

## State labor legislation enacted in 2009

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The legislative areas of drug and alcohol testing, equal employment opportunity, human trafficking, immigration protections, independent contractors, the minimum wage, prevailing wages, wages paid, and worker privacy were among the most active areas in which State legislatures either enacted or revised legislation during the year. Each of these areas accounted for 10 or more pieces of legislation that were enacted during the individual sessions of the State legislatures in 2009.

In 2009, the States enacted a volume of labor-related legislation greater than that enacted in 2008. The increase was due in part to the fact that all 50 States and the District of Columbia met in regular session during the year. (Only 44 of the 50 States had met in regular session in 2008.) In 2009, 46 of the 50 States, plus the District of Columbia, Puerto Rico, and the Virgin Islands, had enacted or amended labor legislation of consequence in the various categories tracked by the Wage and Hour Division of the U.S. Department of Labor.

The bills that were introduced and then enacted by the States were concerned with more than 30 categories of labor legislation

that are tracked by the Division. The 30-plus categories are agriculture, child labor, (State) departments of labor, drug and alcohol testing, employee discharge, employment agency matters, employee leasing, equal employment opportunity, family issues, garment activity, genetic testing, hours worked, human trafficking, independent-contractor issues, inmate labor, living wages, the minimum wage and tipped employees, offsite work, overtime, 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, workplace violence, and a "miscellaneous" category. Not every piece of labor legislation enacted during the course of the year falls into one of these categories. Among the legislative issues that are excluded from the article are those which (1) amend existing State law, but whose 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.

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The legislation enacted by the States in 2009 addressed a considerable number of employment standards areas and included a number of important measures. Legislation was enacted in 28 of the categories tracked.

In 2009, the minimum wage was again the “hot-button” issue, and such status was due to several factors. First, a number of States have laws that require them to keep their minimum-wage rates equal to or greater than the Federal rate. Thus, because the Federal minimum wage was increased to \$7.25 per hour on July 24, 2009, a number of States put into effect an increased minimum wage of their own. These States were empowered to do so as the result of their own previously enacted legislation. Second, some States have laws that require them to implement an increase in the minimum wage once a year, based upon the cost-of-living increase reported in various consumer price indexes. Finally, uncheduled minimum-wage legislative activity can occur during any particular year. As of December 2009, 14 States plus the District of Columbia had a minimum-wage requirement greater than the Federal minimum-wage rate. An additional 26 States had a minimum-wage rate equal to the Federal rate, 5 States had a minimum-wage rate

less than the Federal rate, and 5 States—Alabama, Louisiana, Mississippi, South Carolina, and Tennessee—had no minimum-wage requirement. (Tennessee, however, does enforce a previously enacted promised-wage law.) Besides the minimum wage, areas that showed a substantial amount of legislative activity through new or amended legislation implemented in 2009 were equal employment opportunity, prevailing wages, and worker privacy. These four categories each had 20 or more pieces of legislation enacted that dealt with those particular topics.

The remainder of this article is composed of two sections. The first provides a brief overview of legislation that was enacted in several of the most active legislative 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 2009. The second section presents a more comprehensive and detailed description of each State’s labor-related legislative activities, again subdivided by category, that resulted in laws amended or newly enacted by the individual State legislatures during the past year.

### State legislation by labor category

*Drug and alcohol testing.* Standards for drivers employed by contractor carriers in Arkansas were established in order to ensure the safe transportation of railroad employees. Among the new standards is one that disqualifies drivers from operating a vehicle for a contractor carrier if they do not pass a drug and alcohol test or if they refuse to submit a specimen for the test to be performed. The testing is done in two circumstances: before any driver performs his or her duties and if a driver is involved in an accident. Minnesota enacted legislation that requires Type III school busdrivers to undergo preemployment drug and alcohol testing. Amusement park ride operators in Oklahoma will be required to submit to voluntary drug and alcohol testing when there are grounds to believe that the operator is under the influence of drugs or alcohol while operating rides. Failure to submit to the test will result in the termination of the ride operator’s certification for 90 days. A positive test will result in the operator’s losing his or her license for 30 days and until the operator passes a subsequent test, retaken at the expense of the applicant. South Dakota developed a drug-screening program for certain applicants and employees of the Wildland Fire Suppression Division whose duties include firefighting. In the future, a program may be developed for all current

employees if there is reasonable suspicion of illegal drug use by any employee.

*Equal employment opportunity.* Delaware added the category of sexual orientation to its list of grounds upon which employers may not discriminate. The maximum age limit for an accusation of age discrimination in Indiana increased from 70 years to 75 years. In Iowa, gender balance will be required on all local boards, including commissions, committees, and councils that are established by the State Code. An exemption is granted if the political subdivision in question has made a good-faith effort for 3 months to appoint a qualified person to fill a vacancy, but has been unable to make any appointment that is compliant with State Code. Louisiana has made it illegal for employees to be held civilly or criminally liable, discriminated against, dismissed, demoted, or in any way prejudiced or damaged for declining to participate in any health care service that violates their conscience. In this case, the term “conscience” is defined as “sincerely held religious beliefs or moral convictions.” New Mexico has repealed a section of law that made it illegal for employers to hire women for employment in certain occupations or to have women work more than a certain number of hours. Employers

also will no longer be required to have certain seating available for their female employees. In New York, victims of domestic violence or stalking will no longer be allowed to be discriminated against by an employer or a licensing agency. Discrimination in this case constitutes refusing to hire or employ an applicant or barring or discharging an employee from employment. Persons enrolled in the uniformed services, including the Army, Navy, Air Force, Marine Corps, Coast Guard, National Guard, and military reserve, cannot be discriminated against by employers in Oregon on the basis of their call to service.

*Human trafficking.* Arizona has made human smuggling a Class 3 felony if it involves the use or threatened use of deadly physical force. The State also makes human smuggling of a minor who is not accompanied by a nonminor family member a Class 2 felony. In California, in any cases involving human trafficking for purposes of prostitution, lewd conduct, or procurement in which the victim is a minor, the proceeds from the offense will be deposited in the Victim-Witness Assistance Fund, to be made available for counseling centers and prevention programs treating victims of child sexual exploitation or sexual abuse. Illinois included involuntary servitude in its omnibus Health Care Worker Background Check Act. The act stipulates that knowingly subjecting another person to forced labor or services is a Class 1 felony. Upon a person's conviction of involuntary servitude, the State court shall authorize the State attorney general to seize all of the person's property declared forfeited by law. Maryland expanded the list of actions relating to human trafficking. The actions that are prohibited under the State Criminal Law now include knowingly persuading, inducing, enticing, or encouraging another to be taken to or placed in any place for prostitution. New Hampshire has prohibited trafficking in persons for purposes of sexual or labor exploitation. The State mandates the forfeiture of items used in connection with trafficking and makes such offenses involving a person less than 18 years of age subject to an extended term of imprisonment. The Washington State Revised Code was amended to require domestic employers of foreign and international workers to disclose certain information to foreign workers who have been referred to or hired by an employer located in the State. Information that is required to be disclosed includes an itemized listing of any deductions the employer intends to make from the workers' pay for food or housing; a statement asserting that the worker has the right to control his or her travel documents and is not required to surrender those documents to the employer or an international recruitment agency

while the employee is working in the United States; a statement asserting that the worker is subject to both State and Federal laws governing overtime and work hours, including the Minimum Wage Act; and a list of services or a hot line that a worker may contact if the worker thinks that he or she may be a victim of trafficking.

*Immigration protection.* Georgia mandated that every public employer in every municipality and county in the State must register and participate in the Federal work authorization program to verify the employment eligibility of all newly hired employees. Once an employer has received Federal authorization, the employer must permanently post its federally issued identification number and date of authorization on its Web site. In Hawaii, the State Contractor License Board is now able to revoke, suspend, or refuse to renew any license of a contractor who knowingly or intentionally has employed a person to perform work subject to Chapter 104 of the State Revised Statutes and who is not able to work in the United States under Federal law. Idaho will now allow foreign physicians pursuing a change in their immigration status to stay in the United States in exchange for a commitment to practice medicine in an underserved population for a 3- to 5-year period, thus establishing a National Interest Waiver. State communities may apply for placement of a foreign physician only after demonstrating their inability to recruit an American physician and only after all other recruitment and placement possibilities have proven to be unsuccessful. Individuals in Oregon cannot be issued a commercial driver's license with a hazardous materials endorsement by the State Department of Transportation if they are not a U.S. citizen or permanent legal resident. The General Assembly of South Carolina requested that Congress provide the funding and resources necessary to ensure the permanence and continued effectiveness of the E-Verify program (the program which certifies that newly hired workers are legally authorized to work in the United States). Utah redefined a "contract," in relation to verification of the Federal authorization status of a new employee, to mean "an agreement for the procurement of goods or services that is rewarded through a request-for-proposals process with a public employer." Included is a sole-source contract.

*Independent contractor.* In Colorado, physicians must now disclose any health-care-related business ownership interests, as well as any information pertaining to any health-care-related employment contracts or contracts establishing an independent contractor relationship with entities

in the State. A penalty of no less than \$1,000 and no more than \$5,000 will be imposed in Delaware for every employee that an employer misclassifies as an independent contractor in the construction services industry. Employees who have been misclassified will be able to seek damages for lost wages and benefits. Contractors must provide notice to employees of their status as independent contractors and of the implementation of such status. Indiana now allows the sharing of information concerning the classification of individuals as independent contractors among the State Departments of Labor, Revenue, and Workforce Development, as well as the Worker's Compensation Board. Certain information pertaining to employee classification is confidential and is prohibited from being published or open to public inspection. In New York, health insurance coverage for independent workers will now be authorized by the State Superintendent of Insurance in a demonstration program. Insurance companies that are eligible to participate in the program will provide periodic reports to the superintendent in order to evaluate the effectiveness of the program and help decide whether it will be expanded to other segments of the population that currently lack access to employment-based health insurance. In Oregon, the State Construction Contractors Board will now be allowed to sanction exempt independent contractors who hire one or more employees. Among the sanctions that are applicable are the revocation, suspension, or refusal to issue or reissue a license and the assessment of a civil penalty. Oregon also has established an Interagency Compliance Network that will oblige persons paying employees in cash to comply with laws relating to taxation and employment. Independent contractors in Tennessee will now be authorized to employ private special deputies to provide security and law enforcement capabilities for Federal Government and resort property. This employment will still be subject to the same provisions that apply to the employment of such deputies by a resort area owner or a management company. Washington State defined an independent contractor as an individual employed on a public-works project who is not considered to be a laborer, worker, or mechanic and consequently is not required to be paid prevailing wages.

*Minimum wage.* On July 24, 2009, the Federal minimum-wage rate increased to \$7.25 an hour. Twenty-four States—Alaska, Delaware, Florida, Idaho, Illinois, Indiana, Kentucky, Maine, Maryland, Missouri, Montana, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Dakota, Texas, Utah, Virginia, and Wisconsin—and the

District of Columbia saw increases in their minimum-wage requirements in the past year. Currently, there are 10 States whose required minimum-wage rates are indexed to increases in inflation that are reported by various consumer price indexes: Arizona, Colorado, Florida, Missouri, Montana, Nevada, Ohio, Oregon, Vermont, and Washington. In a highly unusual occurrence that was the result of a decrease in the consumer price index followed by the State of Colorado, the Colorado minimum-wage requirement decreased effective January 1, 2010.<sup>1</sup> In Indiana, a single-page poster must be posted by employers to notify employees about the State's minimum-wage laws. Also, statements that include hours worked, wages paid, and any deductions made must be provided each pay period to employees working in the State. Maine amended State statutes in order to clarify the minimum-wage exemption for summer camp counselors working at day camps. As amended, the statutes now stipulate that those employees who are counselors, junior counselors, or counselors in training and who are under 18 years of age are exempt from the State minimum-wage requirement.

*Miscellaneous.* Washington, DC, is requiring all nonprofit organizations, companies, associations, contractors, and subcontractors that receive a grant or other funding under the American Recovery and Reinvestment Act of 2009 to list, on the District Department of Employment Services Web site, all jobs that will be created as a result of the grant or other funding, as well as the number of District residents who filled the positions. Kansas expanded its definition of "employee" to include medical students who are enrolled at the University of Kansas Medical Center and who are in clinical training there or at other health care institutions. Maine is requiring employers who employ a bond worker in a logging occupation to provide proof of the employer's ownership of any logging equipment used by that worker while employed. The employer must own at least one piece of logging equipment for every two bond workers. The State Home Care Act was amended in Oklahoma and now provides that no home care agency can place an individual in the role of supportive home assistant with a client on a full-time, temporary, or other basis, unless the individual has completed agency-based supportive home assistance training taught by a registered nurse. Also, each supportive home assistant will be tested through an independent entity approved by the State Department of Health. Texas now requires injured workers to obtain appropriate clearance from their treating physicians before returning to work. In Wisconsin, employers must obtain a certification or registration form from the State Department of Work-



force Development before they can hire, offer to hire, or recruit an individual to work as a traveling sales crew worker. "Traveling sales crew" is defined as "two or more individuals who are employed as salespersons or in related support work, who travel together as a group, and who are absent overnight from their permanent places of residence for the purpose of selling goods or services to consumers from house to house, on any street, or in any other place that is open to the public."

*Prevailing wage.* In Connecticut, monthly payrolls must be submitted through the U.S. mail, with first-class postage prepaid to the contracting agency, for contractors and subcontractors performing work on public-works projects in the State. Also in Connecticut, the State labor commissioner will establish classifications for all hourly nonsupervisory employees on the basis of the applicable occupation codes and titles set forth in the "Wage Determinations" section of the *Federal Register* under the Service Contract Act. The definition of "public works" was amended within the State Prevailing Wage Act in Illinois to mean "all fixed works constructed by any public body or paid for wholly or in part out of public funds." Illinois also made sure that the Prevailing Wage Act was amended to ensure that no less than the general prevailing wage rate of hourly wages be paid to all laborers employed in the construction or demolition of public works. New Jersey deemed the State Board of Public Utilities responsible for adopting rules and regulations requiring that no less than the prevailing wage rate be paid to workers employed in the performance of any construction undertaken in connection with board financial assistance or undertaken to fulfill any condition for receiving board financial assistance. The prevailing-wage requirements do not apply to any contract that is less than the prevailing-wage threshold amount set for municipalities governed by State law. The director of the State Labor and Industrial Division in New Mexico will now be able to set the prevailing-wage rates on public-works projects by using collective-bargaining agreements. Fringe benefits will be included in the prevailing wage. New York will now allow an employee, a contractor, or a certified collective-bargaining agreement agent to complain to the commissioner of the State Department of Labor if there is a violation of receipt of prompt payments when the employee, contractor, or agent is engaged in a private construction project. Arbitration can now be used by contractors as a remedy for nonpayment. In Oregon, the State commissioner of the Bureau of Labor and Industry is now charged with establishing a fee to be paid by the public agency that awards a public-works contract. The

fee shall be established at 0.1 percent of the contract price, and the monies shall be credited to the State Prevailing Wage Education and Enforcement Account. Oregon also now deems a contractor, a subcontractor of any firm, a corporation, a partnership, or an association ineligible to receive a contract or subcontract for public works for a period of 3 years if the said entity has a financial interest in any aspect of the public-works project. In Rhode Island, every contractor and subcontractor awarded a contract for public works must furnish a certified copy of its payroll records for those of its employees who are employed on the project to the State director of labor and training on a monthly basis for the preceding month's work.

