

# State labor legislation enacted in 1991

*Major laws were enacted on a variety of subjects, including minimum wage, child labor, parental leave, employee leasing, and discrimination because of sexual orientation*

Richard R. Nelson

A number of major pieces of State legislation were enacted in 1991 covering several different aspects of employment standards.<sup>1</sup> The greatest areas of concentration were on the traditional subjects of minimum wage protection and the regulation of child labor. Legislation was also enacted on the emerging issue of employee leasing, and on other contemporary issues such as the right to parental leave, the prohibition on employment discrimination because of sexual orientation, and employee drug and alcohol testing.

*Wages.* Minimum wage protection was one of the most active issues in 1991. Rates increased under Federal law and in 29 States and 3 jurisdictions as the result of new laws, wage orders, administrative actions, or as provided for in prior legislation.<sup>2</sup> In addition, legislation was enacted providing for increases in 1992, in Hawaii and North Carolina. While most of the increases were to match the Federal \$4.25 hourly rate that took effect on April 1, 1991, higher rates will be in effect on January 1, 1992, in Alaska, Connecticut, the District of Columbia, Iowa, Oregon, Rhode Island, and the Virgin Islands. (After April 1, 1992, Hawaii and New Jersey will also exceed the Federal rate.)

Subminimum training wages for employees under age 20 were adopted in Nebraska, North Carolina, and Virginia; for those under 19 in West Virginia; and for those under 18 in North Dakota. A training wage provision in Montana was repealed. In South Dakota, minors under age 18 are now subject to the minimum wage law and must receive at least 75 percent of the basic minimum. Increases in youth rates were adopted in Maine and Utah.

A 33-percent tip credit against the minimum wage was adopted in North Dakota. Tip credits were increased in Maryland, Ohio, South Dakota, Utah, and Vermont.

The labor commissioner in New Jersey was authorized to assess and collect civil penalties for violations of the minimum wage, wage payment, prevailing wage, industrial homework, and child labor laws, and the labor commissioner in Iowa was authorized to initiate civil actions to enforce any statute under his or her jurisdiction. In Oklahoma, reciprocal agreements may now be entered into with the Labor Department or corresponding agency in other States for the collection of wage claims and judgments (21 States now have this authority<sup>3</sup>).

Coverage of the Montana prevailing wage law was extended to construction projects financed in whole or part by tax-exempt industrial revenue bonds and enforcement provisions were strengthened in Hawaii, New York and Rhode Island. The dollar threshold amount for coverage was increased in Connecticut.

*Family issues.* Parental leave continued to be a subject of considerable legislative attention. New laws, which permit either parent to take an unpaid leave of absence for the birth or adoption of a child, or to care for a seriously ill child, parent, or spouse, were enacted for both the private and public sector in California, Hawaii (effective January 1, 1994 in the private sector), and Oregon, and for State employees in Florida. With certain exceptions, returning employees are to be reinstated to the same or a similar job under each of these laws. The Louisiana Civil Service Commission and the Montana Department of Administration are to develop parental leave policies for State employees. Existing laws were amended in Maine and Minnesota.

*Child labor.* Child labor was one of the most active subjects of State legislation in 1991, with recent trends continuing in: (1) increased concern over adverse effects of employment of children on their academic performance, (2) use of civil money penalties as an effective enforcement

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Richard R. Nelson is a State standards advisor in the Division of State Standards Programs, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. David A. Levy, an advisor in the same division, contributed to the article.

tool, and (3) restrictions on the employment of children in door-to-door sales. The concern over the effects of employment on schooling was reflected in amendments in Delaware and Maine which adopted hours restrictions for 16- and 17-year-olds, and in Florida and New York where permitted quitting times before schooldays were lowered for these minors. In New York, 16- and 17-year-olds are now required to have permission from their school as well as their parents for work beyond 10 p.m. on nights preceding school days. Permitted daily, weekly, or nightwork hours for minors under 16 were reduced in Delaware, Florida, Maine, New York, North Carolina, Oklahoma, South Dakota, and Virginia, some of these by conformance to Federal standards. Maine increased the age under which minors may not be employed during school hours and conditioned the issuance of work permits on enrollment in school and passing a majority of courses, and New York provided for revoking certificates if school performance is not satisfactory. The use of civil money penalties in the event of violation was authorized in Arkansas, Florida, Maine, and Washington (as well as under the New Jersey law of general application) and the maximum amount of such penalties increased in Illinois, New York, and Virginia. The employment of minors in door-to-door sales was prohibited or regulated in Florida, Massachusetts, Utah, and Virginia, and permissible hours of work were revised in Ohio. Among several other child labor provisions, agricultural coverage was added or expanded in New York, South Dakota, and Virginia.

Arizona, Iowa, and Maryland lowered the minimum age for compulsory school attendance and Arkansas increased the upper age.

*Equal employment opportunity.* Twenty-nine States enacted legislation addressing one or more forms of employment discrimination. Among the more significant of these measures, laws in Connecticut and Hawaii ban discrimination in employment on the basis of sexual orientation, and an Executive order in New Jersey prohibits such discrimination by State agencies. Coverage of the Illinois Human Rights Act was expanded as it applies to sexual harassment complaints and Maine enacted employer requirements designed to ensure a workplace free of sexual harassment. The Illinois law was also amended to add employment discrimination on the basis of citizenship status to the list of prohibited forms of discrimination. Mandatory retirement was prohibited generally in North Dakota and for certain tenured education employees in Michigan. Application of the Idaho and North Dakota laws were expanded by reducing the number of employees required for coverage. "Disability," under the South Dakota human rights law was redefined to include being regarded as having an impairment, and to exclude the current use or addiction to defined controlled substances.

Discrimination on the basis of the use of tobacco products outside of employment was prohibited in 11 States, and Nevada barred discrimination because of the lawful use of any product outside the workplace.

*Drug and alcohol testing.* The interest in drug and alcohol testing of employees that has emerged in recent years con-

tinued with a number of enactments in 1991. A comprehensive new law, applicable to both public and private sector employers, was adopted in Mississippi establishing procedures and guidelines for testing employees and job applicants, and a law applicable to State employees was enacted in Nevada. Laws authorizing the testing of intrastate commercial motor vehicle drivers were approved in Connecticut and Montana, and a testing program was authorized for employees of mental health institutions in Kansas. Illinois, in late 1990, passed a law requiring employers who receive a grant or contract from any State agency to establish a drug-free awareness program for employees.

*Employee leasing.* In an emerging issue, Florida, Maine, and Utah passed laws regulating, to some degree, employee leasing firms.

*Labor relations.* Among the labor relations laws enacted, Minnesota prohibited employers from offering permanent employment to individuals who perform bargaining unit work for them during a strike or lockout, and California and Delaware passed resolutions supporting similar Federal legislation. New Hampshire adopted civil money penalties for violation of the law prohibiting employment of professional strikebreakers.

*Occupational safety and health.* One or more laws dealing with various aspects of worker safety and health were enacted in 24 States and Puerto Rico. Noteworthy laws include new right-to-know enactments in Arkansas and Nevada, an asbestos abatement law in Hawaii, and adoption of new field sanitation requirements in Michigan. In Virginia, violators of the State occupational safety and health laws or regulations may now be barred from work on future State construction projects.

On November 5, 1990, Congress passed the Omnibus Budget Reconciliation Act of 1990 which amended the Federal Occupational Safety and Health Act to increase civil penalties for violations. Several jurisdictions implemented corresponding changes in their State occupational safety and health programs as required by Federal law. Penalties for serious violations were increased to \$7,000 for each violation. The maximum for a willful or repeated violation was increased to \$70,000 for each violation and a minimum of \$5,000 established.

*Other legislation.* California and New Jersey amended their garment manufacturer registration laws, with new authorization in New Jersey to confiscate goods and equipment of employers found in violation. New Jersey also prohibited industrial homework in the manufacture of women's or men's wearing apparel. Oregon adopted a "whistleblower" law protecting employees from discharge for reporting criminal activity. Texas passed a new law requiring the licensing of temporary help agencies, and a measure in California requires private employers to assist and reasonably accommodate employees with literacy problems.

The following is a summary, by jurisdiction, of labor legislation enacted during 1991.

## Alaska

**Wages.** The State minimum wage law sets the State rate at 50 cents per hour above the Federal minimum rate. As a result, the State rate rose from \$4.30 to \$4.75 per hour on April 1, 1991.

## Arizona

**School attendance.** The compulsory school attendance law, which had required attendance from age 8 to age 16 was amended to require attendance at age 6. However, a child under age 8 may be exempted from the attendance requirement if a parent or custodian of the child notifies the county school superintendent in writing that they do not want the child to attend school.

**Equal employment opportunity.** State employers are now prohibited from discriminating against any employee or other person on the basis of the use or nonuse of tobacco products.

**Occupational safety and health.** The State Industrial Commission is exempted from the requirements of the Administrative Procedures Act when adopting, by reference, the Federal Occupational Safety and Health standards relating to the Occupational Safety and Health Administration, and standards for construction and agriculture.

Smoking in State owned and leased buildings will now be allowed only when any drifting of smoke can be prevented by physical design, use of electrostatic filtering devices, windows, or venting to the outside air.

## Arkansas

**Wages.** The minimum wage increased from \$3.35 to \$3.65 per hour on July 1, 1991, with a further increase to \$4 scheduled for July 1, 1992. Employees of hotels, restaurants, and tourist attractions which have an annual sales volume of less than \$500,000 must be paid overtime at time and one-half their regular hourly rate after 44 hours in a workweek beginning July 1, 1991, and after 40 hours on July 1, 1992. The law previously required that employees of hotels, motels, restaurants, and tourist attractions with an annual sales volume of less than \$362,500 be paid overtime after 48 hours in a workweek.

The law requiring employees in the State to be paid at least semimonthly was amended to permit those corporations with annual gross incomes of \$500,000 or more to pay, at least monthly, the wages of those management level and executive employees who earn at least \$25,000 a year, and are exempt under the Federal Fair Labor Standards Act.

**Hours.** Job sharing arrangements in which the hours of work of two persons are arranged in such a way as to cover a single regular full-time salary position may now be authorized in any State agency or institution of higher education.

**Child labor.** The Director of Labor may now assess civil money penalties of from \$50 to \$1,000 per day per child for each violation of the child labor law and of the separate provi-

sions regulating employment of children in the entertainment industry. The director may also petition the court to enjoin violation of either law. The child labor law was also amended to provide that employment certificates for minors under 16 years of age will now be issued only by the director. Previously, school officials could also issue such certificates. Authority to determine prohibited hazardous occupations up to age 16 was transferred from the State Board of Health to the Director of Labor, who was also given rulemaking authority and is now solely responsible for inspections. Another change permits children to be employed as batboys and batgirls with written parental approval. Such children must not be employed for more than 10 hours on any day or after 11 p.m. on nights preceding school days or after 1 a.m. on nights preceding nonschool days.

**School attendance.** The compulsory school attendance law will now apply to children ages 5 to 18 on October 1 of that year, rather than ages 5 to 17 as before.

**Equal employment opportunity.** Provisions of doubtful validity pertaining to meal breaks and related matters, but applicable only to females, were repealed.

**Occupational safety and health.** A Public Employees Chemical Right to Know Act was enacted, to be administered by the Department of Labor, to provide State and local public employees health and safety protection against hazardous chemicals similar to that provided in the private sector under the Federal Occupational Safety and Health Act. Employers must ensure proper chemical labeling, maintain and make available material safety data sheets, maintain a workplace chemical list, and provide training and information to employees. Employees are not to be penalized for declining to work with hazardous chemicals or requesting information or filing a complaint.

## California

**Wages.** The consent of employees is no longer needed for the Department of Industrial Relations or the Division of Labor Standards Enforcement to commence and prosecute a civil action to recover unpaid minimum wages or overtime compensation, and in addition, to recover interest, attorney's fees, and costs. Employees bringing action to recover unpaid minimum wages are now entitled to recover liquidated damages in an amount equal to the unpaid wages and interest.

