

## State labor legislation enacted in 2002

*Minimum wage rate increases, limits on overtime for nurses, paid family and medical leave, workplace security, and military re-employment rights were among major legislation enacted during the year*

Richard R. Nelson

States enacted important labor legislation in 2002 covering a variety of employment standards. Minimum wage rates were increased in a number of States, a first-in-the-Nation law provided for paid family and medical leave, changes were made in several child labor laws including a revised prohibition on door-to-door sales, and several States enacted legislation to protect the jobs of reserve or guard members returning from active duty.

Trends continued with additional States placing limits on mandatory overtime for nurses, banning employment discrimination on the basis of genetic testing, providing immunity from liability for furnishing information on job performance, providing job protection for crime victims and victims of sexual assault, and addressing issues of workplace violence and security.

Six State legislatures did not meet in regular session in 2002, and some met only for budget purposes.<sup>1</sup>

This article summarizes significant State labor legislation enacted in 2002. 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. Articles reporting on changes in unemployment insurance and workers' compensation laws appear elsewhere in this issue.

**Wages.** Minimum wage rates increased as the result of new legislation in Alaska and Connecticut and as the result of a

successful ballot measure in Oregon. Rates also increased in California, Connecticut, Hawaii, and Maine as the result of previous laws, and in Washington as the result of a prior ballot measure. Alaska became the first State to provide for an indexed minimum wage rate through legislation (the Washington rate is indexed as the result of a 1998 ballot measure). The Oregon initiative also provides for an indexed rate.

As of January 1, 2003, 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.<sup>2</sup>

A law prohibiting political subdivisions from establishing a minimum wage that exceeds the Federal minimum wage was enacted in South Carolina.

Hawaii increased the amount of guaranteed monthly compensation required to exempt an individual from minimum wage, overtime, and recordkeeping requirements, and New York amended its minimum wage and payment of wages laws to cover limited liability companies.

Prevailing wage laws pertaining to public works construction projects currently exist in 32 States and the Federal Government. Several measures were enacted in 2002 with some strengthening and with others weakening existing legislation. Laws enacted in New Jersey and West Virginia, and ballot measures approved in California, expanded coverage to include additional authorities or agencies. A separate measure amended the California law to provide a new exemption. The dollar threshold amount for coverage was increased administratively in Wisconsin.

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](mailto:rrn@fenix2.dol-esa.gov)

A law was enacted in Guam providing for prevailing wages and benefits under service and other contracts let by the Territory.

Other significant actions include issuance of an executive order in New Jersey authorizing project labor agreements, provision in Connecticut for prevailing wage rates to be adjusted annually, provision in Maryland for contractors and subcontractors to be jointly and severally liable for payment violations, and the adoption of more comprehensive regulations in Montana.

Amendments were also made concerning debarment provisions in New York, frequency of surveys in Washington, contractor compliance requirements in Hawaii, and hearing and recordkeeping requirements in Illinois.

A new equal pay law was adopted in Vermont, and Wyoming authorized a study of the disparity of wages and benefits.

Other important wage legislation included a Kentucky law that allows compensatory time in lieu of paid overtime for county employees; new overtime payment exceptions in Illinois, Kentucky, and Maine; new or increased penalties for violation in New York, Oklahoma, and the Virgin Islands; a revision in enforcement authority in Rhode Island; and a requirement in California for a minimum level of wages for employees to be included in personal services contracts entered into by State agencies.

*Overtime limits.* A recent trend is continuing with Maryland, Minnesota, New Jersey, and Washington placing limits on mandatory overtime for nurses. These laws join similar measures enacted in Maine and Oregon in 2001.

*Family issues.* In a ground-breaking legislative development, California became the first State to provide for paid family and medical leave. Bills of this kind have been introduced in a number of States over the last 3 years, including some in 2002, but the California measure is the first to be enacted. Maine and New Mexico enacted legislation calling for studies of the benefits and costs of providing paid family and medical leave.

In other developments, Guam enacted a paternity leave provision and employers in Puerto Rico are to give priority in processing flexible work schedule requests to women with minor children and to single parents with custody of their children. Significant amendments were made expanding coverage of the Washington law requiring employers to allow use of sick leave in the event of family members' serious health conditions. Separate measures enacted in Maine add organ donation to the reasons allowed for family leave, and provide leave to attend to medical treatment for a victim of violence who is an employee's child, parent, or spouse.

*Child labor.* Child labor continued as a major subject of legislative concern, with bills introduced in more than one-

half of the States. Several important changes were made in the West Virginia law, including conforming the hours, nightwork, and prohibited hazardous occupations orders to Federal law and increasing penalties for violations. Missouri now prohibits door-to-door sales by minors under age 16. Such sales also will be prohibited in Pennsylvania unless certain conditions are met. An Ohio law revises certificate requirements and requires the electronic filing of age and schooling certificates. Kentucky adopted new regulations changing permitted hours of employment and requiring that hours restrictions apply to school dropouts under age 18.

Laws easing restrictions were enacted in Illinois permitting 12- and 13-year-olds to be employed to officiate certain youth sports activities, in Massachusetts permitting the operation of golf carts on golf courses, and in Alaska where employers may now get advance approval for hiring minors in lieu of individual advance written authorization.

*Agriculture.* A comprehensive farm labor contractor registration act was passed in Idaho. Several revisions were made in the Nebraska law including changes pertaining to exemptions and application and renewal fees and addition of a requirement that a bilingual employee be available under certain circumstances. Florida placed new restrictions on deductions from wages for any tools, equipment, transportation, or recruiting fees that are for the benefit of the employer.

*Apparel industry.* The apparel industry continues to be an area of interest and concern. The governor in New Jersey issued an executive order specifying that public bodies purchasing apparel are to require that all production be performed in the United States and that all labor laws are complied with. A New York State Apparel Workers Fair Labor Conditions and Procurement Act also requires that labor standards and working conditions be considered by State agencies, universities, and community colleges when purchasing apparel. New York also enacted requirements for the posting, at the worksite, of wage payment requirements and labor department contact information.

*Equal employment opportunity.* Hawaii, Utah, and Virginia joined the more than one-half of the States who have previously enacted legislation banning employment discrimination against individuals based on genetic characteristics, genetic information, or test results. The existing law in Rhode Island was amended.

Among other measures that were enacted banning various forms of employment discrimination, changes were made in Arizona's civil right's laws adding various protections provided by Federal law and adding mental impairment to the definition of disability, New York made amendments to its law protecting the right of employees to practice their religion,

and New Jersey and New York made it unlawful for an employer to discriminate against an employee for wearing the American flag or displaying it at his or her work station.

*Worker privacy.* Laws were enacted providing for the confidentiality of employee information for reproductive health care services providers in California, for dependents of State employees in Minnesota, and for at-risk government employees in Utah. Washington made it unlawful to sell, publish or otherwise release the home address or other private information of any law enforcement-related employee or volunteer.

Measures authorizing the disclosure of information about a current or former employee to a prospective employer were enacted in Minnesota, and California now allows current or former employers to answer whether or not they would rehire someone.

Connecticut made it unlawful for an employer to require an employee or applicant to disclose the existence of any arrest, criminal charge, or conviction, the records of which have been erased. Licensed health care facilities in Mississippi were protected from liability for requiring felony conviction information from employees and applicants.

*Workplace violence and security.* In an emerging area addressing issues of workplace violence and security, Florida counties and municipalities were authorized to require the screening of employees or applicants in positions critical to security or public safety. California extended time limits for filing a complaint under the law providing that State residents have the right to be free from any violence committed because of factors including race, color, or religion. Guam and New Jersey established task forces to study workplace violence and, in Virginia, an employee who reports threatening conduct by a co-worker will be immune from all civil liability that might otherwise be incurred because of making such a report.

*Employee leasing.* The term “professional employer organization” has replaced “employee leasing firm” in some recent legislation. New comprehensive professional employer registration acts were enacted in New York and Oklahoma. Several amendments were made to the Utah law including removing references to “employee leasing company” and “leased employee.” Tennessee amended its law to specify that a client will be jointly liable with a staff leasing company for State unemployment insurance premiums.

*Private employment agencies.* A law was enacted in Massachusetts to limit the amount of fees that staffing agencies may charge employees for transportation. Among amendments to other laws, coverage of the Illinois day labor services act was expanded to include temporary labor services, and several changes were made in the Hawaii law

regulating commercial employment agencies and in the Minnesota law regulating supplemental nursing services agencies.

*Plant closing/displaced workers.* California employers of 75 or more employees must now give 60 days written notice of a mass layoff, relocation, or termination involving 50 or more persons. Another California measure provides that the jobs of laid-off workers are not to be filled with welfare-to-work program participants. The department of labor in Maine is to adopt rules to implement the law governing the severance pay paid by employers who close or relocate.

*Whistleblowers.* Among whistleblower protection measures enacted, a comprehensive Health Care Worker Whistleblower Protection Act was adopted in Maryland, and a section relating to the prohibition of retaliatory personnel actions against health care employees was added to the New York labor law.

*Military re-employment rights.* Following the events of September 11, 2001, several States enacted legislation related to reinstatement rights of reserve or guard members returning from active duty. Many of these measures amended laws to provide State guard members with the same rights as provided to those called for Federal duty.

*State labor departments.* In California, a Labor and Workforce Development Agency was created consisting of the Department of Industrial Relations, the Employment Development Department, the Agricultural Labor Relations Board, and the Workforce Investment Board. A Department of Workforce Services was created in Wyoming to be responsible for programs including displaced worker education and training, public employment offices, and veteran’s employment services. The Florida Department of Labor and Employment Security was eliminated and its responsibilities and functions transferred to other agencies.

*Other laws.* Among other laws enacted, job protection for election officers on election day was provided for in Delaware and a similar law was amended in Alabama. Job protection was also provided in Connecticut for crime victims who attend court proceedings, in California for victims of sexual assault, and in Kentucky for rescue squad members, peace officers, and emergency medical technicians. Puerto Rico established a sports leave-without-pay policy for athletes in training and for trainers.

Utah will provide paid leave for State employees who are organ or bone marrow donors, and Vermont established a disaster relief workers fund to provide wage reimbursement.

New laws in California provide that local labor standards

be enforced on projects receiving assistance from a State agency, that employees may disclose information regarding their working conditions, and that labor laws are to be enforced without regard to an individual's immigration status. West Virginia made

it unlawful to employ an alien who is not authorized to work by immigration laws or the U.S. Attorney General.

The following is a summary, by jurisdiction, of labor legislation enacted in 2002.

## Alabama

*Plant closing.* A resolution was adopted in response to the LTV Steel Corp. filing for bankruptcy. The resolution urges LTV Corp. officials to honor all contractual obligations including, but not limited to, continued health insurance coverage to its employees and former employees. Other laws. The State enacted a law extending active duty military rights and protections to members of the State National Guard called or ordered by the Governor to State active duty for 30 or more consecutive days for emergencies, or called or ordered by the Governor to federally funded duty for homeland security. The law states that the provisions of the Federal Soldiers and Sailors Civil Relief Act and the Federal Uniformed Services Employment and Reemployment Rights Act apply when members of the State Guard are called up in the above circumstances. Additionally, when any public employee is called to active service during the war on terrorism, which commenced in September 2001, the employee shall receive from his or her employing department or agency compensation equal to the difference between the lower active duty pay and the higher public salary which they would have received if not called to active service. While on active service, employees may continue their individual or dependent health insurance coverage under the health insurance plan of the public employer and are considered active and contributing members of their retirement system.

The law concerning time off for election officials on election day was amended. Employees shall be excused without penalty or loss of time for election day only in order to perform the duties of their appointed position. The law now will apply to employers with more than 25 employees rather than to those with more than 50 as before, and it was specified that the law does not require an employer to compensate an employee while he or she is performing election-day duties.