*Wages paid.* State employees in California who currently participate in the direct-deposit program must now receive their statement of earnings and deductions by an electronic method. Any employees who still wish to receive a paper statement must request so in writing. For licensure as a farm labor contractor, registration as a garment manufacturer, renewal or reinstatement of the license of a farm labor contractor or the registration of a garment manufacturer registration, and changes to the names of the specified financially interested parties, California now requires the submission of a statement, under penalty of perjury, as to whether an applicant has satisfied all requirements imposed by final judgments or orders involving unpaid wages. Public school corporations; schools for the blind, deaf, and visually impaired; certain correctional institutions; certain State institutions; and the Soldiers' and Sailors' Children's Home in Indiana are allowed to enter into a 13-month compensation payment schedule for work performed during a normal 9- or 10-month school year. Montana amended State law by revising the periods within which an employer can withhold money from an employee's final paycheck in cases of theft of property or funds. New Jersey now requires that wage records under certain solid-waste contracts be reported. The report must include the name of each individual engaged in the collection and transportation of work done under the contract, as well as the actual hourly rate of wages paid to, and the actual daily, overtime, and weekly hours worked by, the said individual. In New Mexico, civil action can be taken by an employee in the case of a wage-and-hour violation by an employer as long as the action is brought within 3 years after the last violation occurred. Those employers who violate the State Minimum Wage Act will be guilty of a misdemeanor and, upon conviction, will be sentenced and held liable to the affected employees in the amount of their unpaid or underpaid minimum wage, plus inter-

est and an additional amount equal to twice the unpaid or underpaid wages. New York now requires employers (1) to provide employees, at the time they are hired, with written notice of their regular and overtime hourly wage rates and (2) to obtain written acknowledgement from employees of receipt of such notice. For purposes of State law as defined in the North Dakota Century Code, employee wages are due at each regular payday immediately following the work period during which the wages are earned. Employees can file a claim for wages due with the State Department of Labor no later than 2 years from the date the wages were due. Oregon enacted legislation mandating that all compensation by a home health agency providing health care services or a hospice program providing hospice services to nurses providing either home health care services or hospice services must be based on an hourly rate rather than on a per-visit basis. In Texas, wage claims must be filed no later than the 180th day after the date the wages claimed became due for payment.

*Worker privacy.* Information identifying State employees in Alabama will be excluded from records that are available for public inspection. In lieu of a salary schedule, an education service cooperative may now submit to the Arkansas State Department of Education a complete listing of all employees of the cooperative, together with each employee's position, salary, and benefits received. California now requires that Federal funds received under the American Recovery and Reinvestment Act of 2009 be used for state-wide education information systems aimed at facilitating the sharing and transfer of information contained in one segment of the system to another and that ultimately include linkages to workforce data. Agencies in Florida must now identify, in writing, the specific Federal or State law governing the collection, use, or release of Social Security numbers, as well as each purpose for which the agency collects the information, including any authorized exceptions that apply to the collection, use, or release of such information and that ensure compliance with the law. Employees

must receive, in writing, a statement asserting that the collection of their Social Security numbers is authorized or mandatory under Federal or State law. For the purposes of protecting against identity theft, the State of Idaho advised all directors of State agencies to use care and vigilance in protecting the personal data and private information of their employees, as well as all State citizens. In Kansas, information contained in responses to wage and salary surveys conducted by the director of personnel services to provide wage and salary information about jobs and other public and private employment in the State will be confidential and not subject to disclosure under the State Open Records Act. Information can be disclosed upon submission of a written request, as long as no person or entity can be identified in the information. North Dakota amended its State Century Code to provide that any record containing the work schedule of employees of a law enforcement agency is exempt from public disclosure. It is now unlawful for any public or private employer in Oklahoma to ask applicants for a job if they own or possess a firearm. Any employer who violates this provision will, upon conviction, be guilty of a misdemeanor punishable by a fine of \$1,000. In Utah, any information provided to an employer by an applicant during the initial selection phase of the hiring process may not be shared with a person other than the employer. Vermont expanded its list of employers permitted to require polygraph examinations to include (1) the Department of Fish and Wildlife (for applicants for law enforcement positions), (2) the Department of Liquor Control, and (3) the Liquor Control Board (for applicants for investigator positions). West Virginia has exempted certain records of the State Division of Corrections and Regional Jail Authority from being disclosed under the Freedom of Information Act. Among the records exempted are those containing information pertaining to the operation, staffing, equipping, or escape and emergency contingency plans relating to any jail or correctional facility when the disclosure would jeopardize the safe, secure, and orderly operation of the jail or correctional facility.

## State legislation by State

### Alabama

*Child labor.* The State Child Labor Law was amended in a number of particulars. Employers are now required to obtain a child labor certificate from the State Department of Labor in order to employ a minor who is between 14 and 17 years of age, and the minor may be employed only in a nonhazardous occupation. Employers shall verify each minor's age, using documents recognized by

Federal employee identification laws. Employers seeking to employ a minor 14 to 15 years of age in a nonagricultural occupation must seek a Class I Child Labor Certificate from the State Department of Labor. Such employment may be suspended if the minor's school attendance and performance record are not deemed satisfactory by the head administrator or home school instructor. Employers seeking to employ a minor 16 to 17 years of age in a nonagricultural occupation shall ob-

tain a Class II Child Labor Certificate from the State Department of Labor. The law now prohibits a minor who is under 16 years of age from selling fireworks, unless the minor is supervised by a person at least 18 years of age. For each minor under 19 years of age, employers shall keep, on or about the premises at which the minor is employed, a separate file containing specified information about the minor, along with time records indicating the minor's hours of work and break times. The

employer shall keep the records for 3 years. Educational, charitable, religious, scientific, historical, literary, and nonprofit organizations in which no employer-employee relationship exists or in which the services rendered to such an organization are on a voluntary basis (as well as any other activity designated by the State commissioner of labor) are exempt from complying with the requirements of the law that prohibit any person under 14 years of age from distributing, selling, exposing, or offering for sale newspapers, magazines, periodicals, candy, or other articles and from being employed or permitted or suffered to work in any other trade or occupation performed in any street or public place. The law also provides for certificate fees, along with increased fines for noncompliance. Civil penalties for the employment of a minor without a certificate are \$50. Civil penalties for violations of other requirements of the State Child Labor Laws range from \$300 to \$5,000.

*Equal employment opportunity.* The State House of Representatives adopted a resolution that established the State Equal Pay Commission, which is to be composed of nine members of the house of who are appointed by the State Speaker of the house. The commission is charged with making a full and complete study and report on (1) the extent of wage disparities between men and women and between minorities and nonminorities, (2) the factors that tend to cause the disparities, including segregation between men and women, and between minorities and nonminorities, across and within occupations and payment of lower wages for work in female-dominated occupations, (3) the consequences of the disparities on the economy and the families affected, and (4) actions, including proposed legislation, that are likely to lead to the elimination and prevention of the disparities. Upon submission of the report on the 10th legislative day of the 2010 regular session of the house, the commission established by the resolution shall dissolve.

*Immigration protections.* The State Sunset Committee amended the State's Sunset Law and recommended the continuance of the State Licensure Board for Interpreters and Translators, with only one statutory change: all applicants applying to renew their permits to practice as interpreters or translators must be citizens of the United States or, if not, must be legally present in the United States and must have appropriate documentation from the Federal Government.

*Worker privacy.* The State enacted legislation excluding information identifying State employees from records that are available for

public inspection. Notwithstanding any other law to the contrary, a State department, licensing or regulatory board, agency, or commission is prohibited from placing or otherwise revealing information identifying an employee, including, but not limited to, full-time or part-time employees, in any document that is available for public inspection, including, but not limited to, State personnel evaluation forms and any other forms related thereto, unless otherwise required by law, without the express consent of the person the information would identify or, in the case of a minor, the consent of that person's parent, custodian, legal guardian, or legal representative. The foregoing prohibition shall not apply to a bona fide news organization or when a Federal or State agency makes a request, or releases identifying information, for a legitimate government purpose or pursuant to a Federal or State statute, regulation, or federally funded program, or pursuant to an administrative or judicial subpoena or order.

## Alaska

*Minimum wage.* The State increased the minimum-wage requirement for hours worked in a pay period, regardless of the method of measurement (time, piece, commission, or otherwise). An employer shall pay each employee wages at a rate that is not less than \$7.25 an hour between July 24, 2009, and December 31, 2009, and, after that, not less than 0.50 an hour more than the Federal minimum wage. The State minimum wage was increased to \$7.75 per hour on January 1, 2010. An employer may not apply tips or gratuities given to an employee either as a credit toward payment of the minimum hourly wage or to the State's minimum wage.

## Arizona

*Equal employment opportunity.* The house body of the State legislature adopted a resolution proposing an amendment to the State constitution relating to both preferential treatment and discrimination. The resolution stipulates that the State shall not grant preferential treatment to, or discriminate against, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting. The proposed amendment does *not* (1) prohibit bona fide qualifications based upon sex that are reasonably necessary to the normal operation of public employment, public education, or public contracting; (2) prohibit action that must be taken to establish or maintain eligibility for any Federal program if ineligibility would result in a loss of Federal monies to the State;

or (3) invalidate any court order or consent decree that is in force as of the effective date of this new section of the State statutes. The remedies available for a violation of this section of the statutes are the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, and are otherwise available for a violation of the existing antidiscrimination laws of the State. For purposes of the resolution/amendment, the term "State" includes this State and any city, town or county, public university, community college district, school district, special district, or any other political subdivision of the State. The constitution of the State will be amended upon proclamation of the State Governor if this resolution is approved by the voters.

*Human trafficking.* It is unlawful for a person to knowingly traffic another person who is 18 years or older, by deception, force, or coercion, including trafficking for forced labor or services, with the intent to cause the other person to engage in, or with the knowledge that the other person will engage in, any prostitution or sexually explicit performance. It is also illegal to knowingly destroy, conceal, remove, confiscate, possess, or withhold the other person's actual or purported passport or other immigration document, government-issued identification document, government record, or personal property. If an individual is found guilty of a violation related to trafficking (a Class 2 felony) and a sentence is imposed, it shall be consecutive to any other sentence that has been imposed. If the victim is under 15 years of age, the offense is considered a dangerous crime against children and is punishable by laws governing that behavior. Trafficking of persons for forced labor or services also shall be a Class 2 felony, where "trafficking" means "knowingly trafficking another person with the intent or knowledge that the other person will be subject to forced labor, and thereby the trafficker will benefit, either financially or by receiving anything of value, from participation in that venture," and where the definition of "forced labor" incorporates the infractions of causing or threatening to cause serious physical injury to any person or restraining or threatening to physically restrain another person.

The State also established a Class 2 felony for human smuggling of a minor who is not accompanied by a nonminor family member and that involves the use of a deadly weapon.

The State now provides that human smuggling is a Class 3 felony if it involves the use or threatened use of deadly physical force. A person accused of a Class 3 felony is not eligible for suspension of sentence, probation, pardon, or release from confinement on any other basis until the sentence imposed



by the court is served, the person is eligible for release, or the sentence is commuted. The definition of “smuggling of human beings” has been expanded to include persons who have attempted to enter, have entered, or have remained in the United States illegally. “Procurement of transportation” is defined as “participation in, or facilitation of, transportation” and includes providing services that facilitate transportation, including travel arrangement services or money transmission services, or providing property that facilitates transportation, including a weapon, a vehicle, or some other means of transportation or false identification, or selling, leasing, renting, or otherwise making available a drop house. A “drop house” is defined as a property that is used to facilitate smuggling.

*Immigration protections.* An agency or political subdivision of the State shall not issue a license of any kind to an individual if the individual does not provide documentation of citizenship or alien status by presenting one of the many documents that authorizes the individual to be in the United States under Federal law. This requirement is not applicable if the individual is a citizen of a foreign country or if, at the time of the application for the license, the individual resides in a foreign country. In addition, the benefits that are related to the license do not require the individual to be present in the United States in order to receive those benefits. If the individual applying for the license has affirmatively established citizenship in the United States or has a form of nonexpiring work authorization issued by the Federal Government, then, on renewal of, or reinstatement for, the license, the individual is not required to provide subsequent documentation of his or her citizenship status. If, however, the individual holds an expired, limited form of work authorization issued by the Federal Government, then the person must provide documentation of his or her status.

*Worker privacy.* The State statutes were amended to capture changes in the rules relating to monies withheld from an employee’s wages as those rules pertain to withholding taxes. The information supplied by an employee to an employer regarding the employee’s election to have the employee’s withholding tax reduced for the purposes of contributions to qualifying charitable organizations, qualified school tuition organizations, or public schools has been added to the types of information that are considered confidential.

## Arkansas

*Drug and alcohol testing.* Legislation was enacted to ensure the safe transportation of

railroad employees’ contractor carriers by establishing standards for drivers employed by the carriers and the motor vehicles used by the carriers. The legislation defines a “contractor carrier” as “a passenger contractor carrier that, for compensation, transports railroad employees with a vehicle designed or used to transport eight or fewer persons, including the driver.” A contract driver business entity will maintain a driver qualification file for each driver it employs, and that file shall contain documentation that establishes the driver’s driving record. A driver is disqualified from driving for a contractor carrier if the driver has committed two or more serious traffic violations within a 3-year period. Before any driver performs duties for a contractor carrier, the driver must undergo testing for alcohol and controlled substances. The driver will be disqualified from operating a vehicle for the contractor carrier if the driver does not pass the drug and alcohol testing or refuses to submit a specimen, as provided under 49 CFR, parts 40 and 382, for the test to be performed. As soon as is practicable after an accident involving a vehicle operated by a contractor carrier, the driver will be tested for alcohol and controlled substances if the accident involved the loss of human life or if the driver received a citation for a moving traffic violation arising from the accident. The legislation also specifies (1) the amount of time a driver can remain on duty, (2) the contractor carriers’ responsibility for maintaining accurate time records, (3) the establishment of a weekly maintenance and repair program that includes inspections, and (4) a listing of items that every contractor carrier must include.

The portion of the State Code concerning medical examinations as a condition for employment was amended to clarify that employer-required drug tests are to be provided at no cost to employees and to applicants for employment. The clarification in the law also stipulates that, upon a written request from the applicant or employee, the employer must provide, free of charge, a copy of the examiner’s report of the results of the test. However, if an employee tests positive for an illegal drug as defined by rule of the State Department of Labor, then the employer and employee may agree in writing who will bear the cost of future drug tests or screens as a condition of continued employment. The State Code section concerning medical examinations as a condition of employment also was amended to add two new subsections. Under the new subsections, the director of the State Department of Labor is charged with administering and enforcing the new law, without limitations and including adopting administrative rules, demanding payment, and seeking recovery, in a court of competent jurisdiction, for charges, fees, wage deductions, or other payments made by employees as a result of an employer’s violation of

the amended State Code, as well as expressly stating that this amended State Code does not change the definition of “medical examination” under any other State or Federal statute.