**Family issues.** A new Family Rights Act was approved under which employers of 50 or more are required to provide employees with up to 4 months of unpaid leave in a 24-month period for the birth or adoption of a child, or to care for a seriously ill child, parent, or spouse. Employees returning from such leave must be reinstated in the same or a comparable position with no loss of seniority. Employers are prohibited from refusing to hire, discharging, suspending, or otherwise discriminating against any individuals who exercise their rights, or gives testimony in any proceeding under the

law. Requests for leave may be denied, if necessary, to prevent undue hardship to the employer's operations, and for salaried employees who are either among the five highest paid employees or in the top 10 percent in terms of gross salary, whichever encompasses the greatest number of employees at the same location.

**Agriculture.** Prior to entering into any contract or agreement to supply agricultural labor or services to a grower, every farm labor contractor must provide the grower with a copy of a current valid State license. Growers are prohibited from entering into a contract or agreement for farm labor contractor services without first making reasonable inquiry to ensure that the person has a valid license.

Among changes to the law regulating the operation of labor camp housing, the Department of Housing and Community Development or the local enforcement agency which has assumed jurisdiction, may now assess civil penalties for violations continuing for at least 30 days after the issuance of a correction order. Persons who cease to operate labor camps which are subject to the permit requirements of the law must now submit a certificate of nonoperation for 2 years following the discontinuation of the use of the camp.

Owners or operators of labor camps found in contempt of a court order or injunction, or convicted of violating the law or standards relating to labor camps for a second or subsequent time within 5 years, may be ordered by the court to be placed in house confinement in the labor camp.

**Garment industry.** The examination requirement under the garment manufacturer registration law will now be applicable to renewals as well as to first-time registrations. In addition to demonstrating an awareness of pertinent safety laws and administrative regulations, employers must now ensure that employees are also aware of these laws and that they are instructed in the implementation of the required injury prevention program, emergency action and fire prevention plans. Local fire agencies and the Division of Occupational Safety and Health are to notify each other of fire or safety violations they observe in garment manufacturing operations, and are to notify the Division of Labor Standards Enforcement of unregistered garment manufacturers.

**Background clearance.** The Department of Justice is to establish a trustline registry under which background checks of child care providers are made, and those providers with no reported criminal conviction or substantiated child abuse information are registered as trustline child-care providers.

**Labor relations.** A resolution was adopted asking Congress to amend the National Labor Relations Act and the Railway Labor Act to prevent discrimination based on participation in labor disputes by limiting the hiring of permanent replacement workers during labor-management disputes and prohibiting employers from offering preferential benefits to those workers.

**Occupational safety and health.** Potential civil penalties for violations under the State law were

increased in conformance with Federal law.

The Department of Health Services is to establish and maintain an occupational lead poisoning prevention program including developing a system for monitoring reports of cases of adult lead toxicity to create an occupational lead poisoning registry; following up to ascertain the source of lead exposure; conducting training of employers, employees, and health professionals; and making recommendations regarding prevention of lead poisoning.

The injury prevention program required of all employers must now cover all the employer's employees and all other workers that the employer directly supervises on the job to the extent those workers are exposed to worksite and job assignment hazards.

The Division of Occupational Safety and Health is to compile existing studies and other information concerning the effects of continuous exposure to low frequency magnetic radiation emitted by video display terminals and submit a report to the legislature by July 1, 1992.

**Other laws.** Under a new Employee Literacy Education Assistance Act, every private employer of 25 or more employees is to reasonably accommodate and assist any employee who reveals a problem of illiteracy and requests employer assistance in enrolling in an adult literacy education program, provided that reasonable accommodation does not impose an undue hardship on the employer. Employers are not required to provide time off with pay for such purposes. An employee who reveals a problem of illiteracy and who satisfactorily performs his or her work may not be terminated because of the disclosure.

## Colorado

**Equal employment opportunity.** The Director of the Civil Rights Division was authorized to issue subpoenas and compel the testimony of witnesses and the production of relevant books, papers, and records in cases relating to unfair employment practices.

**Background clearance.** The State and county departments of social services are now to be given access to child abuse or neglect records and reports for specific purposes including screening employees, job applicants, or volunteers where responsibilities include direct contact with children.

**Employment and training.** A Youth Service Corps was created to provide meaningful public service work and educational experience for State residents between 16 and 25 years of age, with preference given to those from areas of high unemployment. Efforts are to be made to enroll youths who are economically, socially, physically, or educationally disadvantaged. The assignment of corps members may not result in the displacement of currently employed workers, including partial displacement such as reduction in nonovertime hours, wages, or other employment benefits.

## Connecticut

**Wages.** As the result of a provision in the State minimum wage law automatically increas-

ing the State rate to one-half of one percent above the Federal Fair Labor Standards Act rate if the Federal minimum equals or becomes higher than the State minimum, the State rate rose from \$4.25 to \$4.27 per hour on April 1, 1991.

The dollar threshold amount for coverage under the prevailing wage law was increased from \$200,000 to \$400,000 for new construction and from \$50,000 to \$100,000 for remodeling. Also, the penalty for willfully employing a mechanic, laborer, or worker at less than the prevailing wage or failing to make required pension contributions was increased from a fine of up to \$100 for each offense to a fine of from \$2,500 to \$5,000 for each offense.

The law designed to eliminate wage inequities in the State service, including sex-based inequities, was amended to provide that collective bargaining negotiations concerning wage changes as a result of objective job evaluations are to begin no later than July 1, 1992. Negotiations are to be conducted between the State employer and a coalition committee representing all employees who are members of any designated employee organization. The results of any such negotiations are to be implemented by July 1, 1993, and, upon implementation, all wage inequities will be deemed to have been eliminated.

**Equal employment opportunity.** A new law was adopted prohibiting discrimination on the basis of sexual orientation in employment, public accommodations, housing, and credit transactions. Under the law, it will be a discriminatory practice, except in the case of a bona fide occupational qualification or need, for an employer to refuse to hire or to discharge any individual or to discriminate in compensation or in terms or conditions of employment because of sexual orientation; for an employment agency to fail or refuse to classify properly or refer for employment or otherwise discriminate against any individual; for a labor organization to exclude from full membership rights or to expel from membership or to otherwise discriminate against an individual; or for any person, employer, employment agency, or labor organization to advertise employment opportunities in such a manner as to restrict such employment so as to discriminate against individuals because of their sexual orientation. Following a complaint and hearing, the Commission on Human Rights may order the hiring or reinstatement of employees, with or without back pay, or restoration to membership in any respondent labor organization.

By July 1, 1992, the commissioner of each State agency and each professional examining board which tests individuals is to develop and implement a procedure to adapt the administration of the tests to the needs of persons with disabilities. The adaptation is not to interfere with the validity of the test or with the assessment of bona fide occupational qualifications.

It was made unlawful for an employer to require, as a condition of employment, that an employee or prospective employee not use tobacco products outside of employment, or to discriminate against an employee with respect to wages or other terms and conditions of employment because of such use. The provisions

will not affect municipal hiring practices or collective bargaining agreements involving paid firefighters and police officers, or any non-profit organization or corporation whose primary purpose is to discourage use of tobacco products by the general public.

**Drug, alcohol testing.** A law was adopted authorizing drug testing of intrastate commercial motor vehicle drivers operating vehicles that either have a gross weight of over 26,000 pounds, are designed to transport more than 15 passengers, or are used in the transportation of certain hazardous materials. Prospective drivers may be required to submit to a urinalysis drug test if notified in advance by the employer, and current drivers may be tested in conjunction with a medical examination, after an accident, upon reasonable cause, or on a random basis, if authorized under Federal law.

**Labor relations.** Arbitrators ruling on collective bargaining disputes, under the law establishing binding arbitration procedures for teachers, must now consider other demands on the financial capability of the town or towns in the school district and the terms of recent collective bargaining contract settlements or awards for both other municipal employee organizations and the private sector in arriving at decisions.

**Occupational safety and health.** An employer may not discharge, discipline, or otherwise penalize any employee because the employee either informs another employee that he or she is working in, or exposed to a hazardous condition or refuses in good faith to be exposed to such a condition, provided that there is reasonable evidence of a hazardous condition; there is insufficient time, due to the urgency of the situation, to eliminate or abate the condition through use of regular statutory enforcement procedures; the employer is notified of the condition and asked to correct or abate it; and the employer is unable or refuses to take corrective action. No employee shall be discharged, disciplined, or otherwise penalized while a hazardous condition continues to exist or is in the process of being corrected or abated.

Membership in the State Emergency Response Commission was expanded from 15 to 18 members with the addition of the labor commissioner and two fire chiefs, one from a municipal fire department and one from a volunteer fire department.

## Delaware

**Wages.** As the result of a prior provision automatically increasing the State minimum wage rate to match any Federal increase, the State hourly rate rose from \$3.80 to \$4.25 on April 1, 1991.

**Child labor.** Among several changes in the child labor law, prohibited hazardous occupations under the Fair Labor Standards Act were adopted by reference, including limited application of the agricultural hazardous occupations; work involving meat slicers, deep fat fryers, steamers, and pressure cookers used in the preparation of food was prohibited for minors under 16. Nightwork hours for those under

16 were conformed to the Federal standard; limits of 4 hours a day and 18 hours a week when school is in session were established for minors under 16, and maximum weekly hours permitted when school is not in session were reduced from 48 hours to 40 hours; and hours limits were adopted for 16- and 17-year-olds. The State Secretary of Labor was given specific authority to enter and inspect places of employment during business hours and examine records and question employees.

**Labor relations.** A resolution was adopted supporting proposed amendments to the National Labor Relations Act to make it unlawful to offer permanent employment, or employment preference, to an individual who would work during a strike.

#### District of Columbia

**Wages.** The minimum wage in laundry and dry cleaning occupations was increased from \$3.70 to \$5.45 per hour on February 10, 1991, by issuance of a revised wage order. A minimum rate of \$4.95 may be paid provided the employer furnishes health benefits. If less than 50 cents an hour in health benefits are furnished, the \$4.95 minimum must be increased in the amount by which the benefits are less than fifty cents an hour. Other changes include an increase from \$3.50 to \$4.25 per hour in the minimum rate to be paid to learners with less than 60 calendar days experience in laundry and dry cleaning occupations, and the tip credit allowance against the minimum wage for bootblacks was increased from 35 to 50 cents an hour.

Another revised wage order increased the minimum wage for clerical and semitechnical occupations from \$3.90 to \$7.25 per hour on December 1, 1991, with a rate of \$6.75 permitted if the employer furnishes health benefits of no less than 50 cents an hour. On December 3, 1991, the City Council approved emergency legislation to overrule the Wage Board action and to replace the increase to \$7.25 with an increase to \$5.25 an hour for employees in these occupations.

#### Florida

**Family issues.** Coverage of the maternity leave law, applicable to employees of the State, was expanded to entitle State employees to a period of up to 6 months of unpaid parental leave for either parent for the birth or adoption of a child, or to care for a seriously ill child, parent, or spouse. Employees returning from such leave must be reinstated in the same job or an equivalent position with equivalent pay, seniority, benefits, and service credits accumulated prior to the leave. Employees may use, and be paid for annual leave and sick leave credits for parental or family medical leave.

**Child labor.** Extensive changes were made in the child labor law including raising the general minimum age for employment from 12 to 14 and raising the minimum age for selling newspapers from 9 to 10; prohibiting, as a hazardous occupation, door-to-door sales for minors under 16, except for sales of merchandise of nonprofit organizations; prohibiting hazardous occupations for minors up to age 18, in-

cluding 15 of the 17 Federal hazardous occupations (hazardous occupation prohibitions previously applied only up to age 16); and authorizing administratively assessed civil money penalties of up to \$2,500 per offense for violation of the law. Nightwork by minors under age 16 is now restricted during holidays and summer vacations, prohibiting work before 7 a.m. and after 9 p.m., and when school is in session, hours of work for these minors is now limited to 15 a week. Nightwork hours before schooldays were reduced both for minors under age 16 and for 16- and 17-year-olds, and hours of work restrictions and meal period requirements were made applicable to agricultural employment.