The law requiring reimbursement of training costs by the new employer whenever a municipal court clerk, municipal court magistrate, ambulance service operator, ambulance driver or attendant, emergency medical technician, water or wastewater operator, law enforcement

officer, certified corrections officer, or firefighter is employed by another public entity within 24 months of the completion of training, was amended to specify that costs, in addition to salary, include transportation costs paid for travel to and from the training facility, room, board, tuition, overtime paid to other employees who fill in for the trainee during his or her absence, and any other related training expenses.

## Alaska

*Wages.* New legislation increased the State minimum wage rate from \$5.65 to \$7.15 per hour on Jan. 1, 2003, and provided for thereafter adjusting the minimum wage annually for inflation effective January 1 of each year. The minimum wage, to be determined by the Department of Labor, by regulation, by September 30 of each calendar year, will be either the most recent wage adjusted for 100 percent of the rate of inflation based on the U.S. Bureau of Labor Statistics Consumer Price Index for all Urban Consumers (CPI-U) for Anchorage, Alaska, prepared by the U.S. Bureau of Labor Statistics, or \$1 more than the Federal minimum wage, whichever is greater. The department will round the adjusted minimum wage up to the nearest one cent.

*Child labor.* The section of the child labor law requiring minors under age 17 to have written authorization from the labor commissioner as a condition of employment was amended to allow employers of minors to obtain broad approval of a group of duties or jobs to be performed by minors. Possession of this advance approval from the commissioner for a specific job consisting of listed duties permits employers to hire and employ minors, of at least age 14 without having the prior individual approval as long as the employer does not change any of the duties of the pre-approved jobs. Additionally, the employer must have written consent from the parent or guardian of the minor permitting the employment in the job specified in the consent. The written consent is to be on a form provided by the department and is valid for the calendar year in which it is issued, except that a consent

executed in December may be valid for the next calendar year as well. Employers must notify the department within 7 calendar days after a minor has been employed.

## Arizona

*Equal employment opportunity.* Technical and substantive changes were made in the State's civil right's laws adding various protections provided by Federal law. Mental impairment was added to the definition of disability making it unlawful for employers to fail or refuse to hire or discharge individuals on this basis if the employer can act without undue hardship on the conduct of the business. Employers may not discriminate against persons with disabilities who, with or without reasonable accommodation are capable of performing essential job functions. Employers may determine what functions are considered essential as long as a written description is completed prior to advertising or interviewing for a position including apprenticeship or training programs. Employers may not participate in contracts that subject persons to discrimination, use standards that cause discrimination, exclude persons from jobs or benefits, use qualifications that discriminate (unless they are based upon business necessity, for example, the health or safety of other employees is at risk) or use tests (medical and nonmedical) in a biased manner because of a person's disability.

## California

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

The State prevailing wage law was amended so that several provisions of the law that were scheduled to be repealed on January 1, 2003, will now be retained as a result of deletion of the repeal implementation wording.

Voters in the November general election approved both The Kindergarten-University Public Education Facilities Bond Act of 2002 (Proposition 47), and The Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002

(Proposition 50). As part of these measures, the body awarding any contract for a public works project funded under either act is to adopt and enforce a labor compliance program that includes payment of the prevailing wage rate.

The prevailing wage law was amended to exempt from coverage the construction, expansion, or rehabilitation of privately owned residential projects that are self-help housing projects, operated on a not-for-profit basis as housing for homeless persons, or that provide for housing assistance. This provision and amendments made by prior law do not preempt local ordinances requiring the payment of prevailing wages on housing projects.

A resolution was adopted urging that Apr. 16, 2002, be proclaimed "Equal Pay Day" in California, recognizing the full value of women's skills and significant contributions to the labor force.

The Labor and Workforce Development Agency is to contract with a nonprofit, nonpartisan independent research organization, with a proven record of conducting objective research on labor and employment issues in the State, to study the most effective and efficient means of enforcing wage and hour laws. The study also will identify available Federal and State resources that may be used to enforce wage and hour laws. The study is to be completed and submitted to the legislature by Dec. 31, 2003.

Personal services contracts entered into by a State agency for persons providing janitorial and housekeeping services, custodians, food service workers, laundry workers, window cleaners, and security guard services must include provisions for employee wages and benefits that are valued at no less than 85 percent of the State employer cost of wages and benefits provided to State employees for performing similar duties.

*Family issues.* The State Unemployment Insurance Law was amended to provide for paid family and medical Leave. Employees now may take off up to 6 weeks of paid family leave over a 12-month period to care for a newborn, a newly adopted child, or a seriously ill family member or domestic partner. Employees will be eligible to receive 55 percent of their wages during their absence, up to a maximum payment of \$728 per week in 2004. The benefits will rise to a maximum of \$840 per week in 2005 and will be indexed to the State average weekly wage thereafter. Workers will be permitted to start taking time off beginning July 1, 2004. Benefits provided by the law will be funded entirely by employee payroll

deductions, averaging about \$27 per year and ranging up to \$70 per year for those earning more than \$72,000 annually. These employee deductions will begin on Jan. 1, 2004. Unlike the State Family Rights Act, all employers are covered by this legislation, regardless of number of employees. However, employers with fewer than 50 employees are not required to hold a job for an employee who goes on paid family leave. Employees may be required to use up to 2 weeks of accrued leave prior to the receipt of paid family leave.

An employer who maintains an absence control policy that counts sick leave used to attend to an illness of a child, parent, spouse, or domestic partner as a basis for discipline, demotion, discharge, or suspension will be considered to be in violation of the law prohibiting employer retaliation against an employee who uses sick leave for these purposes.

*Agriculture.* A resolution was adopted directing that a privately-funded Agricultural Worker Health and Housing Commission be established composed of equal numbers of members representing growers and agricultural workers. The commission is to report to the legislature regarding the agricultural industry's ability to compete in the global marketplace and the commission's recommendations of how to improve the housing and health conditions of agricultural workers.

*Equal employment opportunity.* A 2001 court decision (*Esberg v. Union Oil Co. of California*) held that it was permissible under the Fair Employment and Housing Act (FEHA) for employers to discriminate on the basis of age in employee training programs. In response, existing provisions of the FEHA which made it an unlawful employment practice for any employer to refuse to hire or employ, or to discharge, dismiss, reduce, suspend, or demote any individual older than age 40 on the basis of age were repealed. A prohibition on age discrimination was added to a separate code section which addresses the other prohibited bases of discrimination, resulting in age discrimination being expressly prohibited in training programs and in other terms, conditions, and privileges of employment. Age was also added to the existing bases of discrimination prohibited for labor organizations.

Provisions of the FEHA requiring that an individual wishing to pursue a civil action file suit within 1 year of a right-to-sue notice from the Department of Fair Em-

ployment and Housing, were amended to toll the limitation period within which the civil action must be filed, in cases where the department has deferred its investigation of the individual's complaint to the U.S. Equal Employment Opportunity Commission (EEOC) or where after an investigation by the department, the EEOC agrees to perform a substantial weight review of the determination of the department or conducts its own investigation. The time for commencing an action for which the statute of limitations is tolled will expire when the Federal right-to-sue period to commence a civil action expires, or 1 year from the date of the right-to-sue notice by the department, whichever is later.

Sections of the Education Code pertaining to community colleges were amended to repeal provisions relating to affirmative action hiring that had been invalidated by the California Court of Appeal. An Equal Employment Opportunity Fund is established to be administered by the Board of Governors of the California Community Colleges for the purpose of promoting equal employment opportunity in hiring and promotion.

*Worker privacy.* An Address Confidentiality for Reproductive Health Care Services Providers, Employees, Volunteers, and Patients program was created to protect the confidentiality of home address information of these individuals. Under the program, the Secretary of State will be required to approve an application of a qualified program participant for a substitute address to be designated by the Secretary. State and local agencies are required to use the substitute address at the request of a program participant.

The law extending a qualified immunity from slander or libel suits to statements by current or former employers about the job performance or qualifications of an applicant for employment, when the statements are based on credible evidence, made without malice, and made to and at the request of the prospective employer, was amended to extend the qualified immunity to information provided on applicants for employment as well as employees, and to authorize a current or former employer to answer whether or not he or she would rehire a current or former employee.

An employer who receives a request from a current or former employee to inspect or copy his or her payroll records is to comply with the request as soon as

possible, but no later than 21 calendar days from the date of the request. A violation of this provision entitles the current or former employee or the labor commissioner to recover a \$750 penalty from the employer. An employee may also bring an action for injunctive relief to ensure compliance, and in such an action is entitled to an award of costs and reasonable attorney's fees.

The portion of the State penal code relating to the personnel records and records maintained by any State or local agency on peace officers was amended. The information disclosure prohibition was amended to delete the confidentiality limitation to disclosure by the department or agency that employs the peace officer. The peace officer personnel records and records maintained by any State or local agency, or information obtained from these records, remain confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to sections of the State Evidence Code. This change returns the language to that in effect prior to a 2000 amendment and removes a potential confidentiality situation where personal records are in the custody of an outside entity.

The law requiring those agencies that employ peace officers to establish a procedure for the investigation of complaints by the public against peace officers, to provide for the confidentiality of peace officer personnel records, and to provide discovery procedures for peace officer personnel records and other records, was amended to also apply to custodial officers. A custodial officer is a public officer, not a peace officer, employed by a law enforcement agency of San Diego County, Fresno County, Kern County, Stanislaus County, Riverside County, Santa Clara County, or a county having a population of 425,000 or fewer inhabitants that has the authority and responsibility for maintaining custody of prisoners and that performs tasks related to the operation of a local detention facility.

*Workplace violence/security.* State residents have the right to be free from any violence, or intimidation by threat of violence, committed because of their race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, disability, or position in a labor dispute, or because another person perceives them to have one or more of those characteristics. The 1-year deadline, for filing a verified complaint with the Department of Fair

Employment and Housing alleging violations of this law, was redefined to be for a period not to exceed 1 year from the date the person aggrieved by an alleged violation becomes aware of the identity of a person liable for the alleged violation, but in no case exceeding 3 years from the date of the alleged violation if during that period the aggrieved person is unaware of the identity of any person liable for the alleged violation.

*Plant closing.* An employer of 75 or more employees must give 60 days written notice of a mass layoff, relocation, or termination involving 50 or more persons, to employees, the Employment Development Department, the local workforce investment board, and the chief elected official of each affected city and county government. Such notice is not required if the action is necessitated by physical calamity or act of war. The law exempts employers in the broadcasting, motion picture, and construction industries if the closing or layoff is the result of the completion of a particular project. Also exempted are employers whose employees were hired with the understanding that their employment was seasonal and temporary, and employers who qualify under the faltering business exception. An employer who fails to provide the required notices will be subject to civil penalties and will be liable to each employee who lost his or her employment for back pay and lost benefits.

*Displaced workers.* The Employment Development Department is to establish standards to ensure that no participant in welfare-to-work job preparation and training programs under the unemployment insurance law fills a job when any other individual is on layoff from the same or a substantially equivalent job or when the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the intention of filling the resulting vacancy with a program participant. In addition, employers are specifically prohibited from replacing laid-off seasonal construction workers with welfare-to-work participants.

*Preference.* A resolution was adopted expressing the State policy that it is the preference of the State, consistent with the Federal and State constitutions, that the tasks and duties necessary for the rendering

of local telephone service within the State be performed by residents of California.

*Inmate labor.* Amendments were made to law sections relating to the employment of prison inmates and juvenile offenders. The list of specifically included types of personal information to which these individuals are denied access was expanded from addresses, telephone numbers, credit card numbers, Social Security numbers, and drivers license information. Now also included are health insurance, taxpayer, school, or employee identification numbers; mothers' maiden names; demand deposit account, debit card, savings, or checking account numbers, PINs, or passwords; places of employment; dates of birth; alien registration numbers; passport numbers; unique biometric data, such as fingerprints, facial scan identifiers, voice prints, retina or iris images, or other similar identifiers; unique electronic identification numbers; and telecommunication identifying information or access devices. Law coverage now also will include persons performing community service in lieu of a fine or custody.