The State defines a “consortium/third-party administrator” as “a service agent that provides, or coordinates the provision of, drug and alcohol testing services to employers that are required to comply with the drug and alcohol testing provisions under the Federal Motor Carrier Safety Regulations, 49 C.F.R., pts. 250–399.” The State defines an “employee” as “a person who holds a State commercial driver’s license and is currently performing a safety-sensitive transportation job, or is an applicant for employment in a safety-sensitive transportation job, and is subject to drug and alcohol testing.” An “employer” is defined as “a State person or entity employing one or more employees subject to the drug and alcohol testing provisions under the Federal Motor Carrier Safety Regulations.” Consortium/third-party administrators must report to the Office of Driver Services of the Revenue Division of the State Department of Finance and Administration with the results of testing within 3 business days of the day the drug and alcohol tests were administered.

*Department of labor.* The director of the State Department of Labor may now seek to recover, in a court of competent jurisdiction, fees charged or collected in an unlawful manner under the State Private Employment Agency Act.

Legislation was enacted that adjusted for inflation the amount in controversy regarding wage disputes heard and decided by the director of the State Department of Labor. Under the portion of the State Code affected by the legislation, “labor” now means “work or services performed by a person employed for a period for which the wages, salary, or remuneration for the work or services is to be paid at stated intervals or at the termination of the employment or, for physical work actually performed by an independent contractor, if the amount in controversy does not exceed the sum of \$2,000.” The previous amount in controversy was limited to \$1,000.

*Inmate labor.* Legislation was enacted which directed that all inmates in the State who are committed to the State Department of Corrections be given a medical examination during the intake process. On the basis of the examination, a medical provider will determine what restrictions, if any, shall be placed on the inmate’s work assignments. Inmates will not be permitted to complete a work assignment that conflicts with an updated restriction determined by the medical provider.

*Time off.* The State legislature enacted legislation that now requires employers to provide



unpaid break time and reasonable locations for expressing breast milk. As stated in the revised State Code, employers are now required to provide reasonable unpaid break time each day to an employee who needs to express breast milk for her child in order to maintain her milk supply and comfort. Where possible, the break time required by the legislation shall run concurrently with any paid or unpaid break time already provided to the employee. The employer shall make a reasonable effort to provide a private, secure, and sanitary room or other location in close proximity to the work area, other than a toilet stall, where an employee can express breast milk. The legislation does not, however, require an employer to provide break time if doing so would create an undue hardship on the operations of the employer.

*Worker privacy.* Legislation was enacted that affected the section of the State Code concerning the personnel policies of education service cooperatives. Under the amended legislation, in lieu of a salary schedule, an education service cooperative may submit to the State Department of Education a complete listing of all employees of the cooperative, together with each employee's position, salary, and benefits received.

## California

*Agriculture.* The State Planning and Zoning Law provides for the adoption and administration of zoning laws, ordinances, rules, and regulations by a city, county, or city and county. The legislation enacted stipulates that its provisions concerning the filing of subdivision maps are not applicable to leases of agriculturally zoned land to nonprofit organizations for the purpose of operating an agricultural labor housing project on the property. Three conditions make the leases inviable: (1) the property to be leased shall not be more than 5 acres; (2) the lease shall be for not less than 30 years; and (3) the lease shall be executed prior to January 1, 2017.

*Child labor.* Subject to specified requirements and conditions, the principal of a public or private school is now authorized to issue, or is authorized to designate another administrator in the school to issue, work permits to pupils who attend the school. The hour limitations that apply to a work permit issued by any of the officials or other employees authorized to issue work permits are to be based upon the school calendar of the school the pupil attends.

*Equal employment opportunity.* Legislation was enacted that expresses support for the

Federal Employment Non-Discrimination Act of 2009, which prohibits employment discrimination on the basis of sexual orientation and gender identity. The bill urges Congress to pass the Act and the President to sign it.

*Hours worked.* Legislation was enacted that, effective July 1, 2011, requires the standardized health care provider timesheet to contain designated spaces for the index fingerprint of the provider and the recipient. Minors and individuals who are physically unable to provide a fingerprint on the timesheet because of amputation or some other physical limitation are exempt from the requirement. The standardized provider timesheet must contain a certification, to be signed by the provider and the recipient, verifying that the information reported on the timesheet is true and correct, as well as a statement that the provider or recipient may be subject to civil penalties if the information is found to be untrue or incorrect. A person convicted of fraud resulting from intentional deception or misrepresentation shall, in addition to any criminal penalties imposed, be subject to a civil penalty of at least \$500, but not to exceed \$1,000, for each violation.

*Human trafficking.* The State amended Sections 186.2, 186.8, 266k, and 13837 of the State Penal Code to provide that, in any case involving human trafficking of minors for purposes of prostitution or lewd conduct or involving procurement in which the victim is a minor, the proceeds will be deposited in the Victim-Witness Assistance Fund, to be available for appropriation to fund counseling centers and prevention programs for victims of child sexual exploitation and child sexual abuse. Fifty percent of the funds deposited will be granted to community-based organizations that serve minors who are victims of human trafficking.

*Plant closing.* No less than 120 days prior to the intended date of the permanent closure of a continuing-care retirement community facility, the facility must provide written notice to the State Department of Social Services and to the affected residents and their designated representatives.

*Prevailing wage.* Under existing law, the State director of industrial relations is the administrator responsible for overseeing the application of State law governing apprenticeships. Every apprentice employed on public-works projects must be paid the prevailing rate of per diem wages, and every employer who employs apprentices must comply. Certain public-works projects are exempt from the prevailing-wage requirements if the awarding body initiates and enforces a labor compliance

program that meets specific statutory and regulatory requirements and ensures compliance therewith. Legislation amending the current law permits the awarding body that implements an approved labor compliance program for apprentices to allow a contractor to appeal the result of an enforcement action through specified procedures. If the chief of the State Division of Apprenticeship Standards gets involved in a labor compliance program, then enforcement action is limited to a review of an assessment and the matter is resolved without litigation by or against the chief. The awarding body shall enforce any applicable penalties.

*Time off.* New legislation defines a "work unit" to include a division, a department, a job classification, a shift, a separate physical location, or a recognized subdivision of any of these. A work unit may consist of an individual employee, as long as the criteria for an identifiable work unit are met.

Legislation was enacted that establishes a right to employment leave and other employment protections for members of the State wing of the Civil Air Patrol (CAP). The bill now requires the amount of leave currently authorized for eligible employees to be no less than 10 days per year. Emergency operational missions can occur within or outside of the State. During an emergency, leave to carry out an operational mission will not exceed 3 days unless an extension of time is granted by the governmental entity authorizing the mission and the extension is approved by the employer. The bill specifies that an employer is not required to grant CAP leave to an employee who is ordered to respond to either the same or another, simultaneous, emergency operational mission to which a first responder or disaster service worker is responding for a Federal, State, or local agency. An employer with at least 15 employees must, among other things, not discriminate against an employee because of his or her membership in the CAP, not hinder any member or prevent a member from performing services as part of the CAP during an emergency operational mission, provide no less than 10 days per year of unpaid leave to an employee responding to an operational emergency as a member of the CAP, and require certification from the proper CAP authority to verify an employee's eligibility for leave. The legislation also specifies that the employer may deny CAP leave if the employee fails to provide the required certification and that an employee taking CAP leave shall not be required to first exhaust accrued vacation leave, personal leave, compensatory leave, sick leave, disability leave, or any other leave.

*Wages paid.* The State enacted legislation that specifies certain requirements related to

the application and renewal of licenses and registration by farm labor contractors and garment manufacturers. Specifically, the bill requires the submission of a statement, under penalty of perjury, as to whether an applicant has satisfied all requirements imposed by final judgments or orders involving unpaid wages, for licensure as a farm labor contractor, registration as a garment manufacturer, or renewal or reinstatement of a farm labor contractor license or a garment manufacturer registration. The bill also requires the State labor commissioner to reject an application if the aforementioned statement indicates that the applicant has failed to satisfy all requirements of a judgment, order, or accord involving unpaid wages, unless the applicant has submitted either a bond or cash deposit in an amount sufficient to guarantee payments of all amounts due or a notarized accord demonstrating that the applicant has satisfied all requirements imposed by the judge, order, or accord pertinent to the unpaid wages. The commissioner is authorized to reduce the amount of a required bond or cash deposit upon proof of partial satisfaction of the judgment, order, or accord, but not below the unpaid wage balance. The bill's requirements do not apply to unpaid wages discharged in a bankruptcy proceeding.

Legislation was enacted which requires that State employees who currently participate in the direct-deposit program receive their statement of earnings and deductions by an electronic method. Employees still may request a paper version of the statement if they so state in writing.

*Worker privacy.* The State enacted legislation which requires that Federal funds received under the American Recovery and Reinvestment Act of 2009 be used for State education information systems aimed at facilitating the sharing and transfer of data from one segment of the system to another and that ultimately include linkages to workforce data. The bill specified that data elements and codes included in the State Education Information System be maintained in compliance with any other applicable Federal or State law that could be interpreted as protecting the privacy and confidentiality of individual pupils or personnel. The bill deleted the prohibition on data contained in the California Longitudinal Teacher Integrated Data Education System (CALTIDES) from being used either solely or in conjunction with the California Longitudinal Pupil Achievement Data System for purposes of pay, promotion, sanction, or personnel evaluation of an individual teacher or groups of teachers or for any other employment decisions related to individual teachers. The bill now prohibits data in CALTIDES from being used in violation of any Federal or State law that is intended to protect either an individual's right to privacy or the confidentiality of an individual's personal information.

## Colorado

*Equal employment opportunity.* The State Revised Statutes were amended to extend the existence of the State Civil Rights Commission of the State Civil Rights Division until July 1, 2018. The amendment gave the commission expanded authority to initiate complaints and to order the payment of compensatory and punitive damages. The director and staff of the division shall now receive, investigate, and make determinations on charges alleging unfair or discriminatory practices in violation of State law. The protections provided by anti-discrimination laws also were expanded, to include adverse employment actions that affect an employee's terms, conditions, or privileges of employment.

*Family issues.* The State enacted legislation concerning parental involvement in kindergarten through 12th-grade education via the utilization of leave for academic activities. An employee is entitled to take leave, not to exceed 6 hours in any 1-month period and not to exceed 18 hours in any academic year, for the purpose of attending an academic activity for or with the employee's child. Alternatively, the employer and employee may agree to an arrangement allowing the employee to take paid leave to attend an academic activity and, within the same workweek, to work the amount of hours of paid leave taken. Notwithstanding the previous provisions, an employer may limit the ability of an employee to take leave in cases of emergency or other situations that may endanger a person's health or safety or in a situation in which the absence of the employee would result in a halt of service or production.

*Independent contractor.* Legislation was enacted that modified the disclosure requirements imposed on licensed physicians under the Michael Skolnik Medical Transparency Act. In addition to previous requirements, physicians must now disclose any health-care-related business ownership interests and any information pertaining to health-care-related employment contracts or contracts establishing an independent contractor relationship with any entities. This requirement must be met if the annual aggregate value of the contracts exceeds \$5,000. The licensee shall report updated information regarding any health-care-related business ownership interests and any health-care-related employment contracts or contracts establishing an independent contractor relationship within 1 year after a change in that information.

The erroneous misclassification of employees as independent contractors in violation of the State Employment Security Act, which defines the employment relationship, leads to underpayment of employment taxes that employers are obligated to pay the State

for covered employment. Thus, businesses that misclassify employees gain an unfair competitive advantage over businesses that properly classify employees and pay taxes to the State. Deliberate misclassification also precludes employees from receiving State protections against economic insecurity. To counteract this violation of the law, any person may, with appropriate documentation, file a written complaint addressed to the director of the State Department of Labor and Employment, Division of Employment and Training, alleging that an individual is being misclassified by an employer. No later than 30 days after receipt of a complaint, the director shall determine whether an investigation is warranted. Upon the conclusion of an investigation, the director shall issue a written order either dismissing the complaint or finding against the employer, with the latter resulting in the employer being ordered to pay back taxes owed and interest. Upon finding a violation, the director may impose a fine of up to \$5,000 for the first misclassified employee and up to \$25,000 for a second or subsequent misclassification. Upon finding a second or subsequent violation, the director may prohibit the employer from contracting with, or receiving any funds for the performance of contracts from, the State for up to 2 years.

*Minimum wage.* In a highly unusual occurrence that is due to a decrease in the consumer price index followed by the State, the State minimum-wage requirement decreased from \$7.28 per hour to \$7.24 per hour effective January 1, 2010.

*Miscellaneous.* Under the State Revised Statutes, unlicensed persons who administer medication in a facility must pass a competency evaluation as a condition of employment at least once every 5 years. Competency evaluations shall now be required of facility operators and administrators as well. "Facility" is defined as "the correctional facilities under the supervision of the executive director of the department of corrections, including, but not limited to, minimum-security facilities; jails; community correctional facilities; the regimented inmate discipline and treatment program; the Denver regional diagnostic center; institutions for juveniles; assisted-living residences; adult foster-care facilities; alternate-care facilities; residential-care facilities; secure residential treatment centers; facilities that provide treatment for mentally ill persons, except for those facilities which are publicly or privately licensed hospitals; all services funded through, and regulated by, the State Department of Human Services in support of persons with developmental disabilities; and adult daycare facilities.

## Connecticut

*Equal employment opportunity.* The State General Statutes concerning penalties for violations of certain statutes pertaining to personnel files and equal pay for equal work were amended. Under the new amendments, employers shall not discriminate in the amount of compensation paid to any employee on the basis of sex. Any difference in pay based on sex shall be deemed discriminatory. If an employee can demonstrate that his or her employer discriminates on the basis of sex by paying wages to employees at a rate less than the rate at which the employer pays wages to employees of the opposite sex for equal work on a job, the performance of which requires equal skill, effort, and responsibility, the employer must demonstrate that the differential in pay is pursuant to (1) a seniority or merit system, (2) a system that measures earnings by quantity or quality of production, or (3) a differential system based upon a bona fide factor other than sex, such as education, training, or experience. This bona fide factor is a defense only if the employer can demonstrate that it is not based upon or derived from a sex-based differential in compensation and is job related and consistent with business necessity. No employer shall discharge, expel, or otherwise discriminate against any person because the person has opposed a discriminatory compensation practice or has filed a complaint, testified, or assisted in any discrimination proceeding. Any action or prosecution shall be brought within 2 years, or within 3 years if such violation is intentional or committed with reckless indifference.

*Family issues.* The State enacted legislation that permits an eligible employee to take up to 26 weeks of leave from work under the State Family and Medical Leave Act (FMLA) in order to care for each immediate family member or next of kin who is a current member of the U. S. Armed Forces, National Guard, or military reserves and who is (1) undergoing medical treatment, recuperation, or therapy, (2) otherwise in outpatient status, or (3) on the temporary disability retired list for a serious injury or illness. "Next of kin" is defined as the service member's "nearest blood relative, other than his or her spouse, parent, or child, in the following order of priority: (1) blood relatives who have been granted legal custody of the service member by court decree or statutory provisions, (2) siblings, (3) grandparents, (4) aunts and uncles, and (5) first cousins." The bill provides for 26 weeks of leave over a 12-month period under the private-sector law and 26 weeks of leave over a 2-year period for a permanent employee under the State law. Under both private and State employee provisions, the leave is a one-time benefit for each Armed Forces member,

for each serious injury or illness incurred in the line of duty. Under the private-sector law, the 12-month period begins on the first day of military caregiver leave. The bill incorporates the new military caregiver leave into existing provisions of State FMLA laws for private-sector and State employees regarding written certification of medical need, intermittent leave, and other items. The bill specifies that leave taken pursuant to private-sector State FMLA provisions does not run concurrently with a transfer to "light duty" work in place of regular work duties under the Workers' State Compensation Act.