**Employee leasing.** Under a new law, employee leasing firms must obtain a license from the Department of Professional Regulation. Such firms are specifically responsible for the payment of wages to leased employees without regard to payments by the client to the leasing company. The leasing firms are also explicitly responsible for payment of unemployment taxes, for the provision of workers' compensation benefits, and for the payment of payroll taxes and collection of taxes from payroll on leased employees. The employment relationship with workers provided by the leasing company must be established by written agreement between the leasing firm and the client company, and written notice of that relationship given to each worker. Leasing firms convicted of fraud, deceit or misconduct with regard to self-insurance for health benefits or workers' compensation purposes will be subject to disciplinary action, including license revocation or suspension and the imposition of administrative fines.

#### Georgia

**Wages.** A resolution was adopted strongly recommending that the various State government departments and agencies pay overtime to their employees under the rules and regulations of the Federal Fair Labor Standards Act.

**Occupational safety and health.** The Commissioner of Labor is now authorized to order the temporary cessation of operation of a boiler or pressure vessel after an inspection determines it to be hazardous or unsafe.

Among amendments to the Public Employee Hazardous Chemical Protection and Right to Know Act was the abolishing of the Georgia Hazardous Chemical List and the substituting of definitions of physical and health hazards, including health hazards as defined in Federal standards.

#### Guam

**Wages.** As the result of prior legislation providing that the minimum wage rate will automatically match any higher Federal rate, the Guam rate rose from \$3.80 per hour to \$4.25 on April 1, 1991.

#### Hawaii

**Wages.** The minimum wage will increase from \$3.85 to \$4.75 per hour on April 1, 1992, with

a further increase to \$5.25 scheduled for January 1, 1993. Also, a change was made increasing the minimum guaranteed monthly salary that exempts an employee from coverage under the law from \$1,000 to \$1,250.

The enforcement section of the prevailing wage law now permits government contracting agencies to pay, from withheld contractor payments, any wages or overtime compensation found due, to the Director of Labor and Industrial Relations as well as directly to laborers and mechanics as before. Payments are to include any penalty assessed a contractor or subcontractor. First violations will now be subject to a civil penalty, assessed by the director, of up to \$1,000 for each offense rather than a warning as before, and the penalty assessed by the Appeals Board for a second violation was increased.

**Family issues.** A new law, effective January 1, 1992, in the public sector and January 1, 1994, in the private sector, requires employers of 100 employees or more to grant up to 4 weeks of paid or unpaid family leave in a 12-month period upon the birth or adoption of a child, or to care for the employee's child, spouse, or parent with a serious health condition. Upon return, employees are entitled to reinstatement in the same or an equivalent position unless a work force reduction occurs during the employee's absence and the employee would have been laid off if not on leave. Discharge or discrimination against a person opposing any practices forbidden by the law, or filing a complaint, testifying, or assisting in a proceeding is prohibited. The Director of Labor and Industrial Relations is to enforce the law and assist employers in the training and placement of temporary help to perform the work of those employees on family leave.

**Equal employment opportunity.** The civil rights law was amended to include a prohibition against employment discrimination on the basis of sexual orientation. It was also made an unlawful discriminatory practice for an employer or labor organization to refuse to enter into an apprenticeship agreement because of race, sex, sexual orientation, age, religion, color, ancestry, handicapped status, marital status, or arrest and court record. No apprentice is to be under 16 years old.

**Occupational safety and health.** As part of a comprehensive new law relating to asbestos, the director of the Department of Health was authorized to establish a model accreditation program for those involved in asbestos abatement activity and to require certain specified recordkeeping and monitoring. The director may also conduct and supervise Statewide educational and training programs on asbestos pollution prevention, control, and abatement.

**Other laws.** A resolution was adopted asking the governor to establish a task force of representatives from executive agencies to examine the feasibility of creating a central panel of hearings officers independent of the respective State agencies who are involved in disputes.

Another resolution asks the Legislative Reference Bureau, in conjunction with the Department of Labor and Industrial Relations, the

Department of Personnel Services, and the mayors of each county, to conduct a study to identify any existing or potential barriers that may prohibit employees from working at home, and to recommend policies to address such barriers that may discourage public or private employers from offering employees the opportunity to participate in telecommuting programs.

## Idaho

**Wages.** By prior law, the State minimum wage law was increased from \$3.80 to \$4.25 per hour on April 1, 1991.

**Equal employment opportunity.** Coverage under the Human Rights law, which establishes prohibited discriminatory employment practices, was expanded to apply to those who hire five or more employees who work at least a portion of their time in the State. Previously, the law applied to employers having 10 or more employees. Domestic workers hired to work in and about a person's household are now exempt from the law.

## Illinois

**Wages.** As the result of prior legislation providing that the State minimum wage not be less than the Federal rate, the State rate rose from \$3.80 to \$4.25 per hour on April 1, 1991.

**Child labor.** Maximum civil money penalties for employers who violate the child labor laws were increased from \$1,000 to \$5,000 for each violation, with penalties recovered to be paid into a Child Labor Enforcement Fund and used for enforcement of the law. Another change in the law will permit minors under age 16 to work up to 8 hours both Saturday and Sunday, provided they do not work outside school more than 6 consecutive days in 1 week and the number of work hours in a week does not exceed 24. The State labor department is to conduct ongoing outreach and education efforts concerning the child labor law for the benefit of school districts, employers, and other appropriate community groups.

**Equal employment opportunity.** The Human Rights Act, generally applicable to all public sector employers and to private sector employers with 15 employees or more, will now apply to all employers without regard to the number of employees where a complainant alleges sexual harassment.

The Human Rights Act was also amended to add employment discrimination on the basis of citizenship status to the list of prohibited forms of discrimination.

The Department of Labor is to monitor the employment progress of women and minorities in the work force; including access to the public and private sectors, labor unions and collective bargaining units, and to provide the General Assembly with an annual report.

**Drug, alcohol testing.** A Drug-Free Workplace Act was adopted in late 1990, applicable to employers of 25 or more who are awarded a contract or grant by the State for the procurement of property or services. Employers must

notify their employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace and subject to specified penalties, and must establish a drug-free awareness program for employees. Violations may result in suspension or termination of the contracts or grants, and debarment.

**Labor relations.** Among amendments to the Public Labor Relations Act, it was made an unfair labor practice for an employer or a labor organization to refuse to reduce a collective bargaining agreement to writing or to refuse to sign such an agreement.

**Private employment agencies.** The Job Referral and Job Listing Services Consumer Protection Act was amended to add to the list of requirements a provision that such services meet in person with potential jobseekers and enter into a written contract before receiving payment for a job list. Job lists are to include the name and address of the employer making the authorization, job title and qualifications, salary offered if known, duration and location of the job, and certification that the position has not been filled. Newspaper advertising is to include the legal name and address from which business is actually conducted, and may not include 900 telephone numbers.

**Occupational safety and health.** The Department of Labor rather than the Industrial Commission is now to administer and enforce the Health and Safety Act. Also, hearings on appeals of citation orders, notice of penalty, or abatement period under the Safety Inspection and Education Act will now be held before the Director of Labor rather than the Industrial Commission.

**Plant closings.** A private entity which is receiving State or local economic development incentives for doing, or continuing to do business in the State and which is required to provide advance notice of closings and mass layoffs under Federal law is now required to provide, at the same time, a copy of the Federal notice to the governor and other specified State and local officials. Failure to do so may result in termination of the incentives and acceleration of the due date of all or part of any indebtedness to the State or local government.

**Employment and training.** A Workplace Literacy Act was approved under which the Prairie State 2000 Authority was authorized to make grants to eligible agencies that conduct workplace literacy and basic skills education programs for employees of public or private employers or for members of unions whose present levels of literacy skills constitute a barrier to continued employment or to promotion.

A Farm Family Assistance Program was established to, among other things, assist eligible farmers, farm families, and farmworkers who are dislocated from their farms due to farm closings or layoffs caused by business slowdown or failure. Under the program, the Department of Commerce and Community Affairs will coordinate or provide reemployment services such as outreach, counseling, vocational assessment, classroom training, on-the-job training, job search assistance, placement, support-

ive services, and follow-up so that the farmers may remain in farming or find other employment if farming is no longer an option.

The school board that is the governing body of any secondary school that provides special education services and facilities for handicapped children must include, as part of preparing the transition planning for disabled children age 16 and older, consideration of a supported employment component with experiences in integrated community settings for eligible handicapped children.

**Jury duty.** In addition to other penalties provided for in the law requiring that employers grant employees called for jury duty time off for such service without threat of discharge or other retaliatory action. An employer in violation may now also be charged with contempt of court if given reasonable advance notice of such required service by the employee.

## Indiana

**Equal employment opportunity.** It was made unlawful for an employer, other than a church related employer, to require, as a condition of employment, that an employee or prospective employee not use tobacco products outside of employment, or to discriminate against an employee with respect to wages or other terms and conditions of employment because of such use.

**Worker privacy.** Law enforcement agencies were authorized to release criminal history information to officials of State and local government for the purpose of employment and licensing, and to Federally chartered or insured banking institutions and certain segments of the securities industry.

## Iowa

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

**Child labor.** Those minors under age 16 employed in cities with a population of fewer than 10,000 inhabitants and in areas outside the corporate limits of any city are no longer exempt from street trades work permit requirements.

**School attendance.** Among several amendments to the school attendance law, attendance will now be required for youth ages 6 to 16, rather than 7 to 16. Exceptions were eliminated for employed youth over age 14 and for those with an eighth grade education or its equivalent. An exception was added for those who have graduated from high school or obtained a high school equivalency diploma.

**Occupational safety and health.** Potential civil penalties for violations under the State law were increased in conformance with Federal law.

As part of a new toxics pollution prevention program, establishments which are specified toxics users will be encouraged to develop facilitywide pollution prevention plans. These plans are to contain, among their provisions, an economic analysis of the plan including an

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evaluation of the impact on the user's existing and projected labor force, and a method for employees and their representatives, if any, to provide input and to be involved in the development of the plans.

**Other laws.** The labor commissioner, with the assistance of the attorney general if requested, may bring a civil action to enforce any statute under his or her jurisdiction.

### Kansas

**Equal employment opportunity.** The Commission on Civil Rights was renamed the Kansas Human Rights Commission.

**Drug, alcohol testing.** The Director of Personnel Services of the Department of Administration was authorized to establish and implement an alcohol and drug testing program for employees of mental health institutions.

### Kentucky

**Wages.** By prior law, the minimum wage was increased from \$3.80 to 4.25 per hour on July 15, 1991.

### Louisiana

**Family issues.** A resolution was adopted requesting the State Civil Service Commission to adopt a parental leave policy that would provide all State employees with up to 5 weeks of unpaid leave during a 12-month period in order to care for an ill child, spouse, or elderly parent.

**Equal employment opportunity.** An Office of Disability Affairs was established within the Office of the Governor. Among its duties, the new office is to collect facts and statistics and make special studies of conditions pertaining to the employment of the disabled, and seek to facilitate and encourage the integration of job-ready persons with disabilities into such programs as are available to their nondisabled peers.

It was made unlawful for an employer to require, as a condition of employment, that an individual not use tobacco products outside of employment, or to discriminate against an employee with respect to personnel actions, wages, or other terms and conditions of employment because of such use.

**Private employment agencies.** Except for examination, licensing, and bond requirements, the private employment agency regulatory law will no longer apply to employer-fee-paid agencies, provided such agencies place persons in salaried positions exempt from the overtime provisions of the Federal Fair Labor Standards Act.

**Economic development.** An Office of Business Development Services was created, as part of a reorganization of the Department of Economic Development. This office is to encourage and support the startup of new small businesses, and provide services to small and medium sized businesses in the State including job training assistance.

**Other laws.** A comprehensive Military Service Relief Act, applicable to both the private and public sector, was enacted pertaining to

members of the reserve components of the U.S. Armed Forces during periods of military service and active duty. Among the provisions are those dealing with voluntary continuation of pay, military leave of absence status, continuation of life and health and accident insurance, and the right to reinstatement to former employment.

### Maine

**Wages.** Under the State minimum wage law, the State rate is replaced with the Federal minimum when it is higher than the State minimum. As a result, the State rate was increased from \$3.85 to \$4.25 per hour on April 1, 1991.

Legislative changes in the minimum wage law increased the rate that may be paid to students under age 19 from not less than 75 percent to not less than 85 percent of the applicable minimum wage rate required for other employees in the same occupation, and exempted automobile parts clerks from overtime pay requirements.

