

# State labor legislation enacted in 1994

*New laws regulate drug and alcohol testing, employee leasing, prevailing wage, employment discrimination, and whistleblower protection*

Richard R. Nelson

Trends in State labor legislation continued in 1994 to provide for drug and alcohol testing of applicants and employees, require licensing or regulation of employee leasing firms, to authorize civil penalties for law violations, and prohibit sexual harassment.<sup>1</sup>

Other significant developments included major changes in several State prevailing wage laws, elimination of the upper age limit in two age discrimination provisions, and whistleblower protections in several States.

Increases in State minimum wage rates and additional restrictions on child labor, two issues that received major legislative attention in recent years, were addressed in only a few jurisdictions in 1994.

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

**Wages.** Vermont was the only jurisdiction to take action in 1994 increasing its minimum wage rate. This marked a sharp drop in activity from most recent years. As a result of previous actions, rates also increased in Arkansas, Puerto Rico, and Washington.

Hourly rates higher than the Federal \$4.25 are in effect January 2, 1995 in Alaska, Connecticut, the District of Columbia, Hawaii, Iowa, New Jersey, Oregon, Puerto Rico (for a limited number of occupations), Rhode Island, Vermont, the Virgin Islands, and Washington.

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In addition, the minimum wage was extended to agricultural workers in Rhode Island and Vermont State employees. The subminimum youth training wages in Delaware and North Dakota were eliminated.

Compensatory time off in lieu of overtime pay is available to Kentucky State employees and to State and local government employees in Wisconsin. Oklahoma public employees are to be paid overtime in accordance with the Federal Fair Labor Standards Act.

Prevailing wage was the focus of much attention. Delaware and Ohio made several changes in prevailing wage legislation, including increasing the dollar threshold amount for coverage and changing debarment provisions prohibiting violators from bidding on contractors. Delaware also adopted the Federal Davis-Bacon formula for determining prevailing wages and replaced criminal with civil penalties. Ohio created a penalty enforcement fund. Wyoming amended the law to allow raising the prevailing wage rate to match the rate of inflation.

Washington adopted a new debarment provision, and in Rhode Island, the next qualified bidder may bring civil action against a contractor or subcontractor for damages connected to loss of a contract if the prevailing wage law is violated. An Oregon ballot measure to repeal the State's law was rejected.

A U.S. Court of Appeals overturned portions of a 1993 U.S. District Court decision that held the Pennsylvania prevailing wage law to be invalid and unenforceable because it was preempted by Federal law.

In addition to the civil money penalty provision in the Delaware prevailing wage law, a measure replaced criminal penalties with civil penalties for violations of labor laws including minimum wage, wage payment and collection, and child labor.

*Hours.* In Idaho, longer daily hours are now permitted for work in underground mines. In Kentucky, work of up to 10 hours a day may be allowed if agreed to in advance or if permitted in a collective bargaining agreement. Each employee in West Virginia with a workday of 6 or more hours is to receive at least 20 minutes for a meal break, and meal period requirements were revised in New York.

*Family issues.* Since passage of the Federal Family and Medical Leave Act in 1993, few State legislatures have enacted laws in this area. In 1994, Ohio law allows State employees, who are exempt from the Public Employee Collective Bargaining Law, up to 6 weeks parental leave of absence upon the birth or adoption of a child.

Maryland State employees were authorized to use accrued sick leave for child care following the birth or adoption of a child. The amount of time allowed depends on whether the employee is the primary or secondary care giver.

In Hawaii, protection under the State family leave law was extended to private sector employees as provided in earlier legislation.

Among related legislation, a law enacted in the District of Columbia requires employers to provide workers with up to 24 hours of leave annually to attend or participate in their children's school-related events. In California, changes were made in the amount of such time to be allowed, and the scope of activities for which the leave may be used was broadened.

State legislatures also adopted resolutions signaling an interest in family issues. Alabama encouraged employers to grant leave for employees to attend parent-teacher conferences or other school activities, and New Mexico requested a study of how to design a tax credit to encourage employers to provide time off for school and community activities.

In Kansas, State agencies are to make payments to their employee benefits programs that continue benefits to workers as required by the Federal Family and Medical Leave Act.

*Child labor.* Child labor has been a major area of legislation for the last several years. This year, it faded, particularly with respect to recent trends to strengthen enforcement and penalty provisions and restrict hours of employment and hazardous occupations. One notable exception was a law in California that conformed to Federal provisions, significantly strengthening prohibited hazardous occupations provisions. The legislation also raises civil penalties for law violations, prohibits most door-to-door sales for children under age 16, raises the legal age for employment in street trades, and reduces permitted hours of agricultural employment for certain minors.

Idaho, Kentucky, and Maryland added exceptions to prohibitions on employment of minors in occupations involving handling wine or other alcoholic beverages; Illinois, South Dakota, and Washington eased restrictions on minors employed in the entertainment industry; and New Jersey amended its law to permit minors to work as volunteers for nonprofit organizations building affordable housing. In Virginia, the prohibited hazardous occupations for minors working in agriculture were revised to allow certain specified activities.

*Agriculture.* The Florida Legislature strengthened the farm labor contractor registration law and required that information on the hazards and other risks of agricultural pesticides be made available to any worker who enters an area treated by pesticides within the last 30 days.

*Equal employment opportunity.* Several States enacted legislation addressing one or more forms of employment discrimination. Arizona and Kentucky eliminated 70 as the upper limit in age discrimination provisions, and Florida repealed a mandatory retirement age provision for Highway Patrol officers.

The Wisconsin Legislature included workplace sexual harassment among the forms of employment discrimination under the State fair employment law. Washington requires the superintendent of public instruction to develop criteria for school districts to develop sexual harassment policies. Hawaii legislators amended the prohibitions against employment discrimination to make it an unlawful discriminatory practice to exclude or otherwise deny equal jobs or benefits to a qualified individual because he or she is known to have a relationship or association with a disabled individual.

A West Virginia measure provides for coverage of domestic service workers under the Human Rights Act.

Affirmative action in State employment is to be addressed by agencies in Kentucky and Rhode Island. Veterans in New York who meet eligibility requirements for any employment and training program administered by a State agency will be given preference in referral to those programs over nonveterans.

In Georgia, the classification "multiracial" is to be included among choices on all employment forms, applications, and other written documents that request information on the racial or ethnic identification of an employee. Similar documents used in Tennessee by the State and local governments are to include the classification "Native American Indian."

In the first of its kind, a law passed by California prohibits employers from refusing to permit female employees to wear pants rather than dresses or skirts in the workplace.

An expired law in Mississippi was enacted again, prohibiting discrimination for use of tobacco products during non-working hours.

Anti-gay rights ballot measures were rejected by voters in Idaho and Oregon.

*Drug and alcohol testing.* Drug and alcohol testing of applicants and employees continued as an active subject of legislative interest. In Mississippi, a comprehensive law was enacted again, reestablishing procedures and guidelines for drug and alcohol testing by public and private sector employers. It is identical to a 1991 law that included a provision for automatic repeal on July 1, 1993.

Private sector employers, public utilities, and transit districts in Arizona were authorized to require drug and alcohol testing of employees and job applicants within the terms of a written policy; in Rhode Island, private sector employers and employers of law enforcement or correctional officers and firefighters may require job applicants to submit to blood or urine testing if the applicant has been offered a job condi-

tioned on receiving a negative test result; and municipalities and State colleges in Utah were authorized to enact drug-free workplace policies and test current and prospective employees and volunteers for drug use.