*Prevailing wage.* Legislation was enacted that requires contractors and subcontractors performing work on State public-works projects to submit monthly payrolls through the U.S. mail, with first-class postage prepaid to the contracting agency. The submissions must certify that (1) the records are correct, (2) the wage rate paid to each covered employee is at least the prevailing-wage rate, (3) the employer has complied with the prevailing-wage law, and (4) the employer is aware that knowingly filing a false certified payroll is a Class D felony. Covered employees include each person performing the work of a mechanic, laborer, or worker.

Under State law, the term "prevailing rate of wages" refers to the hourly wages paid for work performed within the city of Hartford under the collective-bargaining agreement covering the largest number of hourly non-supervisory employees employed in Hartford County in each classification, provided that the agreement covers no fewer than 500 employees in the classification. For the purpose of predetermining the standard rate of covered wages on an hourly basis, the State labor commissioner shall establish classifications for all hourly nonsupervisory employees on the basis of the applicable occupation codes and titles set forth in the "Wage Determinations" section of the *Federal Register* under the Service Contract Act. When any employer who is a provider of food, building, property, or equipment services by contract or agreement with the State is awarded a contract to perform services that are substantially the same as services that have been rendered under a predecessor contract, the employer shall retain, for a period of 90 days, all employees who had been employed by the predecessor, unless the employees worked less than 15 hours per week or had been employed at the site for less than 60 days. No employee shall be discharged without just cause, and if the performance of the retained employee is satisfactory, the successor contractor shall offer the employee continued employment for the duration of the contract. Each employer shall keep, maintain, and preserve such records relating to the wages and hours worked by

each employee, as well as a schedule of the occupation or work classification at which each person is employed during each workday and workweek, to ensure that proper payments are due to each employee. If no prevailing rate of wages or benefits was in effect at the time the State entered into a franchise agreement, then the employer shall not be required to pay the prevailing rate of wages during the life of the agreement, unless the agreement is amended, extended, or renewed.

## Delaware

*Equal employment opportunity.* Legislation was enacted that added the term "sexual orientation" to the previously existing list of prohibited discrimination practices. The amended act prohibits discrimination against a person by employers and others, on the basis of sexual orientation, in employment, housing, public-works contracting, public accommodations, and insurance. With respect to discriminatory practices based upon sexual orientation, the term "employer" does not include religious corporations, associations, or societies, whether supported, in whole or in part, by government appropriations, except where the duties of the employment or employment opportunity pertain solely to activities of the organization that generate unrelated business income subject to taxation under the Internal Revenue Code of 1986. Alleged violations of the amended act will be heard and adjudicated by the State Superior Court in the first instance.

*Independent contractor.* The State enacted legislation that provides a penalty of no less than \$1,000, and no more than \$5,000, for every employee an employer misclassifies as an independent contractor in the construction services industry. Employees who are misclassified will be able to seek damages for lost wages and benefits. Further, the bill requires contractors to provide notice to each employee of his or her status as an independent contractor and of the implementation of such status. Employers are required to keep, for at least 3 years in the place of business, records that contain the name, address, occupation, and classification of each employee or independent contractor; the rate of pay of each employee and the method of payment for each independent contractor; the amount that is paid each pay period to each employee; the hours that each employee works each day and week; and the written notice of the classification of any individual as an independent contractor. The State Department of Labor will adopt regulations establishing specific requirements for the content and form of the notice within 1 year of the effective date of this act. If, within 30 days of a written re-



quest from the State Department of Labor, an employer fails to produce the records requested, the employer may be subject to a stop-work order and an administrative work penalty, not to exceed \$500 per day, for each day that the records are not produced. If an employer is found to have discriminated against an employee who has made a complaint, the employer may be subject to a civil penalty of no less than \$5,000 and no more than \$10,000. Employers will be subject to an administrative penalty of \$20,000 for each employee they have not properly classified and may be debarred for 5 years if they have been found, by a final order of a court or the department, to have violated the pertinent chapter of the State Code twice in a 2-year period.

*Minimum wage.* The State minimum-wage requirement was increased to \$7.25 per hour.

*Workplace violence.* The State Governor issued an Executive order regarding State policy for State employees affected by domestic violence. The Human Resources Management Section of the State Office of Management and Budget has been ordered to prohibit discrimination against employees who are victims of domestic violence. The section shall draft a statewide policy to address issues of domestic violence affecting employees of State agencies. The policy shall include reasonable guidelines, practices, procedures, and protocols for State employees to follow in order to mitigate the personal and economic effects of domestic violence. All executive agencies are directed to create a supportive workplace for victims of domestic violence. The new policy encourages the disclosure of domestic violence, ensures confidentiality for victims and their families, and promotes the availability of programs and resources to aid victims of domestic violence.

## District of Columbia

*Minimum wage.* The District minimum-wage requirement was increased to \$8.25 per hour.

*Miscellaneous.* All nonprofit organizations, companies, associations, contractors, and subcontractors that receive a grant or other funding under the American Recovery and Reinvestment Act (ARRA) of 2009 shall list all jobs that will be created as a result of the grant or other funding and shall provide the list to the District Department of Employment Services for posting on the department's Web site. Once the positions created as a result of the grant or other funding have been filled, a list of the number of District residents hired for the ARRA-funded positions will be made available to the Department of Employment Services. The mayor shall maintain a list of the positions that have been given to residents, and this informa-

tion shall be reported to the District Council.

## Florida

*Employee leasing.* The State enacted legislation which provides that employee leasing companies be held responsible for producing quarterly reports concerning the clients of the company and the internal staff of the company. Employee leasing companies also are required to submit a report to the State Labor Market Statistics Center within the State Agency for Workforce Innovation. Besides listing each client establishment and each establishment of the employee leasing company, the report must include, among other things, the trade name of the establishment; the month and year that the client entered into the contract for services; and the number of full-time and part-time employees who worked during the pay period that includes the 12th of the month, for each month of the quarter, or who received pay that was subject to unemployment compensation taxes. The report must be submitted electronically in a manner specified by the Bureau of Labor Statistics of the U.S. Department of Labor.

*Human trafficking.* Section 787.07 of the amended State statutes was revised. Now any person who transports an individual into the State who the person knows, or should know, is illegally entering the United States from another country commits a misdemeanor of the first degree. The revised amended State statutes also indicate that the commission of a misdemeanor of the first degree is punishable by a definite term of imprisonment not exceeding 1 year. Furthermore, a person commits a separate offense for each individual he or she transports into the State in violation of the revision of the amended State statutes.

*Minimum wage.* The State minimum-wage requirement was increased to \$7.25 per hour.

*Time off.* If a member of the State National Guard is ordered into active duty on behalf of the State, an employer may not discharge, reprimand, or in any other way penalize the member because of his or her absence by reason of State active duty. Upon completion of active duty, the member of the National Guard shall promptly notify the employer of the member's intention to return to work. The employer is not required to allow a member of the National Guard to return to work if (1) the employer's circumstances have so changed as to make employment impossible or unreasonable or employment would impose an undue hardship on the employer; (2) the employment from which the member left to serve will be for a brief, nonrecurrent period and there is no reasonable expectation that

such employment will continue indefinitely or for a significant period; or (3) the employer had legally sufficient cause to terminate the member at the time the member left for active duty. Upon return from active duty, (1) the member is entitled to the seniority he or she formerly held at the place of employment on the date the member began service, plus any additional seniority that would have accrued had the member maintained continuous employment; (2) the member may not be terminated for a period of 1 year, except for cause; and (3) the employer may not require the member to use vacation, annual, compensatory, or any similar leave for the period of the active duty service, except that the member may use all forms of leave accrued subsequently. Finally, in addition to any other penalty provided by State or Federal law, a person is liable for a civil penalty of no more than \$1,000 per violation for violating the protections afforded to members of the U.S. Armed Forces, military reserve, or National Guard.

*Worker privacy.* The Social Security numbers of all current and former State agency employees are confidential. Because Social Security numbers were intended to be used, not for business purposes, but solely for the administration of the Federal Social Security system, over time they have increasingly been used for identity verification, and they sometimes are used illegally to perpetrate fraud against an individual in order to acquire sensitive personal, financial, medical, and familial information. Accordingly, any State agency shall identify, in writing, the specific Federal or State law governing the collection, use, or release of Social Security numbers and each purpose for which the agency collects the Social Security number, including any authorized exceptions that apply to collection, use, or release and that ensure compliance with the law. The employee must receive, in writing, notification of whether the collection of Social Security numbers is authorized or mandatory under Federal or State law. The number may be released if required by Federal or State law or a court order or if it is necessary for the agency or entity that receives the information to perform its duties and responsibilities or to comply with the U.S. Patriot Act.

## Georgia

*Immigration protections.* The portion of the State Official Code relating to security and immigration compliance was amended. Every public employer, including, but not limited to, every municipality and county, shall register and participate in the Federal work authorization program to verify the eligibility for employment of all newly hired employees. Upon Federal authorization, a public employer shall permanently post the employer's federally is-

sued user identification number and date of authorization, as established by the agreement for authorization, on the employer's Web site. However, if a local public employer does not maintain a Web site, the identification number and date of authorization shall be published annually in the official legal organ for the county. State departments, agencies, or instrumentalities may satisfy the State code requirement by posting information on a separate Web site maintained and operated by the State. In addition, before a public employer considers a bid from a contractor for the performance of services within the State, the employer shall ensure that the bid includes a signed, notarized affidavit from the contractor attesting to (1) the affiant's registration with, and authorization to use, the Federal work authorization program, (2) the user identification number and date of authorization for the affiant, and (3) the affiant's use of, and commitment to continue using, the Federal work authorization program throughout the contract period.

*Independent contractor.* The State enacted a bill that amended Chapter 8 of Title 13 of the Official Code of the State, Annotated. The new bill provides that any restriction which operates under a restrictive covenant during the term of an independent contractor relationship shall not be considered unreasonable because it lacks any specific limitation upon the contractor's scope of activity, the duration of the contract, or the geographic area in which the work is to be performed, as long as it promotes or protects the purpose or subject matter of the agreement or relationship or deters any potential conflict of interest. "Restrictive covenant" is defined as "an agreement between two or more parties that exists to protect the first party's or parties' interest in property, confidential information, customer good will, business relationships, employees, or any other economic advantages that the second party has obtained for the benefit of the first party or parties, to which the second party has gained access in the course of his or her relationship with the first party or parties, or which the first party or parties has acquired from the second party or parties as the result of a sale." Restrictive covenants may exist within or ancillary to contracts between employers and independent contractors.

*Offsite work.* Legislation was enacted which extends State income tax credits until January 1, 2012, for employers that implement teleworking in their establishments.

*Worker privacy.* The State Annotated Official Code relating to when the public disclosure of public records is not required was amended. Financial account numbers, including utility

account numbers, and passwords used to access those accounts are now not required to be disclosed. In addition, records that would reveal the home addresses, telephone numbers, or Social Security numbers of, or insurance or medical information about, firefighters, emergency medical technicians, or paramedics were added to the list of data concerning other public employees that is not required to be released. As defined by the amended statute, a "public employee" means "any nonelected employee of the State, or its agencies, departments, or commissions, or any county, or municipality, or its agencies, departments, or commissions." Finally, e-mail addresses or any other data or information developed, collected, or received by counties or municipalities in connection with neighborhood watch or public-safety notification programs is not releasable.

## Hawaii

*Family issues.* The State Revised Statutes now require employers to clearly post notices of employees' rights in conspicuous places in every establishment. The notices must be posted where employees can readily observe a copy on their way to and from their places of employment.

The house body of the State legislature adopted a resolution urging all the members of the legislature to support the establishment of paid family leave in the State.

*Immigration protections.* Legislation was enacted which expanded the reasons that permit the State Contractor License Board to revoke, suspend, or refuse to renew any license under Section 444 of the State Revised Statutes for any cause authorized by law. The board is now permitted to take these adverse actions if a contractor knowingly or intentionally has employed a person to perform work under a contract subject to Chapter 104 of the State Revised Statutes if, under Federal law, that person is not permitted to work in the United States.

## Idaho

*Immigration protections.* Legislation was enacted that amended Title 39, Health and Safety, Chapter 61, Idaho Conrad J1 Visa Waiver Program, to establish National Interest Waiver criteria for physicians. A National Interest Waiver is a mechanism for a foreign physician pursuing a change in immigration status to stay in the United States in exchange for a commitment to practice medicine to an underserved population for a 3- to 5-year period. The waiver requires an attestation from the State's Department of Health and Welfare to the U.S. Bureau of Citizenship and Immigration Services stating that the physician's work

in the area or facility is in the public interest. Final approval for these requests is made by the U.S. Bureau of Citizenship and Immigration Services. State communities may apply for the placement of a foreign physician only after demonstrating their inability to recruit an American physician and all other recruitment and placement possibilities have proven to be unsuccessful. This bill also modifies the State Conrad J1 Visa Waiver Program, Section 396111(4), to allow physicians to show proof of eligibility for a State license as part of the application criteria. Successful completion of the residency or training program and an unrestricted license to practice medicine in the State are conditions for employment.

*Minimum wage.* The State minimum-wage requirement was increased to \$7.25 per hour.

*Offsite work.* The State legislature adopted a resolution to support and encourage all State and local government employers and all business employers in the development and implementation of telework policies and programs for their employees. The State Governor and the legislature were encouraged to continue (1) the exploration, to the extent feasible within available resources, of the appropriate technology infrastructure that will aid employers and their employees in maximizing the full potential deployment of telework within the State and (2) the provision of assistance in the improvement and availability of such infrastructure.

*Worker privacy.* It was resolved by the State legislature's House Committee on State Affairs that the directors of all State agencies use all care and vigilance to protect the personal data and private information of their employees, and of all State citizens, for the purpose of protecting against identity theft. This protection includes, but is not limited to, the protection of Social Security information, bank account information, and information related to State and Federal income taxes.

## Illinois

*Equal employment opportunity.* The State Equal Pay Act of 2003 was amended in order to adjudicate underpayment of wages to an employee. An employee (or a former employee) may file a complaint with the State Department of Labor within 1 year of the alleged underpayment by submitting a signed, completed form to the department. The director of the State Department of Labor is authorized to supervise the payment of the unpaid wages owed to any employees and, within 5 years of the date of each underpayment, may bring any legal action necessary to recover the amount

of unpaid wages and penalties. The employer shall be required to pay the costs of the legal action. Any employer who violates any provision of the bill and has been demanded by the director or ordered by the court to pay wages due and fails to do so within 15 days after such demand shall be liable to pay a penalty of 1 percent per calendar day to the employee for each day of delay, up to an amount equal to twice the sum of the unpaid wages due the employee.

Bids or proposals that are submitted to the State in competition for contracts must be awarded so that no less than 12 percent of the total dollar amount is awarded to businesses owned by minorities, females, or persons with disabilities. The State Business Enterprise for Minorities, Females, and Persons with Disabilities Act was amended by inserting a proviso which states that those who submit proposals for State contracts shall not be given a period after the bid or proposal is submitted to cure deficiencies in the bid or proposal, unless doing so is mandated by Federal law or regulation.