The section of the wage payment law requiring prompt payment of wages to an employee upon cessation of employment was amended to allow withholding of overcompensation, and to specify, for coverage purposes, that "employee" does not include independent contractors.

**Hours.** The law limiting Sunday work was amended to provide that if an employer decreases the average weekly work hours of an employee who has declined to work on Sundays, it is prima facie evidence that the employer has unlawfully required Sunday work as a condition of employment, unless the employer and employee agreed at the time of hire that the employee would work on Sundays.

**Family issues.** The Family Medical Leave Act was amended to increase from 8 to 10 weeks the amount of unpaid leave in any 2-year period that employees of private sector employers and local governments with 25 or more employees and the State are entitled to receive. Also, the requirement for physician certification as a condition of receiving leave was amended to permit an employee who relies on treatment by prayer or spiritual means, in accordance with the tenets and practice of a recognized church or religious denomination, to submit certification from an accredited practitioner of those healing methods.

**Child labor.** Among several changes in the child labor law, restrictions were added on maximum hours and nightwork of 16- and 17-year-olds. These minors may not work more than 6 days a week, 48 hours a week, and 8 hours a day when school is not in session, and not more than 20 hours a week and 4 hours a day when school is in session. Work is prohibited after 10 p.m. before schooldays (12 a.m. before non-schooldays) and before 7 a.m. Other provisions conformed the daily and weekly hours and nightwork restrictions for those under age 16 to the Federal Fair Labor Standards Act, making permitted work hours generally more restrictive than before; increased from 15 to 17 the age under which minors may not be employed

during school hours; and conditioned issuance of work permits on, among other things, the minor being enrolled in school and passing a majority of courses. Civil money penalties of up to \$10,000 (\$50,000 for repeated intentional or knowing violations of minimum age for employment or prohibited hazardous occupations) may now be assessed for violations.

**Equal employment opportunity.** To ensure a workplace free of sexual harassment, all employers must post and annually provide each employee with written notice of information including the illegality of sexual harassment; a description of such harassment; the complaint process available to them; and directions on how to contact the State Human Rights Commission. Employers of 15 or more workers are to conduct an education and training program containing similar information for all new hires, and conduct additional training for supervisory and managerial employees that includes their specific responsibilities and the methods required to ensure immediate and appropriate corrective action in addressing complaints.

Contractors and subcontractors on all Turnpike Authority construction and reconstruction projects must be equal opportunity employers and, for contracts in excess of \$250,000, must also pursue affirmative action programs designed to remedy underrepresentation of minorities, women and the disabled.

An employer may not require, as a condition of employment, that any employee or job applicant refrain from using tobacco products outside of employment or otherwise discriminate with respect to the person's compensation, terms, conditions or privileges of employment for using tobacco products outside of employment as long as the employee complies with any workplace smoking policy.

**Worker privacy.** The law guaranteeing employees and former employees the right to review their personnel files was amended to also permit them to copy the files at their own expense.

**Employee leasing.** A new law was enacted requiring employee leasing companies to register annually with the Superintendent of Insurance. Applicants for registration must furnish information including the name, address, and principal owners of the business, the firm's taxpayer or employer identification number, and a list of the jurisdictions where the firm has operated in the preceding 5 years. Before entering into a leasing agreement, employee leasing companies must disclose to client companies the services to be rendered, including costs, and the respective rights and obligations of the parties.

**Labor relations.** Bargaining agents certified under the University of Maine System Labor Relations Act are to represent all members of the bargaining unit without regard to membership in the employee organization. Employees may present their grievances directly to the employer at any time and have the grievance adjusted without the intervention of the bargaining agent if the adjustment is consistent with the terms of a collective bargaining agreement in effect and the bargaining agent's repre-



sentative has been given the opportunity to be present at the grievance proceedings.

**Occupational safety and health.** The law regulating the use of video display terminals will now apply to employers using 2 or more terminals at one location within the State, rather than 25 or more as before. The requirement that employers provide both oral and written education and training was amended to permit employers using fewer than five terminals at one location to provide written training only.

## Maryland

**Wages.** The State minimum wage law adopts the Federal Fair Labor Standards Act rate by reference, thereby conforming to Federal changes on a continuing basis. As a result, the basic State rate rose from \$3.80 to \$4.25 per hour on April 1, 1991.

By prior law, the tip credit allowance was increased from 45 to 50 percent of the minimum wage.

**Child labor.** Work performed outside school hours as a counselor, assistant counselor, or instructor in a youth camp certified under the Maryland Youth Camp Act was added to the list of activities exempt from coverage under the child labor law.

**School attendance.** The compulsory school attendance law, which had required attendance from age 6 to age 16, was amended to require attendance at age 5 beginning July 1, 1992. However, a 5-year-old may be exempted for 1 year if the child's parent files a written request with the local school system.

**Equal employment opportunity.** Each political subdivision of the State is to grant its employees who return from military service the same reemployment rights as are provided for State employees.

**Background clearance.** The Department of Juvenile Services is to apply to the Criminal Justice Information System for a Federal and State criminal records background investigation for every employee of the department, within the first month of employment.

Certain controlled dangerous substance offenses, including manufacturing, distributing, or dispensing, were added to the list of criminal offenses that must be disclosed by a person applying for a criminal background investigation as a condition of employment involving the care or supervision of children.

**Private employment agencies.** The Employment Agency Advisory Board, within the Division of Labor and Industry, was abolished.

**Occupational safety and health.** Potential civil penalties for violations under the State law were increased in conformance with Federal law.

## Massachusetts

**Child labor.** A law approved in late 1990 regulates door-to-door commercial selling of goods or periodicals for future delivery by minors under age 18, whether as an employee or an independent contractor. The law is applicable to minors who reside away from home while so

engaged and receive their primary source of income from such activity. Employer requirements include furnishing parents with a travel itinerary, weekly payment of wages, and recordkeeping of sales, expenses and earnings. Salespersons are to provide written notice to each local police chief before commencing operations, and must register with the local jurisdiction. Knowing violators are subject to a \$500 fine or 6 months' imprisonment or both.

**Equal employment opportunity.** Any person claiming to be aggrieved by an unlawful age discrimination practice in employment may bring a civil action for damages or injunctive relief, or both, and will be entitled to a jury trial. If the court finds for the employee, recovery will be in the amount of actual damages, or between two and three times such amount if the practice of was committed with knowledge that such act or practice was unlawful.

**Economic development.** A program was established to promote economic diversification for defense-dependent firms. Diversification of such firms into revenue generating nondefense-dependent activities will be encouraged by providing technical assistance to firms and industries seeking to expand into new product areas or markets, by promoting the transfer of, and access to new and emerging process technologies, and by providing, where appropriate, work force training through the coordination of existing resources of the executive branch of State government.

## Michigan

**Equal employment opportunity.** The civil rights act was amended to provide that, until January 1, 1994, an employer may not require an employee of an institution of higher education who has unlimited tenure to retire because of age.

**Occupational safety and health.** Among changes to the occupational safety and health law, beginning on April 1, 1992, the Director of Labor and/or the Director of Public Health is to initiate the processing of an administrative rule substantially similar to any federally adopted standard within 10 days of its adoption. Potential civil penalties for violations under the State law were increased in conformance with Federal law. The Federal occupational safety and health field sanitation standard was adopted by reference, and in addition, agricultural employers of fewer than 11 employees must ensure that toilet and hand-washing facilities are available to employees.

## Minnesota

**Wages.** By prior law, effective January 1, 1991, a minimum wage rate of \$4.25 per hour was adopted for large firms (annual receipts of \$362,500 or more) and a rate of \$4 adopted for small firms (less than \$362,500 in annual receipts).

The law regulating an employee's lien against an employer's property for wages was amended to specify that wages include payments required to be made to a vacation or

health, welfare, or pension fund on behalf of the employee.

**Family issues.** The section of the parental leave law permitting employees to use personal sick leave benefits provided by the employer for absences to care for a sick child was amended to also apply to care for an injured child.

**Labor relations.** It was made an unfair labor practice for an employer to grant or offer to grant permanent status to a replacement employee for performing bargaining unit work for the employer during a strike or lockout.

**Occupational safety and health.** A research center for agricultural health and safety was created to coordinate funding for, and the findings of, research projects designed to reduce injury and death from farm accidents, reduce long-term exposure to potentially hazardous agricultural agents, and make health care services more available to persons who suffer from health problems related to agriculture.

**Employment and training.** A wage subsidy program was established, under the Commissioner of Jobs and Training, to provide eligible youth between ages 14 and 21 with opportunities for gaining a high school diploma, evaluating vocational options, receiving counseling, and participating in community-based projects and summer youth employment. The maximum subsidy is \$4 per hour for wages and \$1 per hour for fringe benefits and may be paid to an eligible participant for a maximum of 1,040 hours over a period of 26 weeks. An employer may not lay off, terminate, or reduce the working hours of an employee for the purpose of hiring participants in this program.

The State council on vocational technical education is to establish a task force to develop a Statewide plan for implementing programs for education and employment transitions, including those processes and structures that provide an awareness of employment opportunities, demonstrate the relationship between education and employment, identify employment interests, and otherwise assist in making the transition from school to work.

**Other laws.** The law requiring that employees be given time off from work, without loss of pay, to vote in general or special elections will now also apply to State and presidential primary elections.

## Mississippi

**Wages.** The requirement that employees be paid at least twice a month will no longer apply to any individual employed in a bona fide executive, administrative, or professional capacity.

**Equal employment opportunity.** It will now be unlawful for any public or private employer to require, as a condition of employment, that any employee or job applicant abstain from smoking or using tobacco products during nonworking hours, provided that the individual complies with applicable laws or policies regulating smoking in the workplace.

**Drug, alcohol testing.** A comprehensive law was adopted, establishing procedures and guidelines for drug and alcohol testing by public and



private sector employers. Under the law, employers wishing to 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 to a test or positive confirmed test result as a basis for refusal to hire. 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 specific 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 bring action for damages resulting from violation of the act. An employee or job applicant whose drug or alcohol test result is confirmed as positive will not, by virtue of the result alone, be defined as a person with a handicap.

**Whistleblower.** A State agency may not dismiss or otherwise adversely affect the compensation or employment status of any public employee because he or she testified or provided information to an investigative body. An agency found to be in violation will be liable for back pay and reinstatement and specified agency officials may be found individually liable for civil fines.

### Missouri

**Wages.** The State minimum wage law adopts the Federal minimum wage rate by reference. As a result, the State rate was increased from \$3.80 to \$4.25 per hour on April 1, 1991.

**Plant closings.** The Distressed Industry Task Force, established to help alleviate the unemployment and economic distress associated with plant closings, was eliminated.

**Employment and training.** A Training and Employment Council was established to make recommendations regarding the improvement of the State's job training service delivery network. Among its functions, the Council is to propose a Statewide training and employment policy and a periodically updated plan of services for achieving an objective of full employment, and serve as a forum for public and private sector representation to encourage cooperative uses of training and employment funding, facilities, and staff resources for a more comprehensive and coordinated Statewide system.

Subject to approval by the voters at a special election, a Missouri Council for Critical Occupations is to be created to identify those occupations that are essential for the future prosperity and growth of the State's manufacturing and service related industries and, where there is a substantial shortage of qualified personnel to fill such occupations, the council is to identify or develop programs to train unemployed and underemployed State citizens.

**Other laws.** Any officer or employee of the State or any political subdivision, who is or may become a member of the national guard or of any reserve unit of the U.S. Armed Forces

and who is called to active duty is to be entitled to a leave of absence for the duration of such service without loss of position, seniority, accumulated leave, or any other right or benefit to which he or she is entitled.

### Montana

**Wages.** The minimum wage law was amended to remove the \$4 cap that previously prevented the mandatory matching of the Federal minimum wage. Consequently, by rule, the labor commissioner increased the State rate to \$4.25 per hour. The \$4 rate was retained for businesses with annual gross sales of \$110,000 or less. Authorization for a subminimum training wage for new hires of any age, enacted in 1989, was eliminated.

Employers may no longer take a credit against the minimum wage for the cost of providing meals or a meal allowance. As before, a tip credit is also prohibited. The cost to the employer of lodging and other facilities customarily furnished by the employer remains deductible.