Alaska, Delaware, and Georgia continued the trend to allow school boards to require drug and alcohol testing of school bus drivers. Law-enforcement officers will not be certified for employment in Virginia if they test positively for drugs.

**Employee leasing.** Employee leasing, which emerged as an issue only recently, became law in three more States in 1994. Laws were enacted in Idaho, New Hampshire, and Tennessee, and several significant amendments were made to the Florida law. Each of the new laws provides for licensing or regulation of leasing firms and sets forth their responsibilities for leased employees. Amendments to the Florida law strengthened licensing requirements, added grounds for disciplinary action, and clarified enforcement authority.

**Whistleblowers.** Several States passed laws to protect employees who report law violations. Protection was given to public sector employees in Idaho and Massachusetts, State classified employees in Alabama, and county and municipal government employees in Delaware. In Kentucky, whistleblower protection was included among provisions pertaining to medical assistance programs and Rhode Island passed a measure limited to the insurance business.

## Alabama

**Family issues.** A resolution was adopted encouraging the business community and local and State agencies to provide administrative leave during the school year for parents to attend school conferences or other school events.

**Whistleblowers.** Under the State Employees Protection Act, a supervisor may not discharge, demote, transfer, or otherwise discriminate against a State classified employee regarding his or her compensation, terms, conditions, or privileges of employment if the employee reports a violation of a State or political subdivision law, rule, or regulation to a public body. A State employee may bring a civil action within 2 years of an alleged violation, and may be awarded lost wages and/or compensatory damages.

## Alaska

**Drug and alcohol testing.** All school bus drivers are required to submit to testing for drug and alcohol use. The program will include random testing. A positive test may

result in disciplinary action, including termination.

## Arizona

**Family issues.** County boards of supervisors are authorized to provide for fringe benefits for county employees including sick leave, personal leave, and pay for vacations, holidays, and jury duty.

**Equal employment opportunity.** The age 70 limit on the age discrimination ban in employment was eliminated in an amendment to the Civil Rights Act. The prohibition applies to individuals 40 or older. The minimum annual retirement benefit for executive or high level policymaking individuals at compulsory retirement age of 65 was increased from \$27,000 to \$44,000; sections were removed from the law that, as a condition of unlawful employment practice protection, required disabled workers to provide employers with certain information on the nature of the disability and any resulting limits and restrictions.

Enforcement procedures were amended to provide that the Civil Rights Division

**Other laws.** Among several other laws, Nebraska adopted legislation requiring registration of contractors doing business in the more populous counties; Connecticut provided for the creation of a database on construction contractors who bid on State funded projects; South Dakota authorized the State labor department to be among the first to establish and collect user fees; and the Georgia Polygraph Examiners Act was repealed.

Florida, Maryland, Minnesota, and Mississippi joined a recent trend to provide paid leave for State employees who are American Red Cross certified disaster service volunteers. Louisiana will provide a tax credit to employers for the cost of providing employees with alcohol and other substance abuse treatment programs.

In Ohio, employers may not discriminate against crime victims because of time they spend in criminal justice proceedings. California enacted a Workplace Violence Safety Act authorizing employers to seek restraining orders and injunctions on behalf of employees to protect them from violence at work.

The District of Columbia requires contractors on certain specified contracts to keep the workers of the previous contractor for a 90-day transition employment period.

A resolution adopted in Nebraska requests a study of expected advances in human genetic information and technology and potential effects on issues such as hiring decisions and insurance.

The following is a summary, by jurisdiction, of labor legislation enacted in 1994.

may halt an investigation without making a decision if more than 2 years have passed after an alleged unlawful employment practice occurred, and if the party who made the charge has received a notice of right to sue.

**Drug and alcohol testing.** Private sector employers, public utilities, and transit districts may require drug and alcohol testing of employees and prospective employees within the terms of a written policy. Samples may be collected and tested for possible impairment among employees or to investigate workplace accidents, to maintain safety, productivity, quality of products or services, or security of property or information. Specific sample collection and testing procedures must be followed, and confidentiality must be protected. Test results may be used as the basis for adverse personnel actions. Testing is to be paid for by the employer and time spent is to be considered work time. Employers are protected from litigation if they have established a policy and initiated a testing program in accordance with the law.

**Private employment agencies.** The law regulating activities of private employment agencies was amended to exempt electronic

media services that do not collect fees for the successful placement of job applicants.

#### **Arkansas**

*Wages.* The State minimum wage rate increased from \$4.15 to \$4.25 per hour on July 1, as the result of previous legislation.

#### **California**

*Wages.* A State policy of not accepting claims for wages due, filed by union members covered by a collective bargaining agreement with an arbitration clause, was overturned by the U.S. Supreme Court June 13. The Court ruled that Federal law preempts the policy of the State Division of Labor Standards Enforcement as abridging the exercise of employees' rights under the National Labor Relations Act.

The Earthquake Relief and Seismic Retrofit Bond Act of 1994 exempts projects from most of the State Contract Act.

*Family issues.* The amount of time employers are required to permit employees to visit their children's schools was changed to 40 hours each school year from 4 hours each school year per child. (It is not to exceed 8 hours in a calendar month).

Other changes include extending the benefit to employees of the State and grandparents with custody of children; specifying leave entitlement for both parents of a child employed by the same employer at the same work site; and broadening the scope from school visits to participation in school activities. Employees may use vacation, personal leave, or compensatory time for this purpose, or use time off without pay.

*Child labor.* An Omnibus Child Labor Reform Act was adopted, incorporating language that conforms to the hazardous occupations prohibited by Federal law. The State raised from 16 to 18 the age permitted for children to work in several hazardous occupations; added several nonagricultural hazardous occupations; and established prohibited hazardous occupations in agriculture for minors under age 16. Civil penalties for violation were increased, with a \$10,000 maximum fine permitted for serious or willful violations. Door-to-door sales of candy, cookies, flowers, or other products was prohibited for minors under age 16 except if they are under the auspices of an approved nonprofit organization. An exception was made for minors 12 to 16 years old who sell newspaper subscriptions.

Other provisions raise the permitted age from 10 to 12 for employment in street trades except for home delivery of newspapers; specify that children under 12 are not permitted to work or accompany an employed parent or guardian in any of the prohibited agricultural hazardous occupations; reduce the permitted daily hours of work in agriculture for 16- and 17-year-olds on school days; and remove an exemption for viticultural or horticultural pursuits or domestic work from the prohibition on employment for more than 8 hours a day.

Provisions in the education code pertaining to child labor were amended to allow a permit to be issued upon written request of a foster parent or residential shelter services provider in addition to a parent or guardian. Also, new conditions were adopted to issue permits for full-time work to minors age 14 to 16 who reside with a foster care provider. It includes a requirement that the permit is authorized by the minor's social worker, probation officer, or child protective services worker.

*Agriculture.* The Farmworker Housing Grant Program now specifically applies to housing for employees working at a packing shed for a contractor with an agricultural employer. The Department of Housing and Community Development was authorized to offer assistance under the program in any area where there is a substantial unmet need for farmworker housing.

