages. Commissioned salesworkers who sell automobiles and trucks are exempt from overtime pay requirements if they are paid the greater of an hourly rate plus time and one-half for overtime, or a straight commission, a salary plus commission, or a salary plus bonus applied to gross salary.

State and local government employees may now authorize payroll deductions for payments to specified financial institutions.

Child labor. New child labor rules were adopted on October 6, 1992, to take effect February 1, 1993. Among several changes, these rules reduce the permissible weekly hours of work for 14- and 15-year-olds from 18 to 16, and extend from 7 p.m. to 9 p.m. the latest permissible nightwork hours for these minors on Fridays and Saturdays during the school year. The work of 16- and 17-year-old youths during the school year will be limited to no more than 4 hours daily Monday through Thursday and no more than 20 hours a week rather than the current 40 hours a week. These minors will now be permitted to work until 10 p.m. Sunday through Thursday during the school year, and until midnight on Friday and Saturday and when school is not in session.

A special variance to these hours agreed to by the parent, employer, student, and school, and reviewed each grading period, will allow 16- and 17-year-old students to work up to 6 hours a day and 28 hours a week; variances for more than 28 hours must be submitted through the Department of Labor and Industries' standard variance process. Additional occupations are declared hazardous for minors under age 18, including those with a risk of exposure to body fluids or transmission of infectious agents, such as Hepatitis B and HIV, and occupations involving potential exposure to substances that are considered to be carcinogenic, corrosive, or highly toxic.

Equal employment opportunity. Public employees who have served in the Armed Forces subsequent to January 1, 1990, are now entitled to retirement service credit for up to four years of military service.

Whistleblower. The law protecting State employees from workplace reprisal as a result

of the good faith reporting of alleged improper governmental action was amended to also prohibit retaliation by denying employment and encouragement by a supervisor or superior of coworkers to be hostile toward the whistleblower. Retaliation is now an unfair practice under the antidiscrimination law and action may be pursued under that law. In addition to other remedies, an administrative law judge may impose a civil penalty of up to \$3,000 on the retaliator and order the State employer to suspend the retaliator for up to 30 days without pay.

Retaliatory action against a local government employee because the employee provided information in good faith about an improper governmental action also was made unlawful. Employees bringing charges of such retaliation must provide notice to the governing body of the local government and after 30 days or upon receipt of a response may then request a hearing. After such a hearing before an administrative law judge, relief may be granted, including reinstatement with or without back pay, appropriate injunctive relief, and the awarding of costs. In addition, an administrative law judge may impose a civil penalty of up to \$3,000 against each retaliator, and recommend to the local jurisdiction that the retaliator be suspended or dismissed.

West Virginia

Wages. By previous law, the minimum wage was increased from \$3.80 per hour to \$4.25 on April 1, 1992.

The minimum wage law was amended to authorize, for county and municipal government employees in lieu of overtime compensation, compensatory time off at the rate of one and one-half hours for each hour of overtime worked. Employees may accrue up to 240 hours of compensatory time, except for public safety, emergency response, or seasonal employees who may accumulate up to 480 hours. Overtime compensation must be paid for additional overtime hours worked in excess of the maximum compensatory time that may be accrued.

The Minimum Wage Rate Board and Labor Management Relations Board were abolished.

Equal employment opportunity. A new law was enacted to make it unlawful for any employer to refuse to hire an applicant or to discharge or otherwise discriminate against or penalize an employee in compensation, terms, or conditions of employment because of the use of tobacco products off the premises during nonworking hours. The provision will not apply to nonprofit organizations with a primary purpose or objective of discouraging the use of such products by the general public, nor will it prohibit an em-

ployer from offering, imposing or having in effect a health, disability or life insurance policy that distinguishes between employees for type or price of coverage based upon the employee's use of tobacco products provided certain conditions are met.

A resolution was adopted requesting the governor and all appointing authorities to achieve gender balance in their appointments to boards, commissions, departments, and branches of State government.

Preference. State resident bidders on contracts let by the State for the purchase of commodities or printing will now receive the same preference as is granted to resident bidders in the awarding of State contracts for the construction, repair or improvement of buildings.

Wisconsin

Wages. The basic minimum wage rate was increased administratively from \$3.80 to \$4.25 per hour effective March 1, 1992. The rate for minors under age 18 was increased from \$3.45 to \$3.90. Rates of \$3.95 for adults and \$3.60 for minors are applicable to probationary employees who have been employed for a total of 2 months or less in a 3-year period. Rates for agricultural workers increased from \$3.60 to \$4.05 for adults and from \$3.25 to \$3.70 for minors. The minimum cash wage for tipped employees was increased from \$2.19 to \$2.33 for adults and from \$1.98 to \$2.13 for minors (13 cents per hour lower for probationary employees). Increases also were made in the minimum rate for golf caddies and in allowances for meals and lodging.