*Whistleblower.* It was made unlawful for a private patrol operator to discharge, demote, threaten, or otherwise discriminate against an employee in the terms and conditions of employment, because he or she discloses information to a government or law enforcement agency relating to failure to meet registration standards. A private patrol operator intentionally in violation will be liable in an action for damages brought by the injured party. A person who has been discharged or discriminated against may bring a claim against the private patrol operator within 3 years of the date of the discharge, demotion, threat, or discrimination.

*Other laws.* Under a Governor's Reorganization Plan, a Labor and Workforce Development Agency was created in State government consisting of the Department of Industrial Relations, the Employment Development Department, the Agricultural Labor Relations Board, and the California Workforce Investment Board. The agency will be under the supervision of the Secretary of Labor and Workforce Development who will be appointed by the governor.

When a city, county, district, or local agency expends funds that have been provided to it by a State agency, or operates

a program or engages in an activity that has received assistance from a State agency, those labor standards established by the local jurisdiction will be enforced with regard to the expenditure, program, or activity, as long as they are not in conflict with or preempted by State law. A State agency may not require as a condition of receiving State funds or assistance that a local jurisdiction refrain from applying its labor standards to expenditures, programs, or activities supported by the State funds or assistance.

Provisions were added to the Labor Code, the Civil Code, the Government Code, and the Health and Safety Code relative to enforcement actions relating to the rights of employees. The new language specifies that all protections, rights and remedies available under State law, except for any reinstatement remedy prohibited by Federal law, are available to all individuals regardless of immigration status who have applied for employment, or who have been employed in the State. For purposes of enforcing State labor and employment laws, a person's immigration status is irrelevant to the issue of liability, and in proceedings or discovery undertaken to enforce those laws no inquiry will be permitted into a person's immigration status except where the person seeking to make this inquiry has shown that the inquiry is necessary to comply with Federal immigration law.

The law that prohibits employers from discharging or taking other adverse employment actions against victims of domestic violence who take time off from work to attend to issues arising as the result of the domestic violence was amended to extend these protections to victims of sexual assault.

The law providing that an employer may not require that an employee refrain from disclosing the amount of his or her wages was amended to extend this protection to the release of information regarding working conditions. It was specified that the law does not permit an employee to disclose proprietary information, trade secret information, or information that is otherwise subject to a legal privilege without employer consent.

A resolution was adopted recognizing March 31 as Cesar Chavez's birthday and calling on all Californians to participate in appropriate observances to remember Cesar Chavez as a symbol of hope and justice to all citizens.

The first week of April each year is to be designated as Labor History Week. Schools are encouraged to commemorate

this week with appropriate educational exercises that make pupils aware of the role that the labor movement has played in shaping California and the United States.

## Colorado

*Wages.* Resolutions were adopted urging that Apr. 16, 2002, be proclaimed "Equal Pay Day" in Colorado, recognizing the full value of women's skills and their significant contributions to the labor force. April 16 symbolizes the day on which wages paid to an American woman catch up to the wages paid to a man from the previous year.

*Other laws.* A resolution was adopted recognizing Apr. 28, 2002, as Workers Memorial Day in honor of all workers killed, injured, and disabled on the job.

## Connecticut

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

New legislation was adopted raising the State minimum wage rate to \$6.90 per hour, from \$6.70, on Jan. 1, 2003, with a further increase to \$7.10 per hour scheduled for Jan. 1, 2004.

A new provision was enacted concerning annual adjustments to prevailing wages. Each contractor awarded a contract that is subject to the State prevailing wage law is to contact the Labor Commissioner by July 1 of each year, for the duration of the contract, to ascertain the prevailing rate of wages on an hourly basis and the amount of payment or contributions paid or payable on behalf of each mechanic, laborer, or worker employed under the contract. Necessary adjustments for each employee are to be made effective July 1 of each year.

*Child labor.* The provision of the child labor law, permitting the employment of 15-year-old minors in mercantile establishments as baggers, cashiers or stock clerks, which was due to expire on Sept. 30, 2002, was extended to Sept. 30, 2007.

*Worker privacy.* Members or employees of the Commission on Human Rights and Opportunities were added to the list of those individuals whose residential addresses are not to be disclosed by a public

agency under the Freedom of Information Act.

It was made unlawful for an employer to require an employee or prospective employee to disclose the existence of any arrest, criminal charge, or conviction, the records of which have been erased. It is also unlawful to deny employment or to discharge or otherwise discriminate against an individual with a prior arrest, criminal charge, or conviction, the records of which have been erased.

*Whistleblower.* The law concerning State employee and contractor whistleblowing complaints was amended to revise the complaint procedure in the event of a violation.

*Other laws.* Employment protection will now be afforded to any employee who attends a court proceeding or participates in a police investigation related to a criminal case in which the employee is a crime victim. Protection will also apply where either a restraining order or a protective order has been issued on the employee's behalf by a court.

## Delaware

*Drug and alcohol testing.* The Department of Education provides for drug and alcohol testing of public school bus drivers with termination from employment in the event of a positive test result. A new act clarifies that the purpose of the testing program is to assist the employers of public school bus drivers to comply with current Federal laws relating to such testing, and removes language which provided for test procedures and penalties for positive tests which were inconsistent with the provisions of Federal law and beyond the authority of the department to enforce. Refusal to submit to testing, including the provision of a substituted or adulterated test sample, will be deemed to be a positive test result.

*Other laws.* It was made unlawful for an employer to fire an employee, or to threaten or otherwise coerce an employee because he or she is serving as an election officer on an election day, provided the employee has vacation time accrued and available for use and is not in a critical need position. A critical need position is one in the field of public safety, corrections, transportation, health care, utilities, a small business employing fewer than 20 persons, or is

otherwise necessary for a business or industry to be in service or operation on election day. An employer in violation will be subject to both civil and criminal penalties.

### Florida

*Agriculture.* Farm labor contractors now are prohibited from making any charge or deduction from wages for any tools, equipment, transportation, or recruiting fees that are for the benefit of the employer unless in compliance with the Federal Fair Labor Standards Act.

*Drug and alcohol testing.* The State law relating to drug-free workplace programs was amended. Construction contractors, electrical contractors, and alarm system contractors who contract to perform construction work under State contracts for educational facilities, public properties, publicly owned buildings or State correctional facilities now are required to implement drug-free workplace programs.

*Workplace violence/security.* Counties and municipalities were authorized to require, by ordinance, the screening of an employee, appointee, or applicant to a position that is critical to security or public safety. Screening is also authorized for any contractor, vendor, repair person, or delivery person who has access to public facilities that are critical to security or public safety.

*Other laws.* The Department of Labor and Employment Security was eliminated, effective June 30, 2002, and its responsibilities and functions transferred to other agencies. Among these, offices responsible for child labor enforcement, farm labor, and labor organizations were transferred to the Department of Business and Professional Regulation. The Office of Civil Rights, the labor law issues office, and unemployment claims responsibility were transferred to the Agency for Workforce Innovation. The Division of Workers' Compensation was transferred to the Department of Insurance.

An act relating to health care union organizing activities prohibits participation by a nursing home employee in any activity that assists, promotes, deters, or discourages union organizing during any time the employee is counted in staffing calculations for minimum staffing standards.

### Georgia

*Wages.* A resolution was adopted recognizing Tuesday, Apr. 16, 2002, as "Equal Pay Day," expressing support of the efforts of the National Committee for Pay Equity to find solutions which will result in economic justice for women and people of color. Tuesday is symbolic of the point in the week that a woman must work to earn the wages paid to a man in the previous week.

### Guam

*Wages.* Prevailing wages and benefits were established for employees of private contractors awarded service and other contracts by the government of Guam. Where such contracts are entered into, the contractor is to pay each employee in accordance with the most recent wage determination for Guam and the Northern Mariana Islands issued by the U.S. Department of Labor for such labor as is employed in the direct delivery of contract deliverables to the government of Guam. In the event of a renewal clause, the wage determination promulgated on a date most recent to the renewal date will apply. Contracts will also contain provisions mandating health and similar benefits for employees. The benefits are to have a minimum value as detailed in the U.S. Department of Labor wage determination, and are to contain provisions guaranteeing a minimum of 10 paid holidays a year. The Guam Department of Labor is to develop rules and regulations for enforcement of the law and may assess monetary penalties for violation ranging from \$100 to \$1,000 per day in addition to back wages and benefits due. A contractor in violation may also be barred from receiving a new contract for 1 year.

*Family issues.* Fathers will now be provided with paternity leave upon the birth or adoption of a child similar to the leave granted to mothers under the maternity leave law. The paternity leave is not to exceed 20 days, encompassing the date of childbirth or adoption of a child 5 years or younger. Any additional leave taken for such purpose may be charged against accumulated sick leave, or may be unpaid leave at the option of the employee. Total leave, whether paternity, sick, or unpaid leave is not to exceed 6 months without approval of the employee's supervisor.

Any school volunteers under the Rainbows for All Children-Guam program

responding to a request for peer support, guidance, and/or suicide intervention services in the public schools will be granted administrative leave when the volunteer's time is needed during his or her work schedule. Such leave will be limited to 40 hours per school year. Additional hours may be granted with approval. Leave requests are to be made 3 days prior to the date of the leave with the exception of emergency cases.

*Workplace violence.* A Task Force on Workplace Violence was established to study the most effective means to prevent workplace violence. The task force is to review the incidence of workplace violence, based upon data obtained from health, labor, and law enforcement agencies of the government of Guam and the Federal Government; conduct an analysis of the existing policies and regulations governing prevention of workplace violence; and make recommendations concerning laws, re-regulations or incentives necessary for increased security in the workplaces, and protection of employees, including any draft legislation deemed appropriate.

*Other laws.* Military reservists and national guard members employed by the government of Guam are allowed a maximum of 15 working days of military leave of absence with pay. A new provision allows these individuals who are called up for more than 15 days of active duty service to participate in the government of Guam leave sharing program whereby leave can be donated for their use.

### Hawaii

*Wages.* As the result of prior legislation, the State minimum wage rate rose from \$5.25 per hour to \$5.75 on Jan. 1, 2002, and to \$6.25 per hour on January 1, 2003.

The amount of guaranteed monthly compensation required to exempt an individual from minimum wage, overtime and recordkeeping requirements was increased from \$1,250 to \$2,000.

A new section was added to the public contracts and expenditure of public money law. Now, before bidding on a public works construction project in excess of \$2,000, which is subject to the prevailing wage law, a contractor must certify that individuals working on the contract on the jobsite will be paid not less than the wages that the



Director of Labor and Industrial Relations has determined to be prevailing for corresponding classes of laborers and mechanics employed on public works projects; will receive overtime compensation at 1-1/2 times the basic hourly rate plus fringe benefits; and will comply with all applicable Federal and State workers' compensation, unemployment compensation, payment of wages, and safety laws. Enforcement will be by the governmental contracting agency awarding the contract. Additionally, clarifying changes were made in the prevailing wage law, which includes most of these same requirements. Failure by the contracting agency to include prevailing wage payment provisions in the contract or specifications will not be a defense of the contractor or subcontractor for noncompliance with the law.

*Genetic testing.* It is now an unlawful discriminatory practice for an employer to consider an individual's genetic information, including the genetic information of any family member of the individual, or the individual's refusal to submit to a genetic test as a condition of initial or continued employment.

*Private employment agencies.* Several changes were made in the law regulating commercial employment agencies including eliminating the licensing requirement for agency branch offices, eliminating the bonding requirement for employer-paid fee agencies, permitting initial and amended filings of placement fee schedules rather than annual filings, and eliminating the requirement that a new license be issued when an agency changes its address. Other changes specify that an employment agency may not send unsolicited resumes to prospective employers; codify the prohibition on employment agency operations in homes, apartments, and hotel rooms; and codify the requirement that license applicants possess a reputation for honesty, financial integrity, and not have felony convictions related to the operation of a commercial employment agency. Every employment agency is to employ a licensed principal agent who is responsible for the direct management of the agency. A fine of up to \$1,000 per violation may be imposed by the Director of Commerce and Consumer Affairs.

*Whistleblower.* The Whistleblower Protection Act was amended to extend protection to those individuals who are about to report a violation to their employer. The law also was expanded to add coverage for reports of violations of ordinances, regulations, or contracts executed by the State, a political subdivision of the State, or the United States. The statute of limitations for bringing a complaint of retaliation was extended to 2 years from 90 days after the alleged violation. The penalty for each violation was increased from a maximum of \$500 to a minimum of \$500 and a maximum of \$5,000.

### Idaho

*Agriculture.* A comprehensive farm labor contractor law was enacted requiring individuals performing farm labor contracting activities to have a valid State license and to pay an annual licensing fee of \$250. These licensed contractors are required to carry vehicle insurance for all vehicles used in the business operation, carry workers' compensation coverage for all employees, and post a surety bond of \$10,000 if they employ 20 or fewer employees and \$30,000 if they employ more than 20 employees. These licensed contractors are required to provide to all employees, at the time of hiring, recruiting, soliciting, or supplying such employee, a written statement in the employee's native language which describes the terms and conditions of employment, rate of compensation, and method of computing same. The department may deny, revoke, suspend, or refuse to renew a license when the applicant or holder fails to meet certain conditions. Agricultural employers who use the services of a licensed and bonded contractor will not be held jointly and severally liable for any unpaid wages determined to be due and owing to any employee of the contractor who performed work for the agricultural employer.

*Drug and alcohol testing.* An executive order established an alcohol and drug-free workplace for all employees of the State of Idaho. Violations will be cause for management/supervisor intervention and may result in referral to treatment, including participation in the Employee Assistance Program.

### Illinois

*Wages.* Employees who are employed as crew members of any uninspected towing vessel, as defined in the Vessels and Seamen chapter of the U.S. Code dealing with shipping, operating in any navigable waters in or along the boundaries of Illinois will not be subject to the State overtime and One Day Rest in Seven acts.

Two additions were made to the prevailing wage law. One provides that two or more investigatory hearings on the issue of establishing a new prevailing wage classification for a particular craft or type of worker will be consolidated in a single hearing before the department of labor. The consolidation will occur whether each separate investigatory hearing is conducted by a public body or the department. The party requesting a consolidated investigatory hearing has the burden of establishing that there is no existing prevailing wage classification for the particular craft or type of worker in any of the localities under consideration. The second addition requires that any contractor or subcontractor that maintains its principal place of business outside the State must make the required wage records or accurate copies of the records available within the State at all times.

*Child labor.* The child labor law was amended to permit 12- and 13-year-olds to be employed to officiate youth sports activities for not-for-profit youth clubs, park districts, or municipal parks and recreations departments. The law requires that a parent or guardian be present while the minor is officiating; that the employer obtain an employment certificate from the minor's school or school district; that the minor work no more than 3 hours per day on school days and a maximum of 4 hours per day on nonschool days, not more than 10 hours a week, and not later than 9 p.m.; and that the minor must be at least 3 years older than the children participating in the youth sports activity unless an individual 16 years or older is also officiating the same activity.

*Private employment agencies.* The title of the Day Labor Services Act was changed to the Day and Temporary Labor Services Act and changes were made throughout to reflect this expanded coverage. Among other

changes, the fee for registering agencies with the department of labor may be paid by check or money order and the department may not refuse to accept a check on the basis that it is not a certified check or a cashier's check. An additional fee may be charged for a returned check. The department of labor is to enforce the law and will have the power to conduct investigations, hold hearings, and to visit and inspect any places covered by the law. The department may (1) issue and cause to be served cease and desist orders, (2) take affirmative or other action as deemed reasonable to eliminate the effect of the violation, (3) deny, suspend, or revoke any registration under the act, and (4) determine the amount of any civil penalty allowed by the law. In addition to civil penalties, whoever willfully violates the law or obstructs the department, its inspectors or deputies, or any other person authorized to inspect places of employment, will be guilty of a Class A misdemeanor. The Attorney General will have authority to prosecute all reported violations. All monies received as fees and civil penalties will be deposited into the Child Labor and Day and Temporary Labor Enforcement Fund.

*Other laws.* The State Military Code was amended by enacting an Illinois National Guard Employment Rights Law. Guard members called to State Active Duty by the governor are entitled to re-employment rights and benefits if 1) when possible, the employer received advance notice of the active service, 2) the member reports back to work, or applies within specified time frames, and 3) his or her service was deemed honorable. Members re-employment rights include 1) prompt re-employment with the same increases in status, seniority, wages, and benefits (for example, insurance and other) as earned by those who did not serve, 2) if now disabled and incapable of performing duties of the previous position, the employee will be placed in a position with duties for which they are qualified and able to perform, and 3) those rejected for active duty shall be restored to their previous position with the same status, seniority, and wage increases as earned by employees who did not serve. These rights do not apply to members if the employer's circumstances have so changed as to make re-employment of an employee impossible or unreasonable or if the re-employment would impose an undue hardship on the employer.

## Kansas

*Drug and alcohol testing.* The law establishing a drug screening program for certain State officers and employees and for certain applicants for State employment was amended. Added to the list of individuals subject to drug screening based upon a reasonable suspicion of illegal drug use are employees of the Kansas State School for the Blind, the Kansas State School for the Deaf, and a State veteran's home operated by the Kansas Commission on Veteran's Affairs. "Safety sensitive positions" for purposes of coverage was expanded to include State parole officers.

## Kentucky

*Wages.* The section of the State minimum wage law exempting various individuals from the overtime payment requirement was amended to add, by reference, the Federal Fair Labor Standards Act exemption for employees employed as seamen.

The law requiring the payment of overtime was amended to allow compensatory time in lieu of overtime to employees of any county, charter county, consolidated local government, or urban-county government, including an employee of a county-elected official. Compensatory time may be offered upon the written request by an employee, made freely and without coercion, pressure, or suggestion by the employer, and upon a written agreement reached between the employer and employee before the performance of the work. Compensatory leave will be given on an hour-for-hour basis, except that an employee who is not exempt from the provisions of the Federal Fair Labor Standards Act may be granted compensatory time in lieu of overtime pay at a rate of not less than 1 and 1-1/2 hours for each overtime hour worked. Up to 240 hours of compensatory time may be accrued except for certain emergency or seasonal workers who may accrue up to 480 hours. Civil penalties are authorized for violation of the law.

*Child labor.* The Labor Cabinet promulgated amendments to the child labor regulation. Among these, coverage was extended to minors who are not enrolled in school and who have not graduated. Previously, some of the work restrictions did not apply to youth who had dropped out of school. Minors age 14 and 15 now may not be employed more than 3 hours in any one school day, nor more than 8 hours in any nonschool day when school is in

session. Previously, 14- and 15-year-olds could work no more than 3 hours per day when school was in session, regardless of whether it was a school day. Another amendment provides that minors age 16 and 17 may not work more than 30 hours a week when school is in session, except that a minor may work up to 40 hours if a parent or legal guardian gives permission in writing and his or her school certifies that the student has maintained at least a 2.0 grade-point average in the most recent grading period. Previously, these minors could work up to 40 hours per week without parental approval or a grade-point requirement. Minors 16 and 17 years of age must now end their workday by 10:30 p.m. on days preceding a school day, instead of the previous 11:30 p.m.

*Other laws.* The law protecting employees who are volunteer firefighters from discharge for being absent or late to work, as the result of responding to an emergency prior to their starting time, was amended to also apply to employees who are rescue squad members, emergency medical technicians, peace officers, and members of emergency management agencies. Employers are not required to pay employees for the work time missed.

## Louisiana

*Worker privacy.* The law pertaining to employment records of State employees was amended by adding a section authorizing the Governor's Office of Workforce Commission, the division of administration, or any contractor working on behalf of either of them, to be provided with employment data for use in compiling statistics which would support performance management and evaluation by program managers of State and Federal programs, compiling statistics which would assist in the preparation of common performance reports across agencies, or compiling statistics for education and training research purposes, including longitudinal studies to assist in program improvement and design. Employment data obtained is to be kept confidential and used only for these statistical purposes. A person who unlawfully uses or releases the data will be fined from \$1,000 to \$20,000 or imprisoned for not less than 30 days nor more than 6 months, or both.

*Other laws.* The reemployment law affecting persons called to duty in State military forces was amended. The law now

will be applicable to persons called to active duty in the National Guard of any other State. After release from military service, under honorable conditions, employees are to be reinstated or restored to the same or comparable position of employment, unless the person is no longer capable of performing essential functions of the same position by reason of a service-connected disability. If otherwise qualified, by education, training, or experience to perform another position, the employee shall be employed in that other position which the employee is physically capable and qualified to perform provided the employment does not pose a direct threat or significant risk to the safety of any employee if the risk cannot be eliminated by reasonable accommodation. The provisions, protections, and rights of the Federal Soldiers and Sailors Civil Relief Act and the Federal Uniformed Services Employment and Reemployment Rights Act are adopted and incorporated. Every employer shall post in a prominent place in each establishment a State produced notice regarding these rights. The law is applicable to all persons called to service as of September 11, 2001.

## Maine

**Wages.** As the result of prior legislation, the State minimum wage rate rose from \$5.15 to \$5.75 per hour on Jan. 1, 2002, and to \$6.25 per hour on Jan. 1, 2003.

As a result of cases pending before the Maine courts in early 2002, the legislature enacted into law a long standing practice of exempting interstate truck drivers and driver's helpers from overtime requirements. These employees, when engaged in the transportation of goods or services in interstate commerce, are exempt from the overtime provisions of the Federal Fair Labor Standards Act and the provisions of the State overtime law. Application of the law is retroactive to Jan. 1, 1995.

**Family issues.** The law requiring employers to grant leave from work, with or without pay, for an employee to prepare for and attend court proceedings, to receive medical treatment, or to obtain necessary services to remedy a crisis caused by domestic violence, sexual assault, or stalking was amended to also apply to leave to attend to medical treatment for a victim who is the employee's child, parent, or spouse.

The donation of an organ by an employee for a human organ transplant was

added to the list of reasons allowed for the use of family and medical leave.

A committee is to be appointed to study the benefits and costs of increasing access to family and medical leave for Maine families. Among other duties, the committee is to identify or develop sources of Maine-specific data on use of family and medical leave and the availability of paid leave, obtain information from other States and interest groups that are conducting studies or developing methodologies for estimating costs and benefits on paid family and medical leave, and invite testimony from experts on early childhood development, including experts on bonding between children and parents, to assist in considering potential long-term benefits of providing paid leave so that parents will be able to take leave following the birth or adoption of a child. A report, together with any necessary implementing legislation was to be submitted to the legislature by Nov. 6, 2002.

**Drug and alcohol testing.** The State law concerning substance abuse testing of job applicants was amended to allow a screening test of urine or saliva at the collection point through the use of a non-instrumented collection point test device approved by the Federal Food and Drug Administration. Employers using such tests must include procedures to ensure test result confidentiality and establish procedures for training testing personnel in the proper manner of collecting samples and reading results, while maintaining a proper chain of custody. Negative test samples must be destroyed, while positive samples must be forwarded to a qualified testing lab for confirmation testing.

**Private employment agencies.** Health care institutions, facilities, or organizations, including temporary nurse agencies, employing certified nursing assistants, must, before hiring a certified nursing assistant, verify that he or she is listed on the Maine Registry of Certified Nursing Assistants and that there are no annotations to prohibit the hiring of that individual according to State and Federal regulations.

**Plant closing.** The Department of Labor is to adopt rules to implement the law governing severance pay that is to be paid to employees by covered employers who close or relocate an establishment. Initial

rules were to be submitted to the legislature by Jan. 15, 2003.

**Other laws.** The Maine Fire Protection Services Commission is to examine the issue of providing protection to a volunteer firefighter from being discharged or disciplined by an employer on the grounds that he or she arrives late or does not arrive at work because of responding to an emergency. Findings and any recommended legislation were to be reported to the legislature by Dec. 31, 2002.

## Maryland

**Wages.** A law was enacted relating to employee contributions to political action committees. Among other provisions, it authorizes an employee to contribute by payroll deduction to one or more affiliated political action committees selected by the employee. Procedures are established for the transfer of withheld contributions from the employer to the employee's membership entity and from the membership entity to the named political action committee.