*Employment agency.* In a municipality with more than 1,000,000 inhabitants, a day or temporary labor service agency may not operate or transact business at a location within 1,000 feet of a school building or a building in which a Boys and Girls Club is located. This prohibition also pertains to real property on which a school or a Boys and Girls Club is located. This restriction does not apply to an employment agency that was registered with the State Department of Labor or received an occupancy permit for a restricted location prior to January 1, 2008.

In the event of a lawsuit, a day and temporary labor service agency may recover attorney's fees and costs in a civil action brought by the agency against a third-party client when the plaintiff prevails. The charges relate to a breach of contract by the third-party client for services provided by the labor service agency.

*Human trafficking.* Section 10-9, concerning trafficking in persons, involuntary servitude, and related offenses, was added to the omnibus Health Care Worker Background Check Act. The act now deals with (1) forced labor or services performed or provided by another person that are obtained or maintained through any plan intending to cause or threatening to cause serious harm to another person; and (2) physically restraining another person by an individual who is abusing or threatening to abuse the law or some legal process or who is knowingly destroying, concealing, removing, confiscating, or possessing the other person's purported passport (or other immigration document or government identification) or who is attempting to

cause financial harm or exert financial control over the other person. In addition, the act deals with involuntary servitude (knowingly subjecting another person to forced labor or services), including the involuntary sexual servitude of a minor. A violation of the act in the aforementioned areas is a Class 1 felony. If the violation is considered aggravated, it shall be considered a Class X felony. Upon conviction for involuntary servitude, sexual servitude of a minor, or trafficking in persons for forced labor or services, the attorney general of the State may be authorized to seize all property or other interests declared forfeited by law.

*Immigration protections.* Prior to voluntarily enrolling in any electronic employment verification system, including the E-Verify program and the Basic Pilot Program, employers are urged to consult the State Department of Labor's Web site for current information on the accuracy of the E-Verify program and to review the employer's legal responsibilities relative to the program. The State Department of Labor has links to information from the U.S. Government Accountability Office, the private firm Westat, and similar reliable sources that are independent of the U.S. Department of Homeland Security regarding the accuracy of the E-Verify databases, the approximate financial burden the system imposes on employers, the expenditure of time that the use of E-Verify requires from employers, and an overview of an employer's responsibilities under Federal and State law relating to E-Verify. The following actions or omissions are a violation of the law: failure to display notices from the U.S. Department of Homeland Security; failure to take reasonable steps to prevent an employee from circumventing the requirement to complete computer-based training in the E-Verify system; use of the system to verify the employment eligibility of job applicants prior to hiring; termination of, or any other adverse employment action against, an individual prior to the receipt of a final nonconfirmation notice from the Social Security Administration and the U.S. Department of Homeland Security; failure to notify an individual, in writing, of the employer's receipt of a tentative nonconfirmation notice and of the individual's right to contest the notification; failure to provide an individual with the names of agencies to be contacted to contest the notification; and failure to safeguard the information and system. It is also a violation of this legislation (1) for an individual to falsely pose as an employer in order to enroll in an E-Verify system or (2) for an employer to use a verification system to access information regarding a person who is not an employee of the employer.

The director of the State Department of Commerce and Economic Opportunity may make grants to eligible employers, or to other

eligible entities on behalf of employers, to provide training for employees in fields for which there are critical demands for certain skills. No participating employee may be an unauthorized alien. Each applicant must provide a signed, dated, and notarized certification stating the names of all participating employees, ensuring that all persons are employed at a State facility, and indicating the Social Security numbers of the employees. All submissions are subject to departmental audit for purposes of accuracy.

*Minimum wage.* The State minimum-wage requirement was increased to \$8.00 per hour.

*Plant closing.* A hospital or health care facility must provide a written preclosure statement to the State Department of Public Health no less than 90 days before permanently closing its facility. The written agreement must address, among other things, the intended date upon which the business of the health care facility will cease.

*Prevailing wage.* When a public body that is covered by the State Prevailing Wage Act awards a contract without a public-bid, contract, or project specification, the contractor and any subcontractors shall comply with the current prevailing-wage statutes. Written notice indicating the current prevailing rate of wages that must be paid to all laborers, workers, and mechanics performing work on the project must be provided to the contractor. A contractor or subcontractor who fails to comply with the prevailing rate of wages is in violation of the act. When a complaint is made and the State Department of Labor determines that a violation has occurred, it must first be determined that proper written notice was given. If proper written notice was not provided to the contractor, then the public body must pay any interest, penalties, or fines that would have been owed by the contractor had it received proper notification. Failure to receive written notice does not relieve the contractor of the duty to comply with the prevailing-wage rate and pay any outstanding back wages. If proper notice was not given to a subcontractor by a contractor, the contractor shall pay any interest, penalties, or fines due and shall also pay any back wages due to the laborers, mechanics, or workers.

The State Prevailing Wage Act was amended by refining the definition of "public works" within the act. The term means "all fixed works constructed by any public body or paid for wholly or in part out of public funds." The term, however, does not include work done directly by a public utility company, whether or not done under public supervision or direction, or work paid for wholly or in part out of public funds. In addition, the term does not



include projects undertaken by the owner at an owner-occupied single-family residence or at an owner-occupied unit of a multifamily residence.

The State Prevailing Wage Act also was amended to ensure that no less than the general prevailing rate of hourly wages be paid to all laborers, mechanics, and other workers employed in the construction or demolition of public works. Such work includes any maintenance, repair, assembly, or disassembly work performed on equipment, whether owned, leased, or rented. Only laborers, workers, and mechanics directly employed by contractors or subcontractors in actual construction work on the site of the building or construction job and engaged in the transportation of materials and equipment to or from the jobsite shall be deemed to be employed upon public works. Further, the wage for a tradesworker performing maintenance is equivalent to that of a tradesworker engaged in construction or demolition.

*Worker privacy.* The State Department of Central Management shall establish and maintain a Web site known as the Illinois Transparency and Accountability Portal (ITAP), with a full-time webmaster tasked with the responsibility of compiling and updating the site's database with specific information received from all State agencies receiving appropriations. The database shall contain the names of all current State employees and individual consultants (except sworn law enforcement officers), the name of the employing State agency and division, the employment position title, the current pay rate, and the year-to-date amount of pay. The database also shall contain data on (1) all development assistance relevant to the Corporate Accountability for Tax Expenditures Act, (2) all revocations and suspensions of State occupation and use tax certificates of registration and State professional licenses, (3) all current State contracts, sorted by contractor and awarding officer or agency, (4) the value of the licenses, and (5) the value of the goods or services provided. As additional information becomes available, it will be published on the portal.

Privileged or confidential communications otherwise protected by law include communication between an individual and his or her physician; psychologist or other psychotherapist; school social worker; school counselor; school psychologist; or school social worker, school counselor, or school psychologist intern who works under the direct supervision of a school social worker, school counselor, or school psychologist. No school employee shall be subjected to any adverse employment action, the threat of an adverse employment action, or any manner of discrimination because the employee is acting or has acted to protect privileged or confidential communica-

tions pursuant to applicable State provisions or Federal law.

All levels of the educational system in the State, including elementary and secondary schools, colleges and universities, community colleges, and law schools, are affected by a legislative change to the State School Code. A report shall be given to the State board of education by school boards of trustees on or before July 1 of each year. The report shall include information on the base salaries and benefits of all the administrators, teachers, faculty members, and instructors. Benefits include vacation and sick days, bonuses, annuities, and retirement enhancements.

*Workplace violence.* The State passed a resolution creating the Legislative Task Force on Workplace Bullying, with the mission of examining the prevalence and impact of bullying in the workplace. Among the factors to be considered in the study are the physical and psychological health, economic security, and work and family relationships of employees. Further, the task force will examine the barriers faced by private-sector employers that employ individuals who engage in intentional abusive conduct resulting in increased turnover, lost productivity through absenteeism, and worker's compensation and disability insurance claims and affecting corporate recruitment and retention. In addition, the task force will examine offering incentives to businesses that implement policies and procedures to prevent and respond to the mistreatment of employees at work. The task force shall receive administrative support from the State Department of Human Services, hire skilled experts, and report its findings to the State General Assembly on or before December 1, 2010.

The Victim's Economic Security and Safety Act addresses the failure of existing laws to protect the employment rights of employees who are victims of domestic or sexual violence or who have a family or household member who is a victim of domestic or sexual violence. The act does this by protecting the civil and economic rights of those employees and by furthering the equal opportunity of women for economic self-sufficiency and employment free from discrimination. An employee or a household member thereof who is the victim of domestic or sexual violence may be permitted to take unpaid leave to seek medical help, legal assistance, counseling, safety planning, and other assistance without incurring any penalty from his or her employer. The legislation also prohibits employers from discriminating against any employee who is a victim, at the same time ensuring that the legitimate interests of employers are protected and that the safety of all persons in the workplace is secured. To be subject to the act, a private employer must employ at

least 15 employees. The State, any agency of the State, or any unit of local government or the school district also may be an employer under the act. An employee working for an employer with at least 50 employees shall be entitled to a total of 12 workweeks of leave during any 12-month period; an employee working for an employer with 15, but no more than 49, employees shall be entitled to a total of 8 workweeks of leave during any 12-month period. The number of workweeks to which an employee is entitled shall not decrease during the relevant 12-month period. The legislation does not create a right for an employee to take unpaid leave that exceeds the leave time allowed. The leave may be taken intermittently or on a reduced work schedule, with the employee providing the employer with at least 48 hours' advanced notice of the employee's intention to take leave. No reprisals may be taken against the employee, nor may the employer discontinue benefits covered during the leave period. Should the employee fail to return from leave, the employer may recover premiums paid to maintain coverage. The employer may not require the employee to substitute available paid or unpaid leave for leave granted as a result of violence to the employee or his or her family member.

## Indiana

*Equal employment opportunity.* The State amended Section 1 IC 22-9-2-1 of the State Code by increasing the maximum age limit for age discrimination claims from 70 years to 75 years of age.

*Family issues.* The State enacted legislation that adds a biological child, an adopted child, a foster child, or a stepchild of a person who is ordered to active duty as eligible for military family leave. The bill also redefines the definition of the terms "grandparent," "parent," and "sibling" for purposes of military family leave.

*Independent contractor.* Section 1 IC 6-1-3-21.2 of the State Code was amended to provide for the sharing of information concerning the classification of individuals as independent contractors among the State Department of Labor, the Department of State Revenue, the State Department of Workforce Development, and the State Worker's Compensation Board. Certain information pertaining to the classification of employees is confidential and may not be published or open to public inspection. An officer or employee of a State agency who knowingly or intentionally discloses confidential information concerning any suspected improper classification of an individual commits a Class A misdemeanor. The amended bill defines a contractor as a sole proprietor,

a partnership, a firm, a corporation, a limited-liability company, an association, or another legal entity that engages in construction and is authorized by law to do business in the State. The definition of “contractor” includes a general contractor, a subcontractor, and a lower tiered contractor, but does not include the State, the Federal Government, or any political subdivision of either.

*Minimum wage.* The State minimum-wage requirement was increased to \$7.25 per hour.

*Legislation* was enacted that requires an employer to post a single-page poster to notify employees about the State’s minimum-wage law. The State also requires that, each pay period, employers provide employees a statement which includes their hours worked, wages paid, and deductions made.

*Time off.* The State Code was amended so that an employee may not be disciplined for absence from work if the employee is a member of a volunteer fire department and is injured during emergency firefighting or some other emergency response. The immediate supervisor of such an employee may require the employee to provide evidence from a physician or other medical authority documenting the fact that (1) the employee has undergone treatment for the injury at the time of the absence and (2) there is a connection between the injury and the employee’s emergency firefighting or other emergency response activities. The exemption from discipline applies to the period of the employee’s absence from work, as long as that period does not exceed 6 months from the date of injury. Similar protections apply to employees of political subdivisions when certain criteria are met.

*Wages paid.* The State enacted legislation that allows a public school corporation, the State school for the blind and visually impaired, the State school for the deaf, certain correctional institutions, certain State institutions, and the State Soldiers’ and Sailors’ Children’s Home to enter into a 13-month compensation payment schedule for work performed during a normal 9- or 10-month school year. Such an agreement between an institution and an employee thereof must be in writing.

*Workers with disabilities.* The State Code was amended to express the policy that individuals with a mental disability should participate fully in the social and economic life of the State and engage in remunerative employment. Also, persons with mental disabilities should be allowed employment in positions with the State service, the service of the political subdivisions of the State, public schools, and all other employment supported in whole or in

part by public funds. Persons with a disability are entitled to be accompanied by a service animal in certain public accommodations that include various educational institutions. Covered entities, such as employers, employment agencies, labor organizations, and joint labor-management committees, must allow an employee with a disability to keep a service animal with the employee at all times. The bill defines a service animal as a hearing, guiding, assistance, seizure alert, mobility, psychiatric service, or autism animal.

## Iowa

*Department of labor.* The duties of the commissioner of the State Department of Labor pursuant to collecting wage payments, enforcing child labor laws, and providing penalties for violations of the law in such areas were amended. Under the wage payment collection penalties set by the State Code, the commissioner may assess a civil penalty of no more than \$500 per pay period for any violation of the wage payment provisions of the State Code. Under the child labor violation penalties set by the State Code, the commissioner shall adopt rules specifically defining the civil money penalty amount to be assessed for child labor violations. Employers may be assessed a civil money penalty of no more than \$10,000 for each violation of specific child labor codes. The commissioner shall notify the employer of a proposed civil penalty in the same manner as he or she would an original notice of violation or by certified mail. If, within 15 working days from receipt of the commissioner’s notice, the employer fails to file a notice of contest in accordance with rules adopted by the commissioner, the proposed penalty shall be deemed final agency action for purposes of judicial review.

*Equal employment opportunity.* The State enacted legislation, including an applicability provision, providing for gender balance on local boards, commissions, committees, and councils. All appointive boards, commissions, committees, and councils of a political subdivision of the State that are established by the State Code, if not otherwise provided by law, shall be gender balanced, unless the political subdivision has made a good-faith effort to appoint a qualified person to fill a vacancy on a board, commission, committee, or council for a period of 3 months, but has been unable to make an appointment compliant with State Code. In complying with code requirements, political subdivisions shall utilize a fair and unbiased method of selecting the best qualified applicants. This amendment to the code shall not prohibit an individual whose term expires prior to January 1, 2012, from being reappointed, even though the reappoint-

ment continues an inequity in gender balance. The amendment is applicable to appointive boards, commissions, committees, and councils of a political subdivision of the State on and after January 1, 2012.

After restating that wage discrimination is an unfair employment practice under the State Civil Rights Act, the legislature amended the act by providing an enhanced remedy. As amended, the act now states that, for any unfair or discriminatory practice relating to wage discrimination, payment to the complainant for an injury caused by the discriminatory or unfair practice that damages the individual shall include, but is not limited to, court costs, reasonable attorney’s fees, and either of the following: (1) an amount equal to 2 times the wage differential between the complainant and a comparable employee for the period during which the complainant was discriminated against or (2) in instances of willful violation, an amount equal to 3 times the wage differential between the complainant and a comparable employee for the period during which the complainant was discriminated against.

