

State labor legislation enacted in 2001

Increases in minimum wage rates, restrictions on youth peddling, bans on discrimination because of genetic information, and protection from workplace harassment and violence were among major subjects of State labor legislation

Richard R. Nelson

State labor legislation enacted in 2001 covered a wide variety of employment standards and included several significant developments.¹ Minimum wage rates were increased in a number of States, child labor measures were enacted, governing employment in the entertainment industry and placing limits on children selling products door-to-door, and employment discrimination on the basis of genetic information or other reasons was banned in several States. Laws also were enacted in the emerging areas of regulating employee monitoring in the workplace, allowing breaks for nursing mothers, providing benefits for domestic partners, and addressing workplace harassment and violence.

This article summarizes significant State labor legislation enacted in 2001. It does not, however, cover legislation on occupational safety and health, employment and training, labor relations, employee background clearance, economic development, and local living wage ordinances. Changes in unemployment insurance and workers' compensation laws appear elsewhere in this issue.

Wages. Legislation to increase minimum wage rates was introduced in more than one-half of the States and at the Federal level. New legislation increased minimum wage rates in Georgia, Hawaii, Maine, Texas, and Wyoming; rates also increased in California, Connecticut, Massachusetts, Vermont, and Washington as the result of previous laws. A bill proposing an increase in the minimum wage was vetoed in New Mexico. A bill to increase the

Federal minimum wage was pending at press time. If enacted, this will affect 25 jurisdictions where rates are linked to the Federal rate.²

As of January 1, 2002, minimum wage rates were higher than the Federal standard in Alaska, California, Connecticut, Delaware, the District of Columbia, Hawaii, Maine, Massachusetts, Oregon, Rhode Island, Vermont, and Washington. Of the 43 States with minimum wage laws, only 3 have rates lower than the Federal rate of \$5.15 per hour.

Utah passed a measure prohibiting cities, towns, and counties from establishing minimum rates that exceed the Federal rate, and Oregon passed a law barring local governments from establishing minimum wage requirements for private sector employers in their jurisdictions.

Provisions that allow employers to use employee tips to meet a portion of the minimum wage were revised in Connecticut, Hawaii, Texas, Vermont, and Wyoming.

Other significant minimum wage legislation was enacted in Arkansas where civil penalties replaced criminal penalties for violation, in the District of Columbia where civil penalties were authorized for minimum wage and wage payment violations, and in Oregon where civil penalties were authorized for willful minimum wage law violations. Idaho brought agricultural employment under coverage, Nevada eliminated a sub-minimum wage rate for minors, Vermont abolished its wage board, and Wyoming eliminated exemptions for minors under age 18 and part-time workers. Wyoming will allow a sub-minimum wage rate for employees under age 20 during the first 90 days of employment.

Laws were enacted in Maine and Oregon placing limits on mandatory overtime for nurses.

Richard R. Nelson is a State standards advisor in the Division of External Affairs, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.
e-mail: rrn@fenix2.dol-esa.gov

Prevailing wage laws pertaining to public works projects currently exist in 31 States and the Federal Government. In 2001, as usual, there was a mix of reform legislation enacted. Laws enacted in California, Illinois and Rhode Island expanded coverage to include additional authorities or agencies, while the Oregon law was amended to provide a new exemption. The dollar threshold amount for coverage was increased administratively in Ohio and Wisconsin and by legislation for certain projects in West Virginia.

Rate determination methodology was changed in Montana and Wyoming. Wyoming also revised its hearing procedures. Nevada changed penalty provisions, Oregon made changes in requirements for the submission of certified payroll records, and in California, "public works" will now include installation work.

Other significant wage legislation granted the Nevada labor commissioner rule-making authority, authorized the labor commissioner in Oregon to assess civil penalties for final pay and seasonal farmworker payment violations, increased penalties for pay day violations in Wyoming, and permitted payment by direct deposit in South Dakota.

A Utah Voluntary Contributions Act requires that labor organizations may only make expenditures for political activities if they establish separate segregated funds for this purpose and requires that employee contributions to the fund be voluntary.

Coverage of the Michigan reciprocal agreement law was expanded to include Canada.

Family issues. Again this year, several States tried, but were unsuccessful in passing legislation that provides unemployment benefits for individuals on family and medical leave. A task force was created in Oregon to study the issue of paid family leave and funding mechanisms including the use of unemployment insurance.

While no traditional leave provisions were enacted, California, Illinois, and Washington passed measures pertaining to break time for nursing mothers.

Domestic partners were given rights to benefits in California and Maine.

Child labor. At the beginning of 2001, a tight labor market drew considerable attention to child labor issues. A large number of bills were introduced and a variety of laws were enacted.

Vermont granted the labor department rulemaking authority, conformed State hours and hazardous occupations restrictions to Federal law, and increased penalties for law violations. Tennessee also increased penalties for violations. Maine adopted new rules governing prohibited hazardous occupations, including adding restrictions on selling door-to-door, operating amusement rides, working alone in cash-based businesses, and working in places having nude entertainment (all

occupations). Nevada superseded administrative actions taken last year prohibiting youth under age 16 from peddling, by limiting applicability to counties of 100,000 or more population. Minnesota and Tennessee revised requirements for acceptable proof of age.

Indiana will now require rest breaks for minors under age 18, and Nebraska will more closely regulate detasseling work.

Also, Maine will ease a prohibition on work in theaters to allow specified work, Michigan will permit longer and later hours of employment for minors aged 16 or older, and Oregon will exempt soccer referees from coverage.

In the entertainment industry, Nevada employers who employ minors for more than 91 school days are to provide tutoring or equivalent educational services. A new Texas law limits contract duration for minors and provides that a court may require that a portion of earnings be set aside in a trust for those employees.

Equal employment opportunity. The trend to enact legislation banning employment discrimination against individuals based on genetic characteristics, genetic information, or test results accelerated this year, with new laws passed in Arkansas, Louisiana, Maryland, Minnesota, Nebraska, and South Dakota, and with a revision to the Texas law. More than half of the States now have laws of this kind.

Among other measures that were enacted, banning various forms of employment discrimination, Maryland made it an unlawful employment practice to discriminate on the basis of sexual orientation, and Rhode Island enacted a related measure banning employment discrimination on the basis of gender identity or expression. Connecticut added mental disability and marital status to lists of prohibited forms of discrimination for purposes of hiring and other personnel decisions involving State employees. Montana amended its ban on marital status discrimination to allow an employer to employ a person for a position and to also employ the person's spouse. North Carolina passed a law to protect board of education employees from sexual harassment.

Drug and alcohol testing. Tennessee will now require covered employers to notify the parents or guardians of a minor of the results of any drug or alcohol-testing program conducted pursuant to the drug-free workplace act. Other laws require the testing of nuclear storage facility employees in Utah, and revise the drug testing policy requirements for nursing homes in Texas.

Worker privacy. The recent trend continued among States adopting legislation providing immunity from civil liability to employers who furnish information about a current or former

employee's job performance to a prospective or current employer. Such measures were adopted in Florida for law enforcement officers and in Arizona for mortgage bankers and brokers. Other significant measures include a Delaware law requiring employers who monitor employee telephone calls, electronic mail, or Internet access to give prior written notice to the employees, a new Minnesota requirement that employee-assistance records be maintained separate from personnel records and not included in an employee's personnel file, and a Vermont amendment adding the Department of Motor Vehicles to the list of employers permitted to require polygraph examinations for certain applicants as a condition of employment.

Private employment agencies. The Minnesota Department of Labor and Industry will cease regulating search firms beginning July 1, 2003. Employment agencies will continue to be regulated. New legislation was enacted in Arizona regulating the activities of day labor service agencies. Other laws limit the payroll deduction of applicant fees in Louisiana, and change coverage of the Texas law regulating talent agencies. California will require the annual licensure of private duty nursing agencies.

Workplace violence. In an emerging area addressing the issue of workplace violence, legislation was adopted in a few States. The Rhode Island Workplace Violence Protection Act of 2001 was enacted, permitting employers to seek a temporary restraining order and an injunction prohibiting further unlawful acts by an individual at the work site. Nevada also passed legislation allowing employers to seek court orders to prevent harassment in the workplace. California extended the time given to investigate hate crime law violations.

Agriculture. California made several changes concerning farm labor contractor regulation, including increasing civil penalties

for violation and establishing a system for the verification of licenses. Other California laws address use of surety bonds to pay awards and the authority to collect monetary relief.

Discharge. The Montana law placing limits on an employer's right to discharge employees was amended to clarify rights during a probationary period. Changes were also made in the Minnesota law concerning the right to be informed of the reason for termination. Protection from discharge or discrimination was afforded to volunteer fire fighters in Washington and to emergency medical service attendants in West Virginia.

Other laws. Among other laws of interest, a no-sweatshop act was passed in New York permitting local school boards to consider labor standards and working conditions, including the use of child labor, in purchasing apparel. Connecticut enacted a law prohibiting employment exploitation of immigrant labor, and California made it an unlawful employment practice for an employer to have a policy that prohibits the use of any language in the workplace unless the policy is justified by business necessity. West Virginia added knowingly employing a person not having a legal right to be employed in the United States to the list of causes for disciplinary action under the State Contractor Licensing Act.

Time off from work was authorized for State employee veteran funeral details in Delaware, for members of the State legislature in Nevada, for Native American employees to vote in New Mexico, for precinct officials in North Carolina, for Virginia State employees to donate bone marrow or organs, and in New York for American Red Cross disaster volunteers.

Oregon employers are to provide workplaces free of tobacco smoke.

Oklahoma became a "right-to-work" State as the result of a measure placed on the ballot by the legislature and approved by the voters.

Arizona

Child labor. The Department of Health Services may not adopt any rule that prohibits an administrator of a nursing care institution from employing a person age 16 or older, who provides direct care to residents and who meets certification and qualification requirements.

Worker privacy. The law was amended that, permits banks, savings and loan associations, credit unions, and escrow agents to provide written employment references to similar businesses, upon request, which advise of the applicants' involvement in any theft, embezzlement, misappropriation, or other misuse of funds (which has been re-

ported to Federal or State authorities). It now also applies to commercial mortgage bankers, mortgage bankers, and mortgage brokers. The protection from civil liability for providing an employment reference will extend to these businesses as well, unless false information is provided with knowledge and malice.

Private employment agencies. New legislation was enacted regulating the activities of day-labor service agencies (defined as entities that provide day laborers to third-party employers and charge those employers for this service). Service agencies are to pay day laborers for work performed in negotiable instruments that are redeemable in cash at a financial institution, and, at the time of pay-

ment, are to provide each day laborer with an itemized statement showing in detail all deductions from wages. Deductions, other than those required by Federal or State law, are not to bring wages below the Federal minimum wage for hours worked. Agencies are not to restrict the right of a day laborer to accept a permanent position with a third-party employer to whom he or she has been referred to for work. The law does not apply to farm labor contractors, labor union hiring halls, temporary help services engaged in supplying white-collar employees, secretarial employees, clerical employees, or skilled laborers, or to labor bureau or employment offices operated by a business that employs individuals for its own use.

Arkansas

Wages. Among amendments to the minimum wage act, the Labor Board was eliminated and its powers and duties transferred to the Director of the Department of Labor who now has the authority to make and revise regulations under the law. Criminal penalties for violation were eliminated and replaced with civil penalties of not less than \$50 and not more than \$1,000 for each violation. The exemption from the law for employers of fewer than four employees was amended to specify that this exemption applies to employment of fewer than four employees in any workweek. In addition, the general exemption for employers covered by the Federal Fair Labor Standards Act was amended to limit the exemption to employers who are subject to the minimum wage and overtime provisions of the Federal Act.

The law setting maximum salary limits for officers, agents, or employees of hospital and medical corporations was repealed.

Genetic testing. A new Genetic Information in the Workplace Act makes it unlawful for an employer to require a genetic test, or to seek to obtain, or to use a genetic test or genetic information from an employee or job applicant for the purposes of distinguishing between individuals or discriminating against or restricting any right or benefit otherwise due to an employee or applicant. An employer in violation will be guilty of a misdemeanor and may be subject to a fine of up to \$25,000, imprisonment for up to 1 year, or both a fine and imprisonment.

California

Wages. As the result of previous action by the State Industrial Welfare Commission, the State minimum wage rate increased from \$5.75 per hour to \$6.25 per hour on January 1, 2001, and to \$6.75 per hour on January 1, 2002.

The Labor Code was amended to codify minimum wage, hours, and working conditions for sheepherders adopted by the State Industrial Welfare Commission (Order Number 14-2001, effective July 1, 2001). Effective July 1, the minimum wage for all sheepherders was set at \$1,050 per month, with an increase to \$1,200 per month scheduled for July 1, 2002. After July 1, 2002, the amount of the monthly minimum wage required will be increased each time that the State hourly minimum wage is increased by the same percentage as the hourly minimum wage increase. Wages paid to sheepherders may not be offset by meals or lodging provided by the employer. Other provisions specify that sheep-

herders are to receive a 30-minute meal period for a work period of more than 5 hours except when such a break cannot reasonably be provided because the sheepherder is working alone, are to receive 10 minutes of rest period per 4 hours of work, and are to be provided with the tools or equipment necessary for the performance of the job unless the sheepherder earns more than two times the required minimum wage. Civil penalties were specified for law violations.

An employee who is a licensed physician or surgeon, earning more than \$55 per hour, who is primarily engaged in performing duties for which licensure is required, will be exempt from overtime payment requirements. The hourly rate will be adjusted annually, effective on January 1, based on changes in the California Consumer Price Index for Urban Wage Earners and Clerical Workers. The exemption will not apply to employees employed in medical internship or resident programs or to physician employees covered by valid collective bargaining agreements.

Public works projects financed through Industrial Development Bonds issued by the California Infrastructure and Economic Development Bank will be subject to the State prevailing wage law. The definition of "public works" for purposes of law coverage was amended to add installation work to construction, alteration, demolition and repair work. The definition of "paid for in whole or in part out of public funds" was amended to specify that this includes payments, transfers of assets for less than fair market price, credits, reductions, waivers, and performances of work.

Joint labor-management committees, established pursuant to the Federal Labor Management Cooperation Act of 1978, were authorized to bring civil court action against any employer who fails to pay prevailing wages as required by law. Courts may award restitution to employees and attorney's fees to the committee.

The Commission on the Status of Women is to conduct a study on gender based compensation and classification inequities in the State civil service and in certain specified higher educational institutions. A report on findings is due to the legislature by January 1, 2003.

Family issues. A comprehensive domestic partners law was enacted. Among several employment-related provisions, a registered domestic partner may use sick leave to care for a partner or a partner's child and discrimination against an individual who uses sick leave for those purposes is prohibited. It also entitles a domestic partner to receive unemploy-

ment benefits for job loss if his or her partner is transferred to a remote location and commuting to work is impractical and a transfer of employment is not available. A domestic partner, and his or her child, will be eligible for continued health coverage upon the death of the employee or annuitant if the domestic partner is receiving a beneficiary allowance. A domestic partner also may file a claim for disability benefits on behalf of a partner.

Every employer, including the State and any political subdivision, is to provide a reasonable amount of break time to an employee who desires to express breast milk for her infant child. If possible, the break time is to run concurrently with any break time already provided to the employee. Break time that does not run concurrently with authorized leave will be unpaid. Reasonable efforts are to be made to provide a room or other location, near the work area, other than a toilet stall, where the employee can express her milk in privacy. The break time need not be given if to do so would seriously disrupt the employer's operations. An employer in violation will be subject to a civil penalty of \$100 for each violation.

Agriculture. Several changes were made concerning farm labor contractor regulation including establishment of a three-tier escalating penalty system for those contractors who knowingly fail to pay wages or who continue to operate after their licenses are revoked or suspended. Penalties for a first offense after January 1, 2003, will range from \$1,000 to \$5,000, a minimum of \$10,000 for a second offense within 3 years, and a minimum \$25,000 fine for a third offense committed within 5 years of the second violation. In addition, license revocation is required upon conviction of an offense for 1 year in the case of a first offense, 2 years in the case of a second offense, and permanently in the case of a third offense. A system was also established for the verification of farm labor contractor licenses including creation of a Farm Labor Contractor License Verification Unit at the Department of Industrial Relations to certify the status of licenses. A grower has an affirmative obligation to inspect the license of any person contracted as a farm labor contractor and to verify that the license is valid. A copy of the license is to be retained for 3 years following termination of the contract or agreement.

Farm labor contractor surety bonds and funds held for farm workers may be used to pay awards of monetary relief due to an agricultural worker because of a violation of labor laws or regulations. Payments will also be allowed for penalties on nonpayment or

late payment of wages to employees who are discharged or quit.

It was clarified that the Agricultural Labor Relations Board has authority to collect monetary relief it orders paid by employers who violate labor laws and to transfer the money to employees on whose behalf it was collected. If, after 2 years, the board cannot locate employees who are owed money, the money collected will be placed in an Agricultural Employees Relief Fund to pay other workers who are owed monetary relief and for whom the board was otherwise unable to collect from an agricultural employer.

Equal employment opportunity. The provision for the filing of complaints by persons who believe they have been discharged or otherwise discriminated against in violation of labor code provisions under the jurisdiction of the Labor Commissioner was expanded to cover any law under the jurisdiction of the Labor Commissioner. Another change provides that when the Labor Commissioner has decided to dismiss a complaint and the complainant has then brought court action and filed a complaint against the State program with the U.S. Department of Labor, the filing of a timely complaint will stay the dismissal until the U.S. Secretary of Labor makes a determination regarding the alleged violation. Within 15 days of receipt of that determination, the Labor Commissioner is required to notify the parties as to whether he or she will reopen the complaint or reaffirm the dismissal.

Protections against discrimination, for filing wage claims or instituting other actions, which had previously applied only to employees, were extended to job applicants. An unsuccessful job applicant or a person not selected for a job-training program may now file a complaint against an employer for refusal to hire based on lawful off-duty conduct including political activities. The law will not invalidate any requirement restricting the use of tobacco products by firefighters. Claims of alleged discrimination will be filed with the State labor commissioner. The law excludes law enforcement agencies and nonprofit religious organizations.

The Fair Employment and Housing Act was amended to provide that a nonprofit public benefit corporation formed by, or affiliated with a particular religion, that operates an educational institution as its sole or primary activity, may restrict employment, including promotion, in any or all categories of employment, to individuals of the particular religion. In all other respects, these religious affiliated educational institutions

will remain subject to the State's prohibitions against employment discrimination.

The California Fair Employment and Housing Act was amended to make existing provisions prohibiting workplace harassment applicable to nonprofit hospitals and health care facilities affiliated with or owned by religious institutions for persons employed to perform other than religious duties. These hospitals and health care facilities have been subject to the other unlawful employment practice provisions of the law.

It was made an unlawful employment practice for an employer to adopt or enforce a policy that limits or prohibits the use of any language in the workplace, unless the language restriction is justified by a business necessity and the employer has notified employees of the circumstances and the time when the restriction is required to be observed and of the consequences for violations.

Private employment agencies. A law was enacted requiring the annual licensure of private duty nursing agencies that provide or arrange for the provision of private duty nursing services, and making it a crime to violate the licensure provisions. Each private duty nursing agency is to provide a plan of treatment for patients receiving private duty nursing services, maintain clinical records on all patients, maintain policies regarding the delivery and supervision of patient care that are subject to annual professional review, and meet all applicable Federal, State, and local requirements.

Employment agencies that procure temporary employment for long-term health care employers may not refer certified nurse assistants or licensed nursing staff for any employment without first conducting a personal interview, and verifying the individual's experience, training, and references.

Whistleblowers. Provisions of the Reporting by Community College Employees of Improper Governmental Activities Act were expanded to authorize community college employees to file retaliation complaints with the State Personnel Board. This will be in addition to the prior protection from retaliation for disclosing improper activities to a community college administrator, member of the governing board of a community college district, or the Chancellor of the California Community Colleges.

Workplace violence. The time given to the Department of Fair Employment and Housing to investigate civil violations of the State's hate crimes law (concerning the right to be

free of violence or intimidation) was extended from 1 to 2 years.

Other laws. A Displaced Janitor Opportunity Act was enacted requiring contractors and subcontractors who are awarded new contracts or subcontracts to provide janitorial or building maintenance services at a particular job site or sites, and who employ 25 or more janitors to retain the janitors employed by the former contractor or subcontractor for at least 60 days. At the end of the 60-day transition period, the employees who are retained are to be offered continued employment if their performance during the 60-day period was satisfactory. The written offer of employment is to be made in the employee's primary language or another language in which the employee is literate.

Pursuant to regulations adopted by the Department of Personnel Administration, and subject to the collective bargaining agreement between the State and the employee's exclusive representative, with supervisory approval, a State employee may receive full pay from the State while taking time off from work to serve as a member of a precinct board on election day.

Colorado

Private employment agencies. Obsolete provisions related to the U.S. Department of Labor review of Colorado law regarding work refusal by temporary employees and notification to the General Assembly of any conflicts were repealed.

Other laws. A resolution was adopted recognizing April 28, 2001 as Workers' Memorial Day in the State in remembrance of those who were killed, disabled, or injured on the job.

March 31st of each year will be recognized as "Cesar Chavez Day", and appropriate observances may be held by the public and by public schools in the State in tribute to his commitment to the principles of social justice and respect for human dignity. Employees of State agencies may take the day off from work as a paid holiday in lieu of any other paid legal holiday to which they would otherwise be entitled.

Connecticut

Wages. As the result of prior legislation, the State minimum wage rate rose to \$6.40 from \$6.15 per hour on January 1, 2001, and to \$6.70 on January 1, 2002.

The requirement that the labor department,

by regulation, freeze until January 1, 2003, the minimum hourly wage for tipped hotel and restaurant industry employees, other than bartenders, at \$4.74 and for bartenders at \$6.15 was eliminated. A new provision increased the tip credit and raised the minimum wage for bartenders and waitpersons. It creates a tip credit for hotel and restaurant industry employees of 26 percent during 2001 and 29.3 percent during 2002, except for bartenders who customarily and regularly receive tips. For these bartenders, the credit is 3.9 percent during 2001 and 8.2 percent during 2002.

Regulations exempting bona fide executive, administrative, and professional employees from overtime payment requirements were revised administratively. The minimum weekly salary required to qualify for the exemption was increased to \$400 (\$475 for high-salaried employees).

Equal employment opportunity. The Human Rights Law was amended to add marital status and mental disability to the lists of factors that are to be disregarded by State officials and supervisory personnel when making hiring and other personnel decisions involving State employees, and by State agencies in administering apprenticeship and on-the-job training programs. In addition, marital status, mental disability, and learning disability are not to be considered in granting, denying, or revoking licenses or charters. State agencies that provide employment referrals or placement services are now not to accept job orders that indicate an intention to exclude workers based upon marital status or mental disability in addition to previously banned forms of discrimination. "Mental disability" refers to an individual who has a record of, or who is regarded as having one or more mental disorders. The ban on discriminatory practices by employers, government agencies, or labor organizations was enacted to replace the term "mental disorder" with "mental disability."

Worker privacy. Medical records, if kept by an employer, are now to be retained for at least 3 years following termination of an employee. Previously, these records were required to be kept for at least 1 year after termination.

Other laws. As part of a measure to prohibit employment exploitation of immigrant labor, the labor commissioner is to prevent illegal advantage being taken of such laborers because of their lack of information about their rights, credulity or lack of proficiency in the English language. Material describing the rights of these laborers under the State contracts, wage payment, minimum wage,

and unemployment compensation laws is to be printed in Spanish, French, and those languages determined to be spoken by the primary groups of immigrant laborers in the State. The commissioner was also authorized to request the Attorney General to bring court action for injunctive relief requiring compliance with any award, decision or judgment issued by the commissioner under the statute barring retaliation against employees who file claims or testify in proceedings. The act also makes anyone who violates any of the employment regulation laws on hours and employee protection liable to the labor department for a \$300 civil penalty for each violation.

Delaware

Wages. The penalty section of the prevailing wage law was amended to provide that a worker who is paid less than the prevailing wage rate has a right of action against the employer in court to recover treble the difference between the amount paid and the prevailing wage rate. Previously, the right of action was for an amount of up to treble the difference.

Hours. The Director of the State Emergency Management Agency was authorized to grant exemptions from the Federal Rules governing the number of hours a motor carrier may be on duty during any consecutive 7 or 8 day period, for a period not exceeding 3 consecutive days, based upon criteria established by the Department of Administrative Services.

Equal employment opportunity. The Governor issued an executive order affirming the State's commitment to equal employment opportunity. It directs each entity within the Executive Branch to pursue the recruitment and promotion of qualified women and minorities and to comply with the laws prohibiting discrimination in employment. Each Executive Branch Agency is to maintain an affirmative action plan, which is to be filed annually. The Governor's council on Equal Employment Opportunity is continued and will assist in the monitoring and evaluation of executive branch agencies' implementation and compliance with the executive order. The council will provide written reports on the State's progress in improving work force diversity and recommend any additional actions that it believes should be undertaken. The executive order is not intended to create an individual right or legal cause of action not already existing under State or Federal law. A previous executive order issued in 1995 was repealed.

Worker privacy. Any employer who monitors any telephone calls, electronic mail, or Internet access of or by employees must give prior written notice of such monitoring activities to the employees. Violators will be subject to a civil penalty of \$100 for each violation. This requirement will not apply to processes designed to manage the type or volume of incoming or outgoing electronic mail, telephone voice mail, or Internet usage, that are not targeted to monitor usage of a particular individual, and that are performed solely for the purpose of computer system maintenance or protection, or both.

Other laws. Any State employee who is a veteran or a member of the National Guard Reserve may serve on one veteran funeral detail per calendar year without loss of pay, vacation, sick leave, or personal leave credit.

District of Columbia

Wages. The minimum wage and wage payment laws were amended to provide for the assessment and collection of civil administrative penalties for violations in addition to the previously authorized criminal penalties. The Mayor is authorized to assess civil penalties of up to \$300 for first violations, and up to \$500 for each subsequent violation. The history of previous violations by the employer, the administrative costs of the proceedings to collect, and the size of the employer's business are to be considered in determining the amount of the penalty. More than one administrative penalty may be assessed against an employer for the same adversely affected employee if the employer has violated more than one provision of the law. Employers may request an informal hearing if a penalty is assessed.

Preference. The Chief Procurement Officer and each District of Columbia Contracting Officer are to include in each government-assisted project, totaling \$100,000 or more, a provision that 51 percent of the new employees hired for the project will be District residents. Nonprofit organizations are exempt from this requirement. It also may be waived in certain circumstances including where it can be shown that there was a good faith effort to comply. Violation may result in penalties, including monetary fines of 5 percent of the total amount of the direct and indirect labor costs of the contract.

Florida

Worker privacy. Procedures were established relating to the release of the prior employment records of applicants for employ-

ment or appointment as law enforcement officers, correctional officers, or probation officers. The applicant's current or former employer is to provide employment information upon being presented with proper credentials and an authorization form that, among other items, contains the applicant's approval for the information release. Injunctive relief is provided in the event of an employer's failure to disclose the information. Employers who disclose the required information are immune from civil liability for the disclosure or its consequences.

The law exempting personal identifying information of various categories of employees from public records disclosure requirements was amended. With respect to county and municipal code inspectors, the Social Security numbers, photographs, and information on spouses and children of these individuals were added to the previous exemptions of home addresses and telephone numbers. The law was also amended to add local government or water management district human resource, labor relations, or employee relations directors, assistant directors, managers and assistant managers to those eligible for these disclosure exemptions.

Georgia

Wages. Legislation was adopted raising the State minimum wage rate to \$5.15 from \$3.25 per hour on July 1, 2001. Certain individuals, employed by non-profit child-caring institutions or long-term care facilities serving children or mentally disabled adults, were added to the list of those exempt from the law. The exemption for employers subject to the Federal minimum wage was amended to now apply only when the Federal minimum wage rate is greater than the State rate.

Drug and alcohol testing. The State statute regarding testing related to drug-free workplace programs was amended. The statute now stipulates that testing at the employer worksite, with on-site testing kits that satisfy testing criteria, shall be deemed suitable and acceptable post-offer testing as long as the employers use chain of custody procedures to ensure proper recordkeeping, handling, labeling, and identification of all specimens to be tested. Positive test results must be confirmed by a confirmation test conducted in a laboratory in accordance with specific requirements that govern laboratory approval, written procedures that establish a chain of custody, and proper quality control procedures are followed.

Worker privacy. The law, relating to public disclosure of records was amended to add to

the list of those records in which public disclosure is not required those records that reveal the home address and phone number, Social Security number, or insurance or medical information about teachers and employees of a public school.

Hawaii

Wages. New legislation increased the State minimum wage rate from \$5.25 to \$5.75 per hour on January 1, 2002, with a further increase to \$6.25 per hour scheduled for January 1, 2003. A tip credit against the minimum wage is permitted if the tipped employee is paid not less than 25 cents below the basic minimum wage (a change from 20 cents), and the combined amount that the employee receives from his or her employer and receives in tips is at least 50 cents more than the minimum wage.

Plant closing. The dislocated worker law was amended to increase to 60 days from 45 days the advance written notice that an employer in a covered establishment is to give to each employee and the director of labor and industrial relations prior to a closing, partial closing, or relocation of the business.

Idaho

Wages. The State minimum wage law now applies to agricultural labor except for family members of the employer; seasonal harvest workers who spend less than 13 weeks in the fields, live locally, and are paid on a piece-rate basis; children 16 years of age or younger who work with their parents as harvest laborers and are paid at the same piece-rate as employees older than age 16; and employees principally engaged in the range production of livestock.

Illinois

Wages. The section of the minimum wage law authorizing the Director of the Department of Labor to bring any legal action necessary to recover unpaid minimum wages, unpaid overtime compensation, punitive damages, and court costs, was amended to specify that the action is to be brought within 5 years from the date of the failure to pay the wages or compensation.

A new Illinois Sports Facilities Authority Act provides that all public works projects, financed in whole or part with bonds issued under the act, are to be subject to the State prevailing wage law.

Hours. The State vehicle code was amended

to add a requirement that contract carriers limit the hours of service of drivers transporting employees, in the course of their employment, on State roads or highways, in vehicles designed to carry 15 or fewer passengers, to 12 hours of vehicle operation per day, 15 hours of on-duty service per day, and 70 hours of on-duty service in 7 consecutive days. A driver who has 12 hours of vehicle operation per day or 15 hours of on-duty service per day is to have at least 8 consecutive hours off duty before operating a vehicle again. Other provisions require registration and safety testing of these vehicles designed to carry 15 or fewer passengers, and proof of the financial responsibility of the contract carrier.

Family issues. A Nursing Mothers in the Workplace Act was enacted. It requires employers of more than 5 employees, who are not the employer's family members, to provide reasonable unpaid break time each day to an employee who needs to express breast milk for her infant child. Reasonable efforts are to be made to provide a room or other location, near the work area, other than a toilet stall, where the employee can express her milk in privacy. If possible, the break time is to run concurrently with any break time already provided to the employee. The break time need not be given if to do so would unduly disrupt the employer's operations.

Other laws. A Broadcast Industry Free Market Act was adopted providing that broadcasting industry employers may not require, in an employment contract, that an employee or job applicant refrain obtaining employment in a specific geographic area for a specified period of time after termination of employment. The law does not prevent the enforcement of a covenant not to compete during the term of an employment contract or against an employee who breaches an employment contract.

Indiana

Child labor. The child labor law was amended to exempt from coverage those parents or guardians employing their own children. These individuals must still comply with those provisions concerning minimum ages for employment, employment during school hours, and prohibitions on work in hazardous occupations. However, they will no longer be required to comply with other sections of the law, including the need to obtain an employment certificate. Another amendment requires most employers to provide a 30-minute continuous rest break, between their third and fifth hours of work, to

minors under 18 years of age who are scheduled to work 6 or more hours. Minors employed as farm laborers, domestic service workers, golf caddies, and newspaper carriers are exempt from the break requirement as are those minors employed by a non-profit camp or other facility that provides health, recreational, educational, or sectarian-related activities. Also exempt are those minors who have completed an approved vocational or special educational program, and those who are not enrolled in a regular school term. Initial violations of the break requirement will result in a warning letter. Civil money penalties of \$100 per instance will be assessed for second violations, \$200 per instance for third violations, and \$400 per instance for fourth or subsequent violations in which the violations occurred not more than 2 years after a prior violation.

Iowa

Equal employment opportunity. The governor issued an executive order rescinding an earlier executive order that had been voided by court order. The new executive order reaffirms the State policy of providing equal opportunity in State employment to all persons. The State Department of Personnel is to create and administer a workforce diversity program that will create an inclusive work environment, which values the contributions of each employee, and promotes awareness of and respect for employee differences. Additionally, a Task Force for Equal Opportunity in Employment was created to advise the Department of Personnel of potential problems that could impede the State's progress toward full utilization of the State's residents and diversification of the State's workforce, monitor the State's progress in meeting affirmative action goals, and submit recommendations to the Governor on how to meet its goals.

Kentucky

Labor department. The legislature confirmed an Executive Order, issued in 2000, creating an Office of Information Technology within the Labor Cabinet headed by an Executive Director.

Louisiana

Wages. The time period within which a discharged employee must be paid was changed from not later than 3 days following the date of discharge to the earlier of the employee's next regular payday or 15 days following the date of discharge.

The law making it unlawful for employ-

ers to assess employees fines or to deduct fines from their wages was amended to permit such deductions in cases in which the employee is convicted of or has plead guilty to the theft of employer funds.

Child labor. A resolution was adopted urging the United States Congress and the President to institute and enforce legislation and diplomatic action toward the eradication of child slavery internationally.

Equal employment opportunity. A resolution was adopted asking the governor to issue a proclamation directing all State agencies to fully implement and enforce State and Federal law prohibiting employment discrimination based on disability.

Genetic testing. A new law was enacted providing that no otherwise qualified person is to be subjected to employment discrimination on the basis of protected genetic information. Specifically, employers, labor organizations, employment agencies, and training programs may not discharge, refuse to hire, exclude or expel from membership, segregate, classify, or otherwise discriminate against any employee with respect to the compensation, terms, conditions, or privileges of employment because of that individual's genetic information. It was also made unlawful to require, collect, or purchase protected genetic information, or to disclose genetic information except to the employee, upon request, to an occupational or other health researcher, if required by Federal or State law, or as part of an investigation into compliance with the act.

Drug and alcohol testing. The law regulating drug testing was amended to specify that it will not be applicable to employers who use on-site screening tests to test employees or job applicants when there are no consequences provided for in the law. An "on-site screening test" is defined as a test that is easily portable and can be administered in a location outside a laboratory such as a work site or elsewhere. The test must be certified by the United States Food and Drug Administration for commercial distribution and it must meet generally accepted cutoff levels, such as those in the mandatory guidelines for Federal workplace drug-testing programs.

A resolution was adopted urging the governing authority for each public elementary and secondary school to develop, adopt, and implement a policy providing for pre-employment drug screening and in-service testing of any school employee who might be placed in a position of supervisory or disciplinary authority over students. The in-ser-

vice testing for illegal substances should be limited to those instances which result in a reasonable suspicion that drugs are being used, or as part of a monitoring program established by the employer to assure compliance with the terms of an employee's rehabilitation program.

Private employment agencies. A private employment agency may not enter into a written contract with an applicant that provides for the direct payroll deduction of any applicant fee through a payment schedule which exceeds 20 percent of an applicant's gross wages per pay period.

Other laws. The law protecting certified volunteer firefighters, who are employed by the State, from discharge or denial of leave was amended to specify that the protection applies to absences from work for the purpose of emergency response rather than for any other official duties.

Two resolutions were adopted in the wake of the terrorist attacks of September 11 and the subsequent activation of military reservists and National Guard members. One requests all employers who have employees who are members of the National Guard or reserves, and who are called to active duty, to continue to pay those employees, either their entire salary or an amount equal to the difference between their civilian and military pay. The other urges all employers in the State to ensure continued compensation and benefits for military personnel called to active duty if funds are available. It also requests post-secondary education institutions to ensure minimal academic impact on students called to active duty.

Maine

Wages. New legislation increased the State minimum wage rate from \$5.15 to \$5.75 per hour on January 1, 2002, with a further increase to \$6.25 per hour scheduled for January 1, 2003. In addition, the provision that provides for matching any Federal minimum wage increases above the State rate was amended to limit any such increase to no more than \$1.00 per hour above the current legislated State rate.

The exemption from the State overtime pay requirement for automobile mechanics, automobile parts clerks, and automobile salespersons was amended to specify that the interpretation of these terms is to be consistent with the interpretation of the same terms under Federal overtime law.

The law placing limits on mandatory overtime was amended to provide that a nurse may not be disciplined for refusing to

work more than 12 consecutive hours except in the event of an unforeseen emergent circumstance when overtime is required as a last resort to ensure patient safety. Any nurse who is required to work more than 12 consecutive hours must be allowed at least 10 consecutive hours of off-duty time immediately following the worked overtime. This provision will not apply to overtime worked in response to an emergency declared by the governor or to work that is necessary to protect the public health or safety, when the excess overtime is required outside the normal course of business.

The governor is to annually issue a proclamation designating the first Tuesday in April as Equal Pay Day. Also, annually, on this date, the Department of Labor is to report to the legislature on progress made in Maine to comply with the State's equal pay law.

A resolution was adopted asking that the President and the U.S. Congress strengthen efforts to ensure that women are paid fairly for their work.

Child labor. New rules were adopted effective May 14, 2001, governing prohibited hazardous occupations for minors. Among these, minors under age 16 are prohibited from selling products door-to-door (except when the minor is selling candy or merchandise as a fund-raiser for school or for an organization to which the minor belongs, such as the Girl Scouts of America). They are also prohibited from working in a traveling crew, and operating amusement rides (all occupations relating to amusement rides, including ticket collection or sales). For minors under age 18, the hazardous occupations rule prohibits minors from working alone in a cash-based business and from all occupations in places having nude entertainment.

The work permit section of the law providing that permits are issued by the Director of the Bureau of Labor Standards rather than the Superintendent of Schools was clarified. The work permit is issued upon verification of the proper approval by the superintendent and verification that the employment conforms with the provisions of the child labor law. The work permit is only valid for the employer and the positions listed on the permit as issued by the bureau. The superintendent's office will distribute the work permit to the minor.

The current policy regarding cases that are actually prosecuted was codified by amending the child labor law to provide that, absent a pattern of knowing and intentional conduct, the Bureau of Labor Standards may disregard certain *de minimis* hours of employment violations for minors under age 16 and under age 18. Violations of the restrictions on the starting and ending times, and daily hours

that may be worked by both categories of minors may be disregarded if they do not exceed 10 minutes per day. Additionally, it will be considered a *de minimis* violation of the number of hours worked in a week as long as the violation is not greater than 50 minutes in a week.

The section of the child labor law prohibiting the employment of minors, who are under 16 years of age, in theaters was amended to permit these minors to perform work for a nonprofit organization that preserves film and other moving images and that provides education and research opportunities for the public or for a theater that is operated by such an organization as an integral part of its mission.

Equal employment opportunity. Legislation was enacted mandating the offer of domestic partner insurance benefits in individual or group contracts issued by any nonprofit or medical service organization, in individual, group or blanket health insurance policies or contracts issued by any private insurer, and in individual or group policies or contracts issued by any health maintenance organization. Domestic partner is defined as the partner of a subscriber or member who 1) is a mentally competent adult as is the subscriber or member; 2) has been legally domiciled with the subscriber or member for at least 12 months; 3) is not legally married to or legally separated from another individual; 4) is the sole partner of the subscriber or member and expects to remain so; and 5) is jointly responsible with the subscriber or member for each other's common welfare as evidenced by joint living arrangements, joint financial arrangements or joint ownership of real or personal property.

Other laws. A resolution was adopted proclaiming April 28, 2001 as Workers Memorial Day in the State and encouraging residents to remember those workers killed or injured on the job.

Maryland

Wages. Employers were authorized to deduct voluntary contributions to political action committees from employee wages.

Equal employment opportunity. It was made an unlawful employment practice for an employer to refuse to hire, discharge, or otherwise discriminate against an individual in compensation or in terms or conditions of employment because of that person's sexual orientation. It is also now an unlawful employment practice for an employment agency, labor organization, or employee-

training program to discriminate because of the sexual orientation of an individual. Exemptions were adopted for religious organizations and for the Boy Scouts of America and the Girl Scouts of America. Employers are not to be required to offer health insurance benefits to unmarried domestic partners. In addition, employers will be immune from liability arising out of reasonable acts to verify the sexual orientation of an employee or applicant taken in response to a charge filed against the employer on the basis of sexual orientation.

The Washington Suburban Sanitary Commission is prohibited from discriminating against a person on the basis of sex, race, creed, color, age, mental or physical handicap, sexual orientation, or national origin. This prohibition also applies to the commission's contractors and subcontractors when they are engaged on design/build contracts and construction contracts.

Genetic testing. It was made an unlawful employment practice for an employer to refuse to hire, discharge, or otherwise discriminate against an individual because of the individual's genetic information, or because of the individual's refusal to submit to a genetic test or to reveal the results of a genetic test.

Drug and alcohol testing. Employers who require job applicants to be tested for the use of controlled substances were authorized to designate a medical laboratory to perform preliminary screening of the applicants, provided that approved procedures to collect, handle, store, ship test specimens, and maintain records are followed. The employer must have procedures in place relating to voluntary disclosure and documentation by job applicants taking legally prescribed medication. A medical review officer must review positive tests after laboratory confirmation. This law does not apply to employers who are parties to collective bargaining agreements that prohibit such preliminary screening.

Inmate labor. An Advisory Council on Offender Employment Coordination was established in the Department of Public Safety and Correctional Services. The council is to be composed of members from the legislature, State government including State courts, Baltimore City, the business community, faith-based or nonprofit communities, and the labor trades. The council is to provide guidance on ways to expand employment opportunities for offenders both in institutional and community settings; provide more extensive employment counseling; increase job placement and job reten-

tion rates; improve the overall coordination of employment services; and develop and implement a business mentoring program. A report on activities and recommendations is to be made annually to the governor and legislature.

Other laws. Members of the Department of labor, Licensing, and Regulation police force were added to the definition of 'police officer' under the law relating to arrests made without warrants. The law details when such arrests may be made with probable cause and defines probable cause.

Massachusetts

Wages. As the result of prior legislation, the State minimum wage rate increased to \$6.75 from \$6.00 per hour on January 1, 2001. The \$2.63-per-hour cash wage that was required to be paid to employees who receive part of their compensation from tips was frozen at that level.

Child labor. Sections of the child labor law, regulating hours of work by children under age 16, work permit requirements, work in public exhibitions, and license requirements for theatrical exhibitions or shows, were suspended, thereby allowing the theatrical group Cirque du Soleil to employ children under 16 years of age, including employment as acrobats, contortionists, or in any feat of gymnastics, provided each child performs in no more than 10 shows per week and no more than 2 shows per day.

Michigan

Wages. The law authorizing reciprocal agreements with other States for the collection of claims for wages, fringe benefits, and penalties was amended to expand coverage to include Canada, and Canadian provinces and territories.

Child labor. The child labor law was amended to now permit minors (who are 16-years of age or older, and who are enrolled in school) to work until 11:30 p.m. on Friday and Saturday nights in addition to during school vacation periods and other periods when the minor is not regularly enrolled in school, as was previously authorized. In addition, the section of the law permitting longer work hours for minors age 16 and older in agricultural processing was amended to also apply to these minors who are employed in farming operations involved in the production of seed. Two changes were made in the provision permitting these minors to be employed up to 62 hours a week when school is

not in session. The first of these eliminated a 4-week limit on the number of 62-hour weeks that could be worked, and the second provides that the minor must agree to work more than 48 hours during any week.

Other laws. A resolution was adopted commemorating April 28, 2001, as Workers' Memorial Day in the State in remembrance of those who lost their lives while working or as a result of work-related conditions.

Minnesota

Wages. A section of the law dealing with unlawful acts relating to the payment of wages was amended to prohibit an employer or a person, firm, corporation or association from altering the method of, or timing of payment, or procedures for payment of commissions earned through the last day of employment, after the employee has resigned or been terminated, if the result is to delay or reduce the amount of payment. Civil action was authorized in the event of violation.

Child labor. A United States Department of Justice Immigration and Naturalization Service Employment Eligibility Verification Form I-9 was added to the list of those documents that an employer may accept as the proof of the age of any minor employee or job applicant.

Equal employment opportunity. A current, former, or prospective employee of the State who is aggrieved by the State's violation of the Federal Age Discrimination in Employment Act, the Federal Family and Medical Leave Act, or the Federal Americans with Disabilities Act, may now bring a civil action against the State. In addition, a current State employee who is aggrieved by the State's violation of the Federal Fair Labor Standards Act also may bring a civil action against the State.

Among amendments to the Human Rights law, it is no longer required for sexual harassment in employment that the employer knows or should have known of the existence of harassment and fails to take timely and appropriate action. Additionally, national origin was added to the prohibited forms of business discrimination on which basis it is an unfair discriminatory practice to intentionally refuse to do business with, to refuse to contract with, or to discriminate in the basic terms, conditions, or performance of the contract. If the commissioner determines that there is no probable cause to pursue an allegation upon appeal, the options of vacating or remanding for further consideration were added to those of reaf-

firming or reversing a decision.

Genetic testing. It was made unlawful for an employer or employment agency to either administer a genetic test or to request, require, or collect protected genetic information regarding a person as a condition of employment, or to affect the terms or conditions of employment or terminate the employment of any person based on protected genetic information. Civil action may be brought in the event of a violation with the court authorized to award up to three times actual damages, punitive damages, costs and attorney fees, and injunctive or other equitable relief.

Worker privacy. The law relating to public information was amended to specify that State employee identification numbers are considered to be public data. These identification numbers must not be the employees' Social Security numbers.

Employee-assistance records are to be maintained separate from personnel records and must not become part of an employee's personnel file. These records, or participation in employee-assistance services may not be disclosed to a third person, including the employer, without the prior written authorization of the person receiving services, except pursuant to State or Federal law or judicial order, as required in the normal course of providing the requested services, or if necessary to prevent physical harm or the commission of a crime. Employee-assistance services are services paid for or provided by an employer and offered to employees or their family members on a voluntary basis to help resolve personal issues, such as emotional concerns, alcohol or drug use, family, relationship or financial issues, that may affect job performance.

Private employment agencies. The Department of Labor and Industry will cease regulating job search firms beginning July 1, 2003. Employment agencies will continue to be regulated.

Plant closing. Legislation increased to 2 years from 1 year the period of time that the owner or operator of an iron mine or related facility must maintain the mine or facility in salable operating condition, after discontinuing operation, to allow the State and other interested public and private bodies to seek new ownership.

Discharge. An employee who has been involuntarily terminated will now have 15 rather than 5 working days following termination to make a written request to the em-

ployer to be informed of the reason for termination. The employer will now have 10 rather than 5 working days following receipt of the request to provide a written response specifying the reason for termination.

Other laws. Public sector employers of 20 or more employees must grant paid leaves of absence to an employee who seeks to donate an organ or partial organ to another person. The combined length of the leave periods will be determined by the employee, but may not exceed 40 work hours for each donation, unless agreed to by the employer. The employer may require verification by a physician of the purpose and length of each leave period requested. An employer may not retaliate against an employee for requesting or obtaining leave.

Montana

Wages. The State minimum wage and overtime law was amended to specify that the overtime payment requirement for the employment of firefighters and law enforcement officers by the State must be consistent with the Federal Fair Labor Standards Act (FLSA) and its regulations. Additionally, an exemption from the overtime pay requirement of the State or its political subdivisions was added for an employee who is employed, at his or her option, on an occasional or sporadic basis in a capacity other than the employee's regular occupation. In these instances, only the hours that the employee was employed, in a capacity other than his or her regular occupation, may be excluded from the calculation of hours to determine overtime compensation. Finally, in those instances in which the State or political subdivision employer, or a private sector employer subject to the FLSA fails to pay the correct minimum wage and overtime rates, liquidated damages as determined under the FLSA do apply. However, the penalty provisions for the assessment of 110 percent of the wages due and unpaid under State law do not apply. In all other claims not involving the Federal minimum wage or overtime, the 110 percent penalty of Montana law is to be applied.

In response to the *Alden v. Maine* court decision, an amendment was enacted allowing public employees to use the cumulative remedies in Montana law to sue for overtime compensation if it was not paid by their public sector employer.

Provisions in the State minimum wage and overtime law excluding various outside salespersons from coverage were repealed and replaced with a provision adopting the exclusion for outside salespersons provided for under the FLSA.

A resolution was adopted urging the Department of Labor and Industry to review State laws and administrative rules to simplify and clarify laws related to the compensability of employee travel time and to meet with representatives of the U.S. Department of Labor and other interested employer and employee representatives in order to discuss streamlining and reducing the complexity of Federal and State laws governing this subject. Following the meetings, a report is to be sent to the Montana congressional delegation and to the U.S. Secretary of Labor.

The use of a weighted average to establish wage rates under the prevailing wage law was modified. Rates will now be computed by the Department of Labor and Industry based on work performed by registered State contractors and reported in an annual survey. The survey must include information pertaining to the number of skilled craftspersons employed in the employer's peak month of employment and the wages and benefits paid for each craft. In setting prevailing wage rates, the weighted average for each craft will be used, except where the survey shows that 50 percent of the craftspersons are receiving the same wage. When 50 percent are receiving the same wage, that wage is the prevailing wage for that craft. Other changes in the prevailing wage law require contractors and employers to maintain payroll records for 3 years after completion of work on a project, and require that fringe benefits be posted in addition to the wage scale as previously required.

Equal employment opportunity. The law barring discrimination in employment was amended to provide that it will not be a violation of the prohibition against marital status discrimination for an employer to employ or offer to employ a person who is qualified for a position and to also employ or offer to employ the person's spouse.

Discharge. The law establishing rights and remedies with respect to wrongful discharge was amended to clarify that during a probationary period, employment may be terminated by either the employer or the employee on notice to the other for any reason or for no reason. If an employer fails to establish a specific probationary period or provide that there is no probationary period prior to or at the time of hire, there will be a presumptive probationary period of 6 months from the date of hire.

Nebraska

Child labor. Detasseling work, for someone other than a parent, will now be more

closely regulated under the child labor law. Employment under age 12 will not be allowed. Work from ages 12 to 15 will be permitted if it is outside of school hours during June, July or August; the employer obtains written parental permission; the child lives within 75 miles of the work site; and the child does not work more than 48 hours a week, more than 9 hours a day, or before 6 a.m. Minors under age 14 may not work after 8 p.m. and those between the ages of 14 and 16 may not work after 10 p.m. Transportation time will not count as time worked nor will work breaks. Employment certificate and hours requirements for other work by children under age 16 will not apply to detasseling. At least two supervisors age 18 or older must be at each location where detasseling is being performed by children under age 16, and parents are to be given information sheets specifying the terms of employment. Other child labor law changes authorize the Department of Labor to approve employment certificates for children from adjoining States who seek to work in Nebraska, and change law violations from class 5 to class 2 misdemeanors.

Genetic testing. It was made unlawful for an employer to require an employee or applicant for employment to submit to a genetic test or provide genetic information as a condition of employment or promotion. In addition, employers may not fail or refuse to hire, recruit or promote an employee or applicant because of genetic information that is unrelated to the ability to perform job duties; may not discharge or otherwise discriminate with respect to compensation, or the terms, conditions, or privileges of employment; and may not limit, segregate, or classify an employee or applicant in a way which deprives the individual of employment opportunities or otherwise adversely affects the status of an employee because of genetic information unrelated to the ability to perform job duties. This law does not apply to the employment of an individual by his or her parent, spouse, or child, nor does it apply to any individual employed in the domestic service of any person.

Other laws. A resolution was adopted designating April 28, 2001 as Workers Memorial Day to honor and mourn for those workers who sacrificed their lives for the safety of all workers.

Nevada

Wages. The minimum wage law was amended to eliminate a sub-minimum wage rate for minors (85 percent) and to specify

that the labor commissioner is, in accordance with Federal law, to establish the minimum wage by regulation.

The authority of the labor commissioner was expanded by providing authorization to adopt regulations to enforce all State labor laws, the enforcement of which is not vested elsewhere. The authority to take wage assignments has been deleted, but in addition to prosecuting wage claims as before, the commissioner may now commence any other action to collect wages. Additionally, the commissioner has been provided with subpoena power in wage claim cases. Upon complaint of the labor commissioner, the attorney general rather than the district attorneys of the several counties will prosecute all criminal violations of law.

Among several changes in the State prevailing wage law, the labor commissioner may now establish a sliding scale based on the severity of the violation and may assess a fine not to exceed \$5,000 for each violation. The Attorney General rather than the District Attorney of the county where the violations occurred is now responsible for the prosecution of violators. Recordkeeping violations were added to the definition of "offense" for penalty purposes. It was specified that public bodies are to investigate possible law violations and inform the labor commissioner of any violations found. The time that violators will be debarred from public works was increased from 2 to 3 years for a first offense, and from 3 to 5 years for a second or subsequent offense. A contractor engaged on public works who violates the law shall be fined not less than \$20, nor more than \$50 for each calendar day each workman was engaged on the project. This is an increase from the previous range of \$15 to \$25. Payroll records will no longer be sent to the labor commissioner; they must now be kept by the public body for 2 years rather than 1 year.

The law authorizing the Director of Juvenile Services to create and administer a fund to finance a program of restitution through court-ordered work, for minors 14 years of age or older, was amended to specify that the director may not require that more than 50 percent of the wages of a child be deducted to pay restitution.

A resolution was adopted declaring April 3, 2001, as Equal Pay Day in the State. State and local governments, along with private employers were urged to compensate all employees in a fair manner based upon objective evaluations of their jobs, considering factors such as skill, effort, responsibility, and working conditions. Additionally, it was resolved to recognize those firms that promote and support policies to ensure fairness and equity for their employees.

Child labor. In 2000, the labor commissioner issued a rule declaring youth peddling to be a hazardous occupation and banning it for children under age 16. New legislation was enacted superseding this rule. The new law directs the labor commissioner to adopt regulations prohibiting the employment of children under age 16 in connection with the solicitation for sale or selling of any product, good, or service at any time or place or in any manner the commissioner determines to be dangerous to the health or welfare of children. The law will not apply to the sale of any product, good or service in a county of less than 100,000 population, or to the retail sale of any agricultural product at a fixed location directly to consumers. Any person employing or permitting a child to work in violation of this law will be liable for a civil penalty of up to \$2,500 for each violation in addition to any other penalty provided by law.

Entities, including motion picture companies or production companies hired by a casino or resort hotel, that employ children to work in the entertainment industry, pursuant written contract for a period of more than 91 school days, must, upon the request of the child's parent or legal guardian, pay the costs for the child to receive at least 3 hours of tutoring per day for at least 5 days per week or other equivalent educational or instructional services. The child must be exempt from compulsory school attendance requirements because he or she is either 1) receiving equivalent, approved instruction, 2) is 14 years of age or older and must support himself or herself or a parent, or 3) is between 14 and 17 years of age, has completed the 8th grade, and has a written permit for employment or apprenticeship.

It was made unlawful for a business, including a gaming establishment, a saloon, a resort, or a restaurant to employ, allow, or use a person younger than age 18 to distribute promotional materials that include an offer for alcoholic beverages.

Equal employment opportunity. An employer who reasonably believes that harassment in the workplace has occurred may file a verified application for a temporary court order for protection against the person who allegedly committed the harassment, and for an extended order prohibiting further harassment. Workplace harassment occurs when a person knowingly threatens to cause or commits an act that causes bodily injury to the person or another person, damage to the property of another person, or substantial harm to someone's physical or mental health or safety; the threat is made or the act is committed against an employer, an employee on the job, or a person present at the

employer's workplace; and the threat would cause a reasonable person to fear that the threat is viable. An employer is immune from civil liability, both for seeking a temporary or extended order for protection, if acting in good faith, or for failing to seek a temporary or extended order for protection against harassment in the workplace. The law will not be construed as prohibiting a person from engaging in any activity that is part of a labor dispute.

Worker privacy. The law regarding consequences of a peace officer's refusal to submit to polygraphic examinations was amended to provide that it will now be voluntary rather than mandatory, for an officer, against whom an allegation of misconduct is made, to submit to a polygraphic examination concerning such activities. No disciplinary action may be taken if the officer refuses the examination and no record is to be made of the refusal.

Other laws. Private sector employers of 50 or more employees and public sector employers who employ members of the State legislature are to grant them either paid or unpaid leave so that they may attend certain specified committee meetings held during the legislative interim. In addition, the protection from loss of seniority provided for State legislators who miss work while attending regular or special sessions of the legislature was extended to apply to attendance at these interim committee meetings.

New Hampshire

Equal employment opportunity. A committee was established to study various topics involving the Department of Corrections, including an investigation of allegations of sexual harassment, sexual assault, or other allegations of sexual misconduct perpetrated by department personnel on other department personnel, or inmates. A report on findings and any recommendations for proposed legislation is to be made to the legislature by November 1, 2002.

New Jersey

Penalties for violation of the State's Law Against Discrimination were increased from up to \$2,000 for a first violation and up to \$5,000 for a second or any subsequent violation. The maximum fines are now \$10,000 if the violator has not committed any prior violation within the 5-year period preceding the filing of the discrimination charge; \$25,000 for violators who have committed one other

violation within the previous 5 years; and \$50,000 for violators who have committed two or more violations within the previous 7 years. The law bars discrimination in employment, housing and public accommodation on the basis of race, creed, color, national origin, nationality, ancestry, age sex, marital status, sexual orientation, atypical hereditary cellular blood trait, genetic information, liability for military service, or mental or physical disability.

New Mexico

Other laws. An employee who is enrolled as a member of an Indian nation, tribe, or pueblo and who is qualified to vote in a tribal or pueblo election is to be given 2 hours off from work without penalty for voting purposes. Employers may specify the hours in which the voters may be absent, and the time-off requirement will not apply to an employee whose workday begins more than 2 hours after the polls open, or ends more than 3 hours before the polls close. An employer in violation will be guilty of a misdemeanor and may be fined from \$50 to \$100.

New York

Wages. The prevailing wage law was amended by adding a provision requiring the industrial commissioner to ensure that all retirement, insurance, vacation and other supplements due under the law be paid to or on behalf of an employee. The commissioner is to require proof that the pension plan for which any supplement has been paid is qualified as a bona fide plan by the United States Internal Revenue Service.

Garment industry. Local school boards may now consider labor standards and working conditions, including the use of child labor, in purchasing apparel. School boards may determine that apparel companies are not responsible bidders if they either fail to meet certain labor standards including employee compensation, working conditions, employee rights to form unions, and the use of child labor, or if they fail to provide the boards of education with sufficient labor standards compliance information.

North Carolina

Equal employment opportunity. Local boards of education were authorized to adopt policies addressing the sexual harassment of board employees by students, other local board employees, or school board members. At a minimum, these policies may set out the consequences of harassing school

employees and establish a procedure for reporting such incidents. The ban on disciplining an employee of the school board because he or she files a sexual harassment complaint was amended to specify that prohibited discipline means to discharge, threaten, or otherwise retaliate against an employee regarding his or her compensation, terms, conditions, location or privileges of employment.

Other laws. It was made unlawful for an employer to discharge or to demote any employee because he or she has been appointed as a precinct official and takes leave to serve in that capacity on election day or canvass day, provided the employee has given the employer at least 30 days written notice of the intention to take the leave.

North Dakota

Wages. Sections of the State law providing for the payment of wages were amended to provide that the wages of an employee who is terminated, who quits voluntarily, or whose employment is suspended because of an industrial dispute, are due and payable on the regularly scheduled payday established in advance by the employer for the periods worked by the employee. This change makes the handling of the final paychecks for all employees consistent regardless of the reason for separation.

The running of the 2-year statute of limitations for the processing of claims for unpaid wages will now stop at the time a claim is filed with the Labor Department. In cases in which the department dismisses the claim or refers the claim back to the claimant, the statute of limitations will resume running.

Hours. The State law relating to exemptions from Federal hours of service provisions for intrastate drivers was amended by deleting the provision that following 24 consecutive hours off, an intrastate driver would begin a new 7 consecutive day period and on-duty time was reset to zero.

As the result of extreme weather conditions, short supplies of propane and diesel products, and high customer demand, the governor issued an Executive Order on January 24, 2001. This order declared a state of emergency and therefore permitted him to exempt drivers of commercial motor vehicles from hours limits, established under Federal Motor Carrier Safety Regulations, while transporting heating and motor fuels to customers. The order, which expired on February 22, 2001, did not relieve carriers from those regulations pertaining to driver qualifications or the safe operation of vehicles, or

require or allow fatigued drivers to work.

Agriculture. A resolution was adopted directing the Legislative Council to study the benefits and risks associated with the use of contracts in agricultural production, including labor arrangements, growing and sales provisions, chemical usage, and provisions necessitated by emerging technologies. Findings, recommendations, and any legislative proposals are to be reported to the next Legislative Assembly.

Equal employment opportunity. Legislation was enacted which expanded the authority of the Human Rights Division of the Department of Labor beyond responsibility for enforcing employment and housing discrimination protections to include responsibility for discrimination protection provisions for public accommodations, public services, and nonhousing related lending. Additionally, the legislation provided that the Department hold administrative hearings on cases in which there is reasonable cause to believe that a discriminatory practice has occurred and provided that the department report on the progress of its human rights programs at the beginning of the 2003 legislative session.

The human rights act was amended to clarify that filing a minimally sufficient complaint with the State Department of Labor constitutes the filing of an employment discrimination complaint for purposes of establishing the timeframe for remedy for back pay. In addition, the Department of Labor was authorized to provide necessary case file documents to the U.S. Equal Employment Opportunity Commission for purposes of processing and closure.

Other laws. A telecommuting incentive program was adopted for employees of the State. Under the program, a State agency head may submit a proposal, to the suggestion incentive committee, to locate a State employee away from a central office setting of the agency. The proposal must include a comparison of the estimated annual costs of locating the employee away from the central office to the costs of the employee remaining. A State agency head who submits a proposal that is approved and implemented is entitled to receive 10 percent of any savings resulting from implementing the telecommuting program for the first 12-months up to a maximum payment of \$2,000. The employee who participates in the program is entitled to receive 20 percent of any savings identified, up to a maximum payment of \$2,000. The State agency head may also use 20 percent of any savings for one-time technology, equipment, or capital

improvement costs.

Ohio

Wages. By law, threshold amounts for contract coverage under the State prevailing wage law are adjusted every 2 years according to the change in the Census Bureau's Implicit Price Deflator for Construction, provided that no increase or decrease exceeds 6 percent for the 2-year period. As a result, effective January 1, 2002, the threshold amount for new construction rose from \$58,958 to \$62,549, and the threshold amount for reconstruction, remodeling, or renovation increased from \$17,687 to \$18,764.

Oklahoma

Other laws. A right-to-work Constitutional Amendment was approved by the voters in a September 25, 2001 election. The amendment bans any new employment contract that requires employees to resign from or belong to a labor organization, pay union dues, or make other payments to a union. Payroll deductions to labor organizations may only be made with employee authorization. Contributions to charity or any other third party required in lieu of payment to a labor organization are prohibited. The measure was placed on the ballot as the result of the passage of a joint resolution by the legislature.

Oregon

Wages. Legislation was enacted barring local governments from establishing minimum wage requirements for private sector employers in their jurisdictions. Local governments are allowed to set minimum wage rates for their own employees, for employees of firms that perform contract work for the local government, and as a condition of providing direct tax abatements or subsidies for private employers with 10 or more employees.

A restriction on the number of mandatory overtime hours that can be required is among provisions of a law relating to hospitals and staffing plans for registered nurses. Hospitals are to develop staffing plans that include a list of qualified on-call nurses who can serve as replacement workers on a regular basis. Registered nurses cannot be required to work more than 2 hours of mandatory overtime beyond a regularly scheduled shift and may not work more than 16 hours in any 24-hour period. These restrictions will not apply during a national or State emergency, in emergency circumstances identified by the Health Division, or when the hospital has made reasonable efforts to provide replacement staff and has been un-

able to do so in a timely manner. Provisions were enacted prohibiting retaliation and providing a civil cause of action in the event of violation. Hospitals were authorized to require registered nurses to provide notice of any outside employment that may interfere with job requirements.

The State's prevailing wage law was amended to exempt from coverage those projects for which no funds of a public agency are directly or indirectly used. It was specified that funds of a public agency do not include funds provided in the form of a government grant to a nonprofit organization, unless the grant is issued for construction purposes.

The notification to the Commissioner of the Bureau of Labor and Industries that is required of public contracting agencies, whenever a contract subject to the prevailing wage law has been awarded, is now to include a copy of the contractor's disclosure of first-tier subcontractors.

Changes were made regarding the submission of certified payrolls on public works projects. Contractors and subcontractors are to prepare weekly certified payroll statements and submit them monthly by the fifth business day of the following month.

The Commissioner of the Bureau of Labor and Industries was authorized to assess civil penalties of up to \$1,000 for willful minimum wage law violations and for final pay and seasonal farm worker payment violations. In addition, the remedy for failure to pay final wages was amended to provide that penalty wages may not exceed 100 percent of unpaid wages unless the employer fails to pay the full amount of unpaid wages within 12 days of written notice or unless the employer has willfully violated final pay provisions one or more times within a year of the employee's termination.

The section of the wage payment law barring special contracts or other arrangements exempting employers from liability or penalties for failure to pay wages, unless approved by the Commissioner of the Bureau of Labor and Industries, was amended. It now provides that a settlement reached between an employee and employer of a claim, which has arisen under any statute relating to the payment of wages, does not require the commissioner's approval, if the settlement does not provide for the employee to relinquish a claim for additional or future violations.

The section of law relating to attorney fees in actions for the collection of wages, in which wages are not paid within 48 hours after they become due and payable, was amended to provide that a sum for attorney fees will not be awarded if the court finds that the plaintiff's attorney unreasonably failed to give written notice of the wage claim to the employer before filing the action.

Hours. Nurses who provide acute care in hospital settings are now exempt from meal and rest period rules, issued by the Commissioner of the Bureau of Labor and Industries, if they are covered by a collective bargaining agreement that prescribes rules concerning meal and rest periods.

Family issues. A Task Force on Paid Family Leave and Unemployment Insurance was created. The task force is to study the feasibility of providing paid family leave to allow parents to take paid leave after the birth or adoption of a child, and investigate mechanisms for funding the leave through unemployment insurance and other potential funds. A report on findings is to be made to the legislature by September 1, 2002.

Child labor. The child labor law was amended to exempt from coverage soccer referees and assistant referees under age 18 when refereeing youth or adult recreational soccer matches. A separate provision, of general application, classifies referees and assistant referees of these matches as independent contractors.

Agriculture. The Housing and Community Services Department is to disburse the funds credited to the newly created Farmworker Housing Development Account to expand Oregon's supply of housing for low and very low income farmworkers. Monies to be credited to the account include civil penalties assessed for workplace safety and health violations in farmworker camps, and civil penalties assessed for violations of the farm labor contractor registration law.

The law permitting private nonprofit corporations, whose primary purpose is to provide education or training, to obtain farm labor contractor licenses was expanded. The law now also applies to those private nonprofit corporations designated as exempt under Section 501(c)(3) of the Internal Revenue Code who have been authorized to do business in Oregon for at least 5 years and who are primarily engaged in recruiting, soliciting, supplying, or employing workers. These corporations must post a corporate surety bond approved by and payable to the Commissioner of the Bureau of Labor and Industries in the amount of \$30,000 when submitting the application for the farm labor contractor license.

Equal employment opportunity. The State's civil rights statutes were reorganized. Additionally, it was made an unlawful employment practice to discriminate against an applicant or employee for holding a degree with a title in theology or religious occupations.

An advisory Task force on Promotional and Career Opportunities for Women in Oregon was established. It is to issue a report that documents the manner in which laws related to pay equity are enforced in the State; the earnings of Oregon women by income levels, occupation, education, length of employment, age, race and ethnicity and number of persons in a household in comparison to equivalent categories for Oregon men. The report is to document the number and type of businesses owned by women in Oregon and business resources available to women; the amount and type of public education conducted concerning issues about pay for women in the workforce; the impact of domestic violence on women in the workforce; and the availability of workplace child care options and resources. The task force is to make recommendations to the legislature for any necessary corrective action by March 1, 2003.

Other laws. Employers are to provide a place of employment that is free of tobacco smoke for all employees. Exceptions include retail businesses primarily engaged in the sale of tobacco products, bowling centers, and certain restaurants, bars or taverns. Violations will be punishable by fines of not more than \$50 per day, not to exceed \$1,000 in any 30-day period.

Pennsylvania

Equal employment opportunity. A resolution was adopted declaring the week of April 29 through May 5, 2001, as "Persons with Disabilities Employment Week" in recognition of the policy of the Commonwealth to encourage and assist individuals with disabilities to achieve maximum independence through productive and gainful employment.

Rhode Island

Wages. Coverage under the State prevailing wage law was expanded to include public works contracts let by public agencies and quasi-public agencies in addition to the previously covered contracts let by the State and its political subdivisions.

A resolution was adopted declaring April 3, 2001 to be "Rhode Island Pay Equity Day" and asking all Rhode Islanders to join in urging all other States to establish equitable compensation that eliminates sex and race based wage discrimination.

Child labor. The ban on the employment of persons under age 18 to manufacture, transport, carry, or sell a controlled substance was amended to exempt individuals

enrolled in an approved pharmacy training program.

Equal employment opportunity. It was made an unlawful employment practice for an employer, employment agency or labor organization to refuse to hire, discharge, improperly classify, deny membership rights, or otherwise discriminate against an individual on the basis of gender identity or expression. "Gender identity or expression" is defined as a person's actual or perceived gender, as well as a person's gender identity, gender-related self-image, gender-related appearance, or gender-related expression; whether or not that gender identity, gender-related self image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person's sex at birth.

The law requiring employers to adopt a written policy against sexual harassment in the workplace was amended to specify that a copy of the policy is to be kept at the business premises, and is to be made available to any State or Federal employment discrimination enforcement agency upon request.

Workplace violence. The Rhode Island Workplace Violence Protection Act of 2001 was enacted. It provides that if an employer or an employee has suffered unlawful violence, received a credible threat of violence, or been stalked or harassed at the worksite, the employer may (in addition to, or instead of, filing criminal charges against the individual) seek a temporary restraining order and an injunction prohibiting further unlawful acts by that individual at the worksite. An employer who takes action as provided in this law will be presumed to be acting in good faith and, unless lack of good faith is shown, will be immune from civil liability for actions taken. An employer who does not take action as provided in this law will not be liable for negligence.

South Carolina

Wages. A resolution was adopted declaring April 3, 2001, to be "Equal Pay Day" and urging the citizens of the State to recognize the full value of women's skills and significant contributions to the labor force. April 3, symbolizes the day on which the wages paid to American women so far in 2001, when added to women's earnings for all of 2000, equal the 2000 earnings of American men.

South Dakota

Wages. Employers are now authorized to pay employee wages by direct deposit to

the employee's bank account as an alternative to payment by cash or check.

Genetic testing. It was made an unlawful employment practice for an employer to discriminate against employees or job applicants on the basis of genetic information or to restrict any right or benefit otherwise due or available to them. Genetic information may be obtained or used if the employer is a law enforcement agency conducting a criminal investigation. Such information may also be used if the employer relies on the test results from genetic information obtained by law enforcement through a criminal investigation, legally acquires the test results, keeps the test results confidential except as otherwise required by law, and uses the test results for the limited purpose of taking disciplinary action against the employee based only on the alleged misconduct. Any employee or applicant claiming to be aggrieved by a violation may bring a civil suit for damages in circuit court.

Tennessee

Child labor. The State child labor law was amended. Among the amendments, violation of the ban on employing minors under age 14, who are not exempt from coverage of the law, was made a Class D felony. An employer who employs a child under age 14 will now also, at the discretion of the labor commissioner, be subject to a civil penalty of from \$1,000 to \$10,000 for each violation. Other changes specify that each instance of a person's violation of the law constitutes a separate violation for purposes of civil penalties, and provide that violation of the youth peddling provisions is a Class D felony. Baptismal certificates will no longer be accepted as proof of age, but driver's licenses and State issued identification were added to birth certificates and passports as valid documentation of proof of age for employment purposes.

Drug and alcohol testing. An addition to the policy statement section of the drug-free workplace programs law requires a covered employer to notify the parents or guardians of a minor of the results of any drug or alcohol-testing program conducted pursuant to the law. The confidentiality of the records section also was amended to specify that any notice required by the law will inform minors who are tested that their parents or guardians will be notified of the test results. An employer who discloses test results will not be liable for the disclosure.

Texas

Wages. The State minimum wage law was amended to adopt the Federal minimum wage rate by reference. Therefore, the State rate rose from \$3.35 per hour to \$5.15, effective September 1, 2001. The tip credit provision was also changed to adopt the Federal rate by reference (currently a \$2.13 per hour cash wage). The State law previously permitted a 50-percent credit towards the minimum wage.

The section of the payment of wages law relating to the enforcement of a lien, by the Workforce Commission, against an employer's property for unpaid wages or penalties was amended by adding a provision that a lien established under this law is superior to any other lien on the same property, with the exception of a lien for ad valorem taxes.

Child labor. The child labor law was amended to limit contracts binding minors in the arts, sports, and entertainment field to not longer than 7 years. Upon the petition of the minor's guardian, the courts may approve the contract only after the guardian has provided to the other party notice of the petition and the opportunity to request a hearing. The court may require, in an order approving a contract, that a reasonable portion of the net earnings of the minor under contract be set aside and preserved for the minor in a trust.

Agriculture. The Health and Human Services Commission is to study the feasibility of contracting with existing networks of health care providers to establish a migrant care network to provide health care services to children of those migrant or seasonal agricultural workers who are State residents, who intend to return to Texas at the end of temporary or seasonal employment in another State, and who are enrolled in certain specified medical assistance programs. The commission is to consider work patterns to determine in which States the network is most needed; examine the necessity and fiscal effect of entering into interstate agreements to establish the migrant care network; and determine if ensuring the provision of health care services for children of migrant or seasonal agricultural workers while a child is out of the State is necessary to maintain continuity of care. If establishment of a migrant care network is deemed feasible, a pilot program is to be developed. Findings and recommendations are to be reported to the governor and legislature.

Genetic testing. The State revised the stat-

ute banning employment discrimination on the basis of genetic information by expanding the definition of "genetic information" to include information obtained from or based on a scientific or medical determination of the presence or absence in an individual of a genetic characteristic or a family history obtained from an individual. The definition of "genetic test" was expanded to include a presymptomatic laboratory test of an individual's genes or gene products to identify the individual's genetic variations or compositions associated with an increased health risk. Employers are prohibited from discriminating on the basis of certain genetic information or genetic tests, or on the basis of family health information, which may contain details that could be used to determine an individual's genetic predisposition to certain diseases.

Drug and alcohol testing. The law concerning employment drug and alcohol testing policies for nursing homes and related institutions was amended. These institutions may establish their own drug testing policy, use a policy from another entity, or use the model drug testing policy adopted by the Texas Board of Human Services. The board is to adopt a model for use by institutions that is designed to ensure the safety of residents and to protect the rights of the employees. The model policy must include at least one scheduled drug test each year for each employee who has direct contact with residents, and also authorize random, unannounced drug testing for these employees.

Private employment agencies. The law regulating talent agencies will now apply only to the employment of actors or models. Coverage of musicians, writers, cinematographers, composers, lyricists, arrangers of musical compositions, and other individuals who perform analogous professional services in motion pictures, theatrical, radio, television, or other entertainment productions was eliminated.

Utah

Wages. The State minimum wage law was amended to prohibit cities, towns, and counties from establishing a minimum wage rate that exceeds the Federal minimum wage rate. These jurisdictions also may not require that a person who contracts with the city, town, or county pay that person's employees a wage in excess of the Federal rate. These restrictions do not apply when Federal law requires the payment of a prevailing or minimum wage to persons working on projects funded in whole or in part by Federal funds.

A Voluntary Contributions Act was enacted. This law requires that covered labor organizations may only make expenditures

for political activities if they establish separate segregated funds for this purpose. The funds are to be registered as political action committees. In soliciting contributions for a fund, the labor organization is to clearly disclose that the fund is a political fund and will be expended for political activities; that union dues are not to be used for political activities, transferred to the fund, or intermingled in any way with fund monies; that the cost of administering the fund is paid from fund contributions and not from union dues; and that each contribution is voluntary. Employees are also to be informed, in writing, of their right to refuse to contribute without fear of reprisal or loss of membership in the labor organization. Public employees are prohibited from authorizing deductions from their paychecks for fund contributions. Violation of the law is a class A misdemeanor. Organizations governed by the National Labor Relations Act and the Railroad Labor Act are excluded from coverage.

Hours. For workers, in underground mines, smelters, and other institutions that reduce or refine ores or metals, the law, which had limited their work period to no more than eight hours a day was repealed.

Drug and alcohol testing. Several changes were made in provisions related to the regulation of high-level nuclear waste. Among these, any organization that operates a storage facility or transfer facility that is engaged in the transportation of high-level nuclear waste within the State is to establish a mandatory drug and alcohol testing program for job applicants and employees as a condition of hiring or of continued employment for any employee. Testing standards are to be established by the Department of Environmental Quality, in consultation with the Labor Commission, and are to address the protection of the safety, health, and welfare of the public.

Worker privacy. Provisions regarding access and management of State government records were amended to allow current or former employees of a government entity to provide written notice of the employee's status, as a government employee, to each agency of a government entity holding records that would disclose the employee's home address, phone number, Social Security number, insurance coverage, marital status, or payroll deductions in order that the employee may have the information classified as private. Neither the government entity or political subdivision, or employees of those entities, will be liable for damages arising from the negligent disclosure of private

records, unless the disclosure was of employment records maintained by the government entity or the disclosure was of non-employment records and the current or former employee had filed the required notice.

Vermont

Wages. As the result of prior legislation, the state minimum wage rate rose from \$5.75 per hour to \$6.25 per hour on January 1, 2001. The minimum cash wage for tipped employees is \$3.44 per hour, with a maximum tip credit allowance of \$2.81.

The State minimum wage law was amended, eliminating the wage board and transferring its duties and responsibilities to the Commissioner of Labor and Industry. Additionally, employers covered by a wage order must now comply within 10 days of receiving notification of a violation, or the commissioner may take court action to enforce the order. Finally, any employee paid less than the applicable wage rate shall recover, in a civil action, twice the amount of the minimum wage, less any amount actually paid together with costs and reasonable attorney fees.

Resolutions were adopted recognizing the continuing problems that women encounter in their efforts to achieve equal pay for equal work and urging that Equal Pay Day, April 3, 2001, serve as a reminder to all Vermonters that this fundamental economic goal has yet to be achieved.

Child labor. Several significant changes were made in the child labor law. Among these, the Commissioner of Labor and Industries is to adopt rules to carry out the purpose and intent of the law, provided the rules are consistent with Federal child labor laws and rules. Among changes conforming to the Federal law for children under age 16, the earliest starting time was changed from 6 a.m. to 7 a.m., work was limited to 40 hours a week when school is not in session, and employment was restricted to no more than 3 hours on schooldays and to no more than 18 hours on school weeks. These children will now be permitted to work until 9 p.m. from June 1 through Labor Day. The ban on employment by children under age 14 was amended to add the Federal exemptions for newspaper carriers and for employment by a parent. The list of occupations considered to be hazardous and prohibited for minors under age 16 was repealed and replaced by adopting, by reference, the Federal prohibited hazardous occupations for minors under age 18. Other changes eliminated hours restrictions in manufacturing and mechanical establishments for minors age 16 to 18, and

made major increases in penalties for violation of the law and for the sale of goods made in violation of the law.

Worker privacy. The Department of Motor Vehicles was added to the list of employers permitted to require polygraph examinations for job applicants as a condition of employment. For the Department of Motor Vehicles, this authority is limited to applicants for law enforcement positions.

Other laws. The governor, by executive order, transferred the Division of Occupational Health from the Department of Health to the Department of Labor and Industry.

Virginia

Equal employment opportunity. The section of the Fair Employment Contracting Act prohibiting discrimination in the awarding of contracts was amended to adopt the definition of unlawful discriminatory practice used in the State Human Rights Act. This change adds discrimination on the basis of pregnancy, childbirth or related medical conditions, age, marital status, or disability to the previously prohibited discrimination because of race, religion, color, sex, or national origin.

Whistleblower. The time period was increased, from 30 to 60 days after a violation occurs, for an employee to file a complaint with the Commissioner of Labor and Industry, alleging that discharge or discrimination occurred as the result of filing a safety or health complaint, testifying, or otherwise acting to exercise his or her rights under the safety and health provisions of the State Labor and Employment laws.

Other laws. Full-time employees of the Commonwealth of Virginia will be allowed up to 30 days of paid leave a year to serve as bone marrow or organ donors.

Washington

Wages. The State minimum wage rate is adjusted for inflation annually in September by a calculation using the Consumer Price Index for Urban Wage Earners and Clerical Workers for the previous year. As a result, the rate for employees over age 18 increased from \$6.50 per hour to \$6.72 per hour on January 1, 2001, and to \$6.90 on January 1, 2002. Sixteen- and 17-year-olds also receive these rates as the result of an administrative rule requiring that they earn the same minimum wage as adults.

The prevailing wage law was amended to

provide that civil penalties collected for violations of the act are to be deposited in the public works administration account.

Family issues. An employer may use the designation "infant-friendly" on its promotional materials if the employer has a workplace breastfeeding policy, approved by the Department of Health, that addresses issues including flexible work scheduling; providing breaks for breastfeeding or the expression of breast milk; providing a facility allowing privacy for breastfeeding or expressing milk; and providing clean-up and storage facilities.

Worker privacy. Financial and proprietary information collected from any person and provided to the Department of Community, Trade, and Economic Development, as part of the department's research and survey efforts, was made exempt from public disclosure requirements.

Other laws. An employer, of 20 or more full-time employees, may not discharge or otherwise discipline an unpaid volunteer firefighter because of leave taken while responding to a fire alarm or an emergency call. The protection from discharge or discipline applies in cases in which the volunteer is not already at his or her place of employment when called to serve (unless agreed to by the employer) and in which the volunteer has been ordered to remain at his or her position by the commanding authority at the scene.

The statute dealing with the employment and re-employment rights of veterans was amended to ensure employment rights protections for State-activated members of reserve and National Guard units similar to those provided by Federal law for Federal-activated personnel. Employers are prohibited from denying initial employment, employment retention, promotion, or employment benefit on the basis of membership, application for membership, performance of service, application for service, or service obligation to or in any of the military services. Proof of service or required future service must be provided to the employer within specified time frames. Provision is made for the continuation of health insurance and pension benefits during the period of active service.

West Virginia

Wages. The section of the prevailing wage law relating to the attachment of wage rates to construction contracts was amended to permit the schedule of wages to be pub-

lished in an electronic or other medium and incorporated into the contract by reference.

The threshold amount for the prevailing wage payment requirement for projects of the West Virginia Infrastructure and Jobs Development Council was raised to \$50,000 from \$25,000 for work that is performed on construction or repair projects by regular full-time employees of the State or its subdivisions. To be exempt, no more than \$50,000 may be expended on an individual project in a single location in a 12-month period.

Other laws. Knowingly employing a person or persons who do not have the legal right to be employed in the United States was added to the list of causes for disciplinary action under the State Contractor Licensing Act.

The law prohibiting employers from discharging employees for time lost from work as members of volunteer fire departments while their squad responds to emergencies was amended. It now also provides protection from other forms of disciplinary action and expands the scope of the protection to include emergency medical service attendants. Motor vehicle accidents were added to the definition of "emergency," and the restoration of an employee's lost seniority was added to the remedies provided in the event of violation by an employer.

Wisconsin

Wages. Effective July 1, 2001, the threshold amount for coverage under the State prevailing wage laws for State and municipal contracts was changed administratively from \$168,000 to \$172,000 for contracts in which more than one trade is involved and from \$34,000 to \$35,000 for contracts in which a single trade is involved. On January 1, 2002, these amounts were changed administratively to \$175,000 for contracts in which more than one trade is involved, and \$36,000 for contracts in which a single trade is involved.

Equal Employment Opportunity. Employers must allow all employees, with certain exceptions, to return to employment after service in the National Guard or State de-

fense force without loss of rights or benefits including seniority. Employees who are denied re-employment, or are about to be denied, may file a complaint with the Equal Rights Division of the Department of Workforce Development, either directly or through the adjutant general.

Wyoming

Wages. Legislation was adopted raising the state minimum wage rate from \$1.60 per hour to \$5.15 per hour on April 1, 2001. A minimum cash wage of \$2.13 per hour must be paid to employees receiving tips and who regularly receive more than \$30.00 a month in tips. Additionally, employers must make up the difference between this wage and the applicable minimum wage if the employee's tips received during a given pay period added to the \$2.13 per hour fail to equal the minimum wage. The law was amended to remove exemptions for all minors under age 18, part-time workers (defined as persons working 20 hours or less a week), and individuals who are enrolled and participating in any educational training or apprenticeship program approved by the Commissioner of Labor and Statistics. In lieu of the \$5.15 per hour minimum wage, employers may pay any employee under age 20 a wage that is not less than \$4.25 per hour during the first 90 consecutive days after the employee is initially employed by the employer. Employers may not take action to displace employees for purposes of hiring employees at this sub-minimum wage.

Among several changes in the State prevailing law, references to the commissioner of labor and statistics were replaced by references to the director of the Department of Employment (DOE). The definition of "locality" is now the same for public building projects as it has been for heavy and highway projects. The DOE, rather than the public bodies awarding contracts, will now determine prevailing wage rates. The prevailing rates within the State shall be determined on an annual basis for all occupations, crafts, or types of workers expected to be required for public works in the State. The most current hourly wage survey is to be considered in setting rates. Periods for various actions

were extended:1) written objections may now be filed within 15 days of publication and notification,2) within 10 days of receipt of an objection, the director shall set a hearing date that must be held within 30 days of receipt of the objection,3) objectors must receive written notice, of the hearing time and place, 5 days prior to the hearing, and 4) the director must rule within 10 days of the conclusion of the hearing.

As a result of reorganization, references to the "commissioner of labor" have been replaced with the "department of employment" which has the same duties and responsibilities. Penalties for violation of semimonthly payment requirements were increased from a fine of from \$25 to \$100 and/or up to 90 days imprisonment to a fine of up to \$750 and imprisonment for up to 6 months. A ban on paying female workers less than is paid to male employees by the same employer for the same work was eliminated. It was replaced with a provision that employers may not discriminate in paying wages on the basis of gender for equal work on jobs for which the performance requires equal skill, effort, and responsibility under the same working conditions. There are exceptions if the pay is based upon seniority, the merit system, production quality or quantity, or a differential based on any factor other than gender. When the department collects back wages for employees it must attempt to make payments of the collected wages to the persons entitled to the back wages for a period of not less than 4 months (previously 2 years), whereupon the wages now will become unclaimed property. These funds previously reverted to the general fund of the State.

Other laws. A Department of Workforce Services is to be created as part of a reorganization of the State government by July 1, 2002 following approval of a reorganization plan by the legislature. The reorganization plan is to consider transferring several functions or programs to the new department including displaced worker education and training, public employment offices, veterans' employment services, the school-to-careers program, and the unemployment insurance program. □

Notes

¹ All of the State legislatures met in regular session in 2001. Alabama, Alaska, Kansas, Mississippi, and Missouri did not enact significant legislation in the fields covered by this article. Information about Guam, Puerto Rico, and the

Virgin Islands was not received in time to be included in the article, which is based on information received by November 9, 2001.

² Laws in 25 jurisdictions link changes in the

State rate to changes in the minimum wage rate under the Federal Fair Labor Standards Act (FLSA). Linkage provisions are of several types:

a) Laws in 14 jurisdictions do not contain

current dollar minimums. Instead, these 14 statutes adopt the FLSA rate by reference, or mandate or authorize matching the FLSA rate by administrative action, thereby conforming to Federal changes on a continuing basis. These 14 jurisdictions are Guam, Illinois, Kentucky, Maryland, Missouri, Montana (mandates administrative action), Nevada (mandates administrative action), New Jersey, North Carolina, Oklahoma, Pennsylvania, Texas, Utah (authorizes, but does not mandate, administrative action) and Virginia.

b) Laws in Delaware, Iowa, Maine, New Hampshire, New York and Vermont have

their own rates, but replace the State rate with the FLSA minimum if it is higher than the State minimum.

c) In Alaska, Connecticut, the District of Columbia and Massachusetts, the rates rise above the Federal rate by a fixed differential on a continuing basis. In Alaska, the rate is automatically set at 50 cents above the FLSA rate. In Connecticut, the State rate automatically increases to 0.5 percent above the FLSA rate if the Federal minimum equals or becomes higher than the State minimum. In the District of Columbia, the rate is set at \$1.00 above the FLSA rate. In Massachusetts, the

State rate automatically increases to 10 cents above the FLSA rate if the Federal minimum equals or becomes higher than the State minimum.

d) Another type of linkage is in California. The California rate matches any higher Federal rate on a continuing basis. In California, the Industrial Welfare Commission sets rates administratively by issuance of industry wage orders. If the Federal rate is scheduled to exceed the State rate, the Commission is directed to adopt, in a public meeting, an order matching the higher rate, without the necessity of convening a wage board.

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