Child labor. The State's child labor regulations were revised in December 1991, with changes effective January 1, 1992. Among the changes, minors under age 16 may now work until 11 p.m. rather than 9:30 p.m. on days preceding nonschool days. A 16- or 17-year-old required to attend school may work 26 hours (32 hours in a school week of less than 5 days) during a school week, down from 40 hours. The State also moved the latest permitted work time on a night before a school day to 11 p.m. from 12:30 a.m. The earliest that 16- and 17-year-old youths are permitted to start work was changed from 6 a.m. to 7 a.m. for work on school days and 6 a.m. to 5 a.m. on nonschool days during school weeks.

Agriculture. Local jurisdictions are now prohibited from enacting an ordinance or resolution that interferes with the repair or expansion of migrant labor camps if the repair or expansion is required by a rule of the Department of Industry, Labor and Human Relations.

Equal employment opportunity. It is now unlawful for an employer, labor organization, employment agency, licensing agency, or other person to discriminate in employment because of the lawful use of any product outside the workplace during nonworking hours, provided that such use does not adversely affect job performance, create a conflict of interest or appearance of such a conflict, or conflict with a bona fide occupational qualification or any Federal or State statute. The law will not apply to any nonprofit corporation with a primary objective of discouraging the general public from using a lawful product or encouraging the use of such a product. It will not be considered employment discrimination to provide a health, life or disability insurance plan that makes distinctions between employees for the type or cost of coverage based on the employee's use of a lawful product if different premium rates charged reflect the actual differential cost to the employer. Prospective fire fighters may legally be refused employment because of the use of tobacco during nonworking hours.

Genetic testing. Employers, labor organizations, employment agencies and licensing agencies are prohibited from requiring or administering genetic tests as a condition of employment, labor organization membership or licensure, and from affecting the terms, conditions or privileges of employment, labor organization membership or licensure of any person taking such a test.

Worker privacy. Several changes were made in the law restricting the use of honesty testing by employers. Among these, employers were authorized to request employees to submit to a polygraph test administered in connection with an ongoing investigation involving economic loss or injury to an

employer's business, including theft, embezzlement, misappropriation, and unlawful industrial espionage or sabotage. Such testing is only permitted where an employee had access to the property under investigation and reasonable suspicion exists that the employee was involved in the incident or activity under investigation.

With certain limits, testing also will be allowed by employers whose primary business is providing security personnel, armored car personnel or personnel employed in the design, installation and maintenance of security alarm systems, and of employers who manufacture, distribute or dispense specified controlled substances if the employee would have direct access to the manufacture, storage, distribution or sale of the controlled substance. It was specified that the law does not prevent a county, city, village or town from adopting an ordinance that prohibits or further restricts honesty testing. Collective bargaining agreements also may contain such provisions.

Wyoming

Wages. The State Auditor was authorized to establish a payroll checkoff program for State employees, permitting automatic payroll deductions, payable to third parties, for supplemental medical plans, disability plans, life insurance plans and annuities.

Equal employment opportunity. It is now a discriminatory or unfair employment practice for an employer to require, as a condition of employment, an employee or prospective employee to use or refrain from using tobacco products outside of employment, or discriminate against an employee in compensation, terms, or conditions of employment because of the use or nonuse of such products, unless such restriction relates to a bona fide occupational qualification. These

provisions will not prohibit an employer from offering, imposing, or having in effect a health, disability or life insurance policy that makes distinctions between employees for type or price of coverage based upon the employee's use or nonuse of tobacco products provided the differential rates assessed reflect a differential cost to the employer and employees are provided with written notice of the differential rates imposed by insurance carriers. □

Footnotes

¹ The Nevada, North Dakota, and Oregon legislatures did not meet in 1992. The Montana and Texas legislatures met in special sessions only and no labor legislation was enacted. The District of Columbia, Idaho, Kansas, and Maryland did not enact significant legislation in the fields covered by this article. Information about the Virgin Islands was not received in time to be included in the article, which is based on information received by November 4, 1992.

² Basic wage rates were increased in Arkansas, Hawaii, Iowa, New Jersey, North Carolina, Virginia, and West Virginia. The rate for farmworkers was increased in New York, and the rate for employees in the watching and protective service industry was increased in Puerto Rico.

³ The 22 States are: Arkansas, Alaska, California, Hawaii, Idaho, Illinois, Iowa, Kansas, Maryland, Montana, Nevada, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Utah, Washington, Wisconsin, and Wyoming.

⁴ Laws prohibiting discrimination on the basis of sexual orientation were enacted previously in Connecticut, the District of Columbia, Hawaii, Massachusetts, and Wisconsin.

⁵ Laws relating to the elimination of sexual harassment in the workplace were enacted in Alaska, California, Connecticut, Hawaii, Iowa, Minnesota, Nebraska, and New Hampshire.