*Equal employment opportunity.* Employers who refuse to permit female employees to wear pants rather than dresses or skirts will be committing an unlawful labor practice unless the required clothing is part of a uniform or costume. The Fair Employment and Housing Commission is to adopt standards and procedures for exemptions.

*Private employment agencies.* Verifying a worker's legal status or authorization to work before providing referral services was added to the responsibilities of employment agencies referring domestic workers to employment.

*Other laws.* Under a Workplace Violence Safety Act, an employer may seek a temporary restraining order and an injunction on behalf of an employee who has been the victim of unlawful violence or a credible threat of violence at the workplace from any individual.

#### **Colorado**

*Worker privacy.* Public agency records of sexual harassment complaints and investigations relating to employees of the General Assembly are excluded from the right of inspection under the open records law. Such records are available for inspection by the person making the complaint and the person whose conduct is the subject of the complaint, and may be made available to an administrative agency investigating the complaint.

#### **Connecticut**

*Equal employment opportunity.* Complaints of discriminatory employment practices may now be resolved by alternative dispute resolution. This could include voluntary mediation or binding arbitration, upon the agreement of both parties involved in the complaint.

*Other laws.* The commissioner of Administrative Services is to develop a plan to establish an automated system for centralizing information concerning contractors who submit bids for construction projects that receive State funding. This database is to include information on each contractor including name, mailing address, and telephone number, the officers, and the date of incorporation or establishment; a history of previous bids and contracts with the State and its political subdivisions; and violations of law and pending investigations regarding potential violations, including violations concerning contract compliance, employment discrimination, and applicable labor and environmental laws.

#### **Delaware**

*Wages.* The State Legislature repealed a provision allowing employers to pay workers under age 18, employed by the employer for 90 days or less, a wage rate less than the minimum wage, but not less than \$3.35 per hour.

Among changes to the prevailing wage law was an increase in the dollar threshold amount for law coverage, from \$10,000 to \$100,000 for new construction and to \$15,000 for alteration, renovation, or repairs. Criminal penalties also were replaced with authorization to seek civil penalties in court of \$1,000 to \$5,000 for each violation. In addition, the method for determining wage rates was changed. A rate based

on the average of wages paid to a majority of employees in the county performing similar work was replaced by a method using the Federal Davis-Bacon Act formula that uses the prevailing wage paid to most employees doing similar work in a county or, in the absence of a majority, the average wage paid to all employees reported.

Other provisions require sworn payroll information to be furnished weekly to the Department of Labor; change debarment rules; authorize treble damages to employees from employers for failure to pay the prevailing rate; permit wages collected but not claimed by employees to be kept by the Department of Labor for enforcement; and add penalties for construction managers who fail to monitor compliance with the law.

**Civil penalties.** Civil penalties replace criminal penalties for violations of several labor laws, including minimum wage, wage payment and collection, child labor, employment of strike breakers, meal periods, right to inspect personnel files, and the prohibition on the use of polygraph or similar tests as a condition of employment. The civil penalty in each instance will be not less than \$1,000 nor more than \$5,000 for each violation, except that employers who permit minors to work in violation of the child labor law will be subject to a civil penalty of \$10,000 for each violation. Civil penalty claims are to be filed in the courts.

**Drug and alcohol testing.** Applicants for employment as school bus drivers will now be required to pass a drug test as a condition of employment. In the event of a positive test, the applicant may request and pay for further analysis of the drug test to determine whether the result was false or the controlled substance was taken as a valid prescription.

A separate measure provides that any school bus driver who tests positive for controlled substances on any drug test administered according to the rules and regulations of the Department of Public Instruction will be terminated and may never be rehired as a school bus driver in the State. An individual testing positive may request further analysis at his or her expense. The employee will be reinstated with pay restored if the further analysis shows the positive test result to be false or inconclusive.

**Whistleblowers.** County and municipal government employees are now covered by the law that protects State and school dis-

trict employees from retaliation for reporting suspected violations of Federal or State law or regulations. In addition, the law now covers reports of suspected violations of school district, county, or municipality laws or regulations.

#### District of Columbia

**Family issues.** The Family and Medical Leave Act was amended to provide for the award of costs and reasonable attorney's fees to prevailing plaintiffs who seek enforcement by civil action.

Any employee in the District who is a parent is now entitled to 24 hours leave during any 12-month period to attend or participate in school-related events for his or her child. Leave may consist of unpaid leave unless the parent chooses to use available paid family, vacation, personal, compensatory, or leave bank leave. If possible, employees are to give 10 days notice for leave, and the request may be denied only if it would cause the employer undue hardship. For leave purposes, parent is defined as the natural mother or father; a person with legal custody; a person who acts as a guardian; an aunt, uncle, or grandparent; or the spouse any of these individuals..

**Worker privacy.** Pre-employment investigations conducted by the Metropolitan Police Department or the Department of Corrections were exempted from the ban on lie detector tests in hiring or during the employment of an individual.

**Other laws.** A Displaced Workers Protection Act was enacted for contractors who employ 25 or more persons. A contractor who is awarded a contract that replaces another must keep eligible covered employees of the previous contractor for 90 days in which the employees may not be dismissed except for cause. This applies to contractors who provide food services in a hotel, restaurant, cafeteria, apartment building, hospital, nursing care facility, or similar establishment; janitorial or building maintenance services; or health care or related support services. If fewer employees are required than under the previous contract, the new contractor is to keep employees by seniority within job classification. At the end of the transition period, the contractor is to prepare a written performance evaluation for each employee, and, if performance has been satisfactory, must offer

continued employment. An employee who claims wrongful discharge may bring court action to recover back pay, benefits, and reasonable attorney's fees.

#### Florida

**Agriculture.** To register as a farm labor contractor under State law, applicants must now hold a valid Federal certificate of registration as a contractor or employee, unless exempt by Federal law. The Secretary of the Department of Labor and Employment Security was authorized to administer oaths, take depositions, inspect workplaces and issue subpoenas for any investigation or proceeding under the law.

Separately, the Agricultural Worker Safety Act is to be administered by the Department of Agriculture and Consumer Services. Employers must provide information on the hazards and other risks of agricultural pesticides to any worker who enters an area treated by such pesticides within the last 30 days. The Department is to adopt, by rule, Federal regulations established by the Environmental Protection Agency concerning labeling of pesticides and devices, and worker protections. Employers are prohibited from retaliating against workers for exercising any rights under the provisions of the Federal worker protection standard or the State law.

**Equal employment opportunity.** The State Legislature repealed the requirement that Highway Patrol officers retire at age 62.

**Employee leasing.** Among amendments to the law regulating employee leasing firms, an initial or renewal license may not be issued unless evidence is provided that all obligations for wages, payroll-related taxes, workers' compensation insurance, and employee benefits have been paid. Also, disciplinary action may now be taken against firms fined by any State or Federal regulatory agency for violations within the scope or control of the leasing firm.

Liability for civil fraud determined by a court also is grounds for disciplinary action. Licenses for leasing firms may be permanently revoked for violations of the act. The Department of Business and Professional Regulation now is authorized to investigate audit, or review within or outside the State to enforce the law.

**Inmate labor.** The Department of Corrections is authorized to contract with private

industries to provide inmate work programs in prisons. Such contracts must comply with Federal law and may not result in the significant displacement of employed workers in the community. A plan is to be presented to the legislature by January 1, 1995.