Prevailing wage payment requirements on public works construction projects will now apply to contracts let for projects costing more than \$25,000 and financed in whole or part by tax-exempt industrial revenue bonds.

A person who loses a competitive bid on a public works construction contract may now maintain an action for damages against a successful bidder if the successful bidder does not pay required prevailing wages, unemployment insurance contributions, or workers' compensation premiums.

The wage payment law was amended to increase the penalty for failure to pay wages from 5 percent of the unpaid wages for each day up to 20 days that failure to pay continues to a penalty of up to 100 percent of unpaid wages irrespective of the number of days of violations, and to provide that the penalty be paid to the employee, rather than to the Department of Labor and Industry as before. The penalty is now to include annual interest on the unpaid wages from the date the wages were due.

A resolution was adopted urging public school districts and city and county governments to take appropriate action to pay their employees who were called to active duty in Operation Desert Shield/Desert Storm the difference between their military pay and the pay they would have received if not called.

**Family issues.** The Department of Administration is to develop a parental leave policy for permanent State employees. The policy must permit use of sick leave and a leave of absence for up to 15 working days by employees adopting a child or who are fathers of newborns. Maternity leave provisions remain in effect.

**Equal employment opportunity.** The Human Rights Act and the Governmental Code of Fair Practices were amended to adopt the Federal definition of disability, and to provide that discrimination on the basis of disability includes the failure by an employer to make reasonable accommodations for otherwise qualified physically or mentally disabled persons.

**Drug, alcohol testing.** The law restricting the use of drug or alcohol testing as a condition of

employment or continued employment was amended to specifically authorize testing of applicants for jobs involving intrastate commercial motor carrier transportation and of employees involved in such work at their regular biennial physical examinations. Specific testing procedures that employers must adopt before administering such a test were deleted, and the testing procedures provided for in Federal regulations were adopted by reference.

**Employment and training.** A resolution was adopted urging the U.S. Secretary of Labor to allocate reserve funds available under Title III of the Job Training Partnership Act to those States, including Montana, whose Title III dislocated workers funds were decreased for fiscal year 1991.

Another resolution urged the State AFL-CIO, the Montana Job Training Partnership, Inc., the Department of Labor and Industry, and the Department of Commerce to actively seek additional Federal discretionary and other funds to assist in the employment and training needs of those State workers affected by layoffs and plant closures in the wood products industry.

**Preference.** The law giving a preference to resident bidders on public contracts for construction, repair, or public works of the greater of 3 percent, or the amount of any preference granted to residents of the State of the nonresident bidder, was amended to delete the 3 percent preference and to retain only the reciprocal bid preference.

Any State agency that operates within or contracts for a State construction project within an Indian reservation must give a preference in hiring for State jobs to qualified Indian residents of the reservation. Preference in hiring is also to be given by those awarded such State construction contracts. Such preference is not to constitute an unlawful employment practice.

### Nebraska

**Wages.** The minimum wage was increased from \$3.35 to \$4.25 per hour on July 1, 1991, and the minimum cash wage that must be paid to employees earning tips was increased from \$2.01 to \$2.13 per hour. A training wage of \$3.61 per hour was approved for new employees under age 20, for 90 days from the date of hire, with an additional 90-day period possible for employees participating in approved on-the-job training. An employer may not dismiss or reduce the hours of any employee with the intention of replacing such an employee with a new employee receiving the training wage rate.

**Employment and training.** A resolution was adopted asking that the Health and Human Services Committee of the Legislature conduct an interim study of the implementation of the Developmental Disabilities Services Act including an examination of job training opportunities for State residents with developmental disabilities.

### Nevada

**Wages.** By law, the labor commissioner is to prescribe increases in the State minimum wage in accordance with increases in the Federal rate, except when the commissioner determines that

such increases are contrary to the public interest. Accordingly, the minimum wage rate for employees 18 years or older was increased from \$3.80 to \$4.25 per hour on April 1, 1991, and for employees under age 18, from \$3.23 to \$3.61.

**Family issues.** A resolution was adopted urging employers to adopt strategies to assist their employees with child care, such as providing information and assistance in locating and choosing such care, providing flexible policies for time away from work to attend to children's needs, cafeteria plans to pay for child care, and providing other flexible or innovative practices such as increasing use of part-time employees, and job sharing, and providing child care on the premises of businesses.

**Equal employment opportunity.** The jurisdiction of the Equal Rights Commission was expanded to include the authority to hear complaints relating to discrimination against persons with mental disabilities. The Commission was also authorized to adopt regulations consistent with the provisions of the Americans With Disabilities Act pertaining to the types of examinations employers may require and any defenses available to an employer.

It is now an unlawful employment practice for an employer to fail or refuse to hire an applicant or to discharge or otherwise discriminate against an employee in compensation, terms, or conditions of employment because of the lawful use of any product outside the workplace during nonworking hours, provided that such use does not adversely affect job performance or the safety of other employees. In the event of violation, an applicant or employee may bring a civil action to obtain an order requiring reinstatement or an offer of employment, lost wages and benefits, damages, and attorney's fees.

**Drug, alcohol testing.** State employees found to be under the influence of drugs or alcohol during work hours or on State property will be subject to disciplinary action. Testing is permitted where the employer reasonably believes an employee is using alcohol or drugs which impair the ability to perform job duties safely and efficiently and the employee is informed of the basis for this belief. In addition, the employee must be informed in writing of whether the test will be for alcohol, drugs, or both; that test results are not admissible in a criminal proceeding; and that the employee may refuse the test, but that refusal may result in dismissal or other disciplinary action. Employees are permitted to obtain independent screening. Other provisions establish procedures for testing and the chain of custody of tested samples. An employee who tests positive for the first time is to be referred to an employee assistance program. Failure to accept such a referral is a basis for termination. All applicants for positions affecting the public safety must successfully pass an alcohol and drug screening test as a condition of employment.

**Labor relations.** Final offer arbitration is now provided for in collective bargaining disputes between school districts and employee organizations representing teachers and educational support personnel.

An employee organization negotiating on behalf of two or more bargaining units consisting of firefighters or police officers may now select members of the units to negotiate jointly even if one of the units consists of supervisory employees and the other unit does not.

**Occupational safety and health.** A new law regulating the handling of hazardous substances was enacted under which facilities where highly hazardous substances are produced, used, stored, or handled must register with the Division of Environmental Protection of the Department of Conservation and Natural Resources. In addition to registration, owners and operators of such facilities must provide the division with a written report on safety for the facility including the magnitude of any hazard, the likelihood of a chemical accident resulting from the hazard, the number of people whose health or safety might be affected by a chemical accident, and the qualifications, experience, and training of personnel concerned. An assessment of risks through analysis of hazards must be conducted by qualified personnel at least every 5 years.

Potential civil penalties for violations under the State law were increased in conformance with Federal law.

A resolution was adopted requiring the Director of the Department of Industrial Relations to conduct an interim study of occupational safety and health standards including a comparison of these standards in at least five other States similar to Nevada in population, industries, including mining, and size of the State general fund, and a review of standards in Nevada and other States to include comparisons of scope, penalties for violations and programs for the prevention of injuries.

**Economic development.** Each proposal for a municipal redevelopment project is to include an employment plan. The plan is to include a description of the existing opportunities for employment within the area, a projection of the effect that the project will have on employment opportunities, and a description of how an employer relocating his business into the area plans to employ residents who are economically disadvantaged, physically handicapped, minorities, veterans or women.

**Employment and training.** A resolution was adopted directing the governor to appoint an interim commission to study the issues facing the Hispanic community including the availability of employment for Hispanics in the State and the manner in which they are employed, the manner in which they can be encouraged to start and successfully manage their own businesses, and the problems inherent in a migratory work force.

**Whistleblower.** A State employee or officer may not directly or indirectly interfere with or prevent the disclosure of an improper governmental action by another State officer or employee. Any person subjected to any reprisal or retaliatory action within 2 years after such information is disclosed may file a written appeal with a Department of Personnel hearing officer and a cease and desist order may be issued. Disciplinary procedures may be taken against a person who discloses untruthful information.

A peace officer may now disclose information regarding certain improper governmental action to the county district attorney, or to the state attorney general if the county district attorney is involved in this improper action. The employer of an officer is not to take any reprisal or retaliatory action because of the good faith filing of such a report.

## New Hampshire

**Wages.** The State minimum wage rate rose to \$4.25 per hour on April 1, 1991, as the result of the adoption of any higher Federal minimum wage as the State rate.

**Equal employment opportunity.** An employer may not require, as a condition of employment, that any employee or job applicant abstain from using tobacco products outside the course of employment, provided the employee complies with any workplace smoking policy.

**Labor relations.** Violators of the law prohibiting the employment of professional strike-breakers will now be subject to a civil penalty of up to \$1,000 for each day of noncompliance, to be imposed by the labor commissioner. Previously, such infractions were misdemeanors.

**Private employment agencies.** The section of the private employment agency law requiring local licensing authorities to annually notify the Department of Employment Security of licenses issued was repealed.

## New Jersey

**Wages.** By prior law, the State minimum wage rate rose from \$3.80 to \$4.25 per hour on April 1, 1991, with a further increase to \$5.05 scheduled for April 1, 1992.

As an alternative to, or in addition to any other sanctions provided for violations, the labor commissioner is now authorized to assess and collect civil penalties up to a maximum of \$250 for a first violation and up to \$500 for each subsequent violation of the wage payment, minimum wage, prevailing wage, child labor, or industrial homework laws. When determining the amount of the penalty, the commissioner is to consider factors which include the history of previous violations by the employer, the seriousness of the violation, the good faith of the employer and the size of the employer's business. Also, the labor commissioner was authorized to supervise the payment of amounts due to employees under the wage payment, minimum wage, and prevailing wage laws and to receive payments from employers to be held in a special account until paid directly to the employee or employees affected. Employers must also pay an administrative fee that will be applied to enforcement and administrative costs of the Division of Workplace Standards in the Department of Labor. Civil penalties collected as well as licensing fees and penalties received under the farm labor contractor registration, industrial homework, boiler inspection, and other laws will also go to the division. In addition, the commissioner may now investigate and render a decision for any wage claim up to \$10,000 rather than \$2,000, as before.

Restrictions on deductions from employee wages were amended to permit payroll deductions of up to \$5 per week for registered political action committees if authorized in writing by the employee. Deductions will be limited to one such committee for each employee, and solicitation for such contributions may not be made on the job or at the workplace.

**Garment industry.** Under the law providing for regulation of the apparel industry, the labor commissioner may now, in addition to seeking civil, administrative, or criminal penalties, order confiscation of any partially or completely assembled articles of apparel and any equipment used in its assembly from any manufacturer or contractor found in violation of the law and who has previously been found liable for a civil or administrative penalty for two or more separate violations during the preceding 3-year period. The commissioner was also authorized to require a manufacturer or contractor to post a surety bond of up to \$2,500 per production employee if the firm commits a second violation of the same provision of any labor law within a 3-year period. Among other changes in the law, the special task force created to enforce the law was reestablished as the apparel industry unit; the definitions of contractor and manufacturer were amended to specifically exclude production workers who are employed for wages and who do not employ others; and each manufacturer and contractor is now required to keep accurate records on its production employees during the preceding 3 years and to make those records available to the apparel industry unit upon request.

Industrial homework in the manufacture of women's or men's wearing apparel is now prohibited. Prior prohibitions ban homework in the manufacture of articles of infant's and children's wearing apparel, among others.

**Equal employment opportunity.** On August 16, 1991, the governor issued an Executive order prohibiting State agencies from discriminating on the basis of sexual orientation in employment-related matters such as hiring, job appointment, promotion, tenure, and compensation.

Unless otherwise provided in any applicable law, rule, or workplace policy concerning smoking or the use of other tobacco products during work hours, no employer may refuse to hire, discharge or take any adverse action against any employee with respect to compensation, terms, conditions or other privileges of employment because that person does or does not use tobacco products, unless the employer has a rational basis for doing so that is reasonably related to the employee's or prospective employee's employment.

**Background clearance.** A new provision in a law dealing with the regulation of family day care homes, provides that the Division of Youth and Family Services in the State Department of Human Services is not to issue a certificate of registration or renewal to a person unless the Division has first determined that no criminal history record exists which would disqualify the applicant, assistant provider, substitute provider, or any member of the applicant's household who is 18 years of age or older, from operating a registered family day care home.

## New Mexico

**Wages.** The wage payment law was amended to permit professional, administrative, or executive employees or outside salespersons to be paid monthly rather than semimonthly as before.

The prevailing wage law was amended to specify that, in addition to contractors and subcontractors who were previously mentioned, employers or any persons acting as a contractor are required to pay the prevailing wage rate on public works projects. These persons will also be subject to provisions governing wage rate posting, withholding of accrued payments to assure payment to employees, and penalty provisions for failure to make payments.

**Equal employment opportunity.** It was made unlawful for an employer to require, as a condition of employment, that any employee or applicant not use tobacco products during nonworking hours or to refuse to hire or to discharge any individual, or to discriminate against an employee with respect to wages or other terms and conditions of employment because the individual is a smoker or nonsmoker, provided that the individual complies with applicable laws or policies regulating smoking at the workplace. Exceptions are allowed for bona fide occupational requirements and for activities that threaten an employer's legitimate conflict of interest policy designed to protect trade secrets or proprietary information or interests.

**Other laws.** Among the provisions of a new Peace Officer's Employer-Employee Relations Act, restrictions are placed on investigations and interrogations of peace officers, on the use of polygraph examinations, on material that may be entered into personnel files, and on forced disclosure of financial status. A peace officer is not to be prohibited from engaging in any off duty political activity subject to regulations adopted by his or her department.

## New York

**Wages.** As the result of prior legislation, the State minimum wage rate for nonagricultural workers was increased from \$3.80 per hour to \$4.25 on April 1, 1991. The rate for farmworkers was increased from \$3.80 to \$4.25 on January 1, 1992.

The prevailing wage laws applicable to public construction and service contracts were amended to provide that any one final determination of a willful violation involving falsification of payroll records or kickbacks will result in the ineligibility to perform such work for 5 years. Two final determinations of willful violations of failure to pay the prevailing wage or supplements will continue to result in ineligibility. Contractors and subcontractors debarred for willful violations are now also ineligible to bid on or be awarded subcontracts on public works construction. The debarment provision under the service contract law was amended to specifically include subcontractors and successor contractors. Both were previously included under the construction prevailing wage law.

**Child labor.** Among major amendments to the child labor law, for 17-year-olds, the maximum

weekly hours of work when school is in session was reduced from 48 to 28, and 16- and 17-year-olds are now prohibited from working after 10 p.m. on nights preceding school days without written permission from both the parent and the school (on Friday and Saturday nights, only written parental consent is necessary). For minors ages 14 and 15, the maximum work hours while school is in session were conformed to those under Federal law, as were the nightwork hours during summer vacation; the labor commissioner was authorized to adopt rules prohibiting or regulating the employment of minors in agricultural work found to be hazardous; the chancellor or superintendent of schools may now revoke the employment certificate of a student who has failed four academic courses in one semester, taking into account the student's overall record; and maximum civil penalties for violations were increased from \$500 per violation to \$1,000 for the first violation, \$2,000 for a second violation, and \$3,000 for a third or subsequent violation.

Minors ages 12 to 16 may now work at a farm stand or farmer's market stand owned or leased by the minor's parents or other specified relatives, before or after school hours with written parental consent.

**Labor relations.** The Department of Labor's State Labor Relations and Mediation Boards were consolidated into a new State Employment Relations Board. All functions, powers, and duties of the abolished boards were transferred to the new board.

## North Carolina

**Wages.** The minimum wage was increased from \$3.35 to \$3.80 per hour on January 1, 1992, with a further increase to \$4.25 scheduled for January 1, 1993. A training wage of \$3.35 per hour is authorized for employees under age 20 for the first 90 days of employment, and for a second 90-day training period with another employer—both such periods must be under conditions similar to those under the Federal Fair Labor Standards Act. The training wage will increase to 85 percent of the minimum wage on January 1, 1993, and will expire before April 1, 1993. Compliance with the training wage requirements of the Federal law is deemed to be compliance with the State law.

Premium overtime pay under the wage and hour act is now payable after 40 hours a week instead of 45, except that the 45-hour provision was retained for employees of seasonal amusement or recreational establishments.

In ordering the payment of back wages under the minimum wage, overtime, or wage payment requirements, the courts are now directed to award an equal amount in liquidated damages unless the employer can show that the violation was made in good faith and that the employer believed the act or omission was not a violation. Previously, exemplary damages could be awarded at the discretion of the court.

Authority of the courts to restrain violations of the Wage and Hour Act upon application of the Commissioner of Labor now specifically includes the restraint of any withholding of payment of unpaid wages, minimum

wages, or overtime compensation found due. The provision requiring the certification by employees of the amount of tips they receive in order for employers to take credit for up to 50 percent of the minimum wage was amended to enable employers to take such credit, even if the employees refuse to certify tips accurately, if the employers can demonstrate by monitoring tips that the employees regularly receive the amount for which credit is taken.

**Child labor.** Maximum hours and nightwork restrictions for minors ages 14 and 15 were conformed to the limits under the Federal Fair Labor Standards Act.

**Drug, alcohol testing.** Employers who request or require employees or job applicants to submit to testing for controlled substances must now follow specified procedures relating to the collection, retention and chain of custody of samples, and the use of approved laboratories. Enforcement of the law is vested with the Commissioner of Labor who is authorized to assess civil penalties of up to \$250 per person or \$1,000 per investigation for violations.

**Background clearance.** The Department of Justice is now authorized to provide a criminal record check for public and private school employees or job applicants with the consent of the employee or applicant.

**Occupational safety and health.** Potential civil penalties for violations of the State law were increased in conformance with Federal law.

**Other laws.** As part of a new law relating to political activities by county and city employees, it is prohibited to require, as a duty or condition of employment, promotion, or tenure of office, that such an employee contribute funds for political or partisan purposes.

## North Dakota

**Wages.** Under a new consolidated minimum wage and work conditions order, including agricultural employment coverage, the minimum wage was increased from \$3.40 to \$4.25 per hour on August 1, 1991. A tip credit provision was adopted for the first time, permitting employers an allowance of up to 33 percent of the minimum wage. A training wage of \$3.61 was established for employees under age 18 for a total of 240 hours or 60 days, whichever comes first.

**Equal employment opportunity.** The law against discrimination was amended to expand coverage to employers of one or more instead of ten or more full-time employees, and to extend the age discrimination provisions by eliminating the age 70 upper limit for protection. The Department of Labor is now authorized to determine the validity of complaints of employment discrimination and to prohibit employers from engaging in discriminatory practices and order appropriate relief including an injunction, equitable relief, or backpay. Decisions of the Commissioner of Labor may be appealed to the courts. Previously, the Department's authority was limited to receiving and negotiating settlements of such claims.

It is now a prohibited discriminatory employment practice for an employer to discriminate against an employee because of participation in lawful activity off the employer's premises during nonworking hours.

**Worker privacy.** State employees or their designated representatives now have the right to examine their official personnel files. Such employees must have the opportunity to read any documents that address their character or performance before the document is placed in the file, and have the right to answer any material in the file.

**Labor relations.** The law regulating collective bargaining for teachers was amended to delete the provisions for factfinding in impasse situations, and to abolish the Education Factfinding Commission. Impasses involving salaries and other monetary fringe benefits not resolved by mediation will now be submitted to a final offer resolution panel.

**Occupational safety and health.** In conformance with the State's responsibilities under the Federal Emergency Planning and Community Right-to-Know Act, the Division of Emergency Management, in conjunction with the State Emergency Response Commission, local emergency planning committees, and local emergency management organizations, is to coordinate the development and maintenance of a State hazardous chemicals preparedness and response program.

**Economic development.** A Division of Marketing and Technical Assistance was established in the newly created Department of Economic Development and Finance. Among its duties, the division is responsible for attracting new business and industry from outside the State, in a manner that creates quality jobs, attracts new capital investment, and expands and diversifies the State's economic tax base.

**Employment and training.** A Work Force 2000 Program was established to provide training to unemployed and employed residents for new and expanding businesses, to assist companies that are undergoing major technological changes and where training is deemed critical to the company, and in occupations that lack trained personnel.

**Other laws.** Bonds from public works construction contractors to ensure payment of all bills and claims for labor and materials will now be required only under contracts for more than \$25,000.

## Ohio

**Wages.** By prior law, the State basic minimum wage rate for employers with gross annual sales of more than \$500,000 was increased from \$3.80 to \$4.25 per hour on April 1, 1991. The rate for employers with less than \$150,000 gross annual sales was increased from \$2.50 to \$2.80 per hour. The rate remained at \$3.35 for employers with gross annual sales of \$150,000 to \$500,000. The tip credit permitted for employers with more than \$500,000 gross annual sales was increased from 45 to 50 percent on

April 1, 1991 (tipped employees of other employers are to receive a minimum cash wage of \$2.01 per hour).

A new law establishes the utilization of residential prevailing wage rates payable on certain construction, rehabilitation, remodeling, or improvement of residential housing projects let by any person, municipal corporation, county, or township receiving financing in whole or part from State funds. Rates will be determined by negotiation between an association representing residential construction contractors and subcontractors and the applicable building and construction trades council in the locality or, if they are unable to agree, by the Director of Industrial Relations. Rates established are to be less than those determined by the Director for occupations covered under the State public works prevailing wage law.

**Child labor.** The nightwork restrictions on the employment of minors 16 and 17 years of age were amended to apply only to those required to attend school, to eliminate the 1 a.m. limitation on work preceding a nonschoolday, and to allow work after 6 a.m. instead of 7 a.m. on a schoolday if work was not performed after 8 p.m. the previous night. The latest that minors may work in door-to-door sales was changed from one half hour before sunset to 7 p.m. for those under 16 and to 8 p.m. for those 16 and 17. Variances from the maximum hours and nightwork restrictions may be granted by the juvenile court or superintendent of the school district upon petition of a minor and a finding that the restricted hours will cause a substantial hardship or are not in the minor's best interests.

**Equal employment opportunity.** The Commission on Socially Disadvantaged Black Males was created. The new commission is to oversee and supervise four separate and distinct subcommittees devoted exclusively to solving problems and advancing recommendations exclusively pertinent to black males, including the area of unemployment.

## Oklahoma

**Wages.** The State minimum wage law adopts the Federal Fair Labor Standards Act rate by reference, thereby conforming to Federal changes on a continuing basis. As a result, the basic State rate rose from \$3.80 to \$4.25 per hour on April 1, 1991.

The Commissioner of Labor was authorized to enter into reciprocal agreements with the labor department or corresponding agency in other States for the collection of wage claims and judgments. The Commissioner was also authorized to bring court action upon the written request of such agency of another State provided the other State by legislation or reciprocal agreement will bring such action in cases arising in the State. The detailed powers and duties of the Commissioner were replaced by more general language.

**Child labor.** Among several changes in the child labor law, provisions concerning prohibited and permitted occupations, maximum hours of work, and nightwork restrictions for minors under age 16 in nonagricultural employment

were conformed to the provisions of the Federal Fair Labor Standards Act. A physician's certificate is no longer acceptable as an alternative proof of age. The provision requiring that minors under 16 be permitted 1 hour each day for meal and rest time was amended to require a 1-hour cumulative rest period for each 8 consecutive hours worked, with a limit of 5 consecutive work hours without a 1/2 hour cumulative rest period.

**Equal employment opportunity.** Employers are now prohibited from discharging or otherwise discriminating in employment because an individual is a smoker or nonsmoker, or requiring as a condition of employment that an employee or job applicant abstain from smoking or using tobacco during nonworking hours.

**Occupational safety and health.** An Emergency Response and Notification Act was approved under which the existing Emergency Response Commission was renamed as the Hazardous Materials Emergency Response Commission. Among its responsibilities, the commission is to ensure the State's compliance with Title III of the Federal Superfund Amendments and Reauthorization Act of 1986.

## Oregon

**Wages.** By prior law, the State minimum wage rate was increased from \$4.25 to \$4.75 per hour on January 1, 1991.

The law establishing requirements for payment of final wages when employment terminates was amended to provide that if an employee quits without giving at least 48 hours' notice, the wages may now be paid within 5 days or at the next regular payday, whichever comes first, rather than within 48 hours. For employees who are discharged or quit after giving at least 48 hours' notice, payment remains due and payable immediately. Seasonal farmworkers who quit without giving the required notice must continue to be paid their final wages within 48 hours.

**Family issues.** A requirement that employers of 50 or more employees provide unpaid family medical leave to employees working an average of 25 or more hours per week was added to the fair employment practices law. Under the new provision, it will be an unlawful employment practice for an employer to refuse to grant up to 12 weeks of such leave within a 2-year period upon written request for an employee to care for a child, spouse, parent, or parent-in-law with a serious health condition. Upon termination of the leave, the employee must be reinstated to the same or an equivalent job without loss of seniority, service credits or other benefits. The law is administered by the Bureau of Labor and Industries. A law providing for unpaid parental leave for private and public sector employees was enacted in 1987.

**Agriculture.** The farm labor contractor registration law was amended to specifically exempt farmers who operate a regulated farmworker camp; who recruit, supply, solicit, or employ workers for those farmers' own operations; and have workers living in the camp who are employed elsewhere on no more than an incident

tal basis, and who receive no remuneration by virtue of such incidental employment.

Beginning July 1, 1993, all funds received by the Bureau of Labor and Industries under the farm labor contractor registration law will be credited to the Bureau for use in administration of the law, instead of being placed in the State General Fund.

**Occupational safety and health.** Potential civil penalties for violations under the State law were increased in conformance with Federal law.

**Employment and training.** The Oregon Workforce Quality Act was approved, establishing the Workforce Quality Council. Among its duties, the council is to oversee implementation of various work force development strategies including: adult worker training investment; business, labor, and education partnerships; centralized delivery of employment and training services; and development of goals and a comprehensive strategy to improve the quality of the State's work force consistent with the Oregon Progress Board's Benchmarks for Exceptional People. The council is also empowered to set policy for allocating Federal Job Training Partnership Act funds for education, training, and placement programs and to deliver such services statewide.

Among several new work force development programs, the Economic Development Department in conjunction with the Office of Community College Services is to provide targeted training and key industry training for the needed expansion and higher productivity of businesses in the State, and to assist businesses, trade, and professional organizations to organize and implement partnership activities with schools and colleges in work force improvement.

A Rural Revitalization and Leadership Development Act was approved under which the Economic Development Department is to coordinate programs in rural areas including work force and job training programs.

A Dislocated Worker Fund was established to provide assistance, including training services, to unemployed timber workers when Federal funding is reduced, is inadequate, or is otherwise not available.

**Apprenticeship.** A new law encourages State agencies employing five or more persons in the same apprenticeable occupation for the improvement or maintenance of a public facility to register as a training agent with the appropriate apprenticeship committees and to employ at least one apprentice in that occupation.

The State Apprenticeship and Training Council and the Division of Vocational Education of the Department of Education are to establish a youth apprenticeship pilot program to provide occupational skill training for up to 100 high school students in each biennium. The training is designed to assist in making the transition to apprenticeship programs. The student youth apprentices must be age 16 or older, must be enrolled in a vocational technical program, and are to be paid at 80 percent of the established apprenticeship wage, but not less than the State minimum wage. A youth apprentice may not displace a regular employee.

**Whistleblower.** Employers are now prohibited from discharging, demoting, suspending, dis-

criminating, or retaliating against an employee with regard to employment, because the employee in good faith has reported criminal activity by any person, filed a complaint against any person, cooperated with any law enforcement agency conducting a criminal investigation, brought a civil proceeding against the employer or testified at a civil proceeding or criminal trial. The Bureau of Labor and Industries is empowered to enforce these prohibitions in the same manner as it enforces the State employment discrimination law. Violations are subject to the same civil and criminal remedies and penalties as under that law.

**Other laws.** It is now an unlawful employment practice for an employer to refuse to grant up to 40 hours of already accumulated paid leave of absence to an employee for the purpose of undergoing a medical procedure to donate bone marrow. Employers may not retaliate against an employee for requesting or using leave for this purpose.

## Pennsylvania

**Wages.** As the result of prior legislation providing that the State minimum wage rate match any Federal increase, the State rate rose from \$3.80 per hour to \$4.25 on April 1, 1991.

**Occupational safety and health.** In December 1990, the Hazardous Material Emergency Planning and Response Act was approved. Under this law, the Emergency Management Council was designated as the emergency response commission to carry out the Commonwealth's obligations under the Federal Emergency Planning and Community Right-to-Know Act, to develop overall policy and direction for a statewide hazardous material safety program and to supervise and coordinate the responsibilities of the local emergency planning committees.

Under a late 1990 law, known as the Asbestos Occupations Accreditation and Certification Act, persons engaged in various asbestos abatement occupations must be certified by the labor department. The department is to establish standards and procedures for certification which are at least as stringent as those established by the Federal Environmental Protection Agency, and are to include at least the successful completion of an approved training program and passing a written examination.

**Other laws.** Under a late 1990 law, all prime contractors on public works projects exceeding \$5,000 must furnish a payment bond equal to 100 percent of the contract amount to assure prompt payment for material furnished and labor supplied in connection with the project.

## Puerto Rico

**Wages.** Five mandatory decrees relating to minimum wages and related standards were revised. Minimum wage rates increased in the retail trade industry effective August 3, 1991, from a range of \$2.70 to \$3.35 per hour to a range of \$3 to \$4.25 per hour; in the commercial services industry from a range of \$3.20 to \$3.35 per hour to a range of \$3.40 to \$3.80 per hour effective December 27, 1990 and a range

of \$3.50 to \$3.80 per hour effective December 27, 1991; in the laundry and dry cleaning industry, from \$3.35 to \$3.55 per hour effective February 20, 1991; in the industrial phase of the dairy industry, from \$3.35 to \$4.25 per hour effective October 2, 1991; and in the watching and protective service industry from \$3.35 to \$3.65 per hour effective June 5, 1991, with an increase to \$3.80 per hour scheduled for June 5, 1992.

*Occupational safety and health.* Potential penalties for violations under the Commonwealth law were increased in conformance with Federal law.

## Rhode Island

*Wages.* Prior law provided for an increase in the State minimum wage rate from \$4.25 to \$4.45 per hour on April 1, 1991.

A Special House Commission was created to study the entire field of overtime compensation laws, including exempted businesses, and to report its findings and recommendations to the State House of Representatives by January 15, 1992.

A bill to extend from 6 months to 3 years the period of time within which an employee must file a wage claim with the Director of the Department of Labor was vetoed by the governor. As a result of technical questions, the validity of the veto is being questioned, and a case is now pending in the courts to determine the status of the bill.

Among several changes to strengthen enforcement of the prevailing wage law, the Director of Labor was authorized to hold hearings, issue subpoenas, administer oaths, and examine witnesses. At the conclusion of a hearing, an order may be issued dismissing the charges or directing the payment of wages or supplements found due, including interest, attorney's fees and costs. In addition, such an order may assess a civil penalty of up to 25 percent of the total amount due, with all such penalties to be used solely for enforcing the prevailing wage law. Willful violations of the law may result in the ineligibility to bid on, or perform on public contracts for up to 36 months, or 60 months in case of two or more willful violations in 18 months (the law previously provided for an 18-month debarment period). An Appeals Board was created to hear administrative appeals of any action taken or failure to be taken by the director. The law now specifically authorizes the director to conduct audits of the payroll records of out-of-State contractors and subcontractors who perform work on public works in the State.

*Equal employment opportunity.* The Commission for Human Rights was given specific authority to enforce the Discrimination Against Handicapped law including the same powers, duties, and rights it has under the Fair Employment Practices Act. Also, the Governor's annual report to the general assembly on the status of affirmative action programs in State government is now to include information on the employment of individuals with disabilities.

A complainant may now establish the existence of a prohibited discriminatory employment practice by showing proof of disparate impact or by demonstrating in an action or

proceeding that race, color, religion, sex, handicap, age, or country of ancestral origin was a motivating factor for any employment practice. In cases where an unlawful practice is shown to be motivated by malice or ill will or involves reckless or callous indifference to the protected rights of others, the court may now award punitive damages in private-sector cases. The Commission for Human Rights is now authorized to award compensatory damages in cases of intentional discrimination.

An annual utilization analysis of positions in State government is to be conducted, and, to the extent it is determined that minorities are underrepresented and/or underutilized, the Personnel Administrator, through the Director of Administration, is to direct the appropriate agency head to establish precise goals and timetables and assist in the correction of the deficiency. Proposals for affirmative action in personnel actions, including recruitment, new hires, promotions, transfers, terminations, training and education, layoffs and return from layoffs, are to be included as a subject for all collective bargaining negotiations for State employees.

*Employee testing.* The Director of Personnel is to request that State elected officials comply with the "Drug Free Workplace Policy Acknowledgement" in the same manner as all other State employees.

*Background clearance.* Applicants for employment by sheltered care facilities, home health aids agencies, nursing facilities, or nursing pools must now undergo criminal background checks if the employment involves routine contact with patients or residents without the presence of other employees. Convictions for specified crimes constitute disqualification from such employment.

*Labor relations.* The law regulating municipal employees' collective bargaining was amended to provide that if the parties are unable to reach an agreement on a contract 30 days before the last day on which money can be appropriated by the city or town to cover the first year of the contract, or within 10 days of the expiration of the contract, all unresolved issues must be submitted to the Director of Labor for compulsory mediation.

*Occupational safety and health.* A special legislative committee was created to study the entire field of repetitive backstrain and carpal tunnel syndrome and to report on its findings and recommendations to the legislature by February 4, 1992.

A resolution requested Congress to require American companies, manufacturing products outside of this country, to meet the same health and safety standards as manufacturing facilities located in the United States.

## South Carolina

*Wages.* The law requiring construction contractors to pay all laborers, as well as subcontractors and material suppliers for their services out of money received for the construction was extended to also require such payment by subcontractors.

*Occupational safety and health.* Potential civil

penalties for violations under the State law were increased in conformance with Federal law.

## South Dakota

*Wages.* By prior law, the State minimum wage was increased from \$3.80 per hour to \$4.25 on April 1, 1991. Also, on the same date, the tip credit allowance was increased from 40 percent to 50 percent. Tipped employees are now defined as persons receiving \$35 rather than \$30 a month in tips.

Minors under age 18, previously not subject to the minimum wage, must now be paid at least 75 percent of the minimum.

*Child labor.* The maximum hours of work for minors under age 16 were reduced from 8 hours daily and 40 hours weekly, to 4 hours on school days and 20 in school weeks. Such minors may continue to work 8 hours only on nonschool days and 40 hours only during nonschool weeks. Work after 10 p.m. on a day preceding a school day is now prohibited for those under age 16. Farm laborers, livestock attendants, and domestic workers are no longer exempted from these maximum hours restrictions. The work certificate requirement for the employment of minors under 16 in any factory, workshop, mine, or mercantile establishment was repealed. Special exceptions for minors whose employment is necessary to support themselves or family will now be issued by the Labor Department rather than the school system.

*Equal employment opportunity.* The term "disability" in the Human Rights Law was redefined to include being regarded as having an impairment, and to exclude the current illegal use or addiction to marijuana or defined controlled substances. Either party to a charge of discrimination may now elect to have the charge decided in a civil action, and, upon a finding of an unfair or discriminatory practice, the court may order injunctive relief, including affirmative action. The powers of a local human rights commission may now specifically be coextensive with the powers of the State Commission.

It is now a discriminatory or unfair employment practice for an employer to terminate an employee for the off-duty, off-premises use of tobacco products. Enforcement is through private civil action.

## Tennessee

*Equal employment opportunity.* The legislature requested that the governor give consideration to achieving gender and racial balance in making appointments to State boards and commissions.

*Other laws.* State departments, agencies and subdivisions are prohibited from terminating, demoting, or taking other disciplinary action against an employee who is a victim of a crime solely because the employee takes lawful action to cause or assist in causing the arrest, prosecution and conviction of the perpetrator of the crime.

## Texas

*Wages.* The wage payment law was strengthened by providing that employers who are con-



victed of two violations of the law, or who fail to satisfy timely a final order of the Employment Commission for nonpayment of wages, may be required by the Commission to file a bond for up to 36 months to guarantee wage payment. Any surety company that issues such a bond and willfully fails to pay any verified claim for wages is subject to the assessment of civil money penalties. It is now a felony if at the time of hiring an employee, the employer intends to avoid payment of wages owed, and if the employer fails, after a demand, to pay those wages.

School district employees may now have membership fees or dues to a professional organization deducted from their salaries.

**Equal employment opportunity.** The Department of Highways and Public Transportation is to prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity without regard to race, color, handicap, sex, religion, age or national origin. Among other employment responsibilities, the Department was directed to designate a central authority to set and monitor hiring goals for women and minorities.

**Background clearance.** In addition to obtaining criminal history records for job applicants to whom an offer of employment is being considered, school districts are also now directed to obtain the information for employees and applicants for employment as school bus drivers by public or commercial transportation companies.

**Private employment agencies.** Under a new law, temporary help agencies operating a labor hall and providing unskilled workers to perform physical tasks must obtain a license from the Commissioner of Licensing and Regulation. Such agencies must post notice of any charge for equipment, tools, transportation, or other work-related service. They are prohibited from charging workers for safety equipment, clothing or accessories required by the nature of the work or by the agency's client, or for the cashing of a check or voucher or the receipt of earned wages. The only permissible wage deductions are those required by law, or for reimbursement for a cash advance made during the same pay period. Workers awaiting job assignments must be provided with adequate facilities including restrooms, drinking water, seating, and access to vending refreshments and food.

**Occupational safety and health.** An Asbestos Health Protection Act was approved, amending an existing law regulating removal or encapsulation of asbestos in public buildings. Among the new provisions, asbestos workers must now specifically be provided with approved equipment in good working order for their protection and the protection of the public, and must have an annual physical examination.

## Utah

**Wages.** The minimum wage was increased by administrative action of the Industrial Commission from \$3.80 per hour to \$4.25 per hour effective April 1, 1991. The rate for minors under 18 increased from \$3.23 to \$3.61 per hour, and for adult learners from \$3.55 to \$4 per hour for the first 160 hours of employment. The

maximum tip credit allowance was increased from 45 to 50 percent. The Industrial Commission was granted specific rulemaking authority.

Among the provisions contained in a late 1990 regulation, the Industrial Commission detailed procedures for investigating and adjudicating wage claims, and defined what constitutes lawful deductions or offsets from wages due an employee.

**Child labor.** New rules adopted by the Industrial Commission in late 1990 regulate the employment of minors under age 16 in door-to-door sales. In addition to requiring registration and local licensing of employers and advance notification to the Commission, adult supervision of minors is required, minors cannot be transported more than 30 miles from home and must be returned no later than 9:30 p.m., and must be provided with periodic rest periods.

**Equal employment opportunity.** The Director of the Department of Human Resource Management was to develop an affirmative action plan for State career service employees. The plan is to be reviewed by the legislature before implementation.

**Background clearance.** Applicants to the State Office of Education for certification as teachers, supervisors, administrators, and other professional personnel are required to submit to a criminal background check as a condition of certification, and private schools may now require such a check as a condition for employment for potential employees or volunteers.

**Employee leasing.** An Employee Leasing Company Registration Act was approved under which such businesses are required to register annually with the Department of Commerce. Applicants for registration must be members of the National Staff Leasing Association. Under the law, the leasing firm is considered the employer for purposes of sponsoring and maintaining any benefit plans and for withholding taxes, and is responsible for payment of contributions under the Employment Security Act. Leasing companies may not offer their employees any self-funded insurance programs and must provide proof of insurance coverage by a private carrier for any benefit plan offered. The employment relationship with leased workers is to be established by agreement between the leasing company and the client company, and written notice must be given to them.

**Occupational safety and health.** Potential civil penalties for violations under the State law were increased in conformance with Federal law.

It is now a class C misdemeanor under the Boiler Inspection Law to operate a boiler or pressure vessel if its certification has been denied or suspended, or if it is knowingly operated while constituting a safety hazard. The Industrial Commission is now authorized to bring suit to enjoin violations of the law.

Among other changes to the law relating to employment in coal mines, the Industrial Commission was granted specific rulemaking authority.

## Vermont

**Wages.** On April 1, 1991, the State minimum wage automatically increased from \$3.85 to

\$4.25 per hour to match the Federal rate. Under new wage orders issued by the Department of Labor and Industry, the maximum tip credit allowance for service employees in the hotel, motel, tourist place, and restaurant industry was increased from 40 percent to 45 percent. Allowable deductions for employer-furnished meals and lodging were also increased.

**Occupational safety and health.** Potential civil penalties for violations under the State law were increased in conformance with Federal law.

**Employment and training.** A Displaced Homemaker Policy Council was created within the Department of Employment and Training. Development of programs to serve the needs of displaced homemakers, including job counseling and job placement, were authorized.

## Virginia

**Wages.** The minimum wage was increased from \$2.65 to \$3.65 per hour on July 1, 1991, and will match the Federal rate beginning July 1, 1992. The Federal training wage was adopted by reference.

**Child labor.** The Commissioner of Labor was authorized to promulgate regulations establishing maximum daily and weekly hours and nightwork restrictions for minors under 16, incorporating Federal child labor regulations. Such regulations were issued, conforming previous statutory provisions to the Federal regulations. Also by regulation, Federally prohibited hazardous occupations in agriculture were adopted for minors under the age of 16. Meal period and recordkeeping requirements were established for minors employed in agriculture. A new provision prohibits employment of a minor in an occupation that exposes the minor to a recognized hazard, capable of causing serious physical harm or death. Permits issued by the Commissioner of Labor are now required for door-to-door candy sales, and such work is prohibited for minors under age 16. Work permit provisions were amended to delete the requirement for a certificate of physical fitness, and to reduce the types of employment certificates issued from four to two. Civil penalties that may be assessed for child labor violations were increased from \$250 to \$1,000 for each violation.

**Employee testing.** A joint resolution calls for the establishment of a joint subcommittee to study the feasibility and desirability of implementing drug-free workplace programs and to submit its findings and recommendations to the governor and the 1992 legislature.

**Labor relations.** The law requiring labor unions, labor associations and organizations to register with the Department of Labor and Industry was repealed.

**Occupational safety and health.** Contractors or subcontractors who flagrantly violate the State occupational safety and health laws or standards, rules, and regulations will be barred from performing any work on construction projects for the State, its agencies or institutions. The Commissioner of Labor and Industry is to establish and maintain a register of such violators.

Responsibility for passenger tramway safety was transferred from the Department of Labor



and Industry to the Board of Housing and Community Development, which was already responsible for the certification and inspection of other amusement devices.

The Board of Health was directed to establish a worksite health promotion grants program to provide grants for worksite programs that may include on-site health education and screening efforts, information about health risk behaviors linked to preventable disease and disability, occupational safety and health programs, and employer-sponsored physical fitness programs.

*Other laws.* A joint resolution was adopted pointing out the benefits relating to telecommuting and encouraging efforts to foster and promote telecommuting in the workplace.

## Washington

*Child labor.* Beginning on April 1, 1992, citations will be issued by the Director of the Department of Labor and Industries for violations of the child labor or work permit provisions. The director was also authorized to assess civil penalties of up to \$1,000 for each violation not corrected by the employer, and up to \$1,000 per day for serious or repeated violations. Knowing or reckless violations will constitute a misdemeanor, and violations resulting in the death or permanent disability of a minor will be a felony. The director will also be empowered to issue restraining orders in cases of violations that create a danger from which there is a substantial probability that death or serious physical harm could result to a minor. The unauthorized advance disclosure of an inspection to be conducted will result in a civil penalty of up to \$1,000.

*Occupational safety and health.* Potential civil penalties for violations under the State law were increased in conformance with Federal law.

The Industrial Safety and Health Act was amended to provide that the identity of employers, employees, and voluntary participants in research, experiments, and demonstrations, and information obtained by the Department of Labor and Industries as the result of employer-requested consultation and training services are confidential and not open to public inspection.

*Employment and training.* A Work Force Training and Education Coordinating Board was created as the successor agency to the State Board for Vocational Education and was delegated responsibility for planning, coordination, evaluation, monitoring, and policy analysis for the entire State training system, covering job training, job education, and adult literacy services. The Board's specific duties include facilitating location of support services (including career counseling and job placement for students and trainees in the State training system), facilitating programs for school-to-work

transition, and participating in the development of coordination criteria for activities under the Job Training Partnership Act.

Economic development, job creation, training, and other service programs were established to assist dislocated forest products workers in timber impact areas where high unemployment exists or where substantial job losses are projected or have taken place. An Economic Recovery Coordination Board and an Agency Timber Task Force were created to coordinate economic and social programs targeted to such areas. State agencies with specific duties to implement these programs include the Department of Trade and Economic Development, Department of Community Development, and the Employment Security Department. In addition, a resolution was adopted requesting Congress to pass a Timber Workers Fairness Act to provide adequate benefits to timber workers who lose their jobs as the result of decisions to cut back on the Federal timber supply. It was requested that such legislation provide for adequate training, allowances, and support services.

## West Virginia

*Wages.* The minimum wage was increased from \$3.35 to \$3.80 per hour on April 1, 1991, and will increase again on April 1, 1992 to \$4.25. The Federal training wage rate was adopted by reference, but is applicable only through the age of 18, not 19, as in the Federal law. Also, the training wage is limited to a cumulative period of 90 days per employee. Businesses in operation for 90 days or less at the time of hiring an employee may pay the subminimum training wage for an additional 90-day period.

*Employment and training.* The Governor's Office of Community and Industrial Development was directed to develop a business and industrial training program to provide assistance to new or expanding businesses in the training, retraining, or upgrading of the skills of potential employees. Employers are to have the opportunity to participate in the selection of a training provider and in the program curriculum. Funding to reimburse employers for training costs is available under specified circumstances.

*Other laws.* A Bureau of Employment Programs was created within the Department of Commerce, Labor and Environmental Resources. The Bureau consolidates programs dealing with employment security and workers' compensation which were transferred from the Department of Health and Human Resources. The Bureau consists of Divisions of Unemployment Compensation, Employment Service, Job Training Programs and Workers' Compensation. The Division of Labor remains as a separate division within the Department of Commerce, Labor and Environmental Resources.

## Wisconsin

*Employment and training.* A Wisconsin Service Corps Program was established to provide employment on approved community service projects to persons between the ages of 18 and 26. The program is to encourage and develop work skills, discipline, cooperation, meaningful work experience and training, and educational opportunities. Corps members must be paid at the Federal or State minimum wage, whichever is higher, and may not be used, in any manner, in connection with a work or labor dispute or to displace existing employees.

## Wyoming

*Wages.* The law requiring nonresident employers to post a surety bond of \$3,000 insuring the payment of wages to employees was consolidated with the bonding requirements contained in the workers' compensation law. The new provision requires a \$10,000 bond or other security to be filed with the Director of the Department of Employment and, if the employer is operating under a contract that exceeds \$100,000, the bond is increased by \$1,000 for each additional \$100,000 or fraction thereof up to a maximum of \$50,000. The bond or security must ensure the payment of wages and all obligations of the nonresident employer under the workers' compensation law.

## Footnotes

<sup>1</sup> The Kentucky legislature met in special sessions only and no labor legislation was enacted. Alabama, Guam, and the Virgin Islands did not enact significant legislation in the fields covered by this article. Separate articles on unemployment insurances and workers' compensation, which are not within the scope of this article, are published in this issue of the *Monthly Labor Review*. This article is based on information received by November 1, 1991.

<sup>2</sup> Hourly minimum wage rates were increased as the result of new laws in Arkansas, Montana, Nebraska, Virginia, and West Virginia. Revised wage orders increased rates in the District of Columbia and North Dakota, and revised mandatory decrees increased rates in Puerto Rico. The Utah rate was increased by administrative action. Rates increased as the result of prior legislation Federally, and in Alaska, Connecticut, Delaware, Guam, Idaho, Illinois, Iowa, Kentucky, Maine, Maryland, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, and Vermont.

<sup>3</sup> Arkansas, Alaska, California, Hawaii, Idaho, Illinois, Iowa, Kansas, Maryland, Montana, Nevada, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming.