

State labor legislation enacted in 2010

Drug and alcohol testing, equal employment opportunity, human trafficking, immigration legislation, independent contractors, time off, wages paid, and worker privacy were among the most active areas for lawmakers, who enacted new legislation or implemented legislation that revised State statutes or regulations during the year

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The areas of drug and alcohol testing in the workplace, equal employment opportunity, human trafficking, immigration legislation, independent contractors, time off from work, wages paid, and worker privacy were among the most active areas of legislation that was enacted during the individual sessions of the State legislatures in 2010. Legislative activity in those areas and in more than 20 additional ones resulted in the enactment of legislation that amended or revised current State statutes or regulations during the course of the year.

This year's report on State labor legislation has been modified from those of the past. First, the timeframe covered by the report has been changed. In the past, the article reported on legislation enacted between December 1 of one year and November 30 of the next year. This year, the report will cover the period between December 1 and September 30. In the future, the report will cover the period between October 1 of one year and September 30 of the next year. Second, although the two-part narrative still exists, it has been supplemented with exhibit 1 at the end of the article. This exhibit is a listing of the bill numbers of the enacted legislation, by labor legislation category tracked by the Wage and Hour Division of the U.S. Department of Labor. Each bill

number is located in a cell that is the intersection of a State (row) and a category of legislation (column). It is hoped that this format will enable readers more easily to perform research on a particular piece of legislation. The exhibit also provides information on the number of pieces of legislation that have been enacted in each category tracked.

During the December 1–September 30, 2010, shortened reporting timeframe, 39 States and the District of Columbia enacted or amended labor legislation of consequence in the various categories tracked by the Wage and Hour Division. Forty-five States and the District of Columbia met in regular legislative session during the year. The remaining 5 states (Montana, Nevada, North Dakota, Oregon, and Texas) did not meet in regularly scheduled legislative sessions, but met instead in special sessions dedicated to various issues of particular interest or immediate necessity.

The bills that were introduced and then enacted by the States and the District of Columbia encompassed all 34 categories of labor legislation tracked by the Wage and Hour Division and included a number of important measures. The 34 categories were agriculture, child labor, State departments of labor, drug and alcohol testing, employee

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discharge, employment agency matters, employee leasing, equal employment opportunity, family leave issues, garment activity, genetic testing, hours of work, human trafficking, immigration legislation, independent-contractor issues, inmate labor, living wages (statewide only, not local), the minimum wage and tipped employees, offsite work, miscellaneous legislation lumped under the category titled “other,” overtime, overtime health care, plant closing and the displacement or replacement of workers, employers’ preferences regarding employees, prevailing wages, right-to-work matters, time off from work, unfair labor practices, wages paid, whistleblowers, worker privacy, workers with disabilities, workplace security, and workplace violence. Not every piece of labor legislation enacted during the course of the year falls into one of these 34 categories. Among the legislative issues that are excluded from the article are those which (1) amend existing State law, but in which the changes are strictly technical in nature, (2) affect only a limited number of individuals, (3) require the undertaking or the distribution of an issue study for a legislature or a Governor, or (4) deal with operational or funding concerns related to a specific issue.

The remainder of this article comprises three sections. The first section provides a brief overview of legislation that was enacted in several of the most active categories. This overview discusses some, but not all, of the pieces of legislation in specific categories that resulted in the enactment of laws, new or amended, by the individual State legislatures during 2010. The second section presents a more comprehensive and detailed description of each piece of a State’s enacted labor-related legislation, again subdivided by labor category. The third and final section is composed of exhibit 1, mentioned earlier, which lists the enacted labor legislation bills by State and legislation category.

State legislation by category

Drug and alcohol testing. The Arizona Racing Commission has now authorized its director to allow anyone whose roles require direct hands-on contact with horses or greyhounds to submit to a drug or alcohol test if the racing stewards have reason to believe that the employee is under the influence of, or unlawfully in possession of, any prohibited substance. Also in Arizona, the State Boxing and Mixed Martial Arts Commission may conduct tests for the use of alcohol and those drugs which have been determined by the commission to impair contestants, notwithstanding any other provision of the law. Delaware enacted legislation that prohibits the State Department of Health

and Social Services from hiring anyone for employment at the State Psychiatric Center without a drug-screening test and a criminal background check. Applicants who willfully fail to comply with the drug and alcohol testing requirements are subject to a civil penalty of \$1,000 to \$5,000. Delaware also enacted legislation requiring drug testing for employees of the State Department of Services for Children, Youth, and Their Families. In Missouri, drug and alcohol testing is now required for employees of contractors and subcontractors as a condition of the contractors’ being permitted to bid on projects to build elementary and secondary education facilities. As a condition of employment as a direct care staff member at a State psychiatric hospital or developmental center, applicants in New Jersey shall consent to and undergo drug testing for controlled dangerous substances. The Tennessee Code Annotated was amended and now requires that all motor carriers in the State which provide passenger transportation service to eight or more individuals shall conduct a program of mandatory random drug testing for the operators of their motor vehicles in accordance with regulations promulgated by the U.S. Department of Transportation. Organizations in Utah that operate a storage or transfer facility that is engaged in the transportation of high-level nuclear waste or the transportation of radioactive waste greater than class C shall establish a mandatory drug and alcohol testing program as a condition for hiring or for the continued employment of any employee. State procurement units in Utah may not enter into a construction contract unless it (1) requires the contractor to maintain a drug and alcohol testing policy that applies to the covered individuals during the construction project, (2) requires the contractor to post a notice to covered individuals that the contractor has a drug and alcohol testing policy, and (3) subjects the covered individuals to random drug and alcohol testing.

Equal employment opportunity. It is an unlawful employment practice in California for an employer to bar or discharge a person from employment or from a training program unless doing so is based upon a bona fide occupational qualification. The enacted legislation serves as a statement that allows an employer to legitimately discriminate against an employee on the basis of appropriate parameters. Michigan expanded the prohibitions against job discrimination toward women affected by pregnancy, childbirth, or related medical conditions. New Jersey expanded the State’s antidiscrimination laws to protect autistic people from discrimination in employment. New York issued an executive order banning discrimination

practices in State employment because of gender identity. Oklahoma enacted a new law prohibiting an employer from discriminating against an employee or a prospective employee by refusing to reasonably accommodate the religious observance or practice of the employee unless the employer can demonstrate that the accommodation would pose an undue hardship on the program, enterprise, or business of the employer in certain circumstances described by State law. Oregon enacted a law similar to the one in Oklahoma, but with an additional prohibition against imposing occupational requirements that restrict the right of an employee to wear religious clothing. Tennessee law has been amended to specify that it is not a discriminatory policy for an employer to institute a policy in the workplace requiring that all employees speak only English at certain times when the employer has a legitimate business necessity for such a policy. Included among, but not exhaustive of, such legitimate necessities is the safe and efficient operation of the employer's business. Washington State added a number of categories on the basis of which employment-related discriminatory activities were prohibited in State public schools; previously, race was the only such category. The new categories are creed; religion; color; national origin; honorable discharge from military service; sexual orientation, including gender expression or identity; the presence of any sensory, mental, or physical disability; and the use of a trained guide dog or service animal by a person with a disability. Wisconsin also added to its list of discriminatory actions that employers are prohibited to take in their dealings with employees. Employers in the State are now prohibited from discriminating against an employee who declines to attend an employer-sponsored meeting, or to participate in any communication with the employer or with an agent, representative, or designee of the employer, regarding religious or political matters.

Human trafficking. Alabama enacted legislation making it a criminal offense to traffic in humans; knowingly aid, solicit, recruit, transport, restrain, maintain, or otherwise obtain, by any means, another person for purposes of human trafficking; obstruct or attempt to obstruct an investigation into human trafficking; or knowingly benefit from human trafficking. The crime of human trafficking in the first degree is classified as a class A felony. Arizona made it a class 2 felony for a person to (1) knowingly traffic another person with the intent or knowledge that the other person will be subject to forced labor or (2) knowingly benefit from a venture that engages in trafficking for forced labor. Kansas redefined the activity of human

trafficking. The activity is now defined as the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjecting the person to involuntary servitude or forced labor while benefiting financially or by receiving anything of value from participation in a venture that has engaged in coercing employment by obtaining or maintaining services that are performed or provided by another person through any of a group of certain specified trafficking activities. Legislation enacted by Louisiana states that when an individual is involved in the crime of human trafficking, including trafficking of children for sexual purposes, the court shall order that the personal property used by that individual in the commission of the offense be seized and impounded. If the person is convicted, then, after the conviction, the seized property shall be sold at public sale or by auction by the district attorney. It is now illegal in Oklahoma to intentionally destroy, hide, alter, abscond with, or keep documentation from someone for the purpose of trafficking that person within the United States. Any person found guilty of such a crime will face up to 1 year in jail or up to a \$1,000 fine or both. South Carolina amended the State Criminal Code by declaring human trafficking to be one of the most serious offenses prosecuted by the State. Human trafficking will now be considered a violent crime, as well as a class A felony punishable by up to 30 years' imprisonment. Washington State enacted legislation concerning domestic employers of foreign workers (persons who, as temporary visitors, hold nonimmigrant visas). The employers are prohibited from requiring such employees to surrender their legal documents while the person is working in the United States, except as otherwise required by law or regulation.

Immigration legislation. Contractors or subcontractors who, pursuant to Georgia law, enter into a contract with a public employer or of a public employer (that is, a subcontract), shall not enter into such a contract or subcontract in connection with the physical performance of services within the State unless the contractor or subcontractor registers and participates in the Federal work authorization program that verifies certain information about all newly hired employees. Hawaiian law now states that any contractor who knowingly or intentionally employs a person who is not eligible to work in the United States under Federal law shall be in violation of State law. Such a violation could lead to the revocation, suspension, or refusal to renew the license of the contractor. Employers in Maine must make a good-faith inquiry, in writing and

before employing or referring a person for employment, as to whether the applicant is a U.S. citizen, an alien lawfully admitted to the United States for permanent residence, or an alien authorized by the appropriate Federal agency to accept employment in the United States. If an employer violates this requirement, then for 2 years the employer may not employ H-2A aliens who have been granted permission to work temporarily within the State. Oklahoma added another exception to those exceptions from the requirement that every State agency or political subdivision of the State verify the lawful presence in the United States of any person who has applied for State or local public benefits. The new exception stipulates that verification is not required if the person in question is applying for a special volunteer health care license. A private employer in Utah who employs 15 or more employees may not hire a new employee unless the private employer is registered with a system that verifies the Federal legal working status of any new employee and uses the system to verify the Federal legal working status of the new employee in accordance with the requirements of the system. Virginia now requires that all agencies of the Commonwealth be enrolled in the Federal E-Verify program and use the program for each newly hired employee who is to perform work within the Commonwealth. West Virginia employers who knowingly violate the State Code by employing, hiring, recruiting, or referring an unauthorized worker are guilty of a misdemeanor. Upon conviction, the employer is subject to a civil penalty ranging from \$100 to \$1,000 and could be sentenced to imprisonment for a period ranging from 30 days to 1 year.

Independent contractor. Colorado law now authorizes a nonprofit youth sports organization and a coach to enter into an independent contractor agreement (as opposed to an employer-employee agreement) which provides conclusive evidence that there is no employment relationship between the organization and the coach. New legislation in Connecticut states that each day that an employer knowingly or intentionally misclassifies an employee will constitute a separate offense. Civil money penalties between \$300 and \$1,000 may be assessed for each day the employer is in violation of the statute. Maine now requires that a stop-work order be issued against any hiring agent or subcontractor who misclassifies construction workers. In Nebraska, any individual performing construction labor services for a contractor engaged in a delivery service or for a construction contractor business, including any subcontractor performing services for that contractor or business is presumed to be an employee, and not an independent

contractor, for purposes of the State Employee Classification Act. The Governor of New Hampshire issued an executive order directing State departments that currently enforce employee misclassification laws to coordinate their respective resources in order to identify and investigate cases of misclassification and develop strategies to eliminate misclassification. A new article added to New York's labor law specifies that a contractor must classify a person as an employee unless that person meets certain criteria as enumerated by the amended statute. The Vermont commissioner of labor must issue a stop-work order against an employer when it has been determined that the employer has failed to comply with the State workers' compensation provisions. The order will remain in effect until the employer complies with the insurance requirements. The Wisconsin legislature created a new section for the State's employee classification laws. Employers are now required to maintain records of all of their employees, offer workers' compensation coverage for their employees, and maintain records of (1) hours worked by their employees, (2) wages paid to the employees, and (3) any deductions the employers make from the wages. Wisconsin modified existing statutes regarding the definition of "employer" to now include "a person engaged in the painting or drywall finishing of buildings or other structures."

Other legislation. Illinois now mandates that recipients who are awarded a grant, or who are loaned funds, of \$250,000 or more must file written certification that they will comply with business enterprise program practices for minority- and female-owned businesses and for businesses owned by people with disabilities. In New York, all employers or their duly authorized agents shall neither penalize nor threaten an employee relative to his or her employment with any of the following consequences, based in whole or in part on the employee's failure to meet a quota, established by the employer or the agent, of tickets or summonses issued within a specified period for violations of law or for which a ticket or summons is authorized: reassignment, a change in schedule, an adverse evaluation, a constructive dismissal, or the denial of a promotion or of overtime. Rhode Island now allows employees who are placed on extended medical leave to maintain their group hospital, surgical, or medical insurance plan benefits for up to 18 months from the date the employee was placed on extended medical leave.

Time off from work. Alabama now grants the same privileges of military leave of absence to public and private employees within the State who are members of the Civil

Air Patrol, the civilian auxiliary of the U.S. Air Force. In addition, Alabama has granted the right to military leave to all officers and employees of the State or of any county, municipality, or other agency or political subdivision thereof, or officers or employees of any public or private business, who are active members of the State National Guard, the Naval Militia, the State Guard, the National Disaster Medical System, or any other Reserve component of the Armed Forces of the United States. Such persons shall be entitled to military leave of absence from their respective civil duties and occupations on all days that they are engaged in field or coastal defense or other training or service ordered under the National Defense Act or the Public Health Security and Bioterrorism Preparedness and Response Act. Arizona now requires that public and private employers treat members of the U.S. Armed Forces Reserve in a manner similar to the way the State treats members of the State National Guard with respect to leaves of absence for military orders. California changed the amount of time an employer may require an employee to work before providing a 30-minute unpaid meal break. Employers must provide the break to employees who work 5 consecutive hours. The break may be waived by mutual consent if the total work period for the day is no more than 6 hours. Private employers in California are now required to permit employees who have exhausted all of their available sick leave to take a leave of absence with pay, not exceeding 30 days for the purpose of organ donation and not exceeding 5 days for a bone marrow donation. The District of Columbia amended its municipal regulations by establishing standards and procedures for processing paid leave to employees for absences associated with illness, domestic violence, and sexual abuse. Maryland amended the State Annotated Code with regard to employee participation in Civil Air Patrol activities. As a result, employers in Maryland may not discriminate against or discharge an employee because of his or her membership in the patrol, as long as the employee has been employed at least 90 days. New York now requires employers to extend funeral or bereavement leave to employees whose same-sex partner or relative thereof has died if the employer extends the same type of leave to employees whose spouse or relative thereof has died. Any employee of the Oklahoma executive branch who is a certified disaster volunteer of the American Red Cross or a member of the U.S. Air Force Auxiliary Civil Air Patrol may be granted a leave with pay not to exceed 15 days in any 12-month period, in order to participate in specialized disaster relief services within the State. Employers in Tennessee may not terminate an employee who

is a volunteer rescue squad worker because the employee is absent from or late to his or her regular employment as a result of having responded to an emergency prior to the time the employee was to report to the place of employment. Washington employers are prohibited from discharging from employment, or from taking disciplinary action against, an employee who is a Civil Air Patrol member because of leave the employee has taken in responding to an emergency service operation.

Wages paid. Employers in Colorado shall not deduct any wages from employees unless the employees authorize such deduction and the authorization is revocable. The Illinois Department of Labor has been empowered to establish an administrative procedure to hear claims or specific categories of claims filed with the department for \$3,000 or less per employee under the State Wage Payment and Collection Act. Maryland amended the definition of “wage” to include overtime wages and any other remuneration promised for service. In Nebraska, upon an employee’s written request, the employer must furnish an itemized statement showing the employee’s wages paid and deductions for each pay period that earnings and deductions were made. New Hampshire enacted legislation that allows employers to withhold wages of employees for legal plans and identity theft plans offered by the company, as long as the employer receives no financial gain from the plans. In New Jersey, employers are now permitted to withhold or divert a portion of an employee’s wages for payments of the costs and related fees for the replacement of employee identification tags when such identification is used to allow the employee access to sterile or secured areas of airports. Tennessee now permits employers to pay wages to employees by two additional methods. The wages may be paid by an electronic automated fund transfer in lawful money of the United States or by prepaid debit card issued through a network system from which the employee is able to withdraw or transfer funds subject to certain limitations. Under certain conditions, employers in Vermont may now compensate employees via a credit to a payroll card account that has been directly or indirectly established by the employer in a federally insured depository institution to which electronic fund transfers of the employee’s wages, salary, or other compensation is made on a recurring basis. The Washington Revised Code was amended by an expansion of the list of defined terms in the code and an extension of the time the State is permitted to conduct investigations and calculate back wages and interest owed by the employer to the employee. In addition, the amendments (1) adjusted the tolling

of the statute of limitations for civil actions brought by an employee during an investigation conducted by the State Department of Labor and Industries and (2) delineated successor liability for businesses sold or otherwise conveyed to another.

Worker privacy. The working papers and other files contained in an audit of the accounts and performance of a county officer in the State of Arizona are not public records and are exempt from the general State disclosure requirements. California's chief information officer shall require fingerprint images and associated information from an employee, a prospective employee, a contractor, a subcontractor, a volunteer, or a vendor whose duties include, or would include, working at a State data center, or at any State facility, in the field of telecommunications, network operations, engineering, or security, with access to confidential or sensitive information or data on a network of computing infrastructure. In Connecticut, personnel, medical, or similar files concerning a former employee of the State Department of Correction or the State Department of Mental Health and Addiction Services, including, but not limited to, a record of a security investigation of, or a discrimination complaint by or against, such employee shall not be subject to disclosure under the Freedom of Information Act. The public records exemption of the Florida Statutes has been expanded to include certain specified personal information about current and former public defenders and about staff of the privately run Office of Criminal Conflict and Civil Regional Counsel, as well as their spouses and children. Georgia expanded the portion of the State Code Annotated relating to exemptions from requirements for the disclosure of public records,

to provide that certain personal information relating to teachers and other employees of public and nonpublic schools shall be exempt from disclosure. Idaho amended the State Code outlining its four categories of personal information: (1) personnel records, (2) personal information, (3) health records, and (4) professional discipline records. Information falling into any of these categories is exempt from public disclosure. Illinois employers may not base their decision regarding the hiring of an individual on the person's credit history or on a credit report. Also in Illinois, employers or former employers who divulge a disciplinary report about, letter of reprimand to, or any other disciplinary action taken against an employee to a third party must provide written notice to the employee. With certain exceptions in both the types of information and the parties to whom the information may be released, neither the New Mexico Educational Retirement Board nor its employees or contractors shall allow public inspection of any information regarding a member or retired member of the board or the disclosure of that information to anyone. Tennessee no longer allows the discharge of, or other disciplinary action against, State Department of Correction employees solely on the basis of their failing or refusing to take a polygraph examination. The Washington Revised Code now states that any personal information, such as photographs, day and month of birth, residential addresses, and personal telephone numbers, used to locate employees or criminal justice agencies shall be exempt from public disclosure. Wisconsin has made it illegal to solicit or require an HIV test as a condition of employment of any employee or prospective employee. Nor can the employer or prospective employer use the results of an HIV test as a condition of employment.

Legislation by State

Alabama

Human trafficking. A new section was added to the "Crimes and Offenses" part of the State Code. The section reflects legislation passed to make it a criminal offense to traffic in humans; knowingly aid, solicit, recruit, transport, restrain, maintain, or otherwise obtain, by any

means, another person for purposes of human trafficking; obstruct or attempt to obstruct an investigation into human trafficking; or knowingly benefit from human trafficking. The bill applies to human trafficking for purposes of labor servitude, sexual servitude, or any other involuntary servitude. Human trafficking in the first degree is a class A felony and involves (1) knowingly subjecting someone to labor or sexual servitude through the use of coercion or deception or (2) knowingly obtaining, recruit-

ing, enticing, soliciting, inducing, threatening, isolating, harboring, holding, restraining, transporting, or maintaining any minor for sexual servitude. It is a class C felony for someone to obstruct, attempt to obstruct, or in any way interfere with the enforcement of first-degree human trafficking laws. Human trafficking in the second degree occurs when a person knowingly (1) benefits from participation in human trafficking or (2) recruits, entices, solicits, induces, harbors, transports, restrains, provides,

maintains, subjects, or obtains, by any means, another person for labor or sexual servitude. Such activity is a class B felony. A person who obstructs, attempts to obstruct, or otherwise interferes with the enforcement of second-degree human trafficking laws commits a class A misdemeanor. Mistaking the age of a victim is not a defense against any human trafficking violation. A person convicted of human trafficking in the first or second degree will forfeit any profits, proceeds, or interests in property acquired or maintained as a result of having committed the trafficking. The disgorged assets will be used for restitution purposes for the victim. In addition to pursuing State prosecution, a victim of trafficking may bring a civil action against the perpetrator. The court may award actual, compensatory, or punitive damages, as well as injunctive relief and attorneys' fees and costs. Damage awards will be trebled when the defendant's acts are shown to be willful and malicious.

Immigration legislation. The State Sunset Law, part of the State Code, was amended in order to continue the existence and functioning of the State Board of Registration for Foresters. The amended code now requires applicants for licensure as foresters to meet the following additional condition for consideration by the board as minimal satisfactory evidence that the applicant is qualified to practice forestry and to be registered and licensed pursuant to the code within the State: individuals who wish to be licensed by the board must now show satisfactory evidence that they are citizens of the United States or, if they are otherwise legally present in the United States, must present appropriate documentation from the Federal Government.

Time off. Legislation was passed that provides the same privileges of military leave of absence to public and private employees within the State who are members of the civilian auxiliary (also known as the Civil Air Patrol) of the U.S. Air Force as those privileges previously provided to members of the State National Guard, the State Naval Militia, the State Guard, the Federal National Disaster Medical System, or any other Reserve component of the Armed Forces of the United States.

All officers and employees of the State or of any county, municipality, or other agency or political subdivision thereof, or officers or employees of any public or private business, who are active members of the State National Guard, Naval Militia, State Guard, National Disaster Medical System, or any other Reserve component of the Armed Forces of the United States shall be entitled to military leave of absence from their respective civil duties and occupations on all days that they

are engaged in field or coastal defense or other training or service ordered under the National Defense Act or the Public Health Security and Bioterrorism Preparedness and Response Act. This leave shall be granted without loss of pay, time, efficiency rating, annual vacation, or sick leave. No person granted a leave of absence with pay shall be paid for more than 168 working hours per calendar year, and those persons shall be entitled to be paid for no more than 168 working hours at any one time while called to duty by the Governor. Service in the State National Guard or State Naval Militia, when the person serving is called, drafted, or ordered into the service of the United States, shall be considered as equivalent service in the State National Guard or State Naval Militia for any and all State purposes regarding privileges, honors, pay allowances, and exemptions provided by law for members of the State National Guard and State Naval Militia.

Workplace Security. Pursuant to the State Sunset Law, the State Radiation Control Agency will continue in existence and will function with certain modifications to the State Code regarding applicants for licensure to the agency. The agency shall provide, by rule or regulation, for general or specific licensing of persons to receive, possess, or transfer byproducts, sources, special nuclear materials, and devices or equipment utilizing such materials or any other radioactive materials occurring naturally or produced artificially. Such rule or regulation shall provide for the amendment, suspension, or revocation of licenses and shall require that each applicant for licensure be a citizen of the United States or, if not a citizen of the United States, a person who is legally present in the United States and who has appropriate documentation from the Federal Government.

Alaska

Overtime health care. Health care facilities should provide adequate and safe nurse staffing without the need for or use of mandatory overtime. Accordingly, by law, a nurse in a health care facility may not be required or coerced, directly or indirectly, to work beyond a predetermined and regularly scheduled shift that is agreed to by the nurse and the facility. Further, the nurse may not be forced to accept an overtime assignment if, in the nurse's judgment, the assignment would jeopardize the safety of patients or employees. In addition, after working a predetermined and regularly scheduled shift, a nurse shall be allowed not less than 10 consecutive hours of off-duty time immediately following the end of that shift. The declaration of a temporary nurse staffing emergency in a rural area may negate the rule regarding the prohibitions on overtime and on its restrictions. Notification

requirements are attached to this declaration, including notification to the State legislature. Finally, a health care facility shall provide for an anonymous process by which a patient or a nurse may make a complaint about staffing levels or safety. The health care facility is prohibited from retaliation and may neither file a report with the State Board of Nursing nor discharge, discipline, threaten, discriminate against, or penalize a nurse for filing a good-faith complaint about abuses of overtime.

Arizona

Drug and alcohol testing. The State legislature enacted amendments to the State Revised Statutes as they pertain to the drug policy relating to the State Racing Commission and the State Boxing and Mixed Martial Arts Commission and the authority those agencies have with reference to enforcement. The director of the State Racing Commission is authorized to allow the person whose roles require direct hands-on contact with horses or greyhounds to submit to a drug or alcohol test if the racing stewards have reason to believe that the employee, while on the grounds of a track owner, is under the influence, or unlawfully in possession, of any prohibited substance. These employees include, but are not limited to, jockeys, apprentice jockeys, sulky drivers, grooms, outriders, trainers, exercise or pony riders, starters, jockeys' agents, veterinarians, lead-outs, and paddock employees. The State Boxing and Mixed Martial Arts Commission may conduct tests for the use of alcohol and drugs determined by the commission to impair contestants, notwithstanding any other provision of the law. The commission may immediately suspend the participant, immediately revoke the participant's license, immediately impose a civil penalty not to exceed \$500, or take any combination of these actions against a contestant who either tests positive for alcohol or drugs, or refuses or fails to take a test for alcohol and drugs after a test is requested. All civil penalties assessed shall be deposited in the State General Fund.

Employee leasing. Legislation was passed amending the definition section of the State Public Entities and Public Employees law. Leased employees are now included in the definition of "employees," and the legislation defines "leased employee" as "a person providing services to a public entity under a lease agreement and who is not an independent contractor or temporary employee."

Human trafficking. Legislation was passed that amends current State human trafficking laws. The new legislation makes it a class 2 felony for a person to knowingly traffic another person or cause a person to be trafficked

for the purpose of engaging in prostitution or sexually explicit performances. Sentences for conviction of trafficking in minors for prostitution or sexual acts must be served consecutively. It is also a class 2 felony (1) to knowingly traffic another person with the intent or knowledge that the other person will be subject to forced labor or (2) to knowingly benefit from a venture that engages in trafficking for forced labor. Convictions for the trafficking of persons for the purpose of prostitution, to perform sexually explicit acts, or for forced labor is a class 2 felony.

Other legislation. No person shall be appointed to any office or be employed by the State Department of Corrections who is a contractor for the department or who is interested in, directly or indirectly, any business carried on in connection with the department. Also, an officer or employee shall neither have any monetary interest in any contract or purchase made by anyone for or on behalf of the department nor receive compensation for services, unless approved by the director of the department. Further, no officer or employee of the department, no contractor, and no agency or employee of a contractor, deputy warden, or prison administrator shall make a gift to, or present to or receive a gift from, a prisoner, or shall barter or deal with a prisoner, without written permission of the warden. If an employee is found intoxicated while on duty, that single act of intoxication shall justify the employee's discharge or removal. As amended, State law does not prohibit an officer or employee of the department from maintaining secondary employment in any correctional facility that is not within the person's primary employment or within any institution of higher learning as an adjunct faculty member. Violation by an officer or employee may result in discharge and prohibition from ever serving again as a contractor, agent, or employee of the department.

Time off. The State enacted legislation mandating that public and private employers treat members of the U.S. Armed Forces Reserve similarly to members of the State National Guard with respect to leaves of absence for military orders. Leaves of absence for military duty may not affect vacation rights or adversely affect the employee's seniority. Employees of the State and its subdivisions are entitled to leave for military duty without loss of time or efficiency rating. Moreover, the employee will receive his or her regular pay for time spent on duty for leaves not exceeding 30 days in 2 consecutive years.

Worker privacy. The State Revised Statutes were amended to specify that the working papers and other audit files in an examination

or audit of the accounts and performance of a county officer are not public records and are exempt from the general State disclosure requirements. The information contained in the working papers and audit files prepared pursuant to a specific examination or audit is not subject to disclosure, except to the county attorney and the attorney general in connection with an investigation or action taken in the course of their official duties.

It is unlawful for a person to disseminate information that is disclosed in an appeal of a disciplinary action by a law enforcement or probation officer to any person other than the parties to the appeal process and their lawful representatives. All data and reports from a polygraph examination of a law enforcement or probation officer are confidential and may be used only for purposes of employment, certification, or reactivation of certification with reference to the administrative matter for which the polygraph was administered. All other uses are prohibited. Except for a preemployment polygraph taken by an applicant who was not hired, or in the case of an active investigation or an appeal, the data from, and reports pertaining to, a polygraph shall be destroyed as soon as practicable 3 years after the date of appointment or employment of the employee who took the polygraph, but not more than 90 days after that date.

The State legislature passed a bill that added a new section to the State Revised Statutes. The new legislation restricts the posting of dismissed or nondisciplinary actions against regulated professionals from the interested regulatory board's Web site. If, however, the board issues an advisory letter or a letter of concern, or imposes a practice limitation, the action in question may be posted on the board's Web site. The legislation also requires that if a regulatory board maintains a Web site, the board must display on the site a statement indicating that a person may obtain additional public records related to any licensee or certificate holder by contacting the board directly.

Workers with disabilities. Legislation was passed that amends the State's antidiscrimination labor statutes. Changes to the law include additional phrases in the definition sections, sections limiting accommodations, and sections interpreting "disability" and "substantially limits." According to the bill, "auxiliary aids and services" include (1) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; (2) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments; and (3) the acquisition or modification of equipment or devices. In the same vein, "being regarded as having such a physical or mental impairment"

means "an individual who establishes that she or he has been subjected to an action prohibited under statute because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity." This definition does not countenance an impairment that is transitory and minor. The legislation defines "major life activities" to include (1) caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working; and (2) the operation of major bodily functions, such as functions of the immune system and normal cell growth, as well as digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. The new legislation mandates that the interpretation of "disability" exercise the broadest coverage permitted by the legislation, while "substantially limits" must be interpreted in a manner consistent with the Americans with Disabilities Amendments Act of 2008. The bill made it unlawful for an employer, a labor organization, or a joint labor-management committee to discriminate on the basis of disability. In addition, an employer cannot fail or refuse to hire an individual, or discharge, limit, segregate, or classify an individual in any way that deprives or tends to deprive the individual of an employment opportunity or that adversely affects the individual in respect of an employment opportunity, on the basis of a disability. It is now an unlawful employment practice for a labor organization to exclude, expel from its membership, or otherwise discriminate against an individual on the basis of a disability. It is also unlawful for an employer, labor organization, or labor-management committee to participate in any contractual or other arrangement wherein a qualified individual is discriminated against on the basis of a disability.

California

Agriculture. An amendment to the State Health and Safety Code modified the definition of the term "agricultural employee" to include the definition given in the code. In addition, the definition now includes "any person who works on or off the farm in the processing of any agricultural commodity until it is shipped for distribution, whether or not this person is encompassed within the definition specified in the State Labor Code."

Equal employment opportunity. Legislation was enacted that amended the State Code, making it an unlawful employment practice for an employer to bar or discharge a person from employment or from a training program, unless the action is based on a bona fide occupational qualification. The legislation serves as a state-

ment that provides an employer with the right to legitimately discriminate against an employee on the basis of appropriate factors. An employer may refuse to hire or may discharge an employee who, because of the employee's medical condition, is unable to perform his or her essential duties, even with reasonable accommodations, or is unable to perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others. An employer also may refuse to employ an individual because of the individual's age if the law compels or provides for that refusal. Promotions within the existing staff, hiring or promotion on the basis of experience and training, rehiring on the basis of seniority and prior service with the employer, and hiring under an established recruiting program from high schools, colleges, universities, or trade schools do not, in and of themselves, constitute unlawful employment practices.

Human trafficking. The portion of the State Penal Code related to human trafficking was amended to state that, "upon conviction of a violation of certain sections of the State Penal Code, if real property is used to facilitate the commission of the offense, the procedures for determining whether the property constitutes a nuisance and the remedies imposed therefore as provided in Article 2 of Chapter 3 of Title 1 of Part 4 shall apply."

Other legislation. The State legislature passed a bill requiring persons 18 years and older who provide childcare or childcare supervision in an ancillary daycare center to register with the State TrustLine Registry. If the State Department of Social Services denies an individual's application or revokes the individual's registration, then that individual automatically becomes ineligible for employment in a position providing childcare or childcare supervision. The submission of a TrustLine Registry application by a current or prospective subject registrant enables the individual to be deemed in compliance with the State law and to begin employment in the daycare center. If the application is denied, then the individual shall become ineligible for employment as a provider of childcare or childcare supervision in an ancillary daycare center. This requirement does not apply to similarly situated persons 18 years and younger.

Time off. The State legislature passed legislation specifying the amount of time an employer may require an employee to work before providing a 30-minute unpaid meal break. Employers must now provide employees who work 5 consecutive hours with an unpaid 30-minute meal break. The break may be waived by mutual consent if the total work period for the

day is no more than 6 hours. If an employee works 10 hours in a workday, the employer must provide a second unpaid meal period, unless the total work period will not exceed 12 hours, in which case the parties may mutually agree to waive the second break if the first was not waived. Persons working in those areas of the motion picture or broadcasting industry in which a valid collective bargaining agreement provides for meal breaks and monetary remedies for missed meal periods are exempt from this legislation. Similarly, employees in a construction occupation, commercial drivers, registered security officers, and employees of a gas or electrical corporation or public utility are exempt from this requirement, as long as they are covered under a valid collective bargaining agreement that expressly (1) sets the wages, hours of work, and working conditions of the employees and (2) provides for meal periods, final and binding arbitration of meal period disputes, and certain premium wages for overtime for the employees.

The State Labor Code was amended with respect to employee leave and benefits. Private employers are now required to permit employees who have exhausted all available sick leave to take a leave of absence with pay, not exceeding 30 days for the purpose of organ donation and not exceeding 5 days for bone marrow donation. Employers must restore employees returning from leave for organ or bone marrow donation to the same position they held when the leave began or to an equivalent position. Employers may not interfere with, and shall not retaliate against, employees for taking such leave. An employee may bring a civil action in the superior court of the appropriate county in pursuit of enforcement of the State Code.

Whistleblower. Current law under the State Whistleblower Protection Act authorizes a California State University employee or applicant for employment to have an available action for damages caused by intentional acts of reprisal, retaliation, threats, or coercion. The legislatively revised statute now authorizes an available action for damages or other legal remedies arising on or after January 1, 2011, for a University of California employee or applicant for employment under the same procedure as that applicable to California State University employees. A California State University employee, including an officer or faculty member, or an applicant for employment may file a written complaint with his or her supervisor or manager, or with any other university officer, alleging actual or attempted acts of reprisal, retaliation, threats, or coercion, or similar improper acts, for having disclosed protected information. The complaint, together with a sworn statement asserting that the contents of the complaint are true or are believed by the affiant to be true, under

penalty of perjury, must be filed within 12 months of the most recent act of reprisal. Any person who intentionally engages in acts recognized by this legislation to be against the individual who makes the report is subject to a fine not to exceed \$10,000 and imprisonment in the county jail for a period of up to 1 year. Any university employee who intentionally engages in this conduct shall also be subject to discipline by the university and liable for any punitive damages that may be awarded, including reasonable attorneys' fees as provided by law. Nothing in the legislation precludes the rights or remedies of any employee under any other Federal or State law or under any employment contract or collective bargaining agreement.

A provision on privacy and a definitional section were added to the State whistleblower statute. An auditor or controller in charge of a fraud, waste, or abuse investigation may now submit a substantiated copy of the audit report with the name(s) of the employee(s) being investigated to the appropriate authority for disciplinary action. The report, however, is still subject to confidentiality requirements specified in local, State, and Federal statutes. In addition, the phrase "fraud, waste, and abuse" is defined by the statute as "any improper activity by a local agency or employee that is undertaken in the performance of the employee's duties. Such activity includes any deemed to be outside the scope of his or her employment, [and] which [is] in violation of any local, State, or Federal law or regulation relating to corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform a duty, or is economically wasteful, or involves gross misconduct."

The State Whistleblower Protection Act was amended to include within the definition of "employee," for purposes of the act, a person employed by the State Supreme Court, a court of appeals, a superior court, or the court administrative office. Employees of, or applicants for employment with, these judicial entities who file a written complaint alleging actual or attempted acts of reprisal or retaliation, or similar prohibited acts, for having made a protected disclosure may also file a copy of the written complaint with the State Personnel Board, together with a sworn statement, under penalty of perjury, that the written complaint is true. The law requires the State auditor to investigate and report on improper governmental activities. Any person, except those immune from liability because they are subject to other jurisdictions, who intentionally engages in acts of reprisal or retaliation, or similar prohibited acts, against a State employee or an applicant for State employment

for having made a protected disclosure, is subject to punishment for a misdemeanor and shall be liable in an action for civil damages brought by the injured party.

Worker privacy. The State Public Records Act requires State and local agencies to make their records available for public inspection and, upon payment of a fee, to make copies available upon request, unless the records are exempt from disclosure. The amended State Education Code asserts that the State Interscholastic Federation, a voluntary organization that consists of school and school-related personnel with the responsibility for administering interscholastic athletic activities in secondary schools, is now covered by the protection of the State Public Records Act and that the organization's records are afforded the same public records disclosure exemptions as are provided to school districts. This courtesy is necessary because the federation receives personal information about students and school personnel and the exemption afforded it by the amended code protects the confidentiality of the records and information of said students and school personnel.

Current law prohibits the disclosure of the home addresses of certain public employees and officials that appear in any records of the State Department of Motor Vehicles, except to a court, a law enforcement agency, an attorney in a civil or criminal action, and certain other official entities. This prohibition includes the home addresses of the spouses and children of those specified public employees and officials and of the surviving spouses and children of peace officers who died in the line of duty. Amending legislation now permits the disclosure of the home addresses of those spouses, surviving spouses, or children if they were convicted of a crime and are on active parole or probation. Also, the person requesting confidentiality for a spouse or child is required to declare, at the time the request is made, whether the spouse or child has been convicted of a crime and is on active parole or probation. Neither the State Department of Motor Vehicles nor the listed individual's employer is required to verify or be responsible for verifying that the person was convicted of a crime and is on active parole or probation. Following the person's termination of office or employment, a confidential home address shall be withheld from public inspection for 3 years, unless the termination is the result of a conviction for a criminal offense. Confidentiality shall be maintained while the individual is filing an appeal to bar termination and is ongoing. Once the appeal process has exhausted confidentiality and the termination is upheld, disclosure shall be at the discretion of the employing agency.

The State's chief information officer shall

require fingerprint images and associated information from an employee, a prospective employee, a contractor, a subcontractor, a volunteer, or a vendor whose duties include, or would include, working at a State data center, or at any State facility, in the field of telecommunications, or in network operations, engineering, or security and who has access to confidential or sensitive information or data on a network of computing infrastructure. The fingerprint images and associated information shall be furnished to the U.S. Department of Justice for the purpose of obtaining information about the existence and nature of a record of a person's (1) State or Federal convictions; (2) having been convicted of, or having pleaded no contest to, a crime or having committed an act involving dishonesty, fraud, or deceit if the crime or act is substantially related to the qualifications, functions, or duties of a person employed by the State; or (3) convictions or arrests for which the person is free on bail or on his or her own recognizance pending trial or appeal, especially if there is a reasonable expectation that there is a connection to the information or data to which the employee shall have access. If an individual is rejected for employment on the basis of information contained in a response from the U.S. Department of Justice or Federal Bureau of Investigation, the individual shall receive a copy of the response from the State chief information officer. The latter shall develop a written appeal process for an individual who is determined ineligible for employment because of his or her record as a criminal offender, filed with the aforementioned agencies, and the individual may not be found ineligible for employment until the appeal process is in place. Finally, when considering background information, the State chief information officer shall take into account any evidence of rehabilitation, including participation in treatment programs, as well as the age and specifics of the offense.

Colorado

State department of labor. The State Pay Equity Commission was created by legislation and is located in the office of the executive director of the State Department of Labor and Employment. The commission's work includes (1) educating employers in the State about issues or practices that may contribute to pay inequities, (2) working with business groups and educational institutions to develop and maintain an inventory of best practices for encouraging equal pay, (3) encouraging employers to implement equal-pay best practices, (4) studying other State models of equal-pay practices that achieve pay equity, (5) developing a program recognizing employers who pursue pay equity practices, (6) conducting outreach and education to employers and employees regarding pay equity, and (7) working to establish the

State as a model employer with regard to pay equity.

Independent contractor. Legislation was enacted that authorizes a nonprofit youth sports organization and a coach to enter into an independent contractor agreement (as opposed to an employer-employee agreement) which provides conclusive evidence that there is no employment relationship between the organization and the coach. The legislation allows the agreement to obligate the coach to pay Federal and State income taxes on any compensation that the coach receives for his or her services. In addition, the agreement may be written so that the coach is not entitled to workers' compensation benefits in connection with his or her duties as a coach.