*Other laws.* Any State employee who is a certified disaster service volunteer of the American Red Cross may, with approval of his or her employing agency, be granted a leave of absence with pay for up to 15 working days annually to participate in specialized disaster relief services in the State.

## Georgia

*Wages.* State employees may now authorize deductions from their pay to be remitted to not-for-profit organizations for educational, legislative, or professional development activities that promote and enhance the efficiency, productivity, and welfare of State government services or of State government employees. No such deductions shall be made for organizations that engage in collective bargaining with the State or encourage their members to strike or stop work.

The law establishing standards for labor pools furnishing temporary employees short-time assignments of casual, unskilled labor was amended to extend its provisions to work-site employers using these sources of labor. It also requires that temporary employees be given documentation of hours worked, rate of pay, and deductions.

*Equal employment opportunity.* The classification "multiracial" is to be included among choices on all employment forms, applications, questionnaires, and other written documents or materials used by employers seeking information of an employee.

*Employee testing.* All school bus drivers employed by a public school system will now be subject to random testing for illegal drugs and use of alcohol during the school day. The State Board of Education is authorized to adopt rules and regulations for drug testing and local boards of education are to adopt rules and regulations for random alcohol testing. Rules and regulations are to include procedures for the collection, transportation, and storage of specimens; the selection of the drugs and employees to be tested; and methods for assuring the greatest privacy possible during testing.

A school bus driver found to have any measurable alcohol in his or her system during the school day will be subject to disciplinary action at the discretion of the local board of education. A driver found to have used an illegal drug or who refuses to provide body fluid when requested to do so will be terminated.

*Worker privacy.* The State Legislature repealed the Georgia Polygraph Examiners Act.

## Hawaii

*Wages.* The penalty and employee remedy sections of the wage payment law, which specify employer liability to employees for failure to pay wages, were amended to add interest at a rate of 6 percent annually from the date the wages were due to existing civil penalties.

In a late 1993 decision, the U.S. Court of Appeals for the Ninth Circuit upheld a Federal District Court ruling that the provision in the State wage payment law requiring employers to pay the cost of mandated medical exams is preempted by the Employee Retirement Income Security Act. The case, *Aloha Airlines Inc. v. Ahue*, involved airline pilots who are required to undergo periodic physical examinations under Federal Aviation Administration regulations.

*Family issues.* The State family leave law in the private sector took effect July 1. Public sector coverage has been in effect since January 1, 1992.

*Equal employment opportunity.* An employer, labor organization, or employment agency may not deny equal jobs or benefits to a qualified individual because he or she is known to have a relationship or association with someone who is disabled. An employer will not be required to accommodate a nondisabled person associated with or related to a person with a disability in any way not required by Title I of the Federal Americans with Disabilities Act.

## Idaho

*Hours.* The law limiting work in underground mines to no more than 8 hours a day was amended to allow 10-hour days up to 40 hours per week under certain conditions. Approval may be granted by the director of the Department of Labor and Industrial Services after a majority of the affected

work force approves and that other good and sufficient reasons exist. Such approval can only be granted for a period not to exceed 1 year.

*Child labor.* The prohibition on persons under age 21 possessing or handling wine will no longer apply to those making a delivery as part of their employment.

*Equal employment opportunity.* Voters rejected a ballot initiative barring any State agency, department, or political subdivision from granting minority status to gay men and women.

*Employee leasing.* A law was enacted to regulate employee leasing firms, which, under the law, are known as professional employers. Such firms are required to sign a written contract with client companies setting forth the responsibilities and duties of each party. They must provide written notice of the relationship between the leasing firm and the client to the workers assigned. The leasing firm is responsible for paying wages and collecting employment taxes, paying unemployment taxes, and assisting the client in securing and providing worker's compensation coverage. It is considered to be the employer for purposes of sponsoring and maintaining benefit and welfare plans for its assigned workers.

*Whistleblower.* The Idaho Protection of Public Employees Act now bans public sector employers from taking action against an employee for reporting in good faith any waste of public funds, property or manpower, or a violation or suspected violation of any local, State, or Federal law, rule or regulation. The law also applies to employees who participate or provide information in an investigation, hearing, court proceeding or administrative review; or because the employee has objected to or refused to carry out a directive that the employee reasonably believes to be unlawful.

Any such report by an employee must be made at a time and in a manner that gives the employer reasonable opportunity to stop the waste or correct the violation. Employers are to notify their employees of their protection and obligation under the law, and are prohibited from restricting an employee's ability to document the allegation.

Employees may bring civil action in the event of a violation, and the court may award relief including reinstatement, and compensation for lost wages and benefits.

A court may order that reasonable attorneys' fees and court costs be awarded to an employer if it determines that the action brought by the employee was without basis in law or in fact.

### Illinois

**Wages.** Employees working for a motor carrier, for whom the U.S. Secretary of Transportation may establish qualifications and maximum hours of service, were added to the list of those individuals exempt from the minimum wage law.

**Child labor.** Employers of minors, under age 16 employed in a television, motion picture, or related entertainment production, may seek a special waiver from portions of the child labor law that establish permissible nightwork hours. The waiver may be granted by the director of labor if it is determined that the employment will not be detrimental to the health or welfare of the minor, the minor will be supervised adequately, and schooling will not be neglected. The waiver must be signed by the minor's parent or guardian, the employer, and a collective bargaining representative if a collective bargaining unit represents the minor.

**Equal employment opportunity.** The Department of Central Management Services was to list all positions vacant at any time during the 1994 fiscal year, the number of veterans eligible for each of the positions, and whether the person hired for each position was a veteran.

**Drug and alcohol testing.** The Chicago metropolitan area Regional Transportation Authority, which is responsible for establishing, maintaining, administering, and enforcing a comprehensive drug testing program that conforms to Federal law and regulations, is now to also include alcohol testing.

### Indiana

**Wages.** Payroll deductions for employee mutual fund purchases were added to the list of permissible deductions under the wage payment law.

**Other laws.** The law providing members of the Indiana National Guard leave of absence from work while on State active duty was expanded to include private sector employees.

### Iowa

**Other laws.** Public employees will no longer be granted a paid leave of absence for participation in Olympic competition.

### Kansas

**Family issues.** Payments for the State Health Care Benefits Program made by State agencies on behalf of eligible State employees are to continue to workers as required by the Federal Family and Medical Leave Act.

**Other laws.** A labor education center is to be established at Kansas State University. An advisory council is to be appointed that will name the director and develop the center's goals.

### Kentucky

**Wages.** Upon their written request, State employees may now be granted compensatory time, instead of overtime pay. The rate will be one and one-half hours for each hour worked more than 40 a week.

The exemption from minimum wage and overtime provisions for live-in companions to sick, convalescing, or elderly persons was amended to delete the live-in requirement. The exemption will now apply to an individual employed as a companion by or for a sick, convalescing, or elderly person. The exemption is similar to Federal requirements.

After administrative and judicial appeals have been exhausted, a lien may be placed on real and personal property of an employer against whom the labor commissioner has assessed civil penalties for wage and hour violations. Proceeds from the lien will be paid to the State labor department and equal the unpaid wages and penalties due, in addition to interest at an annual rate of 12 percent.

**Hours.** The law requiring time and one-half for hours worked greater than 8 in one day and 40 in a week on public works construction projects was amended to permit work of up to 10 hours in a day without premium pay for overtime if the employer and employee agree in writing before such work or where provided for in a collective bargaining agreement. Overtime must still be paid after 40 hours in a week.

**Child labor.** The law restricting employment by holders of alcoholic beverage li-

censes was amended to permit employment of persons under age 20 in jobs that do not involve the sale or serving of alcoholic beverages and are performed in a restaurant that derives at least 35 percent of its gross sales from the sale of food, or in any other establishment with alcoholic beverage sales not exceeding 50 percent of its gross sales.

**Equal employment opportunity.** The 70-year-old upper limit on the age discrimination ban in employment was eliminated under the State Civil Rights Act and for State employees in the classified service, applying the prohibition to all persons 40 years old or older.

All State agencies are to develop a plan for a program of equal employment opportunity by January 1, 1995, if required by Title VI of the Federal Civil Rights Act of 1964. A copy of the implementation plan must be submitted to the auditor of public accounts and the Human Rights Commission.

**Whistleblowers.** Medical services employers are prohibited, without just cause, from discharging or otherwise discriminating or retaliating against anyone who in good faith makes a report required or permitted by law, testifies, or is about to testify, in any proceeding with regard to any report or investigation.

**Other laws.** No employer may require, as a condition or precondition of employment, any employee or person seeking employment to waive or otherwise diminish any claim or future right or benefit to which that person would otherwise be entitled under State or Federal law.

### Louisiana

**Wages.** A resolution asks the Department of State Civil Service to develop equitable and consistent compensatory leave policies that conform with the Federal Fair Labor Standards Act. Consideration is to be given to allow nonexempt employees to earn compensatory time at time-and-a-half up to a balance of 240 hours after which overtime must be paid. The Legislature also directed that exempt employees be allowed to earn straight compensatory time up to a balance at the end of the fiscal year of up to 360 hours.

**Other laws.** A measure now provides a tax credit to employers for the cost of providing alcohol and other substance abuse treat-

ment programs to employees, including part-time and leased employees. An employer will receive a credit against the State income tax of 5 percent of the qualified treatment expenses paid or incurred. No deduction will be allowed for drug testing.

#### **Maine**

*Child labor.* The child labor law was amended to provide that minors who are participants in summer youth employment and training programs funded by the Department of Labor will not be required to obtain work permits if the program has submitted a master permit developed by the director of the Bureau of Labor Standards.

#### **Maryland**

*Family issues.* Under the State Personnel Management System, State employees who have the primary responsibility for the care or nurturing of a child may use, without certification of illness or disability up to 30 days of accrued sick leave for child care following the birth of their child or placement of the child with the employee for adoption. Employees who are secondarily responsible for care and nurturing may use up to 10 days of accrued sick leave.

*Child labor.* Frederick County alcoholic beverage licensees were authorized to employ persons 18 years of age or older to sell, serve, deliver, or otherwise handle alcoholic beverages. Persons 16 years of age or older may be hired to perform tasks other than those restricted to those age 18 or older.

*Drug and alcohol testing.* Any rules adopted by the Motor Vehicle Administration relating to alcohol and drug testing of certain commercial motor vehicle drivers must be consistent with Federal regulations.

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

#### **Massachusetts**

*Whistleblower.* Public sector employers may not retaliate against employees for dis-

closing or threatening to disclose to a supervisor or public body an activity, policy or practice of the employer that is believed to violate a law, rule, or regulation or is believed to pose a risk to public health, safety or the environment. This also applies to providing information, or testifying before a public body in an investigation, hearing or inquiry concerning such matters; or for refusing to participate in any activity the employee reasonably believes violates a law or poses a safety risk. With certain exceptions, to be protected, employees must give their employers an opportunity to correct any law violations or safety hazards before disclosing such information to a public body.

Any employee or former employee subjected to retaliatory action has 2 years to file a civil action for relief including reinstatement, restoration of full benefits and seniority, treble the amount of lost wages, and other economic losses. Reasonable attorney's fees and court costs may be awarded to an employer due to an action brought without basis in law or fact.

#### **Minnesota**

*Other laws.* Any State employee who is a certified disaster service volunteer of the American Red Cross may, with the approval of the appointing authority, be granted a leave of up to 15 working days annually at half-pay to participate in specialized disaster relief services in the State without loss of vacation leave, pension, compensatory time, personal vacation days, sick leave, earned overtime accumulation, or loss of seniority.

The State Legislature authorized St. Paul to impose a residency requirement on future municipal employees.

#### **Mississippi**

*Equal employment opportunity.* A 1991 law that was repealed on July 1, 1993, was enacted again, prohibiting any public or private employer requiring an employee or job applicant to abstain from smoking or using tobacco products during nonworking hours. This does not affect applicable laws or policies regulating smoking in the workplace.

*Drug and alcohol testing.* A comprehensive law reestablished procedures and guidelines for drug and alcohol testing by public and private sector employers. The new law

is identical to one enacted in 1991 that was repealed on July 1, 1993. Employers who test employees or applicants must adopt written policy statements on the use of drugs, testing and consequences of use. Employers may require job applicants to submit to a drug and alcohol test as a condition of employment and may use a refusal to submit or a positive confirmed result as a basis to reject the applicant. Employees may be required to submit to a test for probable cause or as part of random sampling. Any employee discharged on the basis of a confirmed positive test will be considered to have been discharged for willful misconduct. Other provisions include procedures for sample collection and handling of samples; criteria for positive tests; use of qualified laboratories; employee rights to explain, appeal and contest confirmed positive test results; confidentiality; and employee rights to seek damages resulting from violation of the act.

A positive drug or alcohol test result will not be the sole factor used to classify the person as having a disability.

*Preference.* A State Prison Emergency Construction and Management Board is to give preference to resident contractors over nonresidents in awarding prison facility contracts on the same basis as the nonresident may receive from his or her home State.

*Other laws.* A State employee who is a certified disaster service volunteer of the American Red Cross may now be granted paid leave from work, for up to 20 work days annually, to participate in such activities in Mississippi or adjacent States.

#### **Missouri**

*Equal employment opportunity.* The Governor's Committee on Employment of People with Disabilities was renamed the Governor's Council on Disability. Members will now be appointed by the governor rather than by the director of the Department of Labor and Industrial Relations. Recruitment and appointment of members to the Council is to provide for representation of various ethnic, age, gender, and physical and mental disability groups.

#### **Nebraska**

*Child labor.* A resolution was adopted directing the Education and the Business



and Labor committees of the legislature to study student employment in the State. In addition, the panels are to examine child labor laws for possible changes or modification, and determine if the extent of student employment in Nebraska has a negative affect on education and what changes may be necessary.

*Genetic testing.* A resolution was adopted designating the Health and Human Services Committee of the legislature to study advances in human genetic information and technology. Among the issues to be examined are potential effects of genetic information on labor-management relations. The committee is to recommend specific public education programs, regulations, and legislation.

*Other laws.* A Contractor Registration Act was adopted requiring all contractors doing business in counties with populations of more than 100,000 to register annually with the Department of Labor. Identifying information is required on the registration application. In addition, proof of workers' compensation insurance coverage and a description of the business that includes the employer's standard industrial classification code or principal products and services provided must be included. Registration may be revoked if an investigation shows that the contractor no longer meets the required conditions.

#### New Hampshire

*Wages.* The law regulating deductions from employee wages was amended to provide that an employer will be liable if an employee loses any benefit or fails to meet an obligation because the employer fails to forward a deduction on the employee's behalf or fails to make timely payments for any employee benefits provided entirely at the employer's expense.

Permissible deductions from the pay of salaried employees for time not worked were made to conform with the provisions of the Federal Fair Labor Standards Act. Deductions are permitted for certain disciplinary suspensions, leave taken under the Family and Medical Leave Act of 1993, and absences of a full day or more at the employee's request, after the employee has exhausted any leave. The law also clarified how commissions are to be paid and how advance payments are to be reconciled against commissions.

*School attendance.* School attendance is required by the State to age 16. A new mea-

sure provides that children between 16 and 18 years old who want to quit school before graduating high school may do so only after a conference with the principal, or other school official. The principal is to request a conference with the child's parent, guardian, or other custodian. Written approval of withdrawal must be received from the parent, guardian or other custodian at least 60 days before withdrawal unless the school board grants a waiver.

*Employee leasing.* Under a new law, employee leasing firms must obtain a license from the commissioner of labor. All license applicants must provide proof that leased employees are covered by a workers' compensation policy, and show a minimum net worth of \$50,000. The Commissioner may require a security deposit equal to the minimum net worth requirement to assure payment of wages, benefits and other entitlements. This would apply if the leasing firm has had its license suspended or limited in another jurisdiction, or if it has failed to pay wages, benefits, payroll taxes or unemployment compensation contributions when due.

Specific criteria were established for the leasing company to be deemed the employer of its leased employees, and for leasing firms to provide health insurance benefits to such employees. The commissioner is authorized to suspend or revoke licenses and impose fines for violations of the act.

*Other laws.* Business organizations are prohibited from knowingly coercing, or attempting to coerce any employee, or any contractor or subcontractor or their employees doing business with the firm, to contribute to any political campaign or political committee, or to any candidate, party or cause.

#### New Jersey

*Child labor.* A section was added to the child labor law permitting minors 14 to 17 years old to work as volunteers for nonprofit organizations building affordable housing as determined by the commissioner of labor. Minors doing this work must be under the direct supervision of an adult, use safety equipment required by law, may not be exposed to hazardous waste products or other hazardous substances, and not work on or in connection with any power driven machinery, or any excavation, scaffolding or roofing. Permitted hours of work and insur-

ance requirements for the nonprofit organizations are specified.

#### New York

*Wages.* The wage payment and prevailing wage laws were amended to delete provisions that had required cash payments to employees unless the employer requested and received authorization from the commissioner of labor to pay by check. Authorization could be given after the employer furnished proof of financial responsibility and assured that the checks could be cashed in full.

*Hours.* The minimum meal period requirement for workers employed in mercantile and other nonfactory establishments was reduced from 45 to 30 minutes. An employee who works a shift of more than 6 hours that extends over the noon day meal period is entitled to the meal period time off. The Department of Labor guideline specifying the noonday meal period, from 11 a.m. to 2 p.m., was included in the statute. In addition, the provision for an additional 20-minute meal period, between 5 p.m. and 7 p.m., for those whose work period starts before noon and continues after 7 p.m. was amended to change the work period beginning time for the meal period requirement to before 11 a.m.

Copies of schedules listing employees who work on Sunday and the designated day off for each will no longer need to be filed with the commissioner of labor. Employees are to be notified in advance of their designated day off.

*Equal employment opportunity.* As part of a new New York State Veterans Bill of Rights for Employment and Training Services, veterans who meet eligibility requirements for any employment and training program administered by any State agency will be given preference in referral to those programs over nonveterans.

#### North Dakota

*Wages.* Among the provisions of a revised minimum wage and work conditions order promulgated by the commissioner of labor, employers may no longer pay a subminimum training wage to workers under the age of 18. The order also treats earned paid time off the same as wages upon separation from employment, and clarifies what constitutes work time.

## Ohio

**Wages.** The prevailing wage law was amended to increase the dollar threshold amount for coverage from \$4,000 to \$50,000 for new construction and to \$15,000 for reconstruction, alteration, repair or renovation of any public improvement. Beginning January 1, 1996, and on January 1 of every even-numbered year following, the director of Industrial Relations is to adjust the threshold levels according to the average increase or decrease for the previous two years according to the U.S. Department of Commerce, Bureau of the Census, Implicit Price Deflator for Construction. The director will adjust the level provided that the increase or decrease for any year is not to exceed 3 percent of the threshold amount.

Among other changes, debarment provisions were modified to bar intentional violators of the law from public works contracts for 1 year for a first violation or for 3 years for a second violation in a 5-year period; a 100-percent penalty in addition to wages owed is to be assessed, with 25 percent paid to the worker or workers and 75 percent to the Department for a new penalty enforcement fund. Certain contracts with soil and water conservation districts are no longer covered by the law.

**Family issues.** State employees who are exempt from the Public Employee Collective Bargaining Law are now entitled to a 6-week parental leave of absence upon the birth or adoption of a child. The first 2 weeks of the leave are unpaid, and during the remaining 4 weeks of the leave such employees receive 70 percent of their base pay. Employees may use available sick leave, personal leave, vacation leave, and compensatory time to be paid during the first 2 weeks, and to supplement their pay up to 100 percent in subsequent weeks. State employees covered by collective bargaining agreements had previously been granted parental leave eligibility.

**Child labor.** The Ohio Supreme Court declared unconstitutional a 1993 amendment, enacted as part of a workers' compensation measure, that adopted the Federal child labor exemption for children working as actors or performers in motion pictures or in radio and television productions.

**Plant closings.** The Employee Ownership Assistance Program, which expired on March 17, was enacted again, effective Au-

gust 22. The program authorizes the Director of Development to assist individuals or groups to establish employee-owned corporations.

**Other laws.** As part of a law concerning the rights of crime victims, the employer of a crime victim may not discharge, discipline, or otherwise retaliate against the victim, or a family member or representative, for participating in a criminal justice proceeding if participation is necessary to protect the interests of the victim. Knowing violation by an employer will be considered contempt of court.

## Oklahoma

**Wages.** The hours of work provisions for public employees were amended to provide that such employees who are not otherwise exempt from or otherwise covered by special provisions of the Federal Fair Labor Standards Act will be paid overtime in accordance with the Federal law when working more than 40 hours a week.

**Worker privacy.** The Open Records Act was amended to provide that public agencies are to keep confidential the home addresses of any of their current or former employees.

**Other laws.** An Oklahoma Professional Boxing Licensing Act was adopted, regulating boxing contests and exhibitions. It is to be administered by the Department of Labor, and takes effect January 1, 1996.

The law providing a leave of absence from work for public sector employees called to duty or service by a military reserve unit to which they belong was amended to extend this leave to private sector employees. During the leave of absence, employers may pay the employee an amount equal to the difference between his or her full regular pay and the military pay received.

## Oregon

**Wages.** Voters rejected an initiative to repeal the State prevailing wage law.

**Hours.** The U.S. Court of Appeals for the Ninth Circuit invalidated a State rule exempting bargaining unit members covered by collective bargaining agreements from rest and meal period provisions under the law. The court ruled that the National Labor Relations Act does not prohibit States from setting certain minimum labor standards for all employees.

**Equal employment opportunity.** A ballot initiative to amend the State constitution to bar governments from creating classifications based on homosexuality was defeated.

## Pennsylvania

**Wages.** The U.S. Court of Appeals for the Third Circuit overturned portions of a 1993 U.S. District Court decision that invalidated the State prevailing wage law and accompanying regulations. The district court had ruled that the law is unenforceable because ERISA preempts a requirement to include benefits in the prevailing wage determination. The Court of Appeals held that the State prevailing wage law may not refer to retirement plans under the retirement income law or provide special treatment. However, the State may set minimum wages and allow employers to satisfy a portion of the wage with contributions for employee benefits.

The Court of Appeals affirmed the District Court judgment striking down a 1992 administrative order interpreting the State law. This order provided that any contribution to an ERISA plan was acceptable while other arrangements had to be certified by the Prevailing Wage Division.

## Puerto Rico

**Wages.** As provided in a previous order applicable to the communications industry, minimum hourly wage rates were increased on December 3 from \$4.25 to \$4.45 for radio broadcasting enterprises, with an additional increase to \$4.65 scheduled for December 3, 1995. Rates also increased from \$4.50 to \$4.75 for television occupations and producers of programs for radio and/or television, with an increase to \$5 scheduled for December 3, 1995; from \$4.70 to \$5. for occupations related to telephone and other related services provided by the Commonwealth government; and from \$4.25 to \$4.75 per hour for other communications services, with an increase to \$5 scheduled for December 3, 1995.

Another earlier order applicable to the lumber and wood products; metal furniture, door and windows; and straw, hair, and related products industries provided for hourly increases from \$4.05 to \$4.25 effective April 1 for classifications of workers in the production of wood doors and windows; metal doors, windows, awnings, and screens; mat-

tresses with or without springs, bedsprings, and wire beds; kitchen cabinets; straw, hair, and similar material products; and rattan, osier, bamboo, excelsior, cork, and maguey furniture. Rates were increased on the same date from \$3.95 to \$4.10 for the occupations wood furniture; metal, plastic or other material furniture; and other wood products. An increase of \$4.25 is scheduled for April 1, 1995, for these last three categories.

### Rhode Island

**Wages.** Agricultural workers are now covered by the minimum wage law.

If a contractor or subcontractor who was awarded a public contract as the lowest qualified bidder violates the prevailing wage law, the next lowest qualified bidder may sue for damages incurred by loss of the contract.

Legislation was enacted creating a special legislative commission on equal pay and comparable worth in public and private employment. The commission is to study comparable worth and pay equity in the State and determine if evidence suggests that occupations dominated by women are under-compensated in comparison with occupations dominated by men. The study is to apply to occupations in which the composite value of skill, effort, responsibility, interpersonal skills, accountability, and working conditions are comparable. Findings and recommendations with respect to State government employment were to be reported to the general assembly in 1994, and each year following. Findings and recommendations with respect to municipal government and private sector employment are to be reported by February 10, 1996, and each year following.

**Equal employment opportunity.** As a result of a legislative finding that racial minorities remain underrepresented in most departments of State government, legislation was enacted to provide some degree of flexibility in the State merit system law to achieve equal employment opportunity with affirmative action. The State equal opportunity administrator is responsible for monitoring and enforcing all equal opportunity laws, programs, and policies in State government; is to continually review all policies, procedures, and practices for tendencies to discriminate and for institutional or other barriers to equal opportunity; and is to develop and put in place recruitment plans to assure adequate consideration for qualified minority applicants.

The administrator is authorized to order those committing unlawful discriminatory practices to cease and to take action to assure compliance with any applicable affirmative action plan or State or Federal law. This would include hiring, reinstatement, transferring or upgrading employees, with or without back pay.

A five-member committee was created to monitor negotiations with all State government collective bargaining units for equal opportunity and affirmative action interests.

**Drug and alcohol testing.** Employers may require job applicants to submit to blood or urine testing if the job applicant has been offered employment conditioned on the applicant receiving a negative test result. The applicant provides the test sample in private. This pre-employment drug testing will not apply to applicants for public sector employment except those seeking employment as law enforcement or correctional officers, firefighters, or those required by Federal law. Positive test results must be confirmed.

**Worker privacy.** An employer may not release the name, address or other confidential information obtained through an employee's participation in an employee assistance program, except where the information is related to a crime that must be reported by law. Civil action may be brought if confidentiality is violated, and the court is authorized to award actual and punitive damages, and reasonable attorneys' fees and costs, and to give injunctive relief.

**Inmate labor.** Among amendments to provisions relating to prison labor, it was specified that it is not an unfair labor practice to use prisoners to perform labor at outdoor work sites with unionized employees.

**Whistleblowers.** Provisions relating to crimes by or affecting persons in the insurance business now include a prohibition against reprisals against anyone who provided or attempted to provide information regarding possible violation of the law. This would forbid attempts to discharge, demote, threaten, or otherwise discriminate with respect to compensation, terms, conditions, or privileges of employment. A civil action may be brought within 3 years of the date of any such unlawful discharge or discrimination. Remedies may include reinstatement, compensatory damages, and costs of litigation and attorneys' fees.

### South Carolina

**Child labor.** It is now a felony to employ a minor under age 18 to appear nude in a public place.

**Other laws.** The office of Chief Athletic Commissioner of the State Athletic Commission was replaced by an administrator appointed by the director of the Department of Labor, Licensing, and Regulation.

### South Dakota

**Child labor.** The section of the child labor law establishing permissible hours of employment for minors under age 16 was amended to exempt children employed as actors or performers in motion pictures, theatrical, radio, or television productions.

**Other laws.** The Department of Labor was authorized to establish and collect reasonable fees and charges for seminars, conferences, or workshops conducted by the department; for computer software and publications produced by the department; for certification or renewal of certification of managed care plans for workers' compensation claims; for searches of departmental files and records; and for producing transcripts and copying any papers in the files and records. Fees collected are to be used by the department to administer and enforce programs in its jurisdiction.

### Tennessee

**Equal employment opportunity.** The classification "Native American Indian" is to be included among the choices on all employment forms, education applications, or other similar State and municipal documents that request racial or ethnic background information.

**Employee leasing.** An Employee Leasing Act requires staff leasing firms to obtain a license from the Commissioner of Commerce and Insurance. This provision takes effect January 1, 1996. License applicants must demonstrate a net worth of at least \$25,000 or \$20 per leased employee up to \$50,000, whichever is greater. The law establishes specified obligations for leasing firms and sets forth a list of prohibited acts and grounds for disciplinary action. The commissioner is authorized to revoke, suspend, restrict, or decline to renew a license, impose administrative fines, issue reprimands,

mands, place licensees on probation subject to specified conditions, and charge the costs of investigation and prosecution to the licensee. An advisory board, appointed by the Governor, is to recommend rules and regulations to the commissioner for the conduct of the business and licensing of staff leasing companies.

*Plant closings.* If an insured person becomes uninsured due to a shutdown of the employer's business or plant, the person and his or her dependents will be eligible to enroll in the TennCare program after 18 months. During this period, Federal law requires insurance be provided by other means.

#### Utah

*Equal employment opportunity.* An Anti-discrimination division advisory committee was created with no less than 11 or more than 15 members appointed by the Governor. The committee will include representatives of labor, business and other groups.

*Drug and alcohol testing.* Local governments and agencies and State institutions of higher education were authorized to enact drug-free workplace policies. Drug testing of employees, volunteers, and prospective employees and volunteers is permitted as a condition of hiring, continued employment, and voluntary services. Before testing or retesting, a written policy or ordinance is to be adopted, distributed to employees and volunteers, and made available for review by prospective employees and volunteers.

Collection and testing of samples is to be conducted according to specified procedures, and positive tests are to be confirmed by a second procedure. A current or prospective employee or volunteer may, at his or her option and expense, submit a second drug test sample within 6 hours following the report of the initial test. A current or prospective employee or volunteer whose drug test results are positive will not, because of those results alone, be classified as disabled under the State Anti-Discrimination Act or the Federal Americans with Disabilities Act.

#### Vermont

*Wages.* The minimum hourly wage increased from \$4.25 to \$4.50 on January 2,

1995, and will increase to \$4.75 on January 2, 1996. State employees are now covered by the law, but those who also are covered by the Fair Labor Standards Act are not subject to the State law's overtime requirements.

#### Virginia

*Child labor.* Provisions of the child labor law that prohibit hazardous occupations for minors were amended to specifically allow certain activities by children employed on farms, in gardens, or in orchards. Children 16 years of age or older in such employment may operate, assist in operating, or otherwise perform work involving certain farm vehicles and trucks, except for tractor trailers. Children 14 years of age or older may work as helpers on trucks or commercial vehicles, provided the work is performed while on a farm, in a garden, or in an orchard.

*Drug and alcohol testing.* As part of a law relating to certification and decertification of law enforcement officers, certification for employment will be denied to individuals who test positively on a pre-employment drug screening, if such screening is required by the hiring law enforcement agency. Refusal to submit to a drug screening or a positive result on a drug screening are grounds for decertification of current officers.

*Worker privacy.* Except where required for an internal administrative investigation related to allegations of misconduct or criminal activity, law enforcement agencies are now barred by law from requiring any employee to submit to a lie detector test, or discharging, demoting or otherwise discriminating against any employee for refusal or failure to take a lie detector test. No employee required to submit to a lie detector test will be discharged, demoted or otherwise discriminated against solely on the basis of the test results.

The Department of Personnel and Training is not to disclose the home addresses of State employees except under certain specified circumstances.

*Preference.* The Public Procurement Act was amended to authorize the governing body of a county, city, or town, in a tie bid, to give preference to goods, services and construction produced in the locality or provided by those having principal places of business in the locality if such a choice is available.

#### Washington

*Wages.* As provided for in previous legislation, the State minimum wage rate increased from \$4.25 an hour to \$4.90 on January 1, 1994.

The penalty section of the prevailing wage law was amended to provide that a contractor or subcontractor found in violation of the requirement to pay the prevailing wage rate for a second time in a 5-year period will be barred from bidding on any public works contract for 2 years. A contractor or subcontractor will not be debarred if he or she relied on written information from the Department of Labor and Industries to pay a prevailing rate that is later determined to be in violation. A previous debarment provision applies to instances where contractors or subcontractors file false statements or fail to file a required statement or record.

*Child labor.* The minimum age of 14 for employment required by the child labor law will not apply to children employed as actors or performers in film, video, audio, or theatrical productions. The Department of Labor and Industries is to issue work permits and variances to these minors upon finding that the terms of employment sufficiently protect their health, safety, and welfare. Factors to be considered include working conditions and planned work schedule, adult supervision, and planned educational programs.

*Equal employment opportunity.* By December 31, 1994, the superintendent of public instruction was to develop criteria for use by school districts in developing sexual harassment policies, and provide sample policies to school districts upon request. The criteria is to address subjects including grievance procedures, remedies to victims of sexual harassment, and disciplinary actions against violators of the policy. By June 30, 1995, every school district must adopt, post, distribute, and implement a written sexual harassment policy applicable to all employees, volunteers, parents, and students.

*Whistleblowers.* The list of prohibited retaliatory actions under the Local Government Whistleblower Protection Act was amended to add hostile actions by another employee toward a local government employee that were encouraged by a supervisor or senior manager or official. Also, a

section was added specifying that a local government official or employee may not use official authority or influence to threaten, intimidate, or coerce an employee for the purpose of interfering with the right to disclose information concerning an improper governmental action as provided by the Act. An individual may not disclose information prohibited by law.

*Other laws.* As part of a reorganization of the Department of Labor and Industries, the number of divisions was reduced to four. It includes the Divisions of Consultation and Compliance Services (including employment standards and safety and health compliance), Administrative Services, Research and Information Services, and Insurance Services.

As part of a health system reform plan, the Health Services Commission, consulting with the Seasonal Employment Advisory Committee, is to analyze the financial impact of health insurance coverage on seasonal employees and their employers, including the extent to which funding sources that subsidize health service costs for low-income seasonal workers can be used. Also to be examined is the feasibility of establishing a centralized pool or depository to finance such coverage. The study is to determine the extent to which coverage mechanisms should be modified, if at all, to meet the unique characteristics and needs of seasonal workers and their employers.

#### West Virginia

*Hours.* Each employee with a workday of 6 or more hours is to receive at least 20

minutes for a meal break. The meal period will be required where employees are not afforded necessary breaks and/or permitted to eat lunch while working.

*Equal employment opportunity.* Domestic service workers will now be covered by the Human Rights Act and are protected from various types of discrimination including employment discrimination.

The Legislature increased from 100 days to 365 the amount of time permitted to file a complaint with the Human Rights Commission claiming an unlawful employment or other discriminatory practice.

*Other laws.* The Department of Commerce, Labor and Environmental Resources was abolished as part of a reorganization of the executive branch of State government. Various agencies and boards were grouped under three bureaus: Bureau of Commerce (including the Division of Labor), Bureau of Employment Programs, and Bureau of Environment.

#### Wisconsin

*Wages.* State and local government employees may now be granted compensatory time off instead of overtime pay in accordance with the Federal Fair Labor Standards Act.

*Equal employment opportunity.* The fair employment law specifies that accepting or rejecting sexual advances as a basis for an employment decision, or permitting sexual harassment to contribute to a hostile work environment will constitute employment discrimination. A reasonable person test was established to determine whether sexual

harassment substantially interferes with work performance or creates a hostile work environment. The definition of sexual harassment in the fair employment law was amended to include unwelcome requests for sexual favors and deliberate verbal or physical conduct of a sexual nature, whether or not repeated, that is sufficiently severe to create a hostile work environment.

#### Wyoming

*Wages.* From April 1, 1994 through March 31, 1996, the procedure used to set prevailing wage rates will provide for increases in the rate of inflation if the agency that awards a public works contract finds that the rate of change is less than the rate of inflation as reflected by the State cost-of-living index. The index is determined by the Department of Administration and Information.

*Preference.* The law giving preference in bidding on public contracts to resident bidders was amended to specifically authorize the Department of Employment to determine eligibility to receive or continue to hold a certificate of residency.

#### Footnote

<sup>1</sup> The Montana, Nevada, Oregon, and Texas legislatures did not meet in 1994. The Arkansas and North Dakota legislatures met in special sessions only and did not enact labor legislation. Michigan, New Mexico, North Carolina, and Pennsylvania did not enact significant legislation in the fields covered by this article. Information about Guam, Puerto Rico, and the Virgin Islands was not received in time to be included in the article, which is based on information received by November 8, 1994.