*Workplace violence.* A new section discussing violence in the workplace was added to the State Judicial Acts. A person who harasses a judicial officer, a court employee, or a family member of a judicial officer or a court employee in violation of the judicial acts, with the intent to interfere with or improperly influence, or in retaliation for, the official acts of a judicial officer or court employee commits an aggravated misdemeanor.

## Kansas

*Inmate labor.* The State amended K.S.A. 2008 Supp. 75-5275 to allow the State Department of Corrections to contract with private individuals, corporations, partnerships, or associations for projects that would involve repairing real estate that has been damaged by a tenant who is under the release supervision of the department.

*Minimum wage.* The minimum wage in the State was increased so that, effective January 1, 2010, employees shall be paid at a rate not less than \$7.25 per hour. In calculating the minimum-wage rate, the employer may include tips and gratuities received by an employee if such tips and gratuities have customarily constituted part of the remuneration of the employee and if the employee concerned actually received and retained the tips and gratuities. For employees receiving tips and gratuities, the employer shall pay a minimum wage of at least \$2.13 an hour. If, when combined with the minimum-wage rate prescribed by State law, the amount of the employee’s tips and gratuities is at least equal to \$7.25 an hour, no

further payment is required by the employer; if the amount is less than \$7.25 an hour, the employer must pay the employee the difference between the \$7.25 an hour and the actual hourly amount received by the employee as determined by combining the amount of tips and gratuities received with the minimum wage prescribed by the State law and paid by the employer. These provisions of State law shall not apply to any employers and employees covered by the provisions of the Federal Fair Labor Standards Act.

*Miscellaneous.* For the purpose of resolving tort claims under the State Tort Claims Act, the definition of “employee” was expanded to include medical students who are enrolled at the University of Kansas Medical Center and who are in clinical training at the center or some other health care institution(s). The change in the definition means that the State could be held responsible for a student’s act or failure to act if it occurs within the scope of his or her employment. In addition, the expanded definition of “employee” excludes any independent contractor under contract to a government entity, except those contractors specifically listed in K.S.A. 75–6101 through 75–6118.

*Worker privacy.* The State now provides that information contained in responses to wage and salary surveys conducted by the director of personnel services to provide wage and salary information about jobs and other public and private employment under K.S.A. 75–2938 shall be confidential and not subject to disclosure under the open records act, K.S.A. 45–215 et seq. Any information contained in such responses to wage and salary surveys will not be subject to subpoena, discovery, or any other demand in any administrative, criminal, or civil action. The information can be disclosed upon written request if no person or entity can be identified in the information, as determined by the director of personnel services.

## Kentucky

*Minimum wage.* The State minimum-wage requirement was increased to \$7.25 per hour.

*Overtime.* Legislation was enacted relating to supplemental payments to local governments for qualified professional firefighters and for declaring an emergency. Each firefighter shall receive a distribution of the State Supplement Firefighters Foundation Program Fund in proportion to his or her qualifications brought to the local government. Each qualified professional firefighter whose local government receives a supplement from the fund shall receive the appropriate distribution of the supplement from that local government

in 12 equal monthly installments together with his or her pay for the last pay period of each month. For the purpose of calculating hourly wage rates for scheduled overtime for professional firefighters, the term “wages” shall not include the aforesaid distribution. “Scheduled overtime” means “work by a professional firefighter in excess of 40 hours per week and that regularly recurs as part of an established work schedule.” For the purposes of calculating hourly wage rates for unscheduled overtime for professional firefighters, “wages” shall include the aforesaid distribution. “Unscheduled overtime” is defined as “work by a professional firefighter in excess of 40 hours per week and that does not regularly recur as part of an established work schedule.”

## Louisiana

*Equal employment opportunity.* The State enacted a bill which provides that no person shall be held civilly or criminally liable, discriminated against, dismissed, demoted, or in any way prejudiced or damaged for declining to participate in any health care service that violates his or her conscience to the extent that patient access to health care is not compromised. “Conscience” is defined as “sincerely held religious belief or moral conviction.” “Health care service” is limited to abortion, the dispensation of abortifacient drugs, human embryonic stem cell research, human embryonic cloning, euthanasia, and physician-assisted suicide. Health care facilities are instructed to ensure that they have sufficient staff to provide patient care in the event that any employee declines to participate in any health care service that violates his or her conscience. Employees who feel that a particular health care service violated their conscience should notify their employers in writing as soon as practicable and must notify any patient before they provide any consultation or service to the patient.

*Human trafficking.* Legislation was enacted relative to, and to create the crime of, trafficking of children for sexual purposes. It is now unlawful for any person to knowingly recruit, harbor, transport, provide, sell, purchase, or otherwise obtain a person under 18 years of age for the purpose of engaging in commercial sexual activity. No person may knowingly benefit from participation in any venture that has engaged in such activity. Violators of the law shall be fined no more than \$50,000 and imprisoned at hard labor for no less than 15 years and no more than 50 years. Whoever violates the law with respect to a victim who is less than 14 years of age shall be fined no more than \$75,000 and imprisoned at hard labor for no less than 25 years or more than 50 years. At least 25 years shall be served without

benefit of probation, parole, or suspension of sentence. No parent, legal guardian, or other person having custody of a person less than 18 years of age may knowingly permit or consent to such minor entering into any of the aforementioned prohibited activities. Any such individual who violates the law shall be required to serve at least 5 years, or at least 10 years if the minor is less than 14 years of age, without benefit of probation, parole, or suspension of sentence.

*Inmate labor.* The State enacted legislation pertaining to the rate of inmate compensation. The new requirements regarding rates of pay for inmate labor shall be determined according to the skill, industry, and nature of the work performed by the inmate and shall be no more than 20 cents per hour, except that inmates who are assigned to industrial, agricultural, service, or other programs in the State Prison Enterprises system may be compensated at a rate of up to 40 cents per hour and inmates who are certified academic tutors or certified vocational tutors may be compensated at a rate of up to \$1.00 per hour.

*Worker privacy.* Prior to hiring any applicant for employment, each city, parish, or other local public school board shall require the applicant to sign a statement that (1) provides procedures for the disclosure of information by the applicant’s current or previous employer relative to all instances, if any, of sexual misconduct with students as committed by the applicant, (2) provides procedures for the disclosure of information by the previous employer (if that previous employer was the State school for the deaf, the State school for the visually impaired, or the State special education center) relative to all instances, if any, of abuse or neglect of students, and (3) provides procedures for the disclosure of information by the applicant of all instances, if any, of sexual misconduct committed by the applicant with any student or of the applicant’s abuse and neglect of any student. Such procedures shall include written notification of the school board on any application forms provided to the applicant. Also, the applicant must sign a release removing liability from the applicant’s former employer, or from any employee acting on behalf of the applicant’s former employer, for disclosing any personal information. All copies of any statements concerning sexual misconduct, abuse, or neglect shall be made and provided to the requesting school board no later than 20 business days after receiving the request to provide the necessary information. All applicants shall be required to disclose all cases of sexual misconduct with a minor or student and all investigations of sexual misconduct with a minor or student that occurred within 36 months prior to the applicant’s resignation,



dismissal, or retirement from school employment. Any applicant who knowingly and willfully violates the provisions of this law shall be guilty of a misdemeanor and shall be fined no more than \$500 or imprisoned for no more than 6 months, or both.

## Maine

*Agriculture.* Legislation was enacted to enhance the safety of contracted farmworkers and forestry workers. "An employer with regard to a migrant and seasonal farmworker" means "a person or entity that employs migrant and seasonal farmworkers and that is required to register with the U.S. Department of Labor under the Federal Migrant and Seasonal Agricultural Worker Protection Act." "A migrant and seasonal farmworker" means "a person employed by a farm labor contractor on a temporary or seasonal basis to perform farm labor." "An employer with regard to a forestry worker" means "a person or entity that suffers or permits any forestry worker to work." While transporting workers, a vehicle other than a bus may not exceed the manufacturer's design specifications with regard to the number of occupants permitted, except that in no instance may the number transported exceed 12. In the case of a 15-passenger van, compliance with this standard must be achieved by the removal of the seating immediately behind the rear axle, resulting in the number of passengers in the vehicle at any one time not exceeding 11. Each farm labor contractor employing migrant or seasonal farmworkers shall file a copy of its Federal registration under the Federal Migrant and Seasonal Agricultural Worker Protection Act with the State Department of Labor's Bureau of Labor Standards. The filing must include in-state contact information on the farm labor contractor or the farm labor contractor's representative.

*Drug and alcohol testing.* Legislation was enacted to clarify that the cutoff levels and procedures for substance abuse testing that are to be used when the State Department of Health and Human Services does not have established cutoff levels and procedures are those set forth in the *Federal Register*, volume 69, number 71, Sections 3.4-3.7. The department will allow for the use of any "federally recognized substance abuse test," defined as "any substance abuse test recognized by the Federal Food and Drug Administration as accurate and reliable through the Administration's clearance or approval process." The bill also defines a "confirmation test" as a "second substance abuse test that is used to verify the presence of a substance of abuse indicated by an initial positive screening test result and is a federally recognized substance abuse test or is performed through the use of either liquid

or gas chromatography or mass spectrometry."

*Equal employment opportunity.* The State Revised Statutes Annotated was amended. As amended, the law asserts that an employer may not prohibit an employee from disclosing the employee's own wages or from inquiring about another employee's wages as long as the purpose of the disclosure or inquiry is to enforce the antidiscriminatory rights granted by the statutes. However, nothing in the statutes creates an obligation to disclose wages.

*Living wage.* The State Department of Labor is now required to calculate livable wages for households in the State's counties and metropolitan statistical areas by family size and as statewide averages by developing an annual basic-needs budget for various family sizes. The calculation shall be done on a biannual basis after July 31, 2009.

*Minimum wage.* The State minimum-wage requirement was increased to \$7.50 per hour.

The State Revised Statutes were amended in order to clarify the minimum-wage exemption for summer camp counselors working at day camps. The statutes now stipulate that those employees who are counselors, junior counselors, or counselors-in-training at the organized camps licensed under State statutes and those employees of organized camps and similar recreational programs not requiring licensure that are operated as or by nonprofit organizations and who are under 18 years of age are exempt from the State minimum-wage requirement.

*Miscellaneous.* The State defined "lobbyist" so as not to include an individual who receives no compensation for lobbying other than reimbursement for lobbying-related travel within the State and reimbursement for other out-of-pocket expenditures for printing, postage, and food and lodging connected with lobbying activities paid for by the individual. The definition of "reimbursement for out-of-pocket expenditures" does not include reimbursement for the individual's time spent lobbying that would have been otherwise compensated by an employer or for time spent in the course of the individual's employment.

The U.S. Department of Labor is undertaking a review of contractor practices around the State to investigate allegations that contractors are not following Federal law. In recognition of this fact, and to remove any economic obstacles in the State's wood industry and improve opportunities for resident laborers to be employed by that industry, the State passed a public law indicating that an employer who employs a bond worker in a logging occupation shall provide proof of the employer's ownership of any

logging equipment used by that worker while employed by that employer. The employer must own at least one piece of logging equipment for every two bond workers. Proof of ownership must be carried in the equipment, and upon request by the State Department of Labor, the operator of the equipment shall provide proof of ownership. Information regarding proof of ownership is not confidential and may be disclosed to the public. An employer who violates this law commits a civil violation for which a fine of no less than \$3,000 and no more than \$15,000 per violation may be adjudged.

*Plant closing.* Legislation was enacted that redefined "week's pay" as an amount equal to the employee's gross earnings either during the 12 months previous to the date of termination or relocation of the establishment or the date of termination or layoff of the employee, should it occur earlier, divided by the number of weeks in which the employee worked that period. The bill stipulates that, during Chapter 11 bankruptcy proceedings, the employer is not liable for severance pay to eligible employees, unless the filing is later converted to a filing under Chapter 7. The bill also includes language regarding a mass layoff and directs any employer that lays off 100 or more employees at a covered establishment to report the expected duration of the layoff within 7 days to the director of the State Bureau of Labor Standards. The director shall require the employer to update the report at least every 30 days in order for the director to determine whether the layoff constitutes a termination or relocation or whether there is a substantial reason to believe that the affected employees will be recalled within a reasonable time.

*Prevailing wage.* The State enacted a public law in order to clarify the application of the State Public Works Minimum Wage Laws. The term "public works" is now defined to include public schools, in addition to all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, demolition, waterworks, airports, and all other structures upon which construction may be let to contract by the State and which contract amounts to \$50,000 or more.

*Worker privacy.* Legislation was enacted with the purpose of guiding and governing the issue of teacher confidentiality. Any complaints that might end in the denial, revocation, or suspension of a teacher's certification are to be held confidential, except when submitted in court proceedings. Confidential information may be released or used by the State Department of Education to complete its own investigations, provide information to a national association of State directors of teacher education and

certification to which the State belongs, assist other public authorities in investigating teacher certifications in other jurisdictions, report or prevent criminal misconduct, assist law enforcement agencies in their investigations, or report child abuse or neglect. As long as the release of information, in the form of statistical summaries of complaints and dispositions, does not jeopardize the confidentiality of individuals, the department may publish and release the information to the public.

## Maryland

*Discharge.* Portions of the State statutes relating to the State Flexible Leave Act were amended. The new legislation established that the State Flexible Leave Act applies to employers with 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year. The definition of “immediate family” was clarified to mean only “a child, spouse, or parent.” In addition, the definition of “leave with pay” was clarified to mean “paid time that is earned and available to an employee on [the basis of] hours worked or as an annual grant of a fixed number of days of leave for performance of service.” The term does not include a benefit provided under an employee welfare benefit plan subject to the Federal Employee Retirement Income Security Act of 1974; an insurance benefit, including any benefit from an employer’s self-insured plan; workers’ compensation; unemployment compensation; or a disability or similar benefit. Employers are now forbidden from taking disciplinary action (that is, discharging, demoting, suspending, disciplining, or otherwise discriminating) against an employee, or threatening to do so, because the employee has taken authorized leave; opposed a practice made unlawful by the enacted legislation; or made a charge, testified, assisted, or participated in an investigation, proceeding, or hearing related to the State Flexible Leave Act.

*Equal employment opportunity.* The legislature added a new title to the State Government Article of the Annotated Code. Known as Title 20, the new title revised, restated, and recodified certain laws relating to the State Commission on Human Rights. Under the section concerning unlawful employment practices, employers may not fail to hire, refuse to hire, discharge, or otherwise discriminate against any individual with respect to the individual’s compensation or terms, conditions, or privileges of employment because of (1) the individual’s race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent to the individual’s employment performance or (2) the in-

dividual’s refusal to submit to genetic testing or make available the results of such testing. Furthermore, an employer may not limit, segregate, or classify its employees or applicants for employment in any way that would deprive or tend to deprive them of employment opportunities or that would otherwise adversely affect their status as employees because of (1) their race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent to their employment performance or (2) their refusal to submit to genetic testing or make available the results of such testing. In addition, an employer may not request or require genetic tests or genetic information as a condition of hiring or determining benefits.

The State statutes concerning discrimination by employers on the basis of certain factors were expanded. An employer, a labor organization, or an employment agency may not print or cause to be printed or published any notice or advertisement relating to employment by the employer; membership in, or any classification or referral for employment by, the labor organization; or any classification or referral for employment by the employment agency that indicates any preference, limitation, specification, or discrimination based on race, color, religion, sex, age, national origin, marital status, sexual orientation, or disability. However, any notice or advertisement placed by any of the aforementioned entities may indicate a preference, limitation, specification, or discrimination based upon religion, sex, age, national origin, marital status, or disability when any of those characteristics is a bona fide occupational qualification for employment.