Wages paid. New legislation specifies that, with certain exceptions, no employer shall make a deduction from the wages or compensation of an employee unless that deduction is authorized by the employee and is revocable. The authorization for this legislation includes deductions for hospitalization and medical insurance, other insurance, savings plans, purchases of stock, supplemental retirement plans, charities, and deposits to financial institutions. Deductions for contributions that will apply toward automatic enrollment in an employee retirement plan shall be permitted, regardless of whether the plan is subject to the provisions of the Federal Employee Retirement Income Security Act of 1974 as amended. Any employer that provides automatic enrollment in an employee retirement plan is not liable for having made investment decisions on behalf of any participating employee with respect to the default investment of contributions made for that employee if (1) the plan provides the participating employee at least quarterly opportunities to select investments for the employee's contributions among investment alternatives under the plan, (2) the participating employee is given (a) notice of investment decisions that will be made in the absence of direction from the employee, (b) a description of all the investment alternatives available for employees under the plan, and (c) a brief description of procedures available for the employee to change investments, and (3) the participating employee is given at least annual notice of the actual default investment decisions made regarding contributions attributable to the employee. The relief from liability of the employer extends to any employee retirement plan official who makes the actual default investment decisions on behalf of the employee.

Connecticut

Independent contractor. The State General

Assembly enacted legislation that updated the State's employee classification laws. The bill stipulates that each day in which an employer knowingly or intentionally misclassifies an employee will constitute a separate offense. The legislation, which affects several statutes, imposes civil monetary penalties ranging from \$300 a day to \$1,000 a day for each day the employer is in violation of the statute. The legislation also adds the State to the class of organizations that employers cannot intentionally injure, defraud, or deceive because of failure to pay workers' compensation assessments.

Worker privacy. Personnel, medical, or similar types of files concerning a current or former employee of the State Department of Correction or the State Department of Mental Health and Addiction Services, including, but not limited to, a record of a security investigation of, or a discrimination complaint by or against, such employee shall not be subject to disclosure under the Freedom of Information Act. Such disclosure is prohibited to any individual committed to the custody or supervision of the commissioner of correction or confined in a facility of the Whiting Forensic Division of the State Valley Hospital.

Delaware

Discharge. Periodically, emergencies arise that prohibit driving on State highways, express highways, roadways, and private roads. During these emergencies, the use or operation of motor vehicles is restricted in accordance with a State protocol. In new legislation, a Level 2 Driving Restriction means that no persons, except those deemed to be essential personnel, shall operate a motor vehicle on State roadways when the ban has been activated. All businesses, professional offices, organizations, and other entities shall be encouraged to take appropriate actions to protect their citizens, customers, and employees by terminating operations, or establishing a shelter in place to which those citizens, customers, and employees can go, during an emergency. An employer of a public or private entity shall not terminate, reprimand, discipline, or in any way commit any adverse employment action against an employee who, as a result of the action of a State-mandated driving ban, fails or refuses to report to work during the pendency of the ban. When a Level 1 Driving Warning has been activated, any person operating a motor vehicle shall exercise extra caution in the operation of that vehicle. Nonessential employees, regardless of whether they are employed by a public or private entity, are encouraged not to operate a motor vehicle on the State's roadways, unless there is a significant safety, health, or business reason for doing so.

Drug and alcohol testing. The State General Assembly passed legislation that adds a new section to employment laws governing employees of, and applicants for employment at, the State Psychiatric Center. The State Department of Health and Social Services cannot hire anyone without completing a criminal background check and drug screening on that person. The department shall promulgate a list of disqualifying criminal convictions, but the State General Assembly mandates only that certain controlled substances be tested for. Whenever circumstances dictate, the department may conditionally hire an applicant pending the results of the criminal background investigation and/or drug screening. Upon notification of a conviction, the department must immediately terminate the employment of any center employee who has been convicted of a disqualifying crime; however, if a drug screening indicates that the applicant or employee has consumed some illegal drug or drugs, the department may impose sanctions, including suspension or termination. Any individual who fails to make a full and complete disclosure of any information required to obtain a criminal history record shall be subject to a civil penalty between \$1,000 and \$5,000. Any applicant who willfully fails to comply with the drug-screening requirements shall be subject to a civil penalty between \$1,000 and \$5,000.

The State enacted legislation relating to drug testing of employees of the State Department of Services for Children, Youth, and Their Families. The department is authorized and required to conduct drug testing, in accordance with its policies and regulations, of any employee or prospective employee who has accepted or is accepting a safety, security-sensitive, or childcare position. The following drug testing shall be required: (1) preemployment testing, (2) random testing, and (3) testing on grounds of reasonable suspicion. The department shall adopt policies and procedures for imposing sanctions, which may include referral to the State's Employee Assistance Program, suspension, or termination, upon any employee in a safety, security-sensitive, or childcare position who willfully refuses to submit to random testing or to testing on grounds of reasonable suspicion or whose drug screen indicates that such person has illegally used or consumed a drug or drugs.

District of Columbia

Time off. In newly proposed rules for implementing the Accrued Sick and Safe Leave Act of 2008, the District Council passed legislation that adds a new Chapter 32 to Title 7 of the District Municipal Regulations. The new rules establish standards and procedures

for processing paid leave to employees for absences associated with illnesses, domestic violence, and sexual abuse. The Council shall transmit a copy of this resolution, upon its adoption, to the mayor, the director of the Department of Employment Services, and the administrator of the District Office of Documents and Administrative Issuances.

Whistleblower. The District Council amended the District Comprehensive Merit Personnel Act of 1978 by enacting the Whistleblower Protection Amendment Act of 2009. As specified in the latter, a supervisor shall not take, or threaten to take, a prohibited personnel action or otherwise retaliate against an employee because of the employee's protected disclosure or because of the employee's refusal to comply with an illegal order. Except in cases where the communication would be unlawful, a person shall not interfere with or deny the right of employees, individually or collectively, to furnish information to the council, a council committee, or a council member. An employee who is aggrieved by a violation of this act may bring a civil action against the District before a court or jury in the Superior Court of the District. If a protected disclosure by a District employee assists in securing the right to recover, the actual recovery of, or the prevention of loss of more than \$100,000 in public funds, the mayor may pay a reward in any amount between \$5,000 and \$50,000 to the person who made the disclosure.

Florida

Agriculture. Legislation was passed that amends several statutes related to farm labor contractors and their employees. The "timely application for renewal" is now defined as the time that the application for a Federal certificate of registration as a farm labor contractor or a farm labor contractor employee is filed, as defined by Federal law, with the U.S. Department of Labor at least 30 days prior to the expiration date of the holder's current certificate. This legislation requires the State Department of Business and Professional Regulation to renew a certificate of registration after the person's Federal certificate of registration expires if the person files a timely application for renewal with the U.S. Department of Labor. In addition, the department must suspend, revoke, or refuse to issue or renew a certificate of registration upon receipt from the U.S. Department of Labor of a final order of suspension, revocation, or refusal to issue or renew the Federal certificate of registration.

Employee leasing. A person seeking to purchase or acquire control of an employee leasing company must first apply to the State Board of Employee Leasing Companies for a

certificate of approval for the proposed change of ownership. Prior approval is not required if, at the time the purchase or acquisition occurs, a controlling person of the employee leasing company maintains a controlling person license. Notification of the license must be provided to the board within 30 days after the purchase or acquisition. An application that is submitted to the board is deemed approved if the board has neither approved nor rejected the application (with appropriate notification to the applicant of the reason for the rejection) within 90 days after receipt of the completed application. Failure to renew the license at the due time of renewal and pay the appropriate fee shall result in the license becoming delinquent, with the licensee having 30 days after the due renewal date in which to renew the license and pay a late fee not to exceed \$300. If payment is not received within 30 days, the licensee is subject to disciplinary action under State statutes.

Worker privacy. Within the State Statutes, the public records exemption has been expanded to include specified personal information about current and former public defenders and about staff of the privately run office of Criminal Conflict and Civil Regional Counsel, as well as their spouses and children. Among the categories of excluded personal information are (1) home addresses, (2) telephone numbers, (3) Social Security numbers, and (4) photographs of active or former law enforcement personnel; (5) places of employment of the spouses and children of such personnel; and (6) schools and daycare facilities attended by the students of such personnel. An agency that is the custodian of the aforementioned information and that is not the employer of the public official shall maintain the exempt status of the information if the designated employee submits a written request for maintenance of the exempted information. The legislature deems it a public necessity not to disclose the personal information of these officials, in order to prevent them and their families from becoming targets of acts of violence.

Georgia

Immigration legislation. No contractor or subcontractor who, pursuant to State law, enters into a contract with a public employer or of a public employer (that is, a subcontract) shall enter into such a contract or subcontract in connection with the physical performance of services within the State unless the contractor or subcontractor registers and participates in the Federal work authorization program that verifies certain information about all newly hired employees. Any employee shall also be required to satisfy the foregoing requirements.

Upon contracting with a new subcontractor, a contractor or subcontractor shall, as a condition of any contract or subcontract it enters into, provide a public employer with notice of the identity of any and all subsequent subcontractors hired or contracted by that contractor or subcontractor. Such notice shall be provided within 5 business days of entering into a contract or agreement for hire with any subcontractor. Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement in an affidavit submitted pursuant to this State requirement shall, upon conviction, be punished as specified under State Code and shall be prohibited from bidding on or entering into any public contract for 12 months following such conviction.

Worker privacy. The State Official Code Annotated relating to exemptions to requirements for the disclosure of public records was amended to provide that certain personal information relating to teachers and employees of public and nonpublic schools shall be exempt from disclosure. Public disclosure shall not be required for records that reveal the home address, the home telephone number, the email address, or the Social Security number of, or insurance or medical information about, employees or teachers of the school.

Hawaii

Immigration legislation. The State legislature enacted provisions concerning the revocation, suspension, and renewal of licenses of State contractors by the State Contractors License Board. The board may revoke, suspend, or refuse to renew the license of any contractor who violates certain requirements of State law. Two of the reasons listed for refusing to renew a license are dishonesty and fraudulent or deceitful acts as a contractor that cause substantial damage to another or that cause the abandonment of any construction project or operation without a reasonable or legal excuse. In addition, any contractor who knowingly or intentionally employs a person who is not eligible to work in the United States under Federal law shall be in violation of this statute. Another issue warranting disciplinary license action is a contractor's failure to secure or maintain workers' compensation insurance, unless the licensee is authorized to act as a self-insurer under State law.

Offsite work. The State legislature created the State Broadband Task Force to provide recommendations on how to advance the capabilities and use of broadband communications in the islands. The purpose for expanded broadband communications is to ensure access by all households, businesses, and organizations in the State by 2012. The responsibilities of the

director of the task force and, in time, the State Department of Commerce and Consumer Affairs, are, among others, to promote and encourage the use of telework alternatives for public and private employees, including the promulgation of appropriate policy and legislative initiatives; to advise and assist State agencies; and, upon request from the counties, to help with planning, developing, and administering programs, projects, plans, policies, and other activities that promote telecommuting by employees of State and county agencies.

Workplace violence. The State Senate adopted a resolution urging the State Department of Labor and Industrial Relations to adopt rules to prohibit abusive work environments. The department also was urged to develop and disseminate, at no cost to the employers, information on abusive work environments and the legal consequences that employees or employers encounter if they contribute to the creation or perpetuation of such environments.

Idaho

Worker privacy. The State Code was amended to clarify the four categories of personal information—personnel records, personal information, health records, and professional discipline records—that are exempt from public disclosure. All personnel records of a current or former public official other than the official's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace, and employing agency are now public. No other personnel information relating to a public employee or an applicant for public employment, including information regarding sex, race, marital status, birth date, home address and telephone number, applications for hiring or promotion, testing and scoring materials, grievances, correspondence, and the employee's or applicant's performance evaluation, shall be disclosed to the public without the employee's or applicant's written consent. The disclosure of names as part of a background check is permitted, as is the disclosure of the names of the five finalists among the applicants for any public position. If the list of finalists contains fewer than five finalists' names, then the entire list of applicants may be made available. The disclosure of anyone's residential street address and telephone number is prohibited. Also, the disclosure of records of the State Department of Health and Welfare or a public health district that identify a person infected with a reportable disease is prohibited. Law enforcement officers who desire that their residential street address and telephone number, as well as those of their household members, be exempt from disclosure may submit an application (and the

applicable fee) to the custodian of the public record who contains such information, and the public agency shall comply for a period of 4 years. An individual who ceases to be a law enforcement officer, or a household member of such individual, ceases to be eligible for the exemption and must notify, in writing and within 30 days of such cessation, every public agency to which the individual has submitted an application for exemption from disclosure, informing those agencies that he or she is no longer eligible for such exemption.

Illinois

Child labor. The State General Assembly passed legislation related to the in-state employment of minors from other States. When an out-of-state minor seeks an in-state employment certificate, the State Department of Labor shall work with a city or regional superintendent of schools or the State superintendent of schools, or with either of their duly appointed representatives, to issue the certificate. The State superintendent of schools may waive the requirement that a minor applicant for an employment certificate submit the application in person if the minor resides in another State.

Employee leasing. The State Day and Temporary Labor Services Act was amended to clarify wage payment issues relating to leased employees. A third-party client is now required to pay wages and related payroll taxes to a temporary labor service agency for services performed by the laborer according to payment terms outlined on invoices or service agreements or by the service agency. Violations deemed to be willful may result in revocation of the temporary labor service agency's registration if the agency is found guilty, and the agency may be subject to a civil penalty not to exceed \$6,000 for violations found by a first audit. Following the first audit, the agency or its third-party client shall be subject to a civil penalty not to exceed \$2,500 for each repeat violation within 3 years. A complaint of a violation filed by a licensed day and temporary labor agency shall be reviewed to check payroll and accounting records to determine whether wages and payroll taxes have been paid to the agency and to verify that the day and temporary laborers have been paid the wages owed them.

Family leave. The Family Military Leave Act was amended to include the child or grandparent of a person called to military service that will last longer than 30 days with the State or the United States as one who might request leave from his or her employer. Any employer that employs between 15 and 50 employees shall provide up to 15 days of

unpaid family military leave to an employee during the time Federal or State deployment orders are in effect. Any employer that employs more than 50 employees shall provide up to 30 days of unpaid leave. The number of days of leave provided to an employee shall be reduced by the number of days of leave provided to the employee because of any qualifying emergency arising out of the fact that the service member has been notified of an impending call or order for service in the Armed Forces.

Human trafficking. The State's Abused and Neglected Child Reporting Act was amended to include expanded definitions of categories of abuse. Among the categories now included are the offenses of involuntary servitude, involuntary sexual servitude of a minor, and trafficking in persons for forced labor or services against a child under the State Criminal Code of 1961. This definition presupposes that allowing, encouraging, or requiring a minor—especially a minor under 18 years—to commit any act of prostitution is proof that the parent, custodian, or guardian of the minor is aware that the act involves money, property, a token, an object or article, or anything of value. Such evidence will constitute prima facie evidence of abuse and neglect. If, after a reasonable investigation, the person suspected of or charged with prostitution is a person under 18 years, that person shall be immune from prosecution and shall be subject to temporary protective custody. This allegation of such activity by a person under 18 years shall trigger an initial investigation into child abuse or child neglect within 24 hours.

Other legislation. The State General Assembly passed legislation mandating that recipients who are awarded a grant or loaned funds of \$250,000 or more file written certification that they will comply with business enterprise program practices for minority- and female-owned businesses, as well as for businesses owned by persons with disabilities. The recipient must also agree, in writing, to comply with the equal employment practices section of the State's Human Rights Act. A grant or loan recipient may petition for the funds granted or lent to be exempt, at least partially, from these requirements. The petition should be based on the best available information that the number of businesses owned by minorities, females, and persons with disabilities is insufficient to ensure (1) adequate competition and (2) an expectation of reasonable prices on bids or proposals solicited for the prospective individual contract or contract package. Each State chief procurement officer must maintain, on his or her official Web site, a list of these waivers granted with respect to

contracts granted under that procurement officer's authority. This bill does not apply to any grant or loan (1) executed before the bill is enacted, (2) for which previous incurred costs are being reimbursed, or (3) for a federally funded program for which the requirement would break Federal law.

Wages paid. Legislation passed by the State General Assembly amended the State Criminal Procedure Code with respect to violations of wage payments under the State Wage Payment and Collection Act. The State Department of Labor is now empowered to establish an administrative procedure to hear claims or specific categories of claims filed with the department for \$3,000 or less per employee; the State director of labor or his or her representative may create rules necessary to establish this procedure. Aggrieved employees, however, are not required to exhaust any administrative remedies prior to filing suit in the circuit court that has personal jurisdiction over the employer. Injured employees may not utilize both the administrative procedure and a civil action. In either case, the employee may recover the amount of underpayment and 2 percent of the underpayment as damages, but in a civil action, the employee also can recover costs and all reasonable attorneys' fees. Except in the case of civil remedies, any employer or agent of an employer who willfully refuses to pay wages or falsely denies the amount or validity of the amount of the claim shall be guilty of a class B misdemeanor when the unpaid wages, final compensation, or wage supplements total less than \$5,000. Any amount more than \$5,000 will result in conviction for a class A misdemeanor. Employers found liable for wage payments must pay a \$250 nonwaivable fee to the State Department of Labor. In addition, employers who do not seek a review of an administrative or judicial decision within 35 days from the date of the decision or within 15 days from the date of the demand for payment by the State Department of Labor must pay a 20-percent penalty to the department, as well as a penalty of 1 percent per calendar day to the employee for each day the employer does not pay the amount ordered or demanded. Recidivist criminal activity within 2 years will result in conviction for a class 4 felony.

Worker privacy. The State Dental Practice Act was amended such that, upon a determination by the chairperson of the State Board of Dentistry that, when reasonable cause exists that a violation constituting grounds for disciplinary action has occurred, a subpoena may be issued for the dental records of the individual patients of licensed dentists and dental hygienists. All information gathered during any investigation shall be kept for the

confidential use of the secretary of the State Department of Financial and Professional Regulation, the dental coordinator, the Board of Dentistry's attorneys, the dental investigative staff, authorized clerical staff, and persons employed by contract to advise the dental coordinator. The confidential information may be disclosed to Federal, State, or local law enforcement agencies pursuant to a subpoena in an ongoing criminal investigation or to a dental licensing authority of another State or jurisdiction. Any information or documents disclosed to a dental licensing authority or to another State or jurisdiction may be used by that authority only for investigations and disciplinary proceedings with regard to a license.

An employer or former employer shall not divulge a disciplinary report, a letter of reprimand, or any other disciplinary action to a third party without written notice to the individual who is the subject of the disciplinary report, letter of reprimand, or other disciplinary action. If (1) the employee has waived written notice as part of a written, signed employment application with another employer, (2) the disclosure is ordered to a party in a legal action or arbitration, or (3) the information is requested by a government agency as a result of a claim or complaint by another employee or as a result of a criminal investigation by the employee's agency, then notifying the employee beforehand is not necessary. Any employer who receives a request for records of a disciplinary report, a letter of reprimand, or any other disciplinary action as part of the Freedom of Information Act may provide notification to the employee in written form, or through electronic mail if available.

The decision not to employ an individual on the basis of the individual's credit history or on a credit report is not permitted. An employer shall not do any of the following as it relates to this legislation: (1) discharge, fail or refuse to hire or recruit, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment because of the individual's credit history or credit report; (2) inquire about an applicant's or employee's credit history; or (3) order or obtain an applicant's or employee's credit report from a consumer reporting agency. The prohibition on obtaining an employee's credit report does not preclude an inquiry or employment action if a satisfactory credit history is an established bona fide occupational requirement of a particular position or of a particular group of an employer's employees. A satisfactory credit history is not a bona fide occupational requirement unless (1) State or Federal law requires bonding or some other form of security covering an individual holding the position; (2) the duties of the position include custody

of, or unsupervised access to, cash or marketable assets valued at \$2,500 or more, including signatory power over business assets of \$100 or more per transaction; (3) the position is a managerial one involving setting the direction or control of the business; (4) the position involves access to personal or confidential information, financial information, trade secrets, or State or national security information; or (5) the position meets the criteria that the U.S. Department of Labor or State Department of Labor have established in which a credit history is a bona fide occupational requirement. Lastly, a person who is injured by a violation of this legislation may bring a civil action in circuit court to obtain injunctive relief or damages, or both.

The State legislature enacted legislation that prohibits the disclosure of State employee performance evaluations under the Freedom of Information Act.

Legislation was enacted that affected the privacy of State employees. Information on all State employees hired in the future will be included in a public access database that also includes information on current State employees. Employee information maintained in the database will include the employee's (1) name; (2) employing State agency; (3) employing State division; (4) position title; (5) current rate of pay and year-to-date pay; (6) county of employment; (7) Rutan status; (8) status with respect to any collective bargaining agreement, merit compensation, or exemption; (9) employment status as probationary, trainee, intern, certified, or exempt from certification; and (10) status as a military veteran.

Iowa

Genetic testing. No person shall obtain genetic information or samples for genetic testing from an individual without first obtaining informed and written consent from the individual or the individual's authorized representative. Nor shall the person perform genetic testing or collect, retain, transmit, or use genetic information without the aforesaid consent. A person who violates or aids in the violation of this legislation is liable to an aggrieved employee, labor organization member, or licensee, or to an aggrieved prospective employee, for affirmative relief, including reinstatement or hiring, with or without backpay; membership; licensing; or any other equitable relief that the court deems appropriate, such as attorneys' fees and court costs. If it can be proven that sufficient evidence exists that a violation has occurred, then the employer, employment agency, labor organization, or licensing agency has the burden of proving that the law has not been violated.

Other legislation. Newly enacted legislation clarified the inspection process and the quali-

fications for hospital inspectors. Inspections of hospitals are deemed necessary to determine whether they are complying with applicable rules. Hospital inspectors shall (1) be free of conflicts of interest and shall not participate in an inspection or a complaint investigation in which the inspector or a member of the inspector's immediate family (spouse; natural or adoptive parent; child or sibling; or stepparent, stepchild, or stepsibling) works or has worked within the last 2 years; (2) complete a yearly conflict-of-interest disclosure statement; and (3) biennially complete a minimum of 10 hours of continuing education pertaining to hospital operations. If there is an allegation of abuse by an employee, an independent investigation shall be conducted to determine what, if any, employment action should be taken, including, but not limited to, placing the employee on administrative leave or reassignment and terminating the alleged abuser. Any employee who is terminated and fails to report the termination or investigation to future employers is guilty of a simple misdemeanor. If there is a finding of dependent adult abuse by a caregiver, then written notification shall be made to the caregiver and his or her employer. The notification shall detail both the consequences of placement on the central abuse registry and the caregiver's appeal rights and shall include a separate appeal request form. According to this form, if an appeal is filed within 15 days, the caregiver shall not be placed on the central abuse registry until final agency action is taken.

Plant closing. The State enacted legislation known as the State Worker Adjustment and Retraining Notification Act. Under the act, any employer who plans a business closing or a mass layoff shall not order such action until the end of a 30-day period that begins after the employer serves written notice of the action to the affected employees or their representatives and to the State Department of Workforce Development. If a collective bargaining agreement is in effect, the terms within the agreement shall govern the length of the notice period. In the case of the sale of part or all of a business, the seller is responsible for providing notice of any business closing or mass layoff that will take place up to and on the effective date of the sale. The buyer is responsible for notifications after the sale. The notification about the closing or layoff must include the job titles of the positions that are to be affected and the names of the employees currently holding the affected jobs. The notification shall also include the address(es) of the business site(s), and the State Department of Workforce Development shall maintain the confidentiality of the names and addresses of the employees. An employer who violates the provisions of this law shall be subject to a civil

penalty of not more than \$100 for each day of the violation.

Time off. The legislature passed a bill requiring employers to give veterans the day off on November 11, Veterans Day. At least 1 month prior to Veterans Day, employees who are veterans must provide the employer with written notice of intent to take the time off, as well as proof of discharge from active duty. Employers are required to notify affected employees at least 10 days prior to Veterans Day whether the time off will be paid or unpaid. If providing time off would jeopardize the public safety or health or would cause significant economic or operational disruption to the employer, then the employer may deny the time off to the minimum number of employees needed to maintain public health or safety or the employer's operational capacity.

Kansas

Human trafficking. The definition of human trafficking under the State Annotated Statutes was amended. The activity is now defined as the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjecting the person to involuntary servitude or forced labor while benefiting financially or by receiving anything of value from participation in a venture that has engaged in coercing employment. Employment is considered coercive if it is obtained or maintained by another person through any of the following means: (1) causing or threatening to cause physical injury to any person, (2) physically restraining or threatening to physically restrain another person, (3) abusing or threatening to abuse the law or the legal process, (4) threatening to withhold food, lodging, or clothing, (5) knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported government identification document of another person, or (6) knowingly holding another person in a condition of peonage in satisfaction of a debt owed the person who is holding such other person. Human trafficking is a severity-level-2 person felony. Aggravated human trafficking, a severity-level-1 person felony, involves the commission or attempted commission of kidnapping, in whole or in part, for the purpose of sexual gratification of the defendant, that results in a death or in which one or more of the preceding actions are committed against a person under 18 years, with the knowledge that the individual will be used in forced labor, in involuntary servitude, or for the sexual gratification of the defendant or another person. If the victim is less than 14 years of age, the activity is called an off-grid person felony. If a defendant who is 18 years or older is convicted of aggravated trafficking, he or she shall be sen-

tenced to a term of imprisonment for life, with a mandatory minimum sentence of not less than 25 years. If the defendant has previously been convicted of such trafficking activities, the State law requires a minimum term of imprisonment of not less than 40 years.

Workers with disabilities. The Governor of the State issued an executive order addressing the employment of people with disabilities in State government. The Governor has directed all State agencies to (1) develop a shared vision and mission statement that will lead to people with disabilities gaining employment on a par with the employment of workers without disabilities; (2) inventory State plans, strategic plans, and mission statements to ensure the competitive employment of people with disabilities; (3) identify and revise policies and procedures that are a barrier to the competitive employment of people with disabilities; (4) coordinate employment programs across agencies to maximize the employment of people with disabilities; (5) explore the possibility of implementing new initiatives that will increase the employment of people with disabilities; (6) identify mechanisms for determining baseline data indicating how many people with disabilities are currently employed in the State, how many become employed, and the fiscal impact of their employment; and (7) report annually to the Governor the number of people with disabilities employed in the State and the fiscal impact on the State.

Louisiana

Agriculture. The State legislature enacted a bill that provides unpaid agricultural employees with a security interest in the crops and in the proceeds from those crops. Employees do not need to file the security interest with the State filing office, and the interest is perfected upon attachment. The unpaid employees have priority over all other security interests and are equal among themselves. The new legislation, however, does not prevent the owner of the agricultural products from selling or otherwise conveying the products.

Employment agency. The State legislature enacted legislation affecting employment agencies. The new bill allows fines of up to \$500 to be assessed on a per-violation basis for each violation committed by an employment agency of the statute relative to employment agencies. In addition, applicants who are injured by the employment agency, its agents, or its employees through intentional misrepresentation, fraud, deceit, an unlawful act or omission, or in any other illegal or tortuous manner in relation to the employment service retain the right of bringing private legal action. Recovery shall be limited to any amounts paid by

the applicant, plus damages that may not exceed 25 percent of the fees paid by the applicant; or other relief in any court of competent jurisdiction. Attorneys' fees shall be awarded to the prevailing party. Fines for those operating an employment service without a license are increased: an agency operator now may be fined up to \$1,000 per violation, may be imprisoned for up to 6 months, or both.

Human trafficking. Legislation was enacted addressing human trafficking. Human trafficking and trafficking of children for sexual purposes are now included in various types of crimes of violence. A conviction on a count of trafficking of children for sexual purposes is considered an aggravated offense. Trafficking of children for sexual purposes is now a sex offense within the meaning of the legislation.

Inmate labor. The State enacted legislation that allows for the deduction of incidental costs, in addition to deductions for room, board, and other administrative costs, for inmates on work release programs. Administrative and incidental costs are now defined as all costs other than room and board. Deductions may not exceed 70 percent of the gross wages received by the inmate.

Whistleblower. The State legislature passed legislation dealing with whistleblowers in the public school system. The bill gives a public school employee a private right of action against his or her employer if the employer retaliates against the employee for participating in good faith in an investigation of irregularities or improprieties in the administration of standardized tests or if the employee reports irregularities or improprieties to the State Department of Education or to any public school administrator or governing authority. Any person who does retaliate against such an employee is guilty of a misdemeanor and may be fined up to \$500 or imprisoned for up to 6 months, or both. For purposes of this legislation, "retaliation" is defined as (1) discharging, demoting, or suspending an employee who reports any irregularities or improprieties in the administration of standardized tests or (2) threatening, harassing, or discriminating against an employee who reports any irregularities or improprieties in the administration of standardized tests. Any employee who makes a false report of irregularities or improprieties in administering standardized tests shall be guilty of a misdemeanor and subject to up to a \$500 fine, 6 months in jail, or both.

Worker privacy. The State Senate resolved to request the State Workforce Commission to act quickly to limit the use of consumer credit reports as a criterion for most employment opportunities in the State.

Maine

Immigration legislation. The State Public Law was amended to indicate that if an employer is found guilty of a violation of Section 871, Subsection 1–A, of the State Revised Statutes Annotated (a class E crime), then for 2 years the employer may not employ H–2A aliens who have been granted permission to work temporarily within the State. It is an affirmative defense to prosecution that (1) before employing or referring a person for employment, the employer made a good-faith inquiry as to whether that person was a U.S. citizen or an alien and (2) the inquiry reasonably indicated that the alien was lawfully admitted to the United States for permanent residence or that the appropriate Federal agency had authorized the alien to accept employment in the United States. A good-faith inquiry must be in writing, and if an application for employment requests citizenship data or an alien registration number, then if the applicant is an alien, the application meets the requirement of a being a good-faith inquiry. A Social Security account number card is not considered evidence of the appropriate Federal agency's authorization for an alien to accept employment in the United States.

Independent contractor. Legislation to amend the State laws governing the misclassification of construction workers was enacted. The legislation sets out procedures for issuing stop-work orders because of the misclassification of construction workers. If it is determined that a hiring agent or construction subcontractor has failed to secure workers' compensation for its employees, then a stop-work order must be issued against the hiring agent or subcontractor for the construction project in question. The stop-work order is a final agency action, but the hiring agent or subcontractor must be given at least 3 days' notice of a hearing regarding the order. If the hiring agent or subcontractor presents evidence that it provides workers' compensation coverage for the employees in question, the stop-work order shall be stayed. A stop-work order will continue in effect until the executive director releases it upon finding that the hiring agent or subcontractor has complied with the order. A stop-work order applies to any successor firm, corporation, or partnership of the hiring agent or subcontractor.

Inmate labor. Legislation was enacted to clarify the status of prisoners and their exclusion from or inclusion in the definition of the term "employee." Those excluded from the definition include persons who are sentenced as prisoners for a term of incarceration imposed in the State, or in any other jurisdic-

tion, for a criminal offense. However, a prisoner may be considered an employee in any of the following exceptional cases: (1) the prisoner is employed by a private employer, (2) the prisoner is participating in a work release program, (3) the prisoner is sentenced to imprisonment with intensive supervision under Title 17A, Section 1261, of the State Criminal Code, (4) the prisoner is employed in a program established under a certification issued by the U.S. Department of Justice under 18 United States Code, Section 1761, (5) the prisoner is employed while in a supervised community confinement program pursuant to Title 34A, Section 3036A, of the State Code, and (6) the prisoner is employed in a community confinement monitoring program pursuant to Title 30A, Section 1659A, of the State Code.

Maryland

Prevailing wage. Both houses of the State legislature passed legislation outlining amendments to public work contracts. If an employee working under a public work contract is paid at a rate less than the prevailing-wage rate for that employee's classification for the work performed, the employee may file a complaint with the State commissioner of labor and industry. The commissioner may attempt to resolve the issue informally; failing that, the commissioner may order a hearing and is obligated to take certain actions if an employee is found to be entitled to restitution. If an employee who is no longer working under a contract with a public body is found to be entitled to restitution, the commissioner may order that restitution be paid directly by the employer of the employee within a reasonable length of time determined by the commissioner. If an employer fails to comply with an order to pay restitution to an employee, the commissioner or the employee may bring a civil action to enforce the order in the circuit court in the jurisdiction where the individuals are located. If the court finds that an employer paid an employee less than the requisite prevailing wage, the court shall award the affected employee the difference between the wage actually paid and the prevailing wage at the time that the services were rendered, with any outstanding unpaid fringe benefit contributions paid to the appropriate benefit fund, plan, or program, or directly to the employee if the individual is no longer employed by the employer and thus is not enrolled in an appropriate benefit fund. The court may order the payment of double damages or treble damages if it finds that the employer withheld wages or benefits willfully and knowingly, or with deliberate ignorance or reckless disregard for the employer's obligations. An employer may

not discharge, threaten, or otherwise retaliate or discriminate against an employee regarding compensation or other terms and conditions of employment for filing a complaint. If the court finds in favor of the employee in this instance, the employer shall pay the employee an amount equal to 3 times the amount of back wages and benefits, calculated from the date of the violation, as well as reasonable counsel fees and other costs. Any person found to have made a false or fraudulent representation or an omission known to be false or made with deliberate ignorance or reckless disregard for its truth or falsity regarding a material fact in connection with any prevailing wage payroll record is liable for a civil penalty of \$1,000 for each falsified record.

State department of labor. The State legislature enacted legislation that requires the commissioner of the State Division of Labor and Industry, Department of Labor, Licensing and Regulation, to investigate wage complaints that do not exceed \$3,000. Included in the legislation are (1) procedures for the commissioner to follow when dealing with a wage complaint and (2) proper methods for disposing of complaints. Upon receipt of an order to pay back wages, an employer has 30 days to request an administrative hearing; if a hearing is not requested, the order to pay becomes a final order. Upon expiration of the 30 days, the commissioner may seek to enforce payment of the wage order in a district court of the county in which the employer resides or has a place of business.

Time off. The State Annotated Code was amended with regard to employee participation in civil air patrol activities. Employers may not discriminate against or discharge an employee who has been employed at least 90 days and is a member of the Civil Air Patrol because of membership in the patrol. In addition, employers may not hinder or prevent an employee who has been employed at least 90 days from performing service as part of the State wing of the patrol during an emergency mission when the member is entitled to leave under State law. Employers shall provide no less than 15 days per calendar year of unpaid patrol leave to an employee responding to an emergency mission of the State wing of the patrol. Employees shall give as much notice as possible of the intended dates of the beginning and end of the leave. After arriving at the location of the emergency, the employee shall provide the employer with an estimate of the time needed to complete the mission and shall report to the employer any necessary changes in that time. The employer may require verification of the eligibility of the employee for any patrol leave requested or taken. If the employee fails to provide the required certifi-

cation, the employer may deny the employee leave for the patrol activity. The employee may not be required to exhaust all available leave before using patrol leave. When the employee returns to work, the employer shall restore the employee to the position held when the leave began or to a position with equivalent seniority status, benefits, pay, and conditions of employment. An employer may decline to restore an employee as required by State law because of changed employment circumstances unrelated to provisions of State law.

For each working day in each of 20 or more calendar weeks, an employer who is engaged in a retail establishment business, owns one or more facilities doing business under the same trade name, and employs a total of 50 or more employees in the State may not employ a person for 4 to 6 consecutive hours without providing a nonworking shift break of at least 15 minutes, as long as the person does not qualify for a longer break. The employee is not entitled to a 15-minute nonworking shift break under the 4- to 6-hour work rule if the employee is entitled to a 30-minute nonworking shift break when he or she works more than 6 consecutive hours. If the employee works 8 consecutive hours in a single shift, the employer shall provide an additional break of at least 15 minutes for every 4 more consecutive hours that the employee works in the shift. If an employee's work hours do not exceed 6 consecutive hours, the allowance for time off may be waived by written agreement between the employer and the employee. A shift break may be considered a working shift break if the type of work prevents an employee from being relieved of work during the break or if the employee is allowed to consume a meal while working and the shift break is counted toward the employee's work hours. Alleged violations are reported by the employee to the State commissioner of labor and industry, and if it is found that violations exist, then an order is issued compelling compliance and a civil penalty of up to \$300 may be assessed for each employee with respect to whom the employer is not in compliance and if the violation occurred within 3 years after an employee had filed a previous complaint. If the employer fails to comply with an order issued for a subsequent violation and the employee prevails, the employee may be entitled to 3 times the value of his or her hourly wage for each shift break violation, plus reasonable attorneys' fees and other costs incurred by the employee.

Wages paid. A manufacturer, distributor, or factory branch shall make information available to a dealer about any incentive payment, reimbursement payment, cash, gift, or thing of value that the dealer gives to an employee in a calendar year and that is worth more than \$200. An incentive, reimbursement, or cash

payment given to a dealer for distribution to an employee shall be distributed to the employee as part of the payroll process after the dealer has made the appropriate payroll deductions. Upon the filing of a claim, a manufacturer, factory branch, or distributor shall compensate a dealer for any incentive or reimbursement program sponsored by the manufacturer, factory branch, or distributor under the terms of which the dealer is eligible for compensation. A claim shall be filed in the manner and form prescribed by the manufacturer and approved or disapproved within 30 days of receipt. If not approved or disapproved within those 30 days, the claim shall be deemed approved and payable within 30 days of approval. If the claim is shown to be unsubstantiated, the distributor may charge back the claim within 6 months from the payment of the incentive or reimbursement.

The State Wage Payment and Collection Law was amended and now requires that the definition of "wage" include overtime wages and any other remuneration promised for service.

Worker privacy. The State legislature enacted an amendment whose purpose is to highlight the rights of State correctional officers relating to employment. A correctional officer may not be required or requested to disclose an item of his or her property, income, assets, source of income, and debts or personal or domestic expenditures, including any item of a member of the officer's family or household, unless the disclosure is required by Federal or State law or the information is necessary to investigate a possible conflict of interest that relates to the performance of the officer's duties. A correctional officer who follows the mandates of this legislation may not be discharged, disciplined, demoted, denied promotion, transferred, reassigned, or otherwise discriminated against for exercising his or her rights granted by the legislation. A correctional officer may waive any or all of the aforesaid rights if he or she signs and acknowledges a waiver to that effect after having been given the opportunity to consult with legal counsel selected by the officer or a representative from the officer's employee organization.

The State Division of Correction is now authorized to require an individual to pass a polygraph examination before being appointed to serve as a correctional officer in a State or local correctional facility. In addition, the State commissioner of correction shall adopt certain regulations governing the administration of authorized polygraph examinations and shall also possess the authority to provide an exemption, for an applicant for employment, from the State-mandated prohibition to the taking of a polygraph examination as a condition of employment. This authority to exempt the person from the prohibition over-

rides a State law which says that an employer may not require or demand, as a condition of prospective or continued employment, that an individual submit to or take a polygraph examination or similar test.

Michigan

Agriculture. Legislation was enacted that amended a portion of the State Codified Laws concerned with agricultural labor camps. Prospective applicants who wish to open such a camp must submit a completed application listing (1) the full name and address of the applicant; (2) the location of the labor camp; (3) the maximum number of people who will occupy the camp at any one time; (4) the months when the camp will be used or occupied; (5) a brief description of the facilities in which the individuals will be housed; (6) a brief description of the sanitary, water, cooking, and sewage facilities available; and (7) any other information required by the State Department of Natural Resources and Environment. Together with the application, the applicant must submit a fee equal to the product of \$5 and the maximum number of occupants of the camp. Finally, the application must be submitted at least 30 days prior to the first day the camp is to be operated.

Equal employment opportunity. The State enacted legislation that amended Section 202 of the Elliott-Larsen Civil Rights Act by prohibiting job discrimination against women on the basis of pregnancy, childbirth, or related medical conditions.

Preference. No contract shall be awarded by the State Department of Technology, Management and Budget for the construction, repair, remodeling, or demolition of a facility, unless the contract is let pursuant to a bidding procedure that is approved by the department. The department shall issue directives prescribing procedures to be used to implement the new contracting policy. The procedures shall require a competitive solicitation in the awarding of any contract. In awarding a contract under this legislation, the department shall give a preference of up to 10 percent of the amount of the contract to a qualified disabled veteran. If the veteran otherwise meets the requirements of the contract solicitation and, with the preference, is the lowest bidder, the department shall enter into a construction contract with the qualified disabled veteran. If two or more qualified disabled veterans are among the lowest bidders on a contract and all other factors are equal between the two bidders, the qualified disabled veteran with the lowest bid shall be awarded the contract.

Minnesota

Prevailing wage. Legislation was enacted that amends State procurement law. The new legislation requires that more than 19 percent of the total value of all State government contracts for janitorial services; document imaging; document shredding; and mailing, collating, and sorting services be awarded to rehabilitation programs and extended employment providers (employment of workers with disabilities) that are certified by the commissioner of employment and economic development, as well as to licensed day training and habilitation services. Contracts awarded under this bill may exceed the estimated fair market price, determined by the commissioner, by up to 6 percent; however, for the contract to meet the 19-percent requirement, the vendor must be within 6 percent of the fair market price. All vendors eligible for preference under the new bill must submit contact information to the commissioner annually. The commissioner shall provide notice of contracting requirements under the bill to all State authorities for local purchasing buyers along with the list of eligible service providers.

Missouri

Child labor. The State General Assembly enacted legislation that expands the number of individuals authorized to issue child work certificates. In addition to the superintendent of public schools of the district in which the child resides, the chief executive officer, or his or her equivalent, of the charter school the child attends or a person holding a student services certificate and who is authorized in writing by the superintendent or chief executive may issue work certificates. The bill also authorizes the issuance of a work certificate by the superintendent or the person holding a student services certificate when the principal of a public or private school chooses not to issue work certificates. Principals who issue work certificates must self-certify that they understand the requirements therefor and must submit copies of all work certificate applications and issued certificates to the superintendent of the school district. The superintendent may revoke a work certificate issued by a principal of a public or private school in the district if the child becomes ineligible for a work certificate under existing law. A parent is not permitted to issue a work certificate to his or her child unless the parent is the student's primary educational provider and is responsible for the student's education program. Finally, a school superintendent may authorize another to issue work certificates in his or her absence, even if the authorized person does not possess a student services certificate.

Drug and alcohol testing. An omnibus education piece of legislation was enacted by the State legislature. Among the topics included in the legislation are requirements for drug and alcohol testing for employees of contractors and subcontractors. As a condition for bidding on projects to build elementary and secondary education facilities, contractors and subcontractors must establish and implement a random drug-testing policy. Testing shall be conducted by a duly certified testing facility, and any positive results must be reported to the employee, employer, and school district. All costs incurred shall be borne by the employer, and in no instance will the State or any of its political subdivisions be responsible for testing expenses. Finally, all testing rules must conform to Federal laws and regulations governing drug and alcohol testing.

Nebraska

Independent contractor. An individual performing construction labor services for a contractor engaged in a delivery service or a construction contractor business, including any subcontractor performing services for a contractor, is presumed to be an employee, and not an independent contractor, for purposes of the State Employee Classification Act. Individuals may be considered independent contractors if they are exempted from unemployment insurance coverage or if they have been assigned a combined tax rate and registered as a contractor prior to beginning the construction work for the contractor. It is a violation of the act for a contractor to designate an individual as an independent contractor who would be properly classified as an employee under State statute. The State Department of Labor shall establish and operate a hot line and Web site for individuals to report suspected violations of the act. The hot line and Web site may be operated in conjunction with the requirements of the act. At a minimum, the act requires the reporting individual to provide contact information and a description of the suspected violation, including the name of the business and the location of the jobsite. The information provided shall be confidential. If there is a positive finding regarding the alleged violation, the contractor shall be assessed a \$500 fine for each misclassified individual for the first offense and a \$5,000 fine for each misclassified individual for each second and subsequent offense. The State Department of Labor shall provide a report annually to the legislature regarding compliance with, and enforcement of, the act. The report shall include, among other items required, the number of reports received from the hot line and Web site, the number of reports investigated, and the findings of the reports. Every contractor shall post, in a

conspicuous location at the jobsite or place of business, a statement, in English and Spanish, asserting that every individual working for a contractor has the right to be properly classified by the contractor as an employee rather than an independent contractor. Anyone who believes that he or she or someone else has been improperly classified must contact the State Department of Labor. Any contractor who knowingly provides a false affidavit shall be subject to the penalties of perjury and, upon a second or subsequent violation, shall be barred from contracting with the State or any political subdivision thereof for a period of 3 years after the date of discovery of the falsehood.

Offsite work. The State legislature passed the Teleworker Job Creation Act. The act encourages businesses to promote the creation of and training for new jobs that can be performed in the employee's home within the State. A "qualified training program" is a training program that (1) has at least 15 hours of instruction per trainee, all of which will occur in the trainee's residence, (2) will pay each trainee at least the Federal minimum hourly wage rate, and (3) will train trainees as teleworkers. Trainees must pass job-related tests established by the employer. Any employer who (1) has an approved application, (2) trains at least 400 employees in a qualified training program within 365 calendar days from the day the application must be filed, and (3) offers employment to those employees to work for the employer as teleworkers will be reimbursed for all job training performed. Hiring preference, based on available jobs, should be given to those applicants who reside in the State within counties of less than 100,000 inhabitants and with high concentrations of individuals living below the poverty line.

Wages paid. The State statutes concerning recordkeeping for wages paid were amended. When an employee makes a written request, an employer must now furnish an itemized statement showing wages paid and deductions for each pay period that earnings and deductions were made. The employer must furnish the information within 10 working days after the request is submitted. An employer who fails to furnish the itemized statement is guilty of an infraction and subject to a fine.

New Hampshire

Independent contractor. The Governor issued an executive order directing State departments that currently enforce State employee misclassification laws to coordinate their respective resources in order to identify and investigate cases of misclassification and develop strategies to eliminate misclassification. The State

Department of Labor will lead the coordination effort. The Governor also established a joint task force to address the issue of misclassification. The task force will (1) examine and evaluate current misclassification enforcement mechanisms, including mechanisms arising under minimum wage, employment security, workers' disability, and tax laws, and make recommendations for more effective enforcement; (2) identify barriers to information sharing and recommend to the Governor actions needed to overcome the barriers; (3) work cooperatively with business, labor, and community groups to reduce incidents of misclassification; (4) increase public awareness of the illegal nature and harm caused by misclassification; and (5) encourage businesses and individuals to identify possible violators through a misclassification Web site. On September 1 of each year, the task force must issue a public report to the Governor that will detail the work of the task force in the previous year.

Minimum wage. Legislation was passed that discusses the State minimum-wage law as applied to tipped restaurant employees. In clarifying the definition of "restaurant," the bill states that the term must include businesses located in a permanent or temporary building that is kept, used, maintained, advertised, and held out to the public as a place where meals are regularly served for a fee. Also, the establishment must offer seating, and table or delivery service must be available to the customer. Finally, tipped employees shall include employees who deliver prepared food.

Wages paid. Legislation was enacted that allows employers to withhold wages of employees for legal plans and identity theft plans offered by the company, as long as the employer receive no financial gain from the plans. The employee has to provide his or her written authorization for the deduction(s), and the deduction(s) must be properly recorded.

New Jersey

Drug and alcohol testing. As a condition of employment as a direct care staff member at a State psychiatric hospital or developmental center, an applicant shall consent to and undergo drug testing for controlled dangerous substances. The cost of the testing shall be borne by the applicant. Any person applying for employment shall be removed from consideration if they test positive for the unlawful use of any controlled dangerous substance or refuse to submit to drug testing. Any person who is employed by a State psychiatric hospital or developmental center as a direct care staff member shall be subject to random drug testing for controlled dangerous substances.

The testing will be performed at intervals that the commissioner of the State Department of Human Services deems appropriate, and the commissioner shall perform random drug tests annually on 500 direct care staff members. If, on the basis of the employee's visible impairment or professional misconduct that relates adversely to patient care or safety, the employee's supervisor has reasonable suspicion to believe that the employee is illegally using a controlled dangerous substance, the employee may be required to undergo drug testing. Drug testing required as a result of random testing or supervisor observation shall be at the expense of the department and shall be performed by an outside drug-testing facility in a manner prescribed by the commissioner. Similar drug-testing criteria apply to direct care staff employees of veterans' memorial homes, with the supervisor reporting to the State adjutant general. Any subsequent testing for such staff is to be paid by the State Department of Military and Veterans Affairs.

Employee leasing. The State enacted amending legislation that provides for the suspension or revocation of certain licenses which are required by law and are issued by an agency for the purpose of operating a business in the State. The licenses shall be suspended or revoked for certain repeated violations of laws, including the failure to maintain and report records regarding pay, wages, benefits, and taxes pursuant to State wage, benefit, and tax laws. Specifically, the enacted bill states that, in instances in which an employee leasing company has entered into an employee leasing agreement with a client company, any written determination by the commissioner of the State Department of Labor and Workforce Development directing agencies to suspend or revoke an employer's license for a failure or continued failure to keep records or make payments pursuant to State wage, benefit, and tax laws will be for the suspension or revocation of the licenses of the client company, and not the licenses of the employee leasing company, if the commissioner determines that the failure was caused by incomplete, inaccurate, misleading, or false information provided to the employee leasing company by the client company.

Equal employment opportunity. Legislation was enacted concerning the rights of persons with an autism spectrum disorder that could be the basis for discrimination. The purpose of the legislation is to clarify the provisions of the State Law Against Discrimination, especially those concerning its prohibition of discrimination against a person with a disability. The legislation specifies that the definition of "developmental disability" within the State law now includes autism spectrum disorders.

The revised State law prohibits discrimination in housing, employment, and access to public accommodations generally.

Family issues. The State enacted legislation that provides for annual adjustments in family temporary disability leave contribution rates and limits certain refunds of contributions. The adjustments are to commence in calendar year 2011. The bill requires that the annual rate of contribution to be paid by workers into the Family Temporary Disability Leave Account, for calendar year 2011 and each calendar year thereafter, be the rate necessary to obtain a total amount of contributions equal to 125 percent of the benefits payable for family temporary disability leave during the calendar year, plus 100 percent of the amount necessary to administer the benefits, less the amount of net assets remaining in the account at the end of the immediately preceding year. Further, the bill makes it clear that any worker with more than one employer is entitled to a refund if the worker's combined contribution to all employers exceeds the family temporary disability leave contribution rate set by the law. The contribution rate paid by workers for family temporary disability leave insurance during 2011 and any subsequent year will be calculated on the basis of actual expenditures for the preceding year, instead of estimates by the commissioner of the State Department of Labor and Workforce Development of expenditures expected during the year in which the contributions are to be collected.

Garment. Legislation was enacted concerning the procurement of apparel by the State and supplementing Title 34 of the State Revised Statutes. The State Apparel Procurement Board was established to ensure that the State's interests as a market participant were protected with respect to apparel contracts entered into by the State and its instrumentalities. When purchasing or otherwise obtaining apparel from a vendor, a public body shall require that all apparel production be in compliance with the following conditions: (1) all apparel production under the contract shall be performed in the United States, except where it is determined that it is not possible to obtain apparel produced in the United States that meets the necessary requirements of the public body; (2) workers employed to produce the apparel shall be provided a work environment that is safe, healthy, and free of discrimination on the basis of race, national origin, religion, sex, and sexual preference; and (3) the workers employed to produce the apparel shall be provided compensation at an hourly rate determined by the State commissioner of labor to be not less than the poverty line for a family of three, based upon 40 hours a week for 50 weeks a year. The workers employed to

produce the apparel shall not be terminated, except for just cause, and vendors and their contractors and subcontractors shall provide a mechanism for resolving all disputes with apparel production workers. Every apparel contract and bid application shall contain a provision or provisions detailing the newly enacted requirements of statutes, and compliance with these requirements shall be made a binding part of all apparel contracts.

Other legislation. The State enacted legislation concerning benefits for public employees and amending and supplementing various parts of the statutory law. Supplemental compensation for unused sick leave shall be payable only at the time of retirement from a State or locally administered retirement system and is based on the leave credited on the date of retirement. The political subdivision of the State or of an agency, authority, or instrumentality of the State shall not pay the employee for unused sick leave in an amount in excess of \$15,000. Accrued vacation leave that is not used by the employee within the year because of duties directly related to a state of emergency declared by the Governor may accumulate at the discretion of the appointing authority, and the employee shall be compensated for that leave, which is not subject to collective bargaining.

The State provides several plans that offer equity awards for corporations to use for the benefit of some or all employees and their families, dependents, or beneficiaries. Among these plans are (1) those which provide for the sale or distribution of shares of any class or series of stock options and purchases, profit-sharing, savings, pension, retirement, deferred compensation, and other plans of a similar nature, whether or not such plans also provide for the distribution of cash or property other than the aforesaid shares; (2) those which offer payments solely in cash or property other than shares of the corporation; these plans include profit-sharing, bonus, savings, pension, retirement, deferred compensation, and other plans of a similar nature; and (3) plans for the furnishing of (a) medical services, including life, sickness, accident, and disability or unemployment insurance or benefits, (b) education, housing, social, and recreational services, and (c) other, similar aids and services. Any or all of these plans may be adopted, amended, or terminated by a corporation by the act of its board, a committee of the board, or officers to whom the responsibility has been delegated.

Prevailing wage. The State law concerning prevailing wages was amended. Public work that includes construction, reconstruction, demolition, alteration, custom fabrication, or

repair work to be done on property in which not less than 55 percent is to be leased by a public body, or is subject to an agreement to be leased by a public body, and is to be paid in whole or in part with funds of a municipality in the State shall be equal to the threshold amounts under the State prevailing-wage law for that municipality. Amending legislation also has changed the definition of “maintenance work” to include the repair of existing facilities when the size, type, or extent of such facilities is not changed or increased. In addition, maintenance work is any work on a maintenance-related project that exceeds the scope of work and capabilities of in-house maintenance personnel, requires the solicitation of bids, and has an aggregate value exceeding \$50,000.

Another piece of legislation requires that the prevailing-wage rate be paid to workers employed in the performance of any construction undertaken in connection with financial assistance from the State Board of Public Utilities. This requirement applies to the performance of any contract to construct, renovate, or otherwise prepare a facility, the operation of which is necessary for the receipt of such financial assistance. The prevailing-wage requirements shall not apply to any contract that is less than the threshold amounts under the State prevailing-wage law for municipalities. The prevailing-wage rate shall be the rate determined by the commissioner of the State Department of Labor and Workforce Development and does not include any rebate, credit, loan, loan guarantee, expenditure, investment, grant, rental voucher, rental assistance, tax exemption, tax incentive, or other financial assistance from any source if that assistance is provided directly to a homeowner or tenant in connection with the homeowner’s or tenant’s place of residence. Also excluded from coverage of the prevailing-wage rate determination is assistance for energy-related and other improvements to the place of residence. The exclusion of financial assistance from the board applies as well to the weatherization or new construction of a single-family home, town home, or row home, or of any apartment building, condominium building, or multifamily home of four or fewer stories.

Wages paid. The State enacted legislation that permits an employer to withhold or divert a portion of an employee’s wages for payments of the costs and related fees for the replacement of employee identification tags when such identification is used to allow employees access to sterile or secured areas of airports. The withholding of wages shall be in accordance with a fee schedule described in any airline media plan approved by the Federal Transportation Security Administration.

New Mexico

Independent contractor. The State Public Employees Retirement Act was amended in order to change the requirements for retired public employees for returning to public employment after retirement. Now, to be reemployed by a public employer affiliated with the State retirement plan, the retired member of the plan must not have been employed by an affiliated public employer or retained as an independent contractor by the affiliated public employer from which the retired member retired for at least 12 consecutive months from the date of retirement to the commencement of the employment or reemployment with the affiliated public employer. The retired member’s pension shall be suspended upon commencement of the employment. Except as provided in the amended law, the previously retired member shall not become a member of the State retirement plan; thus, the previously retired member shall accrue no service credit, and the previously retired member and his or her affiliated public employer shall make no contributions to any coverage plan pursuant to the act. Upon termination of subsequent employment, the previously retired member’s pension shall resume in accordance with the act’s provisions.

Whistleblower. A public employer shall not take any retaliatory action against a public employee because the public employee communicates, either to the public employer or to a third party, information about an action or a failure to act that the employee believes, in good faith, constitutes an unlawful or improper act. The employer is also prohibited from taking any retaliatory action if the employee provides information to, or testifies before, a public body as part of an investigation, hearing, or inquiry into an unlawful or improper act, or if the employee objects to, or refuses to participate in, an activity, policy, or practice that is unlawful or improper. Nor is retaliation permissible if the improper or unlawful act violates a Federal law or regulation, a State law, an administrative rule, or a law of any political subdivision of the State, or constitutes malfeasance in office, gross mismanagement, a waste of funds, or an abuse of authority. A public employer that violates any provision of this law shall be liable to the public employee for the actual damages, reinstatement with the same seniority status, 2 times the amount of backpay with interest, and compensation for any special damage sustained as a result of the violation. In addition, an employer shall be required to pay the litigation costs of the employee. Finally, any action taken by the employer against the employee must be motivated by the employee’s misconduct or poor job performance, a reduction in the workforce,

or some other legitimate business purpose, and not by retaliation.

Worker privacy. Legislation was enacted that created the State Hazardous Duty Officers' Employer-Employee Relations Act. The act defines a hazardous-duty officer as an individual who is employed full time by the State or a political subdivision thereof as a firefighter, emergency medical technician, or paramedic, but does not include personnel who have not completed the probational period established by the individual's employer. If a hazardous-duty officer is under investigation by his or her employer for alleged actions that could result in administrative sanctions being levied against the officer, then, unless the urgency of the situation requires otherwise, (1) the officer may be interrogated only while on duty or during his or her normal waking hours and (2) the interrogation must be done at the employer's facility. Prior to the start of an interrogation session, the hazardous-duty officer shall be informed of the name and rank of the person in charge of the interrogation and the names of all other persons who will be present during the interrogation. The officer also shall be informed of the nature of the investigation and the names of all known complainants, unless such disclosure would compromise the integrity or security of the investigation. The interrogation shall be recorded, and the complete interrogation shall be published as a transcript, which shall be made available to the officer, upon written request, no later than 15 working days after the investigation has been completed. While under investigation, the officer shall be permitted to produce any relevant documents, witnesses, or other evidence to support his or her case and may cross-examine any adverse witness during any grievance process or appeal involving disciplinary action. No document containing comments adverse to a hazardous-duty officer shall be entered into the officer's personnel file, unless the officer has read and signed the document. Finally, when a hazardous-duty officer is under administrative investigation and a determination is made to commence a criminal investigation, the officer shall immediately be notified of the investigation and shall be afforded all the protections set forth in the Bill of Rights of the U.S. Constitution and in the State Constitution. An officer shall not be prohibited by an employer from engaging in any political activity when the officer is off duty, except as otherwise provided by law.

With certain exceptions, neither the State Educational Retirement Board nor its employees or contractors shall allow public inspection or disclosure of any information to anyone regarding a member or retired member of the board, other than the names of members and local administrative units by which a

member was employed; dates of employment, retirement, and reported death; service credit; reported salary; retirement and disability benefits; and amounts of contributions made by members and local administrative units. If the information provided relates to contributions, payments, or the management of monies received by a local administrative unit or to the financial controls or procedures of a local administrative unit, the exceptions include (1) the member, retired member, or spouse or authorized representative of the member or retired member; (2) other persons specifically identified in a prior release and consent; (3) the attorney general; (4) appropriate law enforcement agencies; and (5) the State auditor, public education department, or higher education department. No person receiving information disclosed as a result of a violation of the restrictions set forth in this legislation shall disclose that information to any other person, unless such disclosure is authorized by an applicable confidentiality agreement, board rule, or State law. Whoever knowingly violates a provision of the legislation is guilty of a petty misdemeanor.

New York

Equal employment opportunity. The State Governor issued an executive order banning discriminating practices in State employment on the basis of gender identity. The ban extends to all employment matters, from recruiting, hiring, appointing, terminating, and retaining personnel to promotion, tenure, and wages. Regulations prohibiting such practices of discrimination, as well as mandating an environment in which only job-related criteria are used to assess an employee or a prospective employee, will be promulgated by the State Governor's Office of Employee Relations. In addition, this State Office will implement a procedure for the swift and thorough investigation of complaints of discrimination.

Hours worked. The legislature passed a statute that amends the State labor law and executive law. The labor law is amended by the addition of a definition of "domestic worker," as well as sections limiting the number of hours domestic workers are allowed to work in a given period. The statute defines a domestic worker as a person employed in a home or residence to care for a child; serve as a companion to a sick, convalescing, or elderly person; perform housekeeping; or carry out any other domestic service purpose. This definition, however, does not include any individual (1) working on a casual basis; (2) who is engaged in providing companionship services as defined under the Fair Labor Standards Act and who is employed by an employer or agency other than the family or household using the individual's services; or (3) who is a relative through blood, marriage, or

adoption of the employer or of the person for whom the worker is delivering services under a program funded or administered by Federal, State, or local government. In addition, domestic workers shall not be required to work more than 40 hours in a week, or 44 hours if they reside in the home of their employer, unless they receive overtime wages of at least 1½ times their normal wage rate. Domestic workers must be allowed at least 24 consecutive hours of rest each week; they may agree to work on their rest days, but they must be paid the overtime rate for all hours worked on such days. The executive law is amended by the prohibition of unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made a term or condition of employment; (2) submission to or rejection of such conduct is used as the basis for employment decisions affecting the worker; or (3) the conduct creates an intimidating, hostile, or offensive working environment or interferes with the worker's performance. Similarly, unwelcome harassment by the employer that is based on gender, race, religion, or national origin and that creates an intimidating, hostile, or offensive work environment or interferes with the worker's performance is prohibited.

Independent contractor. Legislation was passed striking certain language from existing insurance law. The definition of "independent worker" no longer includes the phrase "on a temporary basis" in reference to a worker who is hired to work for a single employer for 18 months or less. In addition, an eligible association, in conjunction with a group health insurer, may not charge individuals application or renewal fees for determining their initial or ongoing eligibility for group health insurance provided through the association.

The State legislature added a new article to the labor law. The addition addresses independent contractors and employees in the construction industry. The article defines "construction" as constructing, moving, reconstructing, altering, maintaining, rehabilitating, repairing, renovating, or demolishing any building, structure, or improvement, or as work relating to the excavation of, or to other development or improvement to, land. The article also defines "contractor" as any sole proprietor, partnership, firm, corporation, limited liability company, association, or other legal entity permitted by law to do business within the State and that engages in construction as defined by the article. The term "contractor" includes general contractors as well as subcontractors. The new article stipulates that a contractor must classify a person as an employee, unless that person meets certain criteria enumerated in the article. A business entity is separate from the contractor only when all criteria cited in the new article are met. The

criteria track the common-law test for an independent contractor relationship. A contractor's failure to withhold Federal or State income taxes toward payment of unemployment compensation contributions or workers' compensation premiums is not a consideration in the employment relationship. Retaliation of any kind by the contractor is prohibited, and the employee's private right of action against retaliation is not limited by any penalty imposed by State authorities. Any contractor who willfully violates this statute will be subject to a civil penalty of up to \$2,500 for the first violation per misclassified employee and up to \$5,000 for each subsequent violation per misclassified employee within a 5-year period. In addition, the criminal penalty imposed for a first-offense willful violation of the statute is a misdemeanor punishable by up to 30 days' imprisonment or a fine not to exceed \$25,000. Subsequent violations could result in incarceration of up to 60 days and a fine of up to \$50,000. Any officer or shareholder who owns or controls more than 10 percent of the outstanding shares of an incorporated contractor who knowingly permits the corporation to willfully violate this statute also shall be in violation and subject to the same civil and criminal penalties. Contractors, who are subject to civil penalties under this statute, are subject as well to any other applicable penalties or remedies provided by law for failure to pay any other statutory payment or coverage obligations. Any contractor, officer, or shareholder who owns more than 10 percent of the outstanding shares of a contractor who has been convicted under this statute shall be subject to debarment and shall be ineligible to submit a bid or be awarded any contract with the State or with any municipal corporation, public benefit corporation, public authority, or public body for up to 1 year from the date of conviction or final determination or from up to 5 years for subsequent convictions. Nothing in this statute limits the availability of other remedies at law or in equity for violations of the statute. Every contractor must post, in a conspicuous place on the jobsite, a legible statement that describes both the responsibilities of independent contractors toward employees and the rights of employees. The State commissioner of labor will make the notice available. Contractors who violate this requirement will be subject to a civil penalty of up to \$1,500 for a first violation and up to \$5,000 for subsequent violations within a 5-year period.

Inmate labor. The commissioner, superintendent, or director of an institution in which inmates are confined may permit an inmate to leave the institution under guard for the purpose of performing volunteer labor or services in the public interest when there is a threat or occurrence of a natural disaster, including

earthquakes, hurricanes, landslides, and fires. An inmate also may be permitted to leave the institution in order to voluntarily perform work for a nonprofit organization—that is, an organization operated exclusively for religious, charitable, or educational purposes and for which no part of the net earnings may be used to the benefit of any private shareholder or individual.

Other legislation. No employer or its duly authorized agent shall transfer or in any other manner penalize or threaten an employee regarding his or her employment. Among the actions prohibited by law are reassignment, a scheduling change, an adverse evaluation, a constructive dismissal, and the denial of a promotion or overtime based in whole or in part on the employee's failure to meet a quota, established by the employer or its agent, of tickets or summonses issued within a specified period for violations of provisions of law for which a ticket or summons is authorized. This prohibition also applies to a quota on arrests or stops of individuals suspected of criminal activity, where the quota must be met within a specified period.

Plant closing. The State social services law was amended to indicate that, in a city having a population of 1 million or more, the social services district seeking to close a child daycare center under contract with the district shall provide at least 6 months' written notice to the center and to the parents or persons legally responsible for children enrolled in the center prior to closing. This notification requirement does not apply in cases where there are violations of the regulations of the State Office of Children and Family Services or when the center is closed for health and safety reasons. The district also can seek to close a child daycare center on an expedited basis for reasons of public safety, criminal behavior by the center, breach of contract with the local social services district, or suspension or revocation of the center's license for noneconomic reasons.

Time off. The State legislature enacted a bill that requires employers to extend funeral or bereavement leave to employees who experience the death of a same-sex partner or relative of the partner if the employer has a policy of extending funeral or bereavement leave to employees for the death of a spouse or relative of the spouse.

Workers with disabilities. Legislation was enacted that amended executive law with regard to ensuring the protection of individuals with disabilities under the human rights law. As amended, the statute now states that the opportunity to obtain employment without dis-

crimination on the basis of age, race, creed, color, national origin, sexual orientation, military status, sex, marital status, or disability is hereby recognized as, and declared to be, a civil right.

North Carolina

Worker privacy. If a career employee has been recommended for dismissal and chooses to resign without the written agreement of the superintendent, then the superintendent shall report the matter to the State Board of Education. The employee shall be deemed to have consented (1) to the placement in the employee's personnel file of the written notice of the superintendent's intention to recommend dismissal and (2) to the release of the fact that the superintendent has reported the employee to the State Board of Education and to prospective employers. These provisions, however, shall not apply to the public release of this information. Furthermore, the employee shall be deemed to have voluntarily surrendered his or her certification pending an investigation by the State Board of Education, and the surrender shall not exceed 45 days from the date of the employee's resignation. The State Board of Education can initiate an investigation within 5 working days of the written notice from the superintendent, who shall make a final decision, within 45 days from the date of resignation, as to whether to revoke or suspend the employee's certificate. A teacher who is not recommended for dismissal should not resign without the consent of the superintendent, unless he or she has given at least 30 days' notice. If the teacher does resign without giving at least 30 days' notice, the board may request that it revoke the teacher's certificate for the remainder of the school year in question. A copy of the request shall be placed in the teacher's personnel file.

Ohio

Family issues. The State legislature enacted an omnibus bill to amend many changes to State laws, including laws relating to family leave. Once per calendar year, an employer shall allow an employee to take leave of up to 10 days or 80 hours, whichever is less, if all of the following conditions are satisfied: (1) the employer has employed the employee for at least 12 consecutive months and for at least 1,250 hours in the 12 months immediately preceding the start of the leave; (2) the employee is the parent, spouse, or a person who has or had legal custody, of a member of the uniformed services who is called into active duty for a period longer than 30 days or who is injured, wounded, or hospitalized while on active duty; (3) the employee gives at least 14 days' notice of the intent to take leave for a call to active duty, or at least 2 days' notice prior to

taking leave because of an injury, wounding, or hospitalization of a uniformed family member; (4) the dates the employee takes leave occur no more than 2 weeks prior to, or 1 week after, the service member's deployment date; and (5) the employee does not have any other leave available, except sick leave or disability leave. The employer shall continue to provide benefits to the employee, with the employee being responsible for the same proportion of the cost of the benefits as he or she pays when not on leave. Upon completion of the leave, the employee shall be restored to the position held prior to taking the leave, with equivalent seniority, benefits, pay, and other terms and conditions of employment. The employer may require an employee who requests the use of leave to show certification from the appropriate military authority. An employer shall not discharge, fine, suspend, expel, discipline, or discriminate against an employee with respect to any term or condition of employment because of the employee's intent to use leave; nor shall the employer deprive the employee of any benefit that accrued before the commencement of the leave. An employee's rights shall not be waived, nor can the employer enter into a collective bargaining agreement that limits or requires an employee to waive his or her employment rights. A violation of these rights subjects an employer to a civil action for injunctive or any other relief that a court finds necessary.

Oklahoma

Equal employment opportunity. A definition was added to the State's employment protection laws. The new legislation defines "sex," "because of sex," and "based on sex" to include, but not be limited to, pregnancy, childbirth, and related medical conditions. In addition, women affected by pregnancy, childbirth, or a related medical condition shall be treated the same for all employment-related purposes as other persons not so affected, but similar in their ability or inability to work.

The State enacted the Freedom of Conscience Act. Under the new law, an employer shall not discriminate against an employee or a prospective employee by refusing to reasonably accommodate the religious observance or practice of the employee, unless the employer can demonstrate that the accommodation would pose an undue hardship on the program, enterprise, or business of the employer in certain circumstances described by State law. No health care facility, school, or employer shall discriminate against any person with regard to admission, hiring or firing, tenure, term, condition, privilege of employment, student status, or staff status on the grounds that the person refuses, or states an intention to refuse, to participate in a medical procedure or an activity on the basis of religious or

moral precepts. No person shall be required to participate in a medical procedure or activity if such participation is contrary to the person's religious beliefs or moral convictions. A person who is adversely affected by conduct that is in violation of this act may bring a civil action for equitable relief, including reinstatement or damages, or both. In an action under the act, the court shall award reasonable attorneys' fees to a person who obtains equitable relief. The action shall be commenced within 1 year after the cause of action accrues, or else the action shall be barred.

Human trafficking. Amended State law now makes it illegal to intentionally destroy, hide, alter, abscond with, or keep documentation from someone for the purpose of trafficking that person within the United States. Such documentation includes birth certificates, visas, passports, green cards, or other documents used to verify or legally extend an individual's legal status within the Nation. Any person found guilty of a crime under the amended law will face up to 1 year in jail or up to a \$1,000 fine, or both. Subject to the availability of funds, the State attorney general is authorized to establish a hot-line number for victims of human trafficking to request assistance or rescue. Finally, the legislation makes it a crime for anyone to blackmail another by threatening to report that person as being illegally present in the United States. As defined in this bill, blackmail is verbal, written, or printed communication with the intent to extort or gain anything of value from another or to compel another to do an act against his or her will. This crime is punishable by imprisonment of up to 5 years, a \$10,000 fine, or both.

Immigration legislation. An exception was added to the list of exceptions from the requirement that every State agency or political subdivision of the State verify the lawful presence in the United States of any individual older than 14 years who has applied for State or local benefits. The new exception provides that verification is not required if the person in question is applying for a special volunteer health care license. The license must specify that the volunteer is either retired from practice in the State or actively licensed in another State with no record of infractions in that State. The application also must specify that the volunteer will not receive, or plan on receiving, compensation for services rendered under the volunteer application.

Time off. Any State employee in the executive branch of the State government who is a certified disaster service volunteer of the American Red Cross or a member of the U.S. Air Force Auxiliary Civil Air Patrol may be granted a leave with pay not to exceed 15 working days

in any 12-month period so that the person may participate in specialized disaster relief services within the State. Approval of the Governor of the State is required in order for the individual to be granted leave without loss of pay, annual or sick leave, accrued overtime wages, or compensatory time. The executive agency for whom the employee works shall compensate an employee who is granted leave time under this legislation at his or her regular rate of pay for those regular work hours during which the employee is absent from work.

Worker privacy. Legislation that amends worker privacy laws was enacted by the State. The provisions of the legislation allow economic and business research centers within State higher education institutions to access confidential employee records maintained by the State Employment Security Commission. The information gained from the commission can be used only for aggregating data and identifying economic trends, and any information gained from the commission must meet its disclosure requirements.

Oregon

Equal employment opportunity. The State enacted legislation relating to unlawful discrimination in employment practices. Employers are now required to provide reasonable accommodation for the religious observance or practice of employees, unless doing so would impose undue hardship on the employer. Also, employers must permit employees to use vacation or other kinds of leave for religious observance or practice. Finally, employers are prohibited from imposing occupational requirements that restrict the ability of an employee to wear religious clothing, to take time off for a holy day, or to participate in a religious observance or practice if the employee's doing so would have only a temporary or tangential impact on the employee's ability to perform his or her job functions.

Prevailing wage. The State Revised Statutes concerning the prevailing wage were amended. "Prevailing rate of wage" refers to the rate of hourly wage, including all fringe benefits, that the State commissioner of the Bureau of Labor and Industries determines is paid in a given locality to the majority of workers employed on projects of a similar character in the same trade or occupation. "Public works" is defined in part as a project that uses funds from a private entity and \$750,000 or more of funds from a public agency for constructing, reconstructing, painting, or performing a major renovation on a privately owned road, highway, building, structure, or improvement of any type and is thus subject to the prevailing wage rate. This definition also applies to a project that uses funds from a pri-

vate entity for the construction of a privately owned road, highway, building, structure, or improvement in which a public agency will use or occupy 25 percent or more of the square footage of the completed project. Public works also may include a device, structure, or mechanism that uses solar radiation as a source for generating heat, cooling, or electrical energy.

Rhode Island

Child labor. The State laws concerned with child labor were amended. With the aim of prohibiting youths from engaging in hazardous occupations, it is now illegal for a person under 16 years to operate a gasoline-dispensing device at a self-service station. Further, no retail dealer of gasoline or any other motor fuel shall be prohibited from employing any person who has reached 16 years for the purpose of operating any gasoline-dispensing device, notwithstanding any other State statute, rule, or regulation to the contrary.

Other legislation. Before any temporary employee is given any new job assignment, regardless of whether the assignment is or is not with the same contracting company, employment agencies shall provide the employee with a copy of a written notice that includes a job description with classification requirements, estimated longevity of the assignment, information concerning any job hazards, and the anticipated pay rate, benefits, and work schedules. The employment agency shall keep a copy of the job description and other specifications on file for a period of 1 year and shall make the copy available to the employee. A notice of this law must be posted and maintained at all employment agencies at a location where workers can view it. Once it is determined that an employment agency has violated the notification provisions, the State Department of Labor and Training shall send the employment agency a written notice of the violation, containing a description of the operative fines. Any employment agency determined to have committed a second violation of the law within 5 years of the first violation shall be subject to a \$500 fine. If a third or subsequent violation of the law occurs within 5 years of a previous violation, the agency shall then be subject to a fine of \$1,000.

Legislation was passed that allows employees placed on extended medical leave to maintain their group hospital, surgical, or medical insurance plan benefits for 18 months from the date the employee was placed on such leave. To qualify for this extension, an employee must have been employed full time for at least 3 months prior to placement on the leave. The employer may continue to contribute to the plan, but is not required to do so and may require the employee to pay 100 percent of the cost of the plan benefits. An

employee becomes eligible for continuing coverage when his or her employer provides a written statement to the plan explaining that (1) the employee is being placed on extended medical leave for a medical reason (pertaining to either the employee or the employee's immediate family), (2) the employee can no longer work full time, and (3) both the employer and the employee expect the employee to return to full-time work someday.

Overtime. No employer shall engage any employee for a workweek longer than 40 hours, unless the employee is compensated at a rate of 1½ times the regular rate at which he or she is employed, for all hours worked in excess of 40 hours per week. However, any employers that pay any delivery drivers or sales merchandisers an overtime rate for hours worked in excess of 40 hours in any one week shall not calculate such overtime by using the fluctuating workweek method of overtime payment. The fluctuating workweek is used for salaried employees, who, regardless of how many hours they work per week, including on a holiday or Sunday, are eligible for overtime at the half-time rate for all hours in excess of 40 hours in the workweek. Therefore, in any workweek in which an employee of a retail business is employed on a Sunday or a holiday at a rate of 1½ times the regular rate at which he or she is employed, the hours worked on the Sunday or holiday shall be excluded from the calculation of overtime pay.

South Carolina

Human trafficking. The State General Assembly amended the criminal code to bring human trafficking into the realm of the most serious offenses prosecuted by the State. Trafficking in humans is now a violent crime, as well as a class A felony punishable by up to 30 years in the State prison. Also, human trafficking is now an aggravating factor when a murder is committed during the trafficking. Similarly, trafficking the victim is an aggravating factor when the victim is also a victim of criminal sexual conduct by the trafficker. Criminal sexual battery in the first degree is committed when the victim submits to the sexual battery while also a victim of human trafficking. Human traffickers must register as sex offenders, unless a specific finding is made, on the record, by the judge, noting that the offense did not include a criminal sexual offense or an attempted criminal sexual offense. Furthermore, sex offenders who also are convicted of human trafficking in persons under 18 years must not reside within 1,000 feet of a school, daycare center, children's recreational facility, park, or public playground and must submit to 24-hour electronic monitoring. Administering, distributing, dispensing, or at-

tempting or conspiring to deliver a controlled substance, such as gamma hydroxyl butyrate, to a person with the intent of trafficking that person is unlawful.

Inmate labor. The State legislature enacted legislation that alters the deduction schedule for compensation for inmates in community or prison industry programs. If the inmate works in paid employment in the community, 5 percent of his or her wages must be deposited with the State treasurer in a special account to support victim assistance programs and 15 percent must be retained by the State Department of Corrections to support services provided to victims of inmates. If the inmate works in a prison industry program, 10 percent of his or her wages must be used in training, program development, victim compensation, and general administrative support for the State Office of Victim Assistance and 10 percent must be retained by the department to support services provided to victims of prisoners.

The State General Assembly now requires that the calculation of the average weekly wage for inmates who work in a federally approved Prison Industry Enhancement Certification Program be based upon the inmate's actual net earnings after any statutory deductions.

Other legislation. The State Code requirements related to the posting of certain employment notices in the workplace were amended. Under the new requirements, every employer shall keep posted, in a conspicuous place, a printed notice stating the provisions of the law pertaining to the employment of adult persons and children and to the regulation of hours worked and working conditions.

Tennessee

Drug and alcohol testing. The portion of the State Code Annotated relative to motor carriers was amended. Henceforth, each for-hire motor carrier providing passenger transportation service to eight or more individuals shall, at a minimum, (1) maintain a policy of liability insurance in the amount of not less than \$1,000,000 to make compensation for injury to persons and for loss or damage to property resulting from the negligent operation by the driver; (2) conduct a program of mandatory random drug testing for the operators of its motor vehicles in accordance with regulations promulgated by the U.S. Department of Transportation; (3) require the operators of its motor vehicles to submit to a physical examination every 2 years; and (4) subject each provider to an annual safety examination compliance review conducted by the State Department of Safety. The review shall include (a) proof of insurance or

self-insured status, (b) documents relating to employee random drug testing, (c) documents specifying the results of physical examinations of employees, and (d) vehicle maintenance records. The State commissioner of safety is authorized to establish rules and regulations that comply with those of the State Uniform Administrative Procedures Act.

Equal employment opportunity. The State Code Annotated was amended to indicate that it is not considered a discriminatory practice for an employer to institute a policy in the workplace requiring that all employees speak only English at certain times when the employer has a legitimate business necessity for such a policy, including, but not limited to, times requiring the safe and efficient operation of the employer's business. Further, the employer must provide notice of the policy to employees, as well as of the circumstances in which English is expected to be spoken and the consequences of violating the policy.

Time off. The State legislature amended the portion of the State Code Annotated relating to employment practices. The amended code stipulates that no employer shall terminate an employee who is a volunteer rescue squad worker because the employee is absent or late to his or her regular employment in order to respond to an emergency prior to the time the employee is to report to the place of employment. An employer may charge the time lost from employment because of the response to the emergency against the employee's regular pay. An employer has the right to request a written statement from the supervisor of the volunteer rescue squad stating that the employee responded to an emergency and including the time and date of the emergency. It is incumbent upon the employee to notify the employer that the employee may be absent or late. Any employee terminated in violation of this legislation may bring a civil action against the employer, seeking reinstatement to the employee's former position, payment of back wages, and reinstatement of fringe benefits and seniority rights. The employee has 1 year from the date of the violation to file the action.

Wages paid. The portion of the State Code Annotated relating to payments to employees by employers was amended. The payment of wages is now permitted to be carried out by two additional methods: by an electronic automated fund transfer in lawful money of the United States and by means of a credit to a prepaid debit card issued through a network system from which the employee is able to withdraw or transfer funds subject to certain limitations. Employers who choose to compensate their employees by prepaid debit cards also shall give the employees the choice of be-

ing paid by electronic transfer. Any employer that pays its employees by a prepaid debit card shall ensure that each employee shall have the capability of making at least one withdrawal or transfer from the prepaid debit card per pay period without cost to the employee for any amount contained on the card.

Worker privacy. Legislation was enacted with provisions that disallow the discharge or other types of disciplinary action of State Department of Correction employees solely on the basis of failing a polygraph examination or for refusing to take a polygraph examination.

Workplace violence. The State commissioner of education, in collaboration with the State-level school safety team, is now charged with developing guidelines and training for all public school administrators and human resource personnel regarding the prevention of workplace violence. Such guidelines and training shall include outlines and related materials for use in the delivery of inservice training activities for teachers and other school personnel, as well as materials and training aimed at recognizing and responding to employee alcohol and substance abuse.

Utah

Drug and alcohol testing. If an employer tests an employee or a prospective employee for the presence of drugs or alcohol as a condition of hiring or continued employment, the employer is protected from liability if it is in compliance with the State statutory requirement concerning drug and alcohol testing. Employers and managers also shall submit to testing on a periodic basis. An organization that operates a storage or transfer facility engaged in the transportation of high-level nuclear waste, or radioactive waste greater than class C, within the exterior boundaries of the State shall establish a mandatory drug and alcohol testing program for prospective and existing employees as a condition of the hiring or continued employment of any employee. The executive director of the State Department of Environmental Quality, in consultation with the State Labor Commission, shall establish time and dosage standards for testing for impairment by the drug and alcohol testing program. Before a positive test result may be used as a basis for an action by an employer, the result must be confirmed by another test. An employer may use a test result or a refusal to be tested as the basis for disciplinary or rehabilitative action against an employee. Such action may include a requirement that the employee enroll in an employer-approved rehabilitation program or treatment or counseling program that may in turn require additional drug or alcohol testing as a condition

of continued employment. Other penalties for a failed test include suspension of the employee with or without pay for a specified period, termination of employment, refusal to hire a prospective employee, and additional disciplinary measures in conformance with the employer's usual procedures, including the provisions of any collective bargaining agreement. If the employer is in compliance with the establishment of a drug-testing program proposed by the legislation, then a cause of action may not arise in favor of an employee, unless the employer takes action on the basis of an inaccurate test result.

The legislature modified the State Procurement Code in order to address requirements for drug and alcohol testing for State construction contracts. The new legislation adds definitions of "contractor," "covered individual," and "subcontractor." A contractor is a person who is or may be awarded a State construction contract. A covered individual is an individual (a) who, on behalf of a contractor or subcontractor, provides a service directly related to design or construction under a State construction contract and (b) who is in a safety-sensitive position. A subcontractor is a person under contract with a contractor or another subcontractor to provide services or labor for design or construction. A supplier who only furnishes materials, equipment, or other supplies to a contractor or subcontractor is not considered a subcontractor. A State procurement unit may not enter into a State construction contract unless the contract requires that (a) during the construction project, the contractor maintain a drug and alcohol testing policy that applies to the covered individuals hired by the contractor; (b) a notice asserting that the contractor has a drug and alcohol testing policy be posted to covered individuals hired by the contractor; and (c) the covered individuals be subject to random drug and alcohol testing. Failure to comply with the new drug and alcohol policy may result in suspension or debarment for the contractor or subcontractor. Failure of a contractor or subcontractor to satisfy the new requirements cannot be a basis for a protest or other action from a prospective bidder, one who makes an offer, or another contractor under other parts of the code. The legislation does not require that, once a procurement contract is initiated, the State audit, monitor, or take any further action to ensure compliance with the drug and alcohol policy.

Human trafficking. The State Criminal Code pertaining to charging the offenses of human trafficking or human smuggling was amended. The code now specifies that a person commits a separate offense of human trafficking or human smuggling for each person who is smuggled or trafficked as defined under current State law.

Immigration legislation. Legislation was enacted as part of the State Private Employer Verification Act. Private employers shall now comply with the requirements of the legislation without regard to race, color, national origin, gender, religion, age, disability, familial status, or source of income. A private employer who employs 15 or more employees as of July 1, 2010, may not hire a new employee on or after that date unless the employer is registered with and uses a status verification system to verify the Federal legal working status of any new employee, in accordance with the requirements of the system. This requirement is not applicable to a private employer of a foreign national if the foreign national holds an H-2A or H-2B visa issued in response to a petition by the employer. If a private employer makes use of the verification system, the employer may not be held civilly liable under State law for unlawfully hiring an unauthorized alien if the information obtained from the system did not prohibit the employer from hiring the employee. In addition, a private employer may not be held civilly liable under State law in a cause of action for the employer's refusal to hire an individual if the information obtained from the status verification system indicated that the individual's Federal legal status was that of an unauthorized alien as defined under U.S. Code, Section 1324a. The State Department of Commerce shall electronically publish a list of private employers who register with the agency. The list shall appear on a Web site that is accessible to the general public without a charge.

Legislation was enacted that complemented general government provisions which address identity documents and verification of the lawful presence of workers by the State Department of Commerce. The Federal program referred to in the legislation is the Systematic Alien Verification for Entitlements Program operated by the U.S. Department of Homeland Security. With the exception of provisions within State law, or when exempted by Federal law, an agency or a political subdivision of the State shall verify the lawful presence in the United States of an individual at least 18 years of age, without regard to race, religion, gender, ethnicity, or natural origin, who applies for a State or local public benefit or for a Federal public benefit that is administered by the agency or political subdivision. An applicant for a license issued by the State Department of Commerce is viable if the applicant provides a certification that he or she is (1) a U.S. citizen, (2) a qualified alien, or (3) an individual who is lawfully present in the United States and possesses a valid driver's license issued by the State or any other State. The State Department of Commerce is exempt from providing the verification if these requirements are met. An individual who knowingly and willfully makes a false, ficti-

tious, or fraudulent statement or representation in a certification is subject to the criminal penalties applicable in the State. If the false claim is related to U.S. citizenship, the agency or political subdivision shall file a complaint with the U.S. Attorney General for the applicable district.

Workers with disabilities. The State Personnel Management Act was amended to change the provisions relating to employment programs for people with disabilities. The amending legislation provides that the competitive career service schedule include positions filled through an on-the-job examination intended to appoint a qualified person with a disability. The legislation grants the executive director of the State Department of Human Resource Management rulemaking authority to establish an on-the-job examination approved by the department, and the director shall allocate positions to the hiring schedules that are appropriate for those positions.

Vermont

Agriculture. Legislation was enacted that establishes rules describing how farm employers must evict former farm employees from employer-provided housing. The bill mandates that certain statements be included in the notice of termination of housing and that the notice be in writing. The State General Assembly recommends that such notices be provided in the farm employee's native language. A law enforcement officer must serve the notice along with a summons and a complaint. After these papers are served on the former employee, a hearing will be held in which the employer can request a court order ordering the former employee and any family or household members to vacate the dwelling. The employer must demonstrate, however, that a replacement employee needs the dwelling and that the former employee's refusal to vacate is causing an actual hardship on the employer. Nothing in the legislation prevents the former employee from pursuing a counterclaim for harm caused by the employer. Filing a counterclaim, however, will not delay or stop the court from ordering the employee to vacate the dwelling.

Independent contractor. Legislation was enacted amending laws governing employee misclassification. The State Department of Labor has been ordered to hire workers' compensation fraud investigators; the new investigators will be funded, in part, by an increase of 0.055 percent in workers' compensation premiums paid by employers. If, after a hearing, the State commissioner of labor determines that an employer has failed to comply with workers' compensation provisions, the employer shall be assessed

a penalty of not more than \$100 for the first 7 days of noncompliance and not more than \$150 for every day thereafter. Further, the commissioner must issue a stop-work order against the employer until the employer has obtained workers' compensation insurance. When the order is issued, the commissioner must post a notice in a conspicuous place on the worksite, informing employees of the reason for the stop-work order and notifying them that the worksite will be shut down until the employer complies with the worker's compensation requirements. After the stop-work order is issued, the employer must be charged a penalty of \$250 for every day that the employer fails to secure workers' compensation insurance. The stop-work order will be lifted as soon as the employer comes into compliance with the insurance requirements. Employers who are issued a stop-work order, who willfully make false or misleading statements or representations in an attempt to gain a benefit for themselves or another, or who willfully make false or misleading statements that result in a lower workers' compensation premium will be debarred from contracting with the State or any of its subdivisions for 3 years. Violation of a stop-work order can result in a civil penalty of not more than \$5,000 for a first violation and not more than \$10,000, along with a criminal fine of up to \$10,000 and imprisonment of no more than 180 days for subsequent violations. In addition to incurring debarment, an employer may be assessed \$20,000 for willfully making a false or misleading statement. Any penalties assessed carry through to successor employers or companies. The State Department of Labor is required to set up an online employee misclassification reporting system. Employers who do not file a required coverage report are subject to a \$100 penalty for each missed report. Employers who misclassify individuals' employment status shall be subject to a fine of up to \$5,000 and face contract debarment.

Wages paid. Employers may now compensate employees by directly or indirectly crediting a payroll card account established by an employer in a federally insured depository institution to which electronic fund transfers of the employee's wages, salary, or other employee compensation are made on a recurring basis. In order to do so, the employer must provide the employee written disclosure, in the employee's primary language or another language understood by the employee, of (1) all of the employee's wage payment options and (2) the terms and conditions of the payroll card account option, including a complete list of all known fees that the employer or the card issuer may deduct from the employee's payroll card account and an indication of whether third parties may assess fees in addition to the fees assessed by the employer or issuer. The employer also must ensure that

the payroll card account provides that, during each pay period, the employee has at least three free withdrawals from the payroll card, one of which permits withdrawal of the full amount of the balance at a federally insured depository institution or other location convenient to the place of employment. The employee must voluntarily consent in writing to the payment of wages by payroll card account.

Virginia

Drug and alcohol testing. A licensed home care organization or any home care organization that is exempt from licensure under Commonwealth law shall establish policies for maintaining a drug-free workplace. Such policies may include drug testing when the employer has cause to believe that the person has engaged in the use of illegal drugs periodically during the course of his or her employment. All positive results from any drug testing administered shall be reported to the health regulatory boards responsible for licensing, certifying, or registering the person to practice, if any.

Equal employment opportunity. An executive order was enacted that would prohibit discrimination on the basis of race, sex, color, national origin, religion, age, or political affiliation, or against otherwise qualified persons with disabilities. The policy permits appropriate employment preferences for veterans and specifically prohibits discrimination against veterans as contemplated by Commonwealth and Federal law. The order directs appointing authorities and managers in the Commonwealth to take appropriate measures in recruiting and appointing qualified minorities, veterans, women, persons with disabilities, and older Commonwealth residents to serve at all levels of Commonwealth government, without lowering job requirements, performance standards, or qualifications, in such manner as to give preference to any Commonwealth employee or applicant for Commonwealth employment. Any Commonwealth employee found in violation of this policy will be subject to disciplinary action.

Immigration legislation. The legislature enacted a change to the Commonwealth Code by adding a chapter which specifies that all agencies of the Commonwealth shall be enrolled in the Federal E-Verify program and must use the program for each newly hired employee who is to perform work within the Commonwealth.

Inmate labor. Legislation that amended Commonwealth statutes now permit persons sentenced to any prison within the jurisdiction of the Commonwealth Department of

Corrections to be employed in the construction and maintenance of the Commonwealth highway system and the secondary system of Commonwealth highways. Such individuals may be used in rock quarries, gravel pits, and other roadway materials plants in the preparation of materials for the construction and maintenance of roads and in the maintenance of any or all medians and other nontraveled portions of such highways. The Commonwealth Transportation Board shall requisition the director of the Commonwealth Department of Corrections from time to time for the number of prisoners it deems necessary for a project, and the number of prisoners requisitioned shall be furnished subject to availability. At a minimum of 15 days prior to a prisoner's participation in the work program, notice of the prisoner's participation shall be given to the chief of police, the sheriff, or the local chief law enforcement official of the locality in which the prisoner will work. The notice shall include the name, address, and criminal history of the prisoner and any other information the officer may request. The transmission of information shall be confidential and not subject to the regulations set forth in the Commonwealth Freedom of Information Act.

The Commonwealth Code was amended in order to permit inmates to work on additional types of property while they are confined in jail. The circuit court of any county or city within the State may now allow persons confined in the jail who are either awaiting disposition of their cases or serving sentences to work on (1) county, city, or town property; (2) any property owned by a nonprofit organization and that is exempt from taxation; (3) private property utilized by a nonprofit organization; or (4) any private property that meets the nonprofit ordinance for the municipality in which it is located. The prisoners performing work may receive credit on their sentences for the work done, whether such sentences are imposed prior or subsequent to the work done. The court may require persons convicted of a felony to work on county, city, or town property for credit toward their sentence.

Worker privacy. Amending legislation now makes it unlawful for any person whose intent is to coerce, intimidate, or harass another person to publish that other person's name or photograph along with identifying information, such as the address of their primary residence. The person who violates this law is guilty of a class 1 misdemeanor. If the person violates the law knowing or having reason to know that the personal identity information published is that of a law enforcement officer, then the person who causes the information to be published is guilty of a class 6 felony with a mandatory minimum sentence of 6

months' confinement. The Commonwealth shall not publish the personal information of any law enforcement officer on the Internet if a court has ordered that the officer's personal information is prohibited from publication and the officer has made a demand, in writing, to the Commonwealth, accompanied by the court order. Any law enforcement officer may petition a circuit court for such an order, and the court can issue the order if the officer can demonstrate a reasonable fear of a risk to his or her safety or to the safety of someone who resides with that officer. If the Commonwealth publishes the officer's personal information on the Internet prior to the receipt of a written demand, the information shall be removed from the Internet within 48 hours of receipt of the written demand, which is effective for 4 years, provided that the officer remains continuously employed as a law enforcement officer throughout the 4-year period.

Legislation was enacted that amends the Commonwealth Freedom of Information Act concerning the transference of custody of public records to entities other than the originating public body. The public body transferring the records retains custodial duties for purposes of responding to requests for the records. In the event that the transferor public body no longer exists, the entity in possession of the public records will be deemed the custodian of the records for purposes of honoring requests.

Washington

Equal employment opportunity. A new section prohibiting discrimination on the basis of the use of a trained guide dog or service animal by a person with a disability was added to existing legislation prohibiting discrimination in State public schools on the basis of race; creed; religion; color; national origin; honorable discharge from military service; military status; sexual orientation, including gender expression or identity; or the presence of any sensory, mental, or physical disability. The superintendent of public instruction shall develop rules and guidelines to eliminate discrimination and monitor local school districts' compliance with established guidelines. The superintendent also may terminate all or part of State apportionment monies or categorical monies allocated to the offending school district, may terminate specific programs in which violations may be flagrant within offending school districts, and may place the offending school district on probation with appropriate sanctions until compliance is achieved.

Human trafficking. Under a new requirement contained in amending legislation, domestic employers of foreign workers (that is, persons

who hold a nonimmigrant visa for temporary visitors) and international labor recruitment agencies must provide a disclosure statement to those foreign workers who, respectively, have been hired by or referred to a State employer. The statement must be in English, or in some other language that is understood by the worker if he or she is not fluent or literate in English. In addition, the statement must indicate that the worker may be subject to State and Federal laws governing overtime and work hours, including the current minimum-wage rate as well as health and safety laws. Employers must itemize any deductions they intend to take from the worker's pay for food and housing, and international labor recruitment agencies must provide an itemized listing of their fees. Employers must provide a listing of their services or a hot line that workers may contact if they think that they may be a victim of trafficking. Further, employers must let their workers know that the workers have the right to control their travel and labor documents, including their visas, at all times. Finally, employers may not require their employees to surrender their legal documents while they are working in the United States, except as otherwise required by law or regulation. A disclosure form is presumed to have been provided in an informational pamphlet to each employee in compliance with the William Wilberforce Trafficking Victims Protection Reauthorization Act. Any international labor recruitment agency or domestic employer found to be in noncompliance becomes liable to the affected foreign worker in a civil action by the worker. The court shall award an amount between \$200 and \$500, or actual damages, whichever is greater, along with court costs and attorneys' fees, to a foreign worker who prevails in such an action. The State Department of Labor and Industries shall integrate what it deems appropriate information about assisting victims of human trafficking into posters and brochures, which shall include the toll-free telephone numbers of the National Human Trafficking Resource Center and the State Office of Crime Victims Advocacy.

Time off. The State enacted legislation to protect the jobs of members of the Civil Air Patrol when they are acting in an emergency operation. The legislation prohibits employers from discharging a patrol member from employment, or from taking disciplinary action against a patrol member, because of leave taken to participate in an emergency service operation. An emergency service operation is defined as (1) a search-and-rescue mission, (2) a disaster relief operation, (3) the rendering of humanitarian services, (4) a U.S. Air Force support operation, or (5) a counterdrug mission. A patrol member who believes that he or she was discharged or disciplined in

violation of the State Revised Code may file a complaint with the director of the State Department of Labor and Industries. A violation may be alleged only if the complaint is filed within 90 days of the alleged violation.

Wages paid. Legislative changes to the State Revised Code expanded the list of terms defined in the code, extended the time required to conduct investigations and calculate back wages and interest owed by an employer to an employee, adjusted the tolling of the statute of limitations for civil actions brought by an employee during an investigation by the State Department of Labor and Industries, and delineated successor liability for businesses sold or otherwise conveyed to another. The term "repeat willful violator" is defined as "any employer that has been the subject of a final and binding citation and notice of assessment for a willful violation of a wage payment requirement within 3 years of the date of issue of the most recent citation and notice of assessment for a willful violation of a wage payment requirement." The term "successor" denotes any person to whom an employer that is quitting, selling out, exchanging, or disposing of a business conveys more than 50 percent of the property of the employer's business, where the transaction is not carried out in the ordinary course of the employer's business. The State Department of Labor and Industries may extend the duration of an investigation for good cause by providing written notice to the employee and employer. Finally, the statute of limitations is now tolled during the department's wage complaint investigation of an employer. The investigation begins on the date the employee files the complaint and ends when (a) the complaint is determined through a final and binding citation and notice of assessment or determination of compliance; (b) the department notifies the employer and employee, in writing, that the complaint has otherwise been resolved; or (c) the employee elects to end the department's investigation. The code now mandates that any person who purchases, exchanges, or otherwise acquires an employer's business becomes the successor to that employer and is liable for the full amount of any outstanding citations, notices of assessment, and penalty notices when certain criteria are met. If an employer does not pay the notice of assessment or penalty within 10 days of the date of conveyance, the successor becomes liable for payment.

Worker privacy. Amending legislation was enacted that relates to the disclosure of public records containing information used to locate or identify employees of criminal justice agencies. The State Revised Code now states that the personal information which can be

used to locate employees of criminal justice agencies, such as photographs, day and month of birth, residential addresses, and personal telephone numbers, shall be exempt from public disclosure. A "criminal justice agency" is defined as a court or a government agency that performs the administration of criminal justice pursuant to a statute or an executive order and that allocates a substantial part of its annual budget to the administration of criminal justice.

West Virginia

Immigration legislation. Any employer who knowingly violates the provision of the legislation that amended the State Code by employing, hiring, recruiting, or referring an unauthorized worker is now guilty of a misdemeanor. Upon conviction, such an employer is subject to the following penalties: (1) for a first offense, a fine of not less than \$100 or more than \$1,000 for each violation; (2) for a second offense, a fine of not less than \$500 or more than \$5,000 for each violation; and (3) for a third or subsequent offense, a fine of not less than \$1,000 or more than \$10,000, or confinement in jail for not less than 30 days or more than 1 year, or both. In addition, any employer who knowingly and willfully provides false records about the legal status or authorization to work of any employee is guilty of a misdemeanor and, upon conviction, shall be confined in jail for not more than 1 year or fined not more than \$2,500, or both. Any employer who knowingly, willfully, and with fraudulent intent sells, transfers, or otherwise disposes of substantially all of its assets for the purpose of evading the recordkeeping requirements pertaining to employees is guilty of a misdemeanor and, upon conviction, shall be confined in jail for not more than 1 year or fined not more than \$10,000, or both. Any employer who knowingly and willfully fails to maintain records as required is guilty of a misdemeanor and, upon conviction, shall be fined \$100 dollars for each offense. The employer's failure to keep records on each employee constitutes a separate offense. If, after the time allowed, the employer is unable to produce the necessary documents that comply with employment status verification requirements, notice shall be given to the employer outlining the alleged violations and presented to a magistrate or circuit judge in the county in which the violation occurred.

Other legislation. Any person who operates a professional employer organization without a license is subject to all of the injunctive, criminal, civil, and administrative relief penalties provided in State law for the unauthorized transaction of insurance. The insurance fraud unit created by the State may investigate suspected violations as well.

Wisconsin

Child labor. Legislation was enacted that allows nonprofit organizations to employ a minor 12 years or older to work in and around the home of an elderly person or a person with a disability if all of the following apply: (1) the work is not performed in connection with, or is not a part of, the business, profession, or trade of the elderly or disabled person; (2) the type of employment is not specifically prohibited by an order of the State Department of Workforce Development; (3) the minor is paid the applicable minimum wage under the State or Federal law, whichever is greater, for the work; and (4) the minor's parent or guardian provides the nonprofit organization with written consent for the minor to perform the work. The bill also permits a minor 12 years or older who satisfies the preceding requirements to be employed without a work permit by a nonprofit organization in and around the home of an elderly or disabled person in work usual to the home of the person.

Employment agency. The State defines a professional employer organization as an organization that is engaged in the business of entering into written contracts for the provision of the nontemporary, ongoing employee workforce of a client. The definition excludes a temporary help agency or company. In order to be approved as a professional employer organization, an applicant organization must submit a financial statement that sets forth the financial conditions of the applicant, that is not more than 13 months old, and that precedes the date of the application. The statement must be prepared in accordance with generally accepted accounting principles, must have been audited by an independent certified public accountant, and shall, without qualification, affirm that the applicant organization is a going concern. A professional employer group may meet the requirements for certification by submitting a combined or consolidated audited financial statement. An applicant whose operating history is insufficient to produce an audited financial statement based on at least 12 months of operation may meet the requirement by submitting financial statements that have been reviewed by an independent certified public accountant. A professional employer organization that is not domiciled in the State and does not maintain an office in the State or that directly solicits clients from the State and has no more than 50 employees performing services for clients may apply for small-operations registration. A list of all professional employer organizations shall be maintained and updated, and the department shall make the list available on the departmental Internet Web site listing the address of each registrant.

Equal employment opportunity. The State added to the list of discriminatory actions that are prohibited to employers in their dealings with employees. Discrimination is prohibited against an employee who declines to attend an employer-sponsored meeting or to participate in any communication with the employer or with an agent, representative, or designee of the employer, where the primary purpose of the meeting or communication is to convey the opinion of the employer about religious or political matters. However, an employer that refuses to hire or employ an individual, that suspends or terminates the employment of an individual, or that fails to promote or appropriately compensate an individual in the terms, conditions, or privileges of employment because the individual declines to attend a meeting or to participate in a communication may not be charged with employment discrimination if any of the following applies: (1) the employer is a religious association that is not organized for private profit or is an organization or corporation that is owned or controlled primarily by such a religious association, and the primary purpose of the meeting or communication is to communicate the employer's religious beliefs, tenets, or practices; (2) the employer is a political organization, including a political party or any other organization that engages, in substantial part, in political activities, and the primary purpose of the meeting or communication is to communicate the employer's political tenets or purposes; and (3) the primary purpose of the meeting or communication is to communicate information about religious or political matters that the employer is required by law to communicate, and no information is communicated about those matters beyond that which is legally required.

Independent contractor. Legislation was passed amending several statutes concerning tax withholding, workers' compensation, unemployment insurance, and employee discrimination misclassifying employees as nonemployees. The State statute now includes, in the definition of employer, "a person engaged in the painting or drywall finishing of buildings or other structures." In addition, the legislation imposes fines on painting and drywall construction trade employers that are already levied against other employers who misclassify employees. Civil monetary penalties of up to \$25,000 per violation will now be levied against employers who willfully misclassify with the intent to evade compliance with the statute.

The State legislature enacted legislation that added a new section to the State's employee classification laws. The new statute requires employers to maintain (1) records of all people working for the employer; (2) workers' compensation coverage for their

employees; and (3) records of hours worked by their employees, wages paid to those employees, and any deductions the employers make. In addition to placing mandates on businesses, the State Department of Regulations and Licensing is now required to (1) educate employers, employees, nonemployee staff, and the public about the proper classification of persons working for an employer; (2) receive and investigate complaints (or initiate investigations) alleging violations of employee classification as nonemployees; (3) order employers who are in violation of the statute to stop work and pay a fine; and (4) refer complaints of misclassification of employees as nonemployees to other State and local agencies that administer laws related to the proper classification of employees. In conducting investigations, the department may enter and inspect any place of business or employment and examine and copy all records that the employer is required to keep, including any books, registers, payroll records, records of wage withholdings, records of work activity and hours of work, records or indicia of the employment status of persons performing work for the employer, and any other records relating to compliance with employee classification. The department also may interview and obtain written statements from any employer or person present at any location where services for the employer are performed. If an investigation reveals that an employer is noncompliant with the amended statute, the department may serve a notice of a stop-work order to the employer for all noncompliant locations. After 3 days have passed since the service of the notice, the department may issue a stop-work order for the locations named in the notice if the employer has not demonstrated or does not demonstrate compliance. Employers who are in violation of the stop-work order may be required to forfeit \$250 a day for every day they are in violation, until they become compliant with the statute.

Other legislation. Any person who is not a civil service employee and who appears before the State Employment Relations Commission shall receive, for his or her attendance, the fees and mileage provided for witnesses in civil actions in courts of record. Upon the presentation of properly verified vouchers approved by the commission and charged to the proper appropriation for the commission, fees and mileage shall be audited and paid by the State in the same manner as other expenses are audited and paid. No witness subpoenaed at the insistence of a party other than the commission is entitled to compensation from the State for attendance or travel, unless the commission certifies that his or her testimony was relevant and material to the matter. Records of the director of the State Employment

Relations Commission shall be open to public inspection, and those records which are confidential shall be kept confidential.

Plant closing. If a local workforce development board anticipates a business closing or mass lay-off in the area served by that board, the board may prepare a list of resources available in that area which provide career planning, job searches, job skills training, and other support services for affected employees. Included in the list may be contact information for those resources and for distribution to the affected employees. An employer that has decided upon a business closing or mass layoff shall notify the affected parties, including employees, no later than 60 days prior to the date on which the closing or mass layoff takes place. The notice to affected employees

shall include contact information for the local workforce development board and, if available, the list of resources provided by the board. In addition, the employer may be required to provide a written plan setting forth the manner in which final payment in full shall be made to the affected employees. Included in the plan may be information about the employer's payroll and about the wages and other remuneration owed to the affected employees.

Worker privacy. The State Division of Motor Vehicles employer notification program was amended. The definition of "employee" now includes any person whose employment responsibilities involve operating a motor vehicle, not just commercial drivers. Employers are now permitted to pre-enroll their employ-

ees in the program and receive automatic notification of a conviction or withdrawal.

The State has incorporated and amended many of the provisions relating to HIV testing and to professional behavior and liabilities relating to such testing. It is now illegal to solicit or require an HIV test as a condition of employment of any employee or prospective employee, nor can the employer or prospective employer use the results of a test for the presence of HIV, antigens or nonantigenic products of HIV, or any antibody to HIV as a condition of employment. It is now a prohibited activity to enter into an agreement between an employer or agent of the employer and an employee or a prospective employee, offering employment or any pay or benefit to the employee or prospective employee in return for taking an HIV test. □

Exhibit 1. Legislation enacted, Senate and House of Representatives, by category and number of bill, Dec. 1, 2009, through Sept. 30, 2010

State	Agriculture	Child labor	State Department of Labor	Discharge of employee	Drug and alcohol testing	Equal employment opportunity	Employment agency
Alabama.....	-	-	-	-	-	-	-
Alaska.....	-	-	-	-	-	-	-
Arizona.....	-	-	-	-	S1076	-	-
Arkansas.....	-	-	-	-	-	-	-
California.....	A702	-	-	-	-	A1814	-
Colorado.....	-	-	H1417	-	-	-	-
Connecticut.....	-	-	-	-	-	-	-
Delaware.....	-	-	-	S306	H190, S122	-	-
District of Columbia.....	-	-	-	-	-	-	-
Florida.....	S1150	-	-	-	-	-	-
Georgia.....	-	-	-	-	-	-	-
Hawaii.....	-	-	-	-	-	-	-
Idaho.....	-	-	-	-	-	-	-
Illinois.....	-	H6014	-	-	-	-	-
Indiana.....	-	-	-	-	-	-	-
Iowa.....	-	-	-	-	-	-	-
Kansas.....	-	-	-	-	-	-	-
Kentucky.....	-	-	-	-	-	-	-
Louisiana.....	H484	-	-	-	-	-	H1199
Maine.....	-	-	-	-	-	-	-
Maryland.....	-	-	H404	-	-	-	-
Massachusetts.....	-	-	-	-	-	-	-
Michigan.....	H5657	-	-	-	-	H4327	-
Minnesota.....	-	-	-	-	-	-	-
Mississippi.....	-	-	-	-	-	-	-
Missouri.....	-	H1892	-	-	H1543	-	-
Montana.....	-	-	-	-	-	-	-
Nebraska.....	-	-	-	-	-	-	-
Nevada.....	-	-	-	-	-	-	-
New Hampshire.....	-	-	-	-	-	-	-
New Jersey.....	-	-	-	-	S2493	A4226	-
New Mexico.....	-	-	-	-	-	-	-
New York.....	-	-	-	-	-	E020	-
North Carolina.....	-	-	-	-	-	-	-
North Dakota.....	-	-	-	-	-	-	-
Ohio.....	-	-	-	-	-	-	-
Oklahoma.....	-	-	-	-	-	S1814, S1891	-
Oregon.....	-	-	-	-	-	H3686a	-
Pennsylvania.....	-	-	-	-	-	-	-
Rhode Island.....	-	H7047, S2996	-	-	-	-	-
South Carolina.....	-	-	-	-	-	-	-
South Dakota.....	-	-	-	-	-	-	-
Tennessee.....	-	-	-	-	H3025	H2685	-
Texas.....	-	-	-	-	-	-	-
Utah.....	-	-	-	-	H23, S13	-	-
Vermont.....	H680	-	-	-	-	-	-
Virginia.....	-	-	-	-	H708	E06	-
Washington.....	-	-	-	-	-	H3026	-
West Virginia.....	-	-	-	-	-	-	-
Wisconsin.....	-	S349	-	-	-	S585	S504
Wyoming.....	-	-	-	-	-	-	-
Guam.....	-	-	-	-	-	-	-
Puerto Rico.....	-	-	-	-	-	-	-
Virgin Island.....	-	-	-	-	-	-	-
Total.....	5	5	2	1	9	11	2

See note at end of table.

Exhibit 1. Continued—Legislation enacted, Senate and House of Representatives, by category and number of bill, Dec. 1, 2009, through Sept. 30, 2010							
State	Employee leasing	Family leave issues	Garment activity	Genetic testing	Hours worked	Human trafficking	Immigration legislation
Alabama.....	-	-	-	-	-	H432	S145
Alaska.....	-	-	-	-	-	-	-
Arizona.....	H2477	-	-	-	-	S1059	-
Arkansas.....	-	-	-	-	-	-	-
California.....	-	-	-	-	-	S677	-
Colorado.....	-	-	-	-	-	-	-
Connecticut.....	-	-	-	-	-	-	-
Delaware.....	-	-	-	-	-	-	-
District of Columbia.....	-	-	-	-	-	-	-
Florida.....	S2046	-	-	-	-	-	-
Georgia.....	-	-	-	-	-	-	S447
Hawaii.....	-	-	-	-	-	-	H2897
Idaho.....	-	-	-	-	-	-	-
Illinois.....	H5247	S3818	-	-	-	H6462	-
Indiana.....	-	-	-	-	-	-	-
Iowa.....	-	-	-	S2215	-	-	-
Kansas.....	-	-	-	-	-	S353	-
Kentucky.....	-	-	-	-	-	-	-
Louisiana.....	-	-	-	-	-	H825, S56	-
Maine.....	-	-	-	-	-	-	S593
Maryland.....	-	-	-	-	-	-	-
Massachusetts.....	-	-	-	-	-	-	-
Michigan.....	-	-	-	-	-	-	-
Minnesota.....	-	-	-	-	-	-	-
Mississippi.....	-	-	-	-	-	-	-
Missouri.....	-	-	-	-	-	-	-
Montana.....	-	-	-	-	-	-	-
Nebraska.....	-	-	-	-	-	-	-
Nevada.....	-	-	-	-	-	-	-
New Hampshire.....	-	-	-	-	-	-	H1219
New Jersey.....	S2773	S3065	A4232	-	-	-	-
New Mexico.....	-	-	-	-	-	-	-
New York.....	-	-	-	-	A1470	-	-
North Carolina.....	-	-	-	-	-	-	-
North Dakota.....	-	-	-	-	-	-	-
Ohio.....	-	H48	-	-	-	-	-
Oklahoma.....	-	-	-	-	-	S2258	S1699
Oregon.....	-	-	-	-	-	-	-
Pennsylvania.....	-	-	-	-	-	-	-
Rhode Island.....	-	-	-	-	-	-	-
South Carolina.....	-	-	-	-	-	H4202	-
South Dakota.....	-	-	-	-	-	-	-
Tennessee.....	-	-	-	-	-	-	-
Texas.....	-	-	-	-	-	-	-
Utah.....	-	-	-	-	-	H230	H431,S251
Vermont.....	-	-	-	-	-	-	-
Virginia.....	-	-	-	-	-	-	H737
Washington.....	-	-	-	-	-	S6332	-
West Virginia.....	-	-	-	-	-	-	H3301
Wisconsin.....	-	-	-	-	-	-	-
Wyoming.....	-	-	-	-	-	-	-
Guam.....	-	-	-	-	-	-	-
Puerto Rico.....	-	-	-	-	-	-	-
Virgin Islands.....	-	-	-	-	-	-	-
Total.....	4	3	1	1	1	11	10
See note at end of table.							

Exhibit 1. Continued—Legislation enacted, Senate and House of Representatives, by category and number of bill, Dec. 1, 2009, through Sept. 30, 2010

State	Independent contractor	Inmate labor	Living wage (statewide)	Minimum wage and tipped wages	Offsite work	Other legislation	Overtime
Alabama.....	-	-	-	-	-	-	-
Alaska.....	-	-	-	-	-	-	-
Arizona.....	-	-	-	-	-	S1169	-
Arkansas.....	-	-	-	-	-	-	-
California.....	-	-	-	-	-	A222	-
Colorado.....	H1108	-	-	-	-	-	-
Connecticut.....	H5204	-	-	-	-	-	-
Delaware.....	-	-	-	-	-	-	-
District of Columbia.....	-	-	-	-	-	-	-
Florida.....	-	-	-	-	-	-	-
Georgia.....	-	-	-	-	-	-	-
Hawaii.....	-	-	-	-	H2698	-	-
Idaho.....	-	-	-	-	-	-	-
Illinois.....	-	-	-	-	-	S3249	-
Indiana.....	-	-	-	-	-	-	-
Iowa.....	-	-	-	-	-	S2333	-
Kansas.....	-	-	-	-	-	-	-
Kentucky.....	-	-	-	-	-	-	-
Louisiana.....	-	H89	-	-	-	-	-
Maine.....	H1102	H1212	-	-	-	-	-
Maryland.....	-	-	-	-	-	-	-
Massachusetts.....	-	-	-	-	-	-	-
Michigan.....	-	-	-	-	-	-	-
Minnesota.....	-	-	-	-	-	-	-
Mississippi.....	-	-	-	-	-	-	-
Missouri.....	-	-	-	-	-	-	-
Montana.....	-	-	-	-	-	-	-
Nebraska.....	L563	-	-	-	L1081	-	-
Nevada.....	-	-	-	-	-	-	-
New Hampshire.....	EO 2010-3	-	-	S416	-	-	-
New Jersey.....	-	-	-	-	-	A2885, S4	-
New Mexico.....	S207	-	-	-	-	-	-
New York.....	A11555, S5847	A10061	-	-	-	S2956	-
North Carolina.....	-	-	-	-	-	-	-
North Dakota.....	-	-	-	-	-	-	-
Ohio.....	-	-	-	-	-	-	-
Oklahoma.....	-	-	-	-	-	-	-
Oregon.....	-	-	-	-	-	S1045a	-
Pennsylvania.....	-	-	-	-	-	-	-
Rhode Island.....	-	-	-	-	-	H5950, S1054, S2547, H8198	S3027, H7323
South Carolina.....	-	S217, S1303	-	-	-	S929	-
South Dakota.....	-	-	-	-	-	-	-
Tennessee.....	-	-	-	-	-	-	-
Texas.....	-	-	-	-	-	-	-
Utah.....	-	-	-	-	-	-	-
Vermont.....	H647	-	-	-	-	-	-
Virginia.....	-	H543, H757	-	-	-	H406	-
Washington.....	-	-	-	-	-	-	-
West Virginia.....	-	-	-	-	-	H4273	-
Wisconsin.....	S672, S929	-	-	-	-	A560	-
Wyoming.....	-	-	-	-	-	-	-
Guam.....	-	-	-	-	-	-	-
Puerto Rico.....	-	-	-	-	-	-	-
Virgin Islands.....	-	-	-	-	-	-	-
Total.....	11	7	0	1	2	16	2

See note at end of table.

Exhibit 1. Continued—Legislation enacted, Senate and House of Representatives, by category and number of bill, Dec. 1, 2009, through Sept. 30, 2010							
State	Overtime health care	Plant closing	Employers' preferences regarding employees	Prevailing wage	Right to work	Time off from work	Unfair labor practice
Alabama.....	-	-	-	-	-	S128, S91	-
Alaska.....	H50	-	-	-	-	-	-
Arizona.....	-	-	-	-	-	H2539	-
Arkansas.....	-	-	-	-	-	-	-
California.....	-	-	-	-	-	A569, S1304	-
Colorado.....	-	-	-	-	-	-	-
Connecticut.....	-	-	-	-	-	-	-
Delaware.....	-	-	-	-	-	-	-
District of Columbia.....	-	-	-	-	-	R716	-
Florida.....	-	-	-	-	-	-	-
Georgia.....	-	-	-	-	-	-	-
Hawaii.....	-	-	-	-	-	-	-
Idaho.....	-	-	-	-	-	-	-
Illinois.....	-	-	-	-	-	-	-
Indiana.....	-	-	-	-	-	-	-
Iowa.....	-	H681	-	-	-	H2197	-
Kansas.....	-	-	-	-	-	-	-
Kentucky.....	-	-	-	-	-	-	-
Louisiana.....	-	-	-	-	-	-	-
Maine.....	-	-	-	-	-	-	-
Maryland.....	-	-	-	H1100, S451	-	H1323, S789, H1299	-
Massachusetts.....	-	-	-	-	-	-	-
Michigan.....	-	-	H4512	-	-	-	-
Minnesota.....	-	-	-	H3096	-	-	-
Mississippi.....	-	-	-	-	-	-	-
Missouri.....	-	-	-	-	-	-	-
Montana.....	-	-	-	-	-	-	-
Nebraska.....	-	-	-	-	-	-	-
Nevada.....	-	-	-	-	-	-	-
New Hampshire.....	-	-	-	-	-	-	-
New Jersey.....	-	-	-	A4293, A4268	-	-	-
New Mexico.....	-	-	-	-	-	-	-
New York.....	-	S3601	-	-	-	A2563	-
North Carolina.....	-	-	-	-	-	-	-
North Dakota.....	-	-	-	-	-	-	-
Ohio.....	-	-	-	-	-	-	-
Oklahoma.....	-	-	-	-	-	S2260	-
Oregon.....	-	-	-	H3651a	-	-	-
Pennsylvania.....	-	-	-	-	-	-	-
Rhode Island.....	-	-	-	-	-	-	-
South Carolina.....	-	-	-	-	-	-	-
South Dakota.....	-	-	-	-	-	-	-
Tennessee.....	-	-	-	-	-	H2685	-
Texas.....	-	-	-	-	-	-	-
Utah.....	-	-	-	-	-	-	-
Vermont.....	-	-	-	-	-	-	-
Virginia.....	-	-	-	-	-	-	-
Washington.....	-	-	-	-	-	S6447	-
West Virginia.....	-	-	-	-	-	-	-
Wisconsin.....	-	A266	-	-	-	-	-
Wyoming.....	-	-	-	-	-	-	-
Guam.....	-	-	-	-	-	-	-
Puerto Rico.....	-	-	-	-	-	-	-
Virgin Islands.....	-	-	-	-	-	-	-
Total.....	1	3	1	6	0	14	0

See note at end of table.

Exhibit 1. Continued—Legislation enacted, Senate and House of Representatives, by category and number of bill, Dec. 1, 2009, through Sept. 30, 2010

State	Wages paid	Whistleblower	Workers with disabilities	Worker privacy	Workplace security and violence
Alabama.....	-	-	-	-	S136
Alaska.....	-	-	-	-	-
Arizona.....	-	-	S1232	H2545,S1325, S1100	-
Arkansas.....	-	-	-	-	-
California.....	-	A1666, S650, A1749	-	A352, S938	S1055
Colorado.....	S35	-	-	-	-
Connecticut.....	-	-	-	H5904	-
Delaware.....	-	-	-	-	-
District of Columbia.....	-	B233	-	-	-
Florida.....	-	-	-	S312	-
Georgia.....	-	-	-	H1086	-
Hawaii.....	-	-	-	-	SR100
Idaho.....	-	-	-	S1378	-
Illinois.....	S3568	-	-	H4658, H5154, H6271, S3025, S3588	-
Indiana.....	-	-	-	-	-
Iowa.....	-	-	-	-	-
Kansas.....	-	-	EO-10-10	-	-
Kentucky.....	-	-	-	-	-
Louisiana.....	-	H1442	-	SR120	-
Maine.....	-	-	-	-	-
Maryland.....	H214, S694, S18	-	-	H1402, S887	-
Massachusetts.....	-	-	-	-	-
Michigan.....	-	-	-	-	-
Minnesota.....	-	-	-	-	-
Mississippi.....	-	-	-	-	-
Missouri.....	-	-	-	-	-
Montana.....	-	-	-	-	-
Nebraska.....	L884	-	-	-	-
Nevada.....	-	-	-	-	-
New Hampshire.....	H1137	-	-	-	-
New Mexico.....	-	H165	-	H231, S60	-
New Jersey.....	S3123	-	-	-	-
New York.....	-	-	A10771	-	-
North Carolina.....	-	-	-	H1377	-
North Dakota.....	-	-	-	-	-
Ohio.....	-	-	-	-	-
Oklahoma.....	-	-	-	S1592	-
Oregon.....	-	-	-	-	-
Pennsylvania.....	-	-	-	-	-
Rhode Island.....	-	-	-	-	-
South Carolina.....	-	-	-	-	-
South Dakota.....	-	-	-	-	-
Tennessee.....	H3095	-	-	H1578	H3794
Texas.....	-	-	-	-	-
Utah.....	-	-	H17	-	-
Vermont.....	S58	-	-	-	-
Virginia.....	-	-	-	H1382, H518	-
Washington.....	H3145	-	-	H1317	-
West Virginia.....	-	-	-	-	-
Wisconsin.....	-	-	-	A32, A659	-
Wyoming.....	-	-	-	-	-
Guam.....	-	-	-	-	-
Puerto Rico.....	-	-	-	-	-
Virgin Islands.....	-	-	-	-	-
Total.....	11	6	4	27	4

NOTE: Dash indicates no bill enacted in category.