An employer may not require a licensed practical nurse or a registered nurse to work more than the regularly scheduled hours according to the predetermined work schedule. Exceptions permit required overtime in unforeseen emergency situations; the emergency situation is nonrecurring and is not caused by or aggravated by the employer's inattention or lack of reasonable contingency planning; the employer has exhausted all good faith, reasonable attempts to obtain voluntary workers during the succeeding shifts; the nurse has the critical skills and expertise required for the work; the standard of care for a patient requires continuity of care through completion of a case, treatment, or procedure; and the employer has informed the nurse of the basis for the employer's direction. Overtime work also may be required if a condition of employment includes on-call rotation or the nurse works in community-based care. Employers must exhaust all good faith, reasonable attempts to ensure that appropriate staff is available to accept responsibility for a patient's care beyond a nurse's predetermined work schedule.

The prevailing wage law was amended to provide that the contractor and the subcontractor be jointly and severally liable for restitution to the subcontractor's employees if they are paid less than the

prevailing wage rate for the work performed.

*Family issues.* A June 30, 2002, termination date provision was removed from the law which requires an employer who provides leave with pay to an employee following the birth of the employee's child to provide the same leave with pay to an employee when a child is placed with him or her for adoption.

*Whistleblower.* A Health Care Worker Whistleblower Protection Act was enacted. This measure makes it unlawful for an employer to take or refuse to take any personnel action as reprisal against an employee because he or she discloses or threatens to disclose to a supervisor or board an activity, policy, or practice of the employer that is in violation of a law, rule, or regulation; provides information to or testifies before any public body conducting an investigation, hearing, or inquiry into any violation of a law, rule, or regulation by the employer; or objects to or refuses to participate in any unlawful activity, policy, or practice. Protection will apply only if the employee has a reasonable, good faith belief that the employer is acting unlawfully; the activity, policy, or practice that is the subject of the disclosure poses a substantial and specific danger to the public health or safety; and the employee has afforded the employer a reasonable opportunity to correct the problem. Provision is made for civil action in the event of violation.

### Massachusetts

*Child labor.* The section of the child labor law prohibiting the employment of any person under age 18 in operating motor vehicles of any description, except in the course of employment in an automobile repair shop, was amended to permit the operation of golf carts on a golf course if the minor is licensed to operate a motor vehicle.

Following a hearing where it has been shown that an emergency exists or that a hardship exists in an industry or individual establishment, the attorney general was authorized to suspend the application or operation of the child labor law or any rule or regulation made under that law which regulates, limits, or prohibits the

employment of minors older than age 16. This authority is limited to the time periods: (1) Sept. 5, 2002, to Oct. 31, 2002; May 25, 2003, to June 21, 2003; and Sept. 4, 2003, to Oct. 31, 2003, on Friday and Saturday evenings only and (2) Aug. 1, 2002, to Sept. 4, 2002, inclusive, and June 21, 2003, to Sept. 3, 2003, inclusive.

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 age 16 years, 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.

*Equal employment opportunity.* Complaints of sexual harassment and other forms of discrimination now may be filed within 300 days after the alleged act of discrimination, rather than within 6 months as before. The superior court has jurisdiction to enforce the law and award damages.

*Private employment agencies.* A law was enacted to limit the amount of fees that staffing agencies may charge employees for transportation. If a staffing agency or worksite employer offers transportation services to an employee for a fee, the fee may be no more than the actual cost to transport the employee to or from the designated worksite. In addition, the fee may not exceed 3 percent of the employee's total daily wages, and may not reduce the employee's pay below the minimum wage earned for the day. If a staffing agency or worksite employer requires the use of such transportation services, no fee may be charged. Transportation costs may not be deducted from an employee's wages without express written authorization. The staffing agency or worksite employer is to give the employee a copy of the signed authorization in a language that he or she can understand.

### Michigan

*Agriculture.* A resolution was adopted urging the U.S. Congress and the

Immigration and Naturalization Service to determine the appropriateness of increasing the number of visas for temporary agricultural workers. It is the belief of the Michigan House of Representatives that an increase in the permissible number of legal status temporary agricultural workers may both benefit the economy and increase the security of the United States by causing a decrease in the number of aliens here without documentation.

*Other laws.* The State amended the law concerning reemployment rights of employees who were on leave following military service, release, or rejection from service. Their re-employment rights follow an established priority order. Having served 1-90 days, they shall be re-employed in the position they would have had, if qualified, and if their employment had not been interrupted for military service. Following service of 1-90 days, if the person were not qualified for the position they would have had if their employment had not been interrupted and the employer makes a reasonable effort to qualify the person, the employee shall be re-employed in the position they held when service began. Following service of 91 or more days, if the employee was not qualified for the position held just prior to service and cannot become qualified through reasonable efforts of the employer, re-employment would occur in a position of lessor status or pay. The employee would be entitled to seniority and its rights and benefits along with rights and benefits not determined by seniority. With certain exemptions, employees are not entitled to re-employment after 5 years military service or a dishonorable discharge.

A resolution was adopted to commemorate Apr. 28, 2002, as Workers' Memorial Day in Michigan, to remember the working men and women who have been killed or injured as a result of their work.

### Minnesota

*Overtime.* A hospital or other licensed health care facility is prohibited from discharging, disciplining, threatening, penalizing, or otherwise discriminating against a registered nurse, advanced practice registered nurse, or licensed practical nurse

solely on the grounds that the nurse fails to accept an assignment of additional consecutive hours at the facility in excess of a normal work period, if the nurse declines to work the additional hours because of a belief that to do so may jeopardize patient safety. A nurse may be scheduled for duty or may be required to continue on duty for more than one normal work period in an emergency, defined as a period when replacement staff are not able to report for duty because of unusual, unpredictable, or unforeseen circumstances, such as, but not limited to, an act of terrorism, a disease outbreak, adverse weather conditions, or natural disasters which impact continuity of patient care. The law does not apply to nursing facilities, intermediate care facilities for persons with mental retardation, licensed boarding care facilities, or housing with services establishments.

*Worker privacy.* The portion of the Government data practices code concerning the release of State employee personnel data was amended to specifically provide that data pertaining to an employee's dependents will be treated as private data.

Upon written request, various licensed programs and facilities providing residential, treatment and other care for children and for persons with mental retardation, developmental disabilities or related conditions may disclose, in writing, information about a current or former employee to a prospective employer. Information disclosed may include dates of employment, wage history, job description, training and education provided by the employer, and all acts of violence, theft, harassment, or illegal conduct by the employee documented in the personnel record which resulted in disciplinary action or resignation, and the employee's written response, if necessary. No action may be brought for disclosure of the information unless it is proven that the disclosure was made fraudulently or with deliberate disregard as to its accuracy. Another new provision requires, with the written informed consent of the subject of the data, school districts or charter schools to release to another school district or charter school private personnel data on a current or former employee related to documented

violence toward or sexual contact with a student.

*Private employment agencies.* Several changes were made in the law regulating supplemental nursing services agencies. The conditions for registration were amended to add requirements that the agency carry an employee dishonesty bond of \$10,000; that the agency maintain workers' compensation insurance for all nurses, nursing assistants, nurse aides, and orderlies provided or procured by the agency; that the agency file with the Commissioner of Revenue the name and address of the bank, savings bank, or savings association in which all employee income tax withholdings are deposited, and the name and address of any nurse, nursing assistant, nurse aide, or orderly whose income is derived from placement by the agency, if the agency purports the income is not subject to withholding; and that the agency document that each temporary employee provided to health care facilities is an employee of the agency and is not an independent contractor. Changes were also made pertaining to registration revocation, hearings, and period of ineligibility for having registration restored.

### Mississippi

*Worker privacy.* Licensed health care facilities will not be held liable in any employment discrimination suit in which an allegation of discrimination is made regarding an employment decision authorized by provisions of the licensing law requiring background checks and signed affidavits by employees and applicants attesting that they have not been convicted of various specified felonies.

### Missouri

*Child labor.* Among several changes in the child labor law, street occupations and door-to-door sales are now prohibited for youth under age 16. Previously, such work was permitted with written permission from the director of the division of labor standards. The director now may require the production of work certificates or work permits and other documents. All such records obtained by the division are confidential. Employers are to keep for no

less than 2 years, on the premises where any child is employed, the work certificate, a record of the name, address, and age of the child, and times and hours worked by the child each day. Waivers of time and hour restrictions issued by the director now will apply only to the entertainment industry. The exemption from the law for farm work performed with the knowledge and consent of the child's parent was expanded. In determining the amount of civil damages due in the event of violation, the director is to consider the size of the business, based on the number of employees.

### Montana

*Wages.* New more comprehensive and detailed prevailing wage regulations were adopted September 13. The rules better identify the nature of projects, heavy, highway or building construction, and conform them largely to Federal Davis-Bacon terminology. The regulations also establish a procedure for debarment for a period of up to 3 years for law violations, and make the appeal procedure for prevailing wage cases consistent with the overall wage claim process. The responsibilities of contractors and contracting agencies are more clearly defined. Facsimile filings are permitted.

### Nebraska

*Agriculture.* Among revisions to the Farm Labor Contractors Act, operations which have a workforce comprised of 80 percent or more individuals who are age 17 years or younger and which have obtained a certificate of exemption from the department of labor were excluded from coverage, while the previous exemption was eliminated for those operations which employ individuals who all live within 50 miles of the worksite. The provisions for application and annual renewal fees of \$750 were replaced with a requirement that the Commissioner of Labor establish the amount of the fees, which are not to exceed \$750, by rule and regulation with due regard for the costs of administering the act. On its own initiative or upon receipt of a complaint or notice that a farm labor contractor is in violation of the act, the department now is to conduct an investigation of the contractor. Contractors are to provide a bilingual employee who will be available at the worksite for each shift a non-English-speaking worker is employed, if the farm

labor contractor has a workforce of 10 or more non-English-speaking workers who speak the same language.

*Other laws.* State law was made consistent with Federal law, regarding private and public sector employees who serve in the military, by adopting, as State law, parts of the Federal Uniformed Services Employment and Reemployment Rights Act of 1994. In other changes, State and local personnel will be granted a "State emergency leave of absence" for emergency duty when called upon by the governor, and public sector employees are now entitled to take a military leave of absence equal to the normal number of hours the employee works in a 3-week period up to a maximum of 120 hours in a calendar year. Previously, State and local government employees were granted up to 15 workdays of leave each year for service in the National Guard or reserves, regardless of their hours worked.

If an employee, who is not a member of a labor organization, chooses to have legal representation from the labor organization in any grievance or legal action, the employee must reimburse the labor organization for his or her share of the actual legal fees and court costs incurred in the representation.

## New Hampshire

*Other laws.* A law was enacted providing employment protection for members of the National Guard, State Guard, or Militia. The measure eliminates the differences in benefits, rights, and protections in employment between individuals called to active duty by the Federal Government and those called to active duty by the State. It provides that an individual may not be denied hiring, retention in employment, promotion, or other incidents or advantages of employment because of any obligation as a member of the National Guard or the State Militia. The department of labor is to provide assistance to affected military members with respect to the enforcement of rights and benefits under the law.

## New Jersey

*Wages.* When a regular payday falls on a non-workday, resulting from the workplace being closed for business, payment now is to be made on the immediately preceding workday, unless otherwise provided in a collective bargaining agreement. Previously,

payment was to be made on the next following workday.

An executive order was issued requiring that on a project-by-project basis, a State department, instrumentality, or authority is to include a project labor agreement in a public works project where it has been determined that it advances the State's interests of cost, efficiency, quality, safety, timeliness, skilled labor force, labor stability, or the State's policy to advance minority and women-owned businesses. Among other things, the project labor agreement is to set forth binding procedures for resolving jurisdictional labor disputes and grievances arising before the completion of work; contain guarantees against strikes, lockouts, or similar actions; permit flexibility in work scheduling and shift hours and times; ensure a reliable source of skilled and experienced labor; permit the selection of the lowest qualified bidder, without regard to union or nonunion status at other construction sites; and be made binding on all contractors and subcontractors on the public works project through the inclusion of appropriate bid specifications in all relevant bid documents.

The sections of the prevailing wage law requiring payment of the prevailing wage rate on construction contracts let by the New Jersey Economic Development Authority were amended to also apply to construction contracts let by other authorities receiving financial assistance from the Economic Development Authority. Financial assistance was defined as any loan, loan guarantee, grant, incentive, tax exemption, or other financial assistance that enables an entity to engage in a construction contract. Payment of the prevailing wage will not be required for construction commencing more than 2 years after the assistance is received.

The maximum administrative penalties that the labor commissioner is authorized to assess and collect for violations of the prevailing wage law were increased from \$250 to \$2,500 for a first violation, and from \$500 to \$5,000 for each subsequent violation.

*Overtime.* Employees of health care facilities will not be required to accept work in excess of an agreed to, predetermined, and regularly scheduled daily work shift, not to exceed 40 hours per week, except in the case of an unforeseeable emergent circumstance when the overtime is required only as a last resort and is not used to fill

vacancies resulting from chronic short staffing, and the employer has exhausted reasonable efforts to obtain staffing. Acceptance by any employee of work in excess of 40 hours per week must be voluntary and the refusal of any employee to accept such overtime work will not be grounds for discrimination, dismissal, or any other penalty or adverse employment decision. The requirement that the employer exhaust reasonable efforts to obtain staffing will not apply in the event of any declared national, State, or municipal emergency or a disaster or other catastrophic event which substantially affects or increases the need for health care service. The law will take effect in January 2003 for acute care hospitals and in July 2003 for long-term care facilities and all other health care facilities.

*Apparel.* An executive order was issued specifying that public bodies obtaining apparel from a vendor are to require that all production be performed in the United States. They also are to require that it be performed in facilities where: (1) vendors and their contractors and subcontractors do not interfere with union organization and agree to voluntarily recognize a duly authorized union; (2) apparel production workers will not be terminated except for just cause and vendors and their contractors and subcontractors will provide a mechanism to resolve all disputes; (3) workers are to have a safe and healthy work environment that is free of discrimination on the basis of race, national origin, religion, sex, and sexual preference; (4) contracts will be issued only to contractors, and production will be performed only by contractors or subcontractors having a record of compliance with laws and regulations governing wages and hours, discrimination, and occupational safety and health; and (5) apparel production will be performed only by contractors or subcontractors who provide compensation at an hourly rate that yields an annual income at least equal to the poverty-level threshold amount for a family of three. Bidders for apparel contracts are to provide information on every location where production is to take place, and the name, business address, and names of principal officers of each subcontractor to be used. In the event of a violation, the Commissioner

of Labor may terminate an existing contract and may bar the vendor or bidder from receiving pending or subsequent apparel contracts.

*Equal employment opportunity.* It now is unlawful for any employer to discharge or otherwise discriminate against an employee in compensation or in terms, conditions, or privileges of employment for displaying the American flag on the employee's person or work station, provided the display does not interfere with the employee's job duties. An employer in violation will be liable to the employee for damages, including punitive damages, and for reasonable attorney's fees.

*Worker privacy.* An Open Public Records Act was enacted expanding the public's right to access all public records to include all government records and facilitating the way in which that access is provided by the custodian of a government record. Public agencies were authorized to take anticipatory administrative action in advance as necessary for the efficient implementation of the act, establishing the process by which members of the public may seek access to records and, at the same time, providing for the confidentiality of certain records. A Privacy Study Commission was established to examine privacy issues raised by the collection, processing, use, and dissemination of information by public agencies, and to recommend to the governor and the legislature specific measures to address these issues and safeguard individuals' privacy rights.

*Workplace violence.* A task force was established to study workplace violence and to recommend legislation and other action to improve workplace security. A report is to be issued by Aug. 3, 2003, that will contain: (1) a review of the incidence of workplace violence, based on data obtained from Federal, State, and local health, labor, and law enforcement agencies; (2) an analysis of the types of businesses, employees, and situations with the greatest occurrences of workplace violence; and (3) recommendations for appropriate legislation, regulations, or incentives necessary for increased security in

workplaces and the protection of employees.

*Other laws.* The requirement that individuals hired as permanent public school teachers be U.S. citizens was amended to exempt teachers from foreign countries who are enrolled with an approved international agency which operates a teacher placement program or teacher exchange program. These teachers may be employed for up to 3 years. To be certified, the teacher must meet the eligibility requirements for a provisional instructional certificate or possess equivalent qualifications as determined by the State Board of Education, and demonstrate the ability to fluently speak, read, and write the English language.

## **New Mexico**

*Family issues.* A resolution was adopted requesting the Commission on the Status of Women to lead a task force to study the costs and benefits of providing wage replacement to employees who take family and medical leave.

## **New York**

*Wages.* The minimum wage and payment of wages laws were amended to cover limited liability companies.

The debarment provisions of the prevailing wage law, previously applicable to the five largest shareholders of a contractor or subcontractor, now will apply to shareholders who own or control at least 10 percent of the outstanding stock. The law was also amended to provide for the ineligibility to submit a bid or to be awarded any public works contract for a period of 5 years from the date of conviction when any person or corporation, or any officer or shareholder who owns or controls at least 10 percent of the outstanding stock of the corporation, has been convicted of a felony offense for conduct directly relating to obtaining or attempting to obtain, or performing or attempting to perform a public work contract with a public body, and the felony offense is a violation of the prevailing wage or wage payment laws or is one or more of several listed felonies.

Amendments were made in relation to actions for recovery from performance

bonds on public work projects. Actions by an affected employee to recover unpaid wages, supplements, and interest may be brought against the contractor, the subcontractor, or the issuer of the bond. The action now may be brought either within 1 year of the date of the filing of an order by the Commissioner of Labor or other fiscal officer determining a wage or supplement underpayment or within 1 year of the date of the last alleged underpayment. The employee may permit the commissioner or other fiscal officer to commence the action on his or her behalf in addition to an employee organization as before.

The labor law was amended to increase the civil penalty for an employer's failure to pay wages or for differentiating in the rate of pay because of sex from \$50 to \$500 for each violation. Penalties are to be recovered by the labor commissioner.

The criminal penalty section of the payment of wages law was amended to provide that a conviction for a first offense of failure by an employer to pay wages of employees or failure to maintain payroll records is a misdemeanor punishable by a fine of not less than \$500 nor more than \$20,000 or by imprisonment for not more than 1 year. Conviction of a second or subsequent offense within 6 years of the first conviction is a felony punishable by a fine of not less than \$500 nor more than \$20,000 or imprisonment for not more than 1 year plus 1 day, or both a fine and imprisonment, for each offense. In determining the penalty for recordkeeping violations, the court is to consider the severity of the violation, the size of the employer, and the employer's good faith effort to comply with the law.

*Child labor.* A cashier under age 18 and employed by a retailer with a drug store beer license, may now sell alcoholic beverages if under the direct supervision of a person age 18 or older. This amendment expands a provision previously applicable to cashiers in licensed grocery stores.

*Apparel.* A New York State Apparel Workers Fair Labor Conditions and Procurement Act was enacted. This law amends the labor law, the State finance law, and the education law to require that State

agencies, public authorities, the State University of New York, the City University of New York, and community colleges consider labor standards and working conditions when purchasing apparel. Contracts for the purchase of apparel are only to be entered into with bidders who attest that the apparel was manufactured in compliance with all applicable labor and occupational safety laws, including but not limited to child labor laws, wage and hour laws, workplace safety laws, and laws protecting the rights of employees to form unions. Bidders must also provide, if known, the name and address of each subcontractor to be used and a list of all manufacturing plants used by the bidder or subcontractor.

The labor commissioner is to prepare and issue a notice to be posted at the worksite of every known apparel or garment manufacturer or contractor in the State. The notice is to clearly specify: (1) the duties of employers with regard to the rights of employees to the receipt and payment of wages; (2) a toll free number at the department of labor to which employees may direct questions or register complaints concerning the conditions of employment or an employer's failure to pay wages; and (3) the address of the regional department to file a complaint. The notice is to be in English, Spanish, Chinese, and Korean, is to be printed in at least 10-point type, and is to be posted in a visible and prominent location within the worksite.

*Equal employment opportunity.* It now is unlawful for any employer to discharge or otherwise discriminate against an employee in compensation, or in terms, conditions, or privileges of employment for displaying the American flag on the employee's person or work station, provided the display does not interfere with the employee's job duties. The labor commissioner may assess an employer in violation a civil penalty of not less than \$200 or more than \$2,000. An employee may bring a civil action for appropriate relief including rehiring, payment of lost compensation, damages, and reasonable attorneys' fees.

Amendments were made to the unlawful discriminatory practices section of the Human Rights Law pertaining to protecting the right of employees to practice their religion. It now is an unlawful

discriminatory practice for an employer to refuse to allow an employee to use leave solely because the leave is being used to accommodate religious observance. It also is an unlawful discriminatory practice for an employer to impose upon an individual circumstances that would force that individual to forgo religious observance as a condition of employment, advancement, or promotion unless, after engaging in a bona fide effort, the employer demonstrates that he or she is unable to reasonably accommodate the employee's or applicant's religious observance or practice without undue hardship on the conduct of the business. Employers will not be required to pay premium wages to employees who are working during hours when premium wages would normally be paid, if the work during those hours is to accommodate religious observation on the employee's behalf.

*Worker privacy.* The section of the civil rights law relating to the confidentiality of the personnel records of police officers, correction officers, firefighters, and paramedics was amended to also cover individuals defined as peace officers within the Division of Parole. Their personal records are to be considered confidential and not subject to inspection or review without their express written consent except as may be mandated by lawful court order.

*Employee leasing.* A New York Professional Employers Act was enacted. Under the law, anyone engaged in the business of providing professional employer services for a client company must register with the department of labor. The initial registration fee is \$1,000 with an annual renewal fee of \$500. Information that must be provided includes the name or names under which it conducts business; the address of the principal place of business and the address of each office it maintains in the State; the taxpayer or employer identification number; a list by jurisdiction of each name under which the professional employer organization has operated in the preceding 5 years; a financial statement; and, in the event the organization is a privately or closely held company, a list of all persons or entities that own a 5-percent or greater interest at the time of application, or owned a 5-

percent or greater interest in the preceding 5 years. A publicly traded company is to file a list of all persons or entities that own a 50-percent or greater interest at the time of application. A professional employer agreement will have no effect on existing collective bargaining agreements.

*Whistleblower.* A section relating to the prohibition of retaliatory personnel actions by certain health care employers against health care employees was added to the labor law. Retaliatory action is prohibited against an employee who discloses or threatens to disclose, or refuses to participate in, an employer activity, policy, or practice that the employee, in good faith, reasonably believes constitutes improper quality of patient care. This protection shall only apply if the employee brought the improper activity to a supervisor's attention and gave the employer reasonable opportunity to correct such activity. The protection application sequence of events will not apply where the improper quality of patient care presents an imminent threat to public health or safety, or where the employee believes that reporting to a supervisor would not result in corrective action. Employees who have been subject to retaliation may seek relief through a civil action. Besides relief for the employee, if the employer has acted in bad faith, the court may assess a penalty of up to \$10,000. These penalties will go into a fund committed to improving the quality of patient care.

## Ohio

*Child labor.* Sections of the education code and child labor law regarding administration of age and schooling certificates for minors were amended. Part-time age and schooling certificates for 14- and 15-year-olds were eliminated, and a child may now apply for a regular certificate at age 14 instead of age 16. The provision for issuance of over age certificates for persons over age 18 was eliminated. It is no longer required to complete a vocational or special education program in order to receive a certificate. Certificates may no longer contain social security information. The chief administrative officer of the nonpublic or com-



munity school district attended by the child, is responsible for issuing age and schooling certificates for city, local, joint vocational, or exempted districts when there is proof that the child is at least age 14. Issuing officers must electronically file the certificates with the State director of commerce, while employers are no longer required to keep the certificates on file. While any licensed physician or physician's assistant may certify a student's physical condition, a student athlete's certificate of examination may be used to certify a student's condition.