The State clarified a formerly unclear provision of the law pertaining to equal employment opportunity. Now an unlawful employment practice with respect to discrimination in compensation occurs when a specified decision or practice is adopted, when an individual becomes subject to the decision or practice, or when an individual is affected by the decision or practice, including each time wages, benefits, or other compensation is paid, resulting wholly or partly from the discriminatory compensation decision or other practice. The State authorized the recovery of backpay for up to 2 years preceding the filing of a complaint when the unlawful employment practice that is the subject of the complaint is similar or related to a specified other unlawful employment practice with regard to discrimination in compensation that occurred outside the time specified for filing a complaint.

*Human trafficking.* The sections of the State Criminal Law concerning human trafficking were amended, expanding the list of actions relating to human trafficking that are prohibited. Under the amended law, a person may

not knowingly persuade, induce, entice, or encourage another person to be taken to or put in any place for purposes of prostitution.

*Independent contractor.* Legislation was enacted that (1) prohibits certain employers from failing to properly classify individuals who perform work for remuneration paid by those employers, (2) authorizes the commissioner of the State Department of Labor and Industry to initiate an investigation under specified circumstances to determine whether certain specified violations occurred, and (3) establishes the method of determining whether an employer-employee relationship exists for purposes of proper classification under specified circumstances. An employer in an affected industry misclassifies an employee when an employer-employee relationship exists, but the employer has not classified the individual as an employee. An employer-employee relationship exists in an affected industry unless the employer can demonstrate that the worker is a sole proprietor or independent contractor subject to clarifying regulations issued by the commissioner. An employer in an affected core industry must keep specified personnel records for at least 3 years. At the time of hiring, an employer must provide each sole proprietor or independent contractor a written explanation of the implications of his or her classification. The bill requires that units within the State Department of Labor, Licensing, and Regulation and other State agencies share information concerning any suspected failure to properly classify an individual as an employee. An employer found to have improperly misclassified one or more employees must, within 30 days, pay restitution to those employees not properly classified and come into compliance with all applicable labor laws. An employer is penalized up to \$3,000 for each employee not in compliance, but the commissioner cannot penalize employers who conform to applicable labor laws within 30 days. An employer is guilty of knowingly misclassifying an employee if the employer misclassifies the individual despite actually knowing that he or she is an employee, with deliberate ignorance of the fact that the individual is an employee, or with reckless disregard for the truth that the individual is an employee. For knowingly violating the bill’s provisions, an employer is subject to a penalty of up to \$5,000 per misclassified employee, regardless of whether the employer enters into compliance within 30 days. Penalties extend to successor corporations and can be doubled for employers who have previously violated the bill’s provisions. An individual who assists, advises, or otherwise facilitates an employer in misclassifying employees is subject to a civil penalty of up to \$20,000. If an employer engaged in work with a public body fails to properly classify one or more employees, the commissioner has to



notify the public body, which is then required to withhold from payment an amount sufficient to pay each employee the full amount of wages due, as well as pay any benefits, taxes, or other required contributions. The commissioner must file with specified agencies a list of employers who repeatedly misclassify employees. A listed employer is debarred and prohibited from entering into a contract with a public body for 2 years from the date of placement on the list. Debarment extends to any successor corporation. A misclassified employee is authorized to bring a civil action against the employer within 3 years of the violation, and the court may award damages to the individual. An employer may not take action against an employee for bringing an action against the company; likewise, employees are prohibited from making a complaint in bad faith. The commissioner is authorized to investigate the situation upon receiving a complaint that an employer took retaliatory action against an employee. The employer must be given an opportunity to respond to the allegations. If the commissioner determines that retaliatory action was taken, the commissioner must file a complaint in circuit court to enjoin the violation, reinstate the employee, and take other appropriate action. The commissioner may enter a place of business to observe work being performed, interview employees and contractors, and review records as part of the investigation. The commissioner also may issue a subpoena for testimony and records. All required records must be kept by the employer for a period of 3 years. An employer that fails to produce records within 5 business days of the commissioner's request is subject to a fine of up to \$500 per day. If an individual fails to comply with a subpoena, the commissioner may file a complaint in circuit court requesting an order directing the individual's compliance. The commissioner must issue a citation to an employer that fails to properly classify an employee. The commissioner is required to send the employer notice of the violation and the amount of the penalty. If a hearing is not requested within 15 days of the notice, the violation and penalties are considered the final order of the commissioner.

*Minimum wage.* The State minimum-wage requirement was increased to \$7.25 per hour.

*Workers with disabilities.* Legislation was enacted that expanded the definition of "disability" and also expanded disability rights of employees in the area of employment discrimination. The definition of "disability" now includes having a record of physical or mental impairment as otherwise defined under State law or being regarded as having a physical or mental impairment as otherwise defined under State law. The expansion provided by the legislation prohibits

employers from failing or refusing to make reasonable accommodations for known disabilities of otherwise qualified employees. However, the employer is not required to reasonably accommodate an employee's disability if the accommodation would cause undue hardship on the employer's business. Finally, employers may not retaliate against an employee because the employee opposed any practice prohibited by the legislation or because the employee made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the State law.

The legislation also extends termination provisions and dates of applicability for specific tax credits for employers that hire certain qualifying individuals with disabilities or certain qualifying employees facing specific employment barriers.

### Minnesota

*Drug and alcohol testing.* Legislation was enacted that requires Type III school bus vehicle operators to undergo preemployment drug and alcohol testing.

*Human trafficking.* Legislation related to human trafficking and public safety was enacted that (1) authorized the commissioner of State Public Safety to gather and compile data on human trafficking every 2 years; (2) expanded the definition of "labor trafficking" to include persons who receive profit or anything of value, knowing or having reason to know that it is derived from labor trafficking; (3) expanded the definition of "sex trafficking" to include persons who receive profit or anything of value, knowing or having reason to know that it is derived from sex trafficking; and (4) defined, as a prior qualified human-trafficking-related offense, a conviction or delinquency adjudication within 10 years of the discharge from probation or parole immediately preceding the warrant offense for a violation of, or an attempt to violate, State law concerning prostitution, sex trafficking, labor trafficking, or unlawful conduct with respect to documents in furtherance of labor or sex trafficking. Those acting as the procurer or provider of a prostitute 18 years or older may be sentenced to imprisonment for no more than 20 years and fined no more than \$50,000. Those acting as the procurer or provider of a prostitute under 18 years may be sentenced to imprisonment for no more than 25 years and fined no more than \$60,000 if certain aggravating factors are present.

*Wages paid.* The sections of the State statutes concerning the deduction from wages of unreimbursed expenses were amended. Deductions, direct or indirect, for up to the full

cost of any uniform or equipment described in the State Statutes may not exceed \$50.00 or, if a motor vehicle dealer licensed under the State statutes furnishes uniforms, clothing, or equipment on an ongoing basis, may not exceed the lesser of 50 percent of the dealer's reasonable expense or \$25 per month, including nonhome maintenance of the uniform or equipment. At the termination of an employee's employment, the employer must reimburse the full amount deducted, directly or indirectly, for any of the items listed in Section 177.24, subdivision 4, of the State statutes, except for a motor vehicle dealer's rental and maintenance deduction for uniforms or clothing. However, no deductions, direct or indirect, may be made that, when subtracted from wages, will reduce the wages paid to below the minimum wage.

### Missouri

*Equal employment opportunity.* The State Revised Statutes were amended by adding a new section to the education requirements for public employees. No municipal fire department, municipal police department, or State agency, department, or political subdivision of the State shall discriminate in hiring, placement, treatment, or prerequisites for any employment or services of an individual on the basis of the elementary or secondary education program that the individual is completing or has completed, provided that the program is permitted under State law. Employers are not prohibited from requiring an individual to have abilities or skills other than those which are applicable to the duties of a position. This particular revision of the State Revised Statutes does not apply to private employers.

*Immigration protections.* The State requirements placed upon certain business entities concerning the legal authorization of workers in this country have been expanded. The affected entities are those which are awarded any contract or grant in excess of \$5,000 by the State or by any political subdivision thereof and those which receive a State-administered or State-subsidized tax credit, tax abatement, or loan. Such entities must sign an affidavit affirming that they do not knowingly employ, in connection with the contracted services, any person who is an unauthorized alien. Any entity contracting with the State or any political subdivision thereof shall only be required to provide the affidavits required by State law to the State and any political subdivision thereof with which it contracts on an annual basis. During or immediately after an emergency, the requirements of the law that a business entity enroll and participate in a Federal work authorization program shall be suspended for 15 working days.



*Minimum wage.* The State minimum-wage requirement was increased to \$7.25 per hour.

## Montana

*Minimum wage.* The State minimum-wage requirement was increased to \$7.25 per hour.

*Prevailing wage.* The State enacted a bill that revised laws related to the standard prevailing-wage rate on wages for public-works contracts. The bill also (1) provides for wage and benefit surveys and alternative methodologies to determine the standard prevailing-wage rate whenever insufficient data are generated by the survey of contractors in the applicable jurisdiction, (2) specifies payment terms for apprentices working on public-works contracts, and (3) authorizes the commissioner of the State Department of Labor and Industry to limit to 10 the maximum number of prevailing-wage rate districts for building construction services and nonconstruction services. In doing so, the commissioner need not take into consideration heavy construction services and highway construction services wage rates. The State defines “standard prevailing wages” as the applicable rates established or provided for building construction services, for heavy construction and highway construction services, and for nonconstruction services.

*Wages paid.* The State enacted legislation that amended State law by revising the periods within which an employer may withhold money from an employee’s final paycheck in cases of theft of property or funds. Generally, employers may not withhold any wages earned by or unpaid to any employee for a period longer than 10 business days after the wages are due and payable. However, when an employee is separated for cause or laid off from employment by the employer, all the unpaid wages of the employee are due and payable immediately upon separation, unless the employer has a written personnel policy governing the employment that extends the time for payment of the final wages to the employee’s next regular payday for the pay period or to within 15 days from the separation, whichever occurs first. In addition, when an employee is discharged by reason of an allegation of theft of property or funds connected to the employee’s work, the employer may withhold from the employee’s final paycheck an amount sufficient to cover the value of the theft if (1) the employee agrees, in writing, to the withholding or (2) the employer files a report of the theft with the local law enforcement agency within 7 business days of the separation from employment, subject to the meeting of certain conditions related to the filing of charges.

## Nebraska

*Immigration protections.* The State enacted legislation which stipulates that every contract

between a public employer and public contractor shall contain a provision requiring the public contractor to use a Federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State. The operative date of the legislation was October 1, 2009, and for 2 years after that date the State Department of Labor shall make available to all private employers information regarding the Federal immigration verification system and encouraging the use of the system.

*Minimum wage.* The State minimum-wage requirement was increased to \$7.25 per hour.

## Nevada

*Employee leasing.* Legislation was enacted authorizing the administrator of the State Division of Industrial Relations of the State Department of Business and Industry to adopt regulations relating to a third party that may act on behalf of an employee leasing company, including obtaining or renewing a certificate of registration. An audited financial statement must have been completed no more than 180 days after the end of the applicant’s fiscal year when a third party submits a renewal of a certificate of registration.

*Minimum wage.* The State minimum-wage requirement was increased to \$7.55 per hour for employees who do not receive paid health benefits from their employer. The minimum wage for employees who do receive paid health benefits from their employer is \$6.55 per hour.

*Miscellaneous.* A department, division, or other agency of the State shall not employ, by contract or otherwise, a person to provide services as a consultant for the agency if (a) the person is a current employee of an agency of the State, (b) the person is a former employee of an agency of the State and less than 1 year has expired since the termination of his or her employment with the State, or (c) the term of the contract is for more than 2 years.

*Prevailing wage.* A public body that undertakes a public work shall request from the commissioner of the State Department of Labor, and include in any advertisement, an identifying number designating the work to be performed. The number must be included in any bid or other document submitted in response to the advertisement or other type of solicitation by any person who enters into an agreement for the actual construction or remodeling of a building or facility. If a lease-purchase or installment-purchase agreement is involved, the public body shall also include in such contract or agreement the contrac-

tual provisions and stipulations required in a contract for public work. Each public body awarded a contract shall report its award to the commissioner within 10 days after receiving the award and shall give the name and address of the contractor. Each contractor also shall list the names of any subcontractors whom he or she engages for work on the project. Each contract shall include the contractual provisions and stipulations required in a contract for public work.

*Time off.* Legislation was enacted that requires certain employers to grant 4 hours of leave per school year to a parent, guardian, or custodian of a child enrolled in public or private school to participate in certain school conferences, activities, or events. An “employer” is defined in the bill as “any person who has 50 or more employees for each working day in each of 20 or more calendar weeks in the current calendar year.” Leave taken must be used in increments of 1 hour. Employers may require that a written request for the leave be provided 5 days before the leave is taken or that documentation be provided attesting to the leave. Employers are prohibited from taking any retaliatory action, including demotion, suspension, or any other kind of discrimination in the terms and conditions of employment, against an employee who takes the authorized leave. Employees who are retaliated against can file a claim with the commissioner of the State Department of Labor, who can award, in addition to remedies or penalties, (1) any wages and benefits lost as a result of the violation, (2) an order of reinstatement without loss of position, seniority, or benefits, and (3) damages equal to the amount of lost wages and benefits.

*Whistleblower.* A medical facility or any agent or employee thereof shall not retaliate or discriminate unfairly against another employee of the facility (for example, a registered nurse, licensed practical nurse, or nursing assistant) who contracts to provide nursing services because the employee has taken an action that calls into question the willful conduct of care providers at the facility. The individual who files such a complaint also may express his or her concern about patients who may be exposed to substantial risk of harm due to (1) failure of staff to comply with minimal professional or accreditation standards, (2) failure of staff to practice statutory or regulatory requirements, or (3) staff’s engaging in conduct which compromises professional standards that would subject the complainant to disciplinary action by the State Board of Nursing. If the employee feels discriminated against, he or she may file an action in a court of competent jurisdiction where compensatory damages may include reimbursement of

any wages, salary, employment benefits that were denied or lost, attorney's fees, and punitive damages. The court also may recommend reinstatement of the employee at the medical facility, and the facility could be liable for a civil penalty of no more than \$10,000 for each violation. If any action taken to retaliate or discriminate against the employee occurs within 60 days after the reported incident, there is a rebuttable presumption that the action taken against the employee constitutes retaliation or discrimination.

### New Hampshire

*Employee leasing.* Legislation modifying certain provisions relating to standards for the operation, regulation, and licensing of employee leasing companies was enacted. An "employee leasing arrangement" is defined as "an instance where an employee leasing company assigns an individual, including one who was previously employed by the client company or its predecessor, affiliate, or subsidiary, to perform services for the client company in an arrangement that is intended to be, or is, ongoing rather than temporary in nature and is not aimed at temporarily supplementing the workforce." Every application for the issuance of an original, renewal, or restricted license must be accompanied by an audited financial statement prepared by an independent certified public accountant and showing that the leasing company has a minimum working capital of \$100,000. The audit must not be older than 13 months, and subsequent audits must be done within 12 months of the application. If the client company has less than the required \$100,000, it will have 180 days to eliminate the deficiency. For those companies with less than the required amount, the applicant agency can submit a surety bond, an irrevocable letter of credit, or securities with a minimum market value of \$100,000 plus an amount to cover the deficit in working capital. If a licensing company has been continuously licensed without revocation or suspension for a period of 5 or more years, a license shall remain in force for 2 years from the date of issue, provided that the required information is submitted to the Department of Labor on an annual basis. Firms shall maintain a list of current and past clients, and the list shall be available for inspection by the State Department of Labor without notice. The list of clients, the application for a license, and related materials shall remain confidential. Failure to maintain an updated list of clients still subjects the licensee to a \$1,000 fine for a first offense and a \$2,500 fine and loss of the license for a second or subsequent offense.

*Human trafficking.* The State prohibits trafficking in persons for the purpose of either sexual or labor exploitation. The bill defines

"serious harm" as including physical and non-physical harm and being an improper threat of a consequence sufficient under the circumstances to compel or coerce a reasonable person in the same situation to provide or continue to provide labor or services. The bill also defines "involuntary servitude" as "compulsory service or labor." In addition, the bill provides for the forfeiture of items used in connection with trafficking and subjects a person who commits such offenses involving someone less than 18 years of age to an extended term of imprisonment.

*Plant closing.* No employer shall order a mass layoff or plant closing unless the employer gives written notice of the order to all affected employees or their representatives 60 days before the order takes effect. The mailing of the notice to an employee's last known address or the inclusion of the notice in the employee's paycheck is considered an acceptable mode of notification. Any employer who fails to give notice before ordering a mass layoff or plant closing is liable to each employee for backpay at the average regular rate of compensation received by the employee during the last 3 years of his or her employment, or the employee's final rate of compensation, whichever is higher. An employer who fails to give notice may be assessed a civil penalty of up to \$2,500, as well as a civil penalty of up to \$100 per employee for each day of noncompliance. The employer is not subject to a civil penalty if the employer pays all applicable employees the amounts for which the employer is liable within 3 weeks from the date the mass layoff or plant closing is ordered.

### New Jersey

*Minimum wage.* The State minimum-wage requirement was increased to \$7.25 per hour.

*Prevailing wage.* The State Board of Public Utilities is responsible for adopting rules and regulations requiring that not less than the prevailing wage rate be paid to workers employed in the performance of any construction undertaken in connection with financial assistance from the board or undertaken to fulfill any condition of receiving such financial assistance. The prevailing-wage requirements of the State law do not apply to any contract that is less than the prevailing-wage threshold amount set for municipalities by State law.

*Wages paid.* The State enacted legislation that requires the reporting of wage records under certain solid-waste contracts. The reporting must include the name of, the actual hourly rate of wages paid to, and the actual daily, overtime, and weekly hours worked by each individual engaged in the collection and

transportation work done under the contract. The public body shall make the certified payroll record open to the inspection of any party to the contract, the commissioner of labor, and any member of the public at all reasonable hours. "Contractor or subcontractor" is defined as a "contractor or subcontractor who employs fewer than 1,000 employees in the State."

### New Mexico

*Equal employment opportunity.* The State legislature repealed certain sections of the State law dealing with the employment of women. It is no longer illegal for employers to hire women for employment in previously prohibited occupations or to have women work more than a limited number of hours. In addition, employers are no longer required to have certain seating available for their female employees.

*Prevailing wage.* Legislation was enacted that amends the State Public Works Minimum Wage Act, which allows the director of the State Labor and Industrial Division to set the prevailing-wage rates on public-works projects by using collective-bargaining agreements. The legislation makes it clear that fringe benefits are included in the prevailing wage. The State repealed Section 13-4-12 NMSA 1978, which defines the term "wages" and provides a listing of what fringe benefits are. Several terms are defined, including "director," "division," "fringe benefit," "labor organization," and "wage." The bill also sets the monetary thresholds for registration of contractors by raising the bid value for registration from \$50,000 to \$60,000.

*Time off.* Legislation was enacted that requires employers to grant domestic abuse leave, without fear of loss of employment or retaliation, to employees. The leave is granted for the purpose of obtaining an order of protection. Employees must provide verification of the need for the leave through their own written statement, an attorney representing them, a victim advocate, a law enforcement official, or a prosecuting attorney. In disclosing verification information related to an employee's taking domestic abuse leave, the employer's authority is limited, unless the employee consents to the disclosure, a court or administrative agency order requires the disclosure, or the disclosure is otherwise required by Federal or State law. Domestic abuse leave can be taken for up to 14 days in any calendar year.

*Wages paid.* The State now provides that an employee can bring a civil action for a wage-and-hour violation by an employer within 3 years after the previous violation occurred. An

employer who violates any of the provisions of the State Minimum Wage Act is guilty of a misdemeanor and, upon conviction, shall be sentenced and held liable to the affected employees in the amount of their unpaid or underpaid minimum wages plus interest and in an additional amount equal to twice the unpaid or underpaid wages. The penalty for a misdemeanor conviction includes imprisonment in the county jail for a term of less than 1 year, or the payment of a fine of no more than \$1,000, or both. A “petty misdemeanor” carries a sentence of at least 6 months’ imprisonment in the county jail, or the payment of a fine of no more than \$500, or both. Any violations of the State Minimum Wage Act will be prosecuted by the director of the Labor Relations Division of the State Workforce Solutions Department. In addition to any remedy or punishment provided pursuant to the act, a court may order appropriate injunctive relief, including requiring an employer to post, in the place of business, a notice describing violations by the employer as found by the court or a copy of a cease-and-desist order applicable to the employer.

*Worker privacy.* The State Educational Retirement Act was amended in order to prevent the disclosure of certain confidential information and to provide a penalty for a violation of the amended act. Other than names of members and local administrative units by which a member was employed; dates of employment, retirement, and reported death; service credit; reported salary; and amounts of contributions made by members and local administrative units, neither the school board nor its employees or contractors shall allow public inspection or the disclosure of any information regarding a member or retired member of the board to anyone, except that the information may be released to (1) the member, the retired member, or the spouse or authorized representative of the member or retired member; (2) other persons specifically identified in a prior release-and-consent form and prescribed by the board; and (3) the State attorney general, appropriate law enforcement agencies, the State auditor, the public education department, or the higher education department if the information released relates to contributions, payment, or management of money received by, or the financial controls or procedures of, a local administrative unit.

## **New York**

*Department of labor.* Legislation was enacted that amends Section 198(1-a) of the State labor law to allow the commissioner of the State Department of Labor to bring a court action or administrative proceeding to collect underpayments of wages and liquidated damages on behalf of workers, unless the employer

proves a good-faith basis for believing that its underpayment complied with the law. The bill also amends labor law Section 215(1) to (1) expand the categories of conduct protected against employer retaliation for complaints concerning wage and other labor law violations, (2) extend liability for such violations to limited-liability companies and partnerships, (3) increase the minimum civil penalty for retaliation from \$200 to \$1,000 and the maximum penalty from \$2,000 to \$10,000, and (4) allow the commissioner to award lost compensation to employees who have been victims of employer retaliation. Further, the bill amends labor law Sections 663(1) and (2) to clarify that the commissioner may use an administrative proceeding against employers to collect minimum-wage underpayments and liquidated damages and to provide that such liquidated damages be assessed, unless the employer proves a good-faith basis for believing that its underpayment complied with the law.

*Equal employment opportunity.* Legislation was enacted that prohibits an employer or licensing agency from refusing to hire or employ, or from barring or discharging from employment, an individual who has been the victim of domestic violence or stalking. “Domestic violence victim” is defined as “an individual who is a victim of an action that would constitute a family offense pursuant to Subdivision 1 of Section 812 of the State Family Court Act,” which considers the following crimes to be family offenses when the victim and abuser are related by blood or marriage, when they are in an intimate relationship, or when they have a child in common: disorderly conduct, harassment, aggravated harassment, stalking, menacing, reckless endangerment, assault, attempted assault, and criminal mischief. The bill also prohibits discrimination against a victim of domestic violence in compensation or in the terms, conditions, or privileges of employment.

*Independent contractor.* Legislation was enacted which authorizes the State Superintendent of Insurance to approve a demonstration program that provides health insurance coverage for independent workers. “Independent worker” is defined as “an independent contractor, a part-time worker, a temporary worker, or another individual who performs work outside the scope of a full-time employment relationship with an employer.” Independent workers frequently lack access to employment-based health insurance coverage. Eligible insurance companies will provide periodic reports to the superintendent in order to help him or her and the legislature evaluate the effectiveness of the demonstration program and whether the program should be expanded to other segments of the population that lack access to employment-based health insurance.

*Inmate labor.* A resolution of the State Senate and State Assembly amended the State constitution so that prisoners sentenced to several State prisons, penitentiaries, jails, and reformatories shall be allowed to voluntarily perform work for nonprofit organizations. A nonprofit organization is an organization operated exclusively for religious, charitable, or educational purposes and such that no part of the net earnings shall benefit any private shareholder or individual. The legislature may provide, by law, that the inmates may work for the State and that the products of their labor may be disposed of to the State, to any political division of the State, to any political subdivision thereof, or to any public institution owned, or managed and controlled, by the State or any political subdivision thereof.

*Minimum wage.* The State minimum-wage requirement was increased to \$7.25 per hour.

*Prevailing wage.* The State Labor Law was amended to provide requirements regarding prompt payments to employees and contractors engaged in private construction projects. Section 196-a of the labor law was amended to allow an employee, a contractor, or a certified collective-bargaining-agreement agent to complain to the commissioner of the State Department of Labor if there is a violation or an imminent violation of the requirement regarding prompt payment. The amended labor law now permits the use of arbitration by contractors as a remedy for nonpayment and sets up a system of protocols for arbitration.

*Wages paid.* Legislation was enacted that requires employers, at the time of hiring, to provide employees with written notice of their regular and overtime hourly wage rates and to obtain a written acknowledgement of receipt of such notice.

## **North Carolina**

*Child labor.* Legislation was enacted to require the commissioner of the State Department of Labor to report on its investigative, inspection, and enforcement activities pertaining to youth employment under the State Wage and Hour Act. Minimum information that must be contained in the report includes all of the educational activities the department has sponsored or participated in for the purposes of educating employers about their responsibilities under the act; the number of complaints received by the department alleging youth employment violations; the specific types of alleged violations and the ages of youths; the number of investigations concerning alleged youth employment violations; the number of administrative proceedings; the number and identity of employers cited



for violations, as well as information on violations within certain industries or occupations; the number and amount of civil penalties assessed; an explanation of obstacles to enforcement; and recommendations for funding to improve enforcement and the implementation of changes.

The State General Statutes were amended to protect the health and safety of children by increasing the penalties for violations of the child labor laws. Any employer who violates the youth employment statutes shall be subject to a civil penalty not to exceed \$500 for the first violation and not to exceed \$1,000 for each subsequent violation. The appropriateness of the penalty is determined by the size of the business and the gravity of the violation. An employer who fails to keep appropriate records of the ages of its employees and their wages, hours, and other conditions and practices of employment shall be subject to a civil penalty of up to \$250 per employee, with the maximum not to exceed \$2,000 per investigation. In the case of civil penalties, any employer who willfully violates any standard of this legislation and thereby causes the death of any employee 18 years of age or younger shall be guilty of a Class 2 misdemeanor, which may include a fine of no more than \$20,000. The employer shall be guilty of a Class 1 misdemeanor, which may include a fine of no more than \$40,000, if subsequent violations involve the death of an employee who is under 18 years of age. Whoever knowingly makes a false statement, representation, or certification shall be guilty of a Class 2 misdemeanor, and the fine shall be no more than \$20,000 for falsifications pertaining to employees who are under 18 years of age.

*Drug and alcohol testing.* If a drug-screening test for a prospective employee produces a positive result, an approved laboratory shall confirm that result by performing a second examination of the same sample. The second test must use gas chromatography with mass spectrometry or an equivalent scientifically accepted method, unless the examinee signs a written waiver at the time or after he or she receives the preliminary test result. All screening tests for current employees that produce a positive result also shall be confirmed by a second examination of the sample, utilizing gas chromatography with mass spectrometry or an equivalent scientifically accepted method.

*Equal employment opportunity.* The State Governor signed an executive order providing for equal opportunity in State employment. The order stipulates that each agency head, department head, and university chancellor is responsible for the successful implementation of the opportunity programs and that

he or she shall (1) designate an official at the deputy secretary or assistant secretary level to assume responsibility for the operation and implementation of the program, (2) designate the appropriate number of full-time equal employment opportunity (EEO) officers, (3) ensure that these officers report directly to the agency head, department head, or chancellor, as the case may be, (4) ensure that the agency's, department's, or university's commitment to equal employment opportunity is clearly transmitted to all employees, (5) provide adequate resources to the EEO officers in the development and implementation of the program, (6) ensure that the agency's, department's or university's personnel policies are administered fairly and that the personnel practices are nondiscriminatory, (7) ensure that each supervisor and management employee has, as a part of his or her performance work plan, the responsibility to comply with EEO laws and policies, and (8) provide reasonable accommodations for otherwise qualified individuals with disabilities who can perform the essential functions of the job in question if such accommodations are made.

*Minimum wage.* The State minimum-wage requirement was increased to \$7.25 per hour.

*Wages paid.* Legislation was enacted that would require a person who, in the regular course of a trade or business, pays more than \$1,500 during a calendar year as compensation other than wages to an Individual Taxpayer Identification Number (ITIN) holder to withhold 4 percent of the payment and remit the withheld taxes to the State Department of Revenue. An ITIN holder is defined as a person whose taxpayer identification number is an ITIN. An ITIN is issued to a person who is required to have a number identifying him or her as a taxpayer, but is not eligible to obtain a Social Security number.

### North Dakota

*Equal employment opportunity.* The State enacted legislation that provides job protections for volunteer emergency responders of the adjutant general's office. A "volunteer emergency responder" is defined as "an individual in good standing as a volunteer member of the State Army National Guard or State Air National Guard; or a volunteer civilian member of the civil air patrol." The State provided that employers may not discriminate in hiring or otherwise deny employment to an individual who is a volunteer emergency responder. The employee must make reasonable efforts to notify his or her employer of any voluntary emergency responder service, and an employer can request an employee to provide written verification of times, dates, and instances during

which the employee was absent or tardy from employment because the employee served as a volunteer emergency responder in the case of a disaster or an emergency. If an employee is terminated, demoted, or otherwise discriminated against, then, within 1 year of the violation, the employee may bring a civil action that seeks reinstatement to his or her former position, payment of back wages, reinstatement of fringe benefits, and seniority rights if they were granted. If an employee is absent or tardy for 10 or more regular business days in a calendar year, the discrimination prohibitions do not apply.

Legislation was enacted which provides that a person who works under a collective-bargaining agreement, an employment contract, or public employee rights that specify a process through which recourse for discriminatory acts is available must use that process to completion before commencing an act related to the State's administrative adjudication of discriminatory practices. Any person found to have been subjected to a discriminatory act through an administrative process can apply to the State district court for an award of reasonable attorney's fees and costs. The period of limitation for bringing an action in the district court is 90 days from the date that the available process is completed or the complaint is filed, or 90 days from the date the department dismisses a complaint case or issues a written determination of probable cause, whichever is greater. In the case of statutory appeals, a request for an administrative hearing must be made within 20 days from the date that the department dismisses a complaint