## Oklahoma

*Wages.* The commissioner of labor now may assess an administrative fine of \$500 against an employer operating in Oklahoma who is found to have knowingly violated the payment of wages law, if the violations occur on two or more occasions within any 6-month period. All such administrative fines collected will be deposited to the Department of Labor Revolving Fund.

A classified State employee who is on-call will receive a minimum of 2 hours of work if he or she reports to a work location while on-call. Previously, this guarantee applied only to classified State employees working in institutional settings.

The law requiring semimonthly payment of wages on regular paydays, except for exempt employees and State, county, and municipal employees who may be paid a minimum of once each calendar month, was amended to also allow employees of qualified nonprivate foundations to be paid monthly.

*Employee leasing.* An Oklahoma Professional Employer Organization Recognition and Registration Act was enacted. Under the law, anyone engaged in the business of providing professional employer services for a client company must register with the Insurance Commission. The initial registration fee is \$500 with an annual renewal fee of \$250. Information that must be provided includes the name or names under which the business operates; the address of the principal place of business and the address of each office it maintains in the State; the taxpayer or employer identification number; a statement of management experience; and a

financial statement. Each professional employer organization must maintain either a net worth of \$50,000 or a bond in that amount. Both the client company and the professional employer organization will be considered the employer for the purpose of coverage under the Worker's Compensation Act and for purposes of sponsoring employee retirement and welfare benefit plans.

*Inmate labor.* Persons convicted of drug distribution now will be included among those inmates authorized to be issued a pass to be away from the correctional facility for purposes including contacting prospective employers or participating in work, educational, and training programs in the community.

*Other laws.* The State law regarding time off for employees who are required to serve on a jury was amended. Employees may no longer be required to use vacation or sick leave to serve on a jury. The employer is not required to pay an employee wages for the time he or she was absent for jury duty. However, the employee has the choice of whether to take paid or unpaid leave for the time off. Employers in violation will be guilty of a misdemeanor and, upon conviction, subject to a fine of up to \$5,000.

## Oregon

*Wages.* A minimum wage ballot initiative was approved by the voters in the November general election. Ballot measure 25 provided for an increase in the State minimum wage from \$6.50 per hour to \$6.90 on Jan. 1, 2003. Beginning Jan. 1, 2004, and annually thereafter, the rate will be adjusted for inflation based on data from the U.S. Bureau of Labor Statistics Consumer Price Index. The rate will be rounded to the nearest 5 cents.

## Pennsylvania

*Child labor.* The child labor law was amended to provide that minors under age 16 may not be employed in youth peddling unless a signed consent has been obtained from the minor's parents or guardian, appropriate adult supervision is provided, the minor is not employed past 6 pm., and work is

in compliance with hours restrictions and such other requirements as the Department of Labor and Industry may establish to protect the minor's safety, health, and well-being. Youth peddling is defined as the selling of goods or services by minors to customers at their residence, places of business, or public places including, but not limited to, street corners, roadway medians, sports and performing arts facilities, public transportation stations and sales from vehicles. The law does not apply to minors who sell products, goods, or services as volunteers without compensation on behalf of nonprofit organizations, minors who deliver newspapers to customers, or minors employed at fixed retail locations in compliance with the Federal Fair Labor Standards Act.

## Puerto Rico

*Family issues.* The law that provides for the adoption of flexible work schedules upon agreement between the employee and the employer was amended to require employers to give priority in processing to those requests submitted by women with minor children and single parents with custody of their children.

*Other laws.* A sports leave without pay policy was established for all public and private sector employees who are selected and certified by the Board for the Development of Full-Time High Performance Puerto Rican Athletes, as athletes in training and as trainers for Olympic, Paralympic, Pan American or Central American Games, or for Regional or World Championships. The unpaid sports leave will be for up to 1 year with a right of renewal, provided it has been approved by the Board and the employer is notified 30 days before its expiration date. Employees on leave will retain their vested rights and benefits. During the term of the sports leave, the Board will be responsible for the salaries of the participants and must remit to the employer the amounts corresponding to the required legal deductions. An employer found in violation must compensate the athletes or trainers for any damages sustained, plus a sum equal to double the compensation awarded, and

must also reinstate them in their employment if they have been dismissed.

### Rhode Island

*Wages.* The section of the payment of wages law establishing the enforcement powers and duties of the Director of Labor and Training was amended to add a provision that the director may institute any action to recover unpaid wages or other compensation under the law, including administrative fees, with or without the consent of the employee or employees affected. Another change permits filing of wage claims by a representative authorized in writing by the employee.

Resolutions were adopted declaring Apr. 3, 2002, 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.

*Genetic testing.* The Genetic Testing as a Condition of Employment law was amended. The law, which prohibits employers, employment agencies, or licensing agencies from discriminating against employees, licensees, or applicants for employment or licensure on the basis of genetic information or testing, was expanded by adding a definition section and by specifying that the ban on discrimination applies to the refusal of the employee, licensee, or applicant for employment or licensure to submit to a genetic test, submit a family health history, reveal whether the individual has submitted to a genetic test, or reveal the results of any genetic test. Any contract or agreement, which purports to waive the provisions of this law are invalid.

*Private employment agencies.* A special House Commission was created to examine procedures and best practices to foster the employment of all individuals in the State including temporary

employees working for any employment agency, placement service, training school or center, labor organization, or any other employee referring source, and to safeguard their right to obtain and hold employment without discrimination. A report of findings and recommendations is to be made by Mar. 12, 2003.

*Other laws.* The law requiring employers to pay for the cost of any physical examination they require of a prospective employee prior to employment was amended to specify that any employer who fails to comply with the law will be subject to a fine of \$200.

### South Carolina

*Wages.* A measure was enacted to prohibit a political subdivision of the State from establishing, mandating, or otherwise requiring either a minimum wage that exceeds the Federal minimum wage rate or a minimum wage rate related to employee wages that are exempt under the Federal Fair Labor Standards Act. Political subdivisions may establish wage rates in contracts to which they are a party.

*Other laws.* The Director of the Department of Labor, Licensing and Regulation is to ensure compliance with the State right-to-work law, and is to cooperate with employees in the investigation and enforcement of claims against employers. Upon the filing of a complaint with the department, the director may enter a place of employment to determine compliance. It now is unlawful to obstruct the director in the performance of duties under the law. It also is unlawful for a person or a labor organization to participate in an agreement, arrangement, or practice that has the effect of requiring, as a condition of employment, that an employee be, become, or remain a member of a labor organization or pay union dues or fees, and for a person or labor organization to induce, cause, or encourage an employer to violate the law.

### South Dakota

*Other laws.* Any member of the South Dakota National Guard ordered to active duty service by the governor or by the President of the United States will have all the employment and reemployment rights and other protections afforded to persons serving on Federal active duty as provided for under Federal law. The section of State law regarding job rights for reservists and guardsmen was repealed.

### Tennessee

*Wages.* Resolutions were adopted asking the governor to recognize Apr. 16, 2002, as “Equal Pay Day” in Tennessee recognizing the full value of women’s skills and their significant contributions to the labor force. April 16 symbolizes the day on which the wages paid to American women to that date in 2002, when added to women’s earnings for all of 2001, equal the 2001 earnings of American men.

The prevailing wage commission is to report to the general assembly on or before Jan. 1, 2003, with recommendations for improvements to the current prevailing wage survey process which optimizes the response rates for the surveys conducted by the department.

*Drug and alcohol testing.* New sections were added to the State law dealing with drug-free workplaces. State or local government entities must include in any issued bid or procurement specification for construction services a statement as to whether the government entity operates a certified drug-free workplace program or any other programs which provide for testing of employees for workplace use of drugs or alcohol. Where such programs exist, the bid or procurement specification is also to include statements describing the program and specifying that all bidders for construction service contracts shall submit an affidavit that attests that the

bidder operates a drug-free workplace or other testing program with requirements at least as stringent as those of the program operated by the government entity.

*Employee leasing.* Among amendments to the employee leasing law, it now is specified that a client will be jointly and severally liable with a staff leasing company for State unemployment premiums for each of the client's leased employees, provided however, that a client will be relieved of joint and several liability if the staff leasing company has posted a corporate surety bond with the administrator of the Division of Employment Security of the Tennessee Department of Labor and Workforce Development.

## Utah

*Genetic testing.* A Genetic Testing Restrictions on Employers Act was enacted. This measure makes it unlawful for an employer, in connection with hiring, promotion, retention or related decisions, to take into consideration private genetic information about an individual, to request or require an individual or his or her blood relative to submit to a genetic test, or to take into consideration the fact that an individual or his or her blood relative has taken or refused to take a genetic test. Limited exceptions permit an employer to seek an order compelling the disclosure of genetic information in connection with an employment-related judicial or administrative proceeding in which the individual has placed his or her health at issue, or an employment-related decision in which the employer has a reasonable basis to believe that the individual's health condition poses a real and unjustifiable safety risk requiring the change or denial of an assignment. The order will only be entered if other ways of obtaining the private information are not available or would not be effective.

*Worker privacy.* Among amendments to the Government Records and Management Act is a new section permitting an at-risk government employee to file a written application that gives notice of his or her

status to each government entity holding a record that would disclose the employee's or a family member's home address or telephone number, Social Security number, insurance coverage, marital status, or payroll deductions, and requests that the records be classified private. Neither the governmental entity or political subdivision is liable for damages arising from the negligent disclosure of records classified as private unless the disclosure was of employment records maintained by the governmental entity, or the current or former employee had previously filed the required notice and the government entity did not take reasonable steps to preclude access or distribution of the record, or the release of the record was otherwise willfully or grossly negligent. "At-risk government employees" include peace officers, judges, U.S. attorneys and assistant attorneys, and certain prosecutors. Changes made to the law in 2001 concerning limits on disclosure of information were repealed.

*Employee leasing.* Among several amendments to the Professional Employer Organization Licensing Act, references to the term "employee leasing company" were removed. References to the term "leased employee" were also eliminated and replaced with the term "co-employee," defined as a person who is an employee of a professional employer organization and of a client company. A client company is defined as an entity that leases any or all of its regular employees from a professional employer organization. The law now provides that employees of professional employer organizations are not exempt from applicable licensure laws. Several changes were made in the qualifications for licensure, in the procedure for refusing to renew the license of a professional employer organization, and in the definition of unprofessional conduct.

*Other laws.* A State employee who serves as a bone marrow donor will be granted a paid leave of absence of up to 7 days for the donation and recovery time. A State employee who donates a human organ will be granted a paid leave of absence of up to 30 days for the donation and recovery time.

A resolution was adopted expressing support for emergency measures needed to save the American steel industry.

## Vermont

*Wages.* It now is an unlawful employment practice for any employer, employment agency, labor organization, or person seeking employees to discriminate between employees on the basis of sex by paying wages to employees of one sex at a rate less than the rate paid to employees of the other sex for equal work that requires equal skill, effort, and responsibility, and is performed under similar working conditions. Different wage rates may be paid pursuant to a seniority system, a merit system, a system in which earnings are based on quantity or quality of production, or any factor other than sex. An employer who is paying wages in violation of the act may not reduce the wage rate of any other employee in order to come into compliance. An employer in violation will be liable to any affected employee in the amount of the underpaid wages and an equal amount as liquidated damages in addition to any other remedies available.

*Drug and alcohol testing.* Among several amendments to the law regulating drug testing of employees and job applicants, the requirement that the test be given to applicants as part of or in conjunction with a comprehensive physical examination was dropped, the time limit for administering the test was eliminated, and employers are to designate a certified collector to collect specimens from job applicants and employees. The collector may be an employee for the purposes of collecting specimens from job applicants. The collector may not be an employee for the purpose of collecting specimens from employees for drug testing based on probable cause.

*Other laws.* A disaster relief workers fund was established to provide wage reimbursement to any Vermont employer for disaster relief services rendered by employees. The employee must be a certified disaster relief service volunteer of the American Red Cross. Reimbursement will be for not more than 14 days for

performing disaster relief work pursuant to a request from the American Red Cross when: (1) the work is performed in Vermont; or (2) the disaster is a Federal or presidentially-declared disaster designated as Level III or above, according to the American Red Cross regulations and procedures; or (3) the disaster is declared by the governor of a State or territory. An employer will not be liable for damage, injury, or harm caused or sustained by an employee who performs disaster relief services and who is eligible for reimbursement under the law.

### Virginia

*Wages.* The law generally requiring that employees who are paid on an hourly basis be paid at least once every 2 weeks or twice in each month, was amended to allow employees whose weekly wages total more than 150 percent of the average weekly wage of the Commonwealth to be paid monthly, upon agreement of each affected employee.

*Genetic testing.* It now is unlawful for an employer to request, require, solicit, or administer a genetic test to any person as a condition of employment, or to refuse to hire, fail to promote, discharge, or otherwise adversely affect any terms or conditions of employment of any employee or job applicant solely on the basis of a genetic characteristic or the results of a genetic test. An employee may bring court action against an employer in violation.

*Workplace violence/security.* Any employee who, in good faith with reasonable cause and without malice, truthfully reports threatening conduct by a person employed at the same workplace will be immune from all civil liability that might otherwise be incurred or imposed as the result of making such a report.

*Other laws.* The law protecting those employees who are summoned to serve on jury duty or summoned or subpoenaed to appear in court, from discharge or other adverse personnel action, or from a requirement to use sick leave or vacation time,

was amended to also apply to individuals who, having appeared, are required in writing by the court to appear at any future hearing.

The law regarding time off for military service by Commonwealth officers and employees who are former members of the Armed Forces or members of organized reserve components, National Guard, or Naval Militia was amended. The Commonwealth may supplement the military pay of its personnel in an effort to bring their total salary up to the level of their non-military pay. Nongovernment employees of the Commonwealth can choose to take leave without pay from their employment and not be forced to use or exhaust any type of accrued leave. Discrimination against the above persons is prohibited in actions concerning initial employment, reemployment, employment retention, promotion, or earned benefits. If the office or position of the returning service person has been abolished or otherwise ceased to exist, the person shall be re-instated in a position of like seniority, status, and pay if the position exists or in a comparable vacant position for which they are qualified unless to do so would be unreasonable. If the employer fails or refuses to comply with the law, the courts may require compliance and compensate the employee for any lost wages or benefits.

### Virgin Islands

*Wages.* A law passed in 2001 increased the maximum fines from \$500 to \$2,500 for violation of wage payment, minimum wage, recordkeeping, posting, and other provisions of the Fair Labor Standards chapter.

*Equal employment opportunity.* A resolution was adopted asking the President and U.S. Congress to enact legislation that would require that future foreign aid to Afghanistan and other foreign countries be conditioned, in significant part, upon the recipient's active commitment to eliminate discrimination against women.

### Washington

*Wages.* The State minimum wage rate is adjusted for inflation annually in September

by a calculation using the U.S. Bureau of Labor Statistics Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-U) for the previous year. As a result, the rate for employees older than age 18 increased from \$6.72 per hour to \$6.90 on Jan. 1, 2002, and to \$7.01 on Jan. 1, 2003. Also receiving these rates are 16 and 17 year-olds, the result of an administrative rule requiring that they earn the same minimum wage as adults; 14 and 15 year-olds may be paid 85 percent of the adult minimum wage.

Provision was made for the State to make payroll deductions for union dues from the wages of individual care providers who, solely for the purposes of collective bargaining, are employed by the home care quality authority. The payroll deduction is voluntary upon the written authorization of the individual provider unless the collective bargaining agreement includes a union security provision. In the event of a union security provision, the State will enforce the agreement by deducting the union dues for members, or for nonmembers, a fee equivalent to the dues. The initial additional costs to the State shall be negotiated, agreed in advance, and reimbursed to the State by the bargaining representative. Ongoing additional costs to the State shall be negotiated with the bargaining representative.

The State transportation law was revised to implement recommendations of the State's Blue Ribbon Commission on Transportation. Among the changes, all intent and affidavit fees paid by contractors are to be used solely for administering the State prevailing wage program. Prevailing wage survey data collected by the Department of Labor and Industry may now be used only in the county for which the work was performed. The Department is to establish a goal of conducting surveys for each trade every 3 years; actively promote increased response rates from all survey recipients; work to ensure the integrity of information used in the development of prevailing wage rates; maintain a timely processing of intents and affidavits, with a target processing time of no more than 7 working days from receipt of completed forms; and develop and implement elec-

tronic processing of intents and affidavits. The Department, in cooperation with the Department of Transportation, is also to conduct an assessment of current practices, including survey techniques, used in setting prevailing wages for those trades related to transportation facilities and transportation project delivery.

*Overtime.* Overtime work may not be required of licensed practical nurses or licensed registered nurses who are employed by a health care facility and who are involved in direct patient care activities or clinical services and who receive an hourly wage. The acceptance by any employee of overtime is strictly voluntary, and the refusal to accept overtime work may not be grounds for discrimination, dismissal, discharge, or any other penalty. Exceptions are permitted for overtime work that occurs because of any unforeseeable emergent circumstance; because of prescheduled on-call time; when the employer documents that he or she has used reasonable efforts to obtain staffing (an employer has not used reasonable efforts if overtime work is used to fill vacancies resulting from chronic staff shortages); or when an employee is required to work overtime to complete a patient care procedure already in progress where the absence of the employee could have an adverse effect on the patient. The Department of Labor and Industries is to enforce the law.

*Family issues.* Significant amendments were made to the law requiring employers to allow employees to use accrued sick leave to care for minor children with serious medical conditions. Now, where a collective bargaining agreement or employer policy entitles an employee to sick leave or other paid time off, either the sick leave or other time off may be used to provide care. The definition of child was expanded to include those age 18 or older who are incapable of self-care because of a mental or physical disability. Coverage of the law was also expanded to apply to leave by an employee to care for a spouse, parent, parent-in-law, or grandparent with a serious medical condition. An employer may not discharge, threaten to discharge, demote, suspend, discipline, or otherwise discriminate against an employee because he or she exercised, or

attempted to exercise, any right provided by the law, or has filed a complaint, testified, or assisted in any proceeding.

*Agriculture.* The law establishing standards for temporary labor camps, used by agricultural workers employed in the harvest of cherries, was amended to provide that the housing and facilities may be occupied by agricultural employees for a period not to exceed 1 week before the start through 1 week following the end of the cherry crop harvest in the State. Previously, camp occupancy was limited to 21 days in a calendar year with provision for extensions under certain circumstances.

*Worker privacy.* It now is unlawful for a person or organization, with the intent to harm or intimidate, to sell, trade, give, publish, distribute, or otherwise release the residential address, residential telephone number, date of birth, or Social Security number of any law enforcement-related, corrections officer-related, or court-related employee or volunteer and categorize them as such, without the express written permission of the employee or volunteer unless specifically exempted by law or court order. An individual who suffers damages as the result of unauthorized release of this personal information may bring a court action for actual damages sustained, plus attorney's fees and costs.

## West Virginia

*Wages.* An amendment to the West Virginia Tax Increment Financing Act stipulates that projects financed by tax increment financing are considered to be public improvements subject to prevailing wage, local labor preference, and competitive bid requirements. Prevailing wage coverage will apply to any project acquired, constructed, or financed, in whole or in part, by a county commission or municipality under the law with a contract cost exceeding \$50,000. This requirement is awaiting a vote by the people of the State to ratify an amendment to the State constitution authorizing tax increment financing secured by ad valorem property taxes.

*Child labor.* Several major revisions were made to the child labor law. These include enacting exemptions from the law for minors under age 14 similar to exemptions for minors under the Federal Fair Labor Standards Act, including newspaper delivery and employment as actors or performers in motion pictures, theatrical, radio, or television productions. Federal standards were added prohibiting hazardous occupations for children under age 18. Federal standards were also adopted limiting work to no more than 3 hours per day on school days, no more than 18 hours per week during a school week, and not before 7 a.m. or after 7 p.m., except from June 1 through Labor Day when the evening hour is extended to 9 p.m. A limit of 6 days a week was eliminated. Penalties for violation were increased from a range of \$20 to \$50 for a first offense to a range of \$50 to \$200, and for a second or subsequent offense from a range of \$50 to \$200 to a range of \$200 to \$1,000. The time of maximum possible imprisonment for a second or subsequent offense was increased from 30 days to 6 months. Other changes were made in the requirements for issuing individual and blanket work permits.

*Inmate labor.* The law regarding the payment of wages to prison inmates participating in work release programs was amended to permit inmates to designate a person to receive the balance of payments for the support of the inmate's dependents after required deductions are made. The requirement that the clerk of the court, with the consent of the inmate, pay the inmate's expenses or unpaid debts was eliminated.

*Other laws.* It now is unlawful for any employer to employ, hire, recruit, or refer, for private or public employment in the State, an alien who is not authorized to work by the immigration laws or the U. S. Attorney General. Employers are responsible for checking the legal status or authorization to work of their prospective employees. Such proof includes, but is not limited to a valid Social Security card, a valid immigration visa, a birth certificate, or a passport. Identification must include some form of photo identification. Employers must keep a record of the

persons employed and proof of their legal status or authorization to work. An employer found in first violation of the provisions of this article is guilty of a misdemeanor and may be fined between \$100 and \$1,000 for each violation. An employer found guilty of subsequent violations is guilty of a misdemeanor and may be fined between \$500 and \$5,000 for each violation.

### Wisconsin

*Wages.* On Jan. 1, 2002, the threshold amount for coverage under the State prevailing wage laws for State and municipal contracts was changed administratively from \$172,000 to \$175,000 for contracts in which more than one trade is involved, and from \$35,000 to \$36,000 for contracts in which a single trade is involved. On Jan. 1, 2003, these amounts were changed administratively to \$180,000 for contracts in which more than one trade is involved, and \$37,000 for contracts in which a single trade is involved.

*Other laws.* A law was enacted providing reemployment rights and benefits for persons called to duty in the National

Guard or State defense force, under State law instead of Federal law. Re-employment rights and benefits are parallel to those provided under Federal law for persons called for Federal service. Employers are now required to re-employ entitled persons promptly upon completion of their active duty unless the employer's circumstances have so changed as to make re-employment of an employee impossible or unreasonable. Persons are entitled to re-employment if 1) the employer received advance notice of the active service, 2) service did not exceed 5 years, 3) the person reports back to work within required time frames, and 4) service was terminated under honorable conditions. Upon re-employment, the person is entitled to the seniority and other rights and benefits that the person would have had if his or her employment had not been interrupted by the State active service.

### Wyoming

*Wages.* A committee is to be established to determine the parameters of a study to be conducted by the University of Wyoming on the disparity of wages and benefits between men and women in the State. The study is to focus on where disparities exist, the major causes of the wage and benefit disparities, the impact of

the disparities on Wyoming's economy, and possible solutions to reduce or eliminate the disparities. A report is to be submitted to the legislature by May 1, 2003.

*Other laws.* The legislature approved a plan for reorganization of the State government, including the creation of a Department of Workforce Services. Among the several functions or programs transferred to the department are displaced worker education and training, public employment offices, veteran's employment services, the school-to-careers program, and the unemployment insurance program. □

### Notes

---

<sup>1</sup> The Arkansas, Montana, Nevada, North Dakota, Oregon, and Texas legislatures did not meet in regular session in 2002. The District of Columbia, Indiana, Iowa, and North Carolina did not enact significant legislation in the fields covered by this article. This article is based on information received by Nov. 8, 2002.

<sup>2</sup> Several tables displaying State labor law information, including a table on State minimum wage rates, are available on the U.S. Department of Labor, Employment Standards Administration Website at: <http://www.dol.gov/esa/programs/whd/state/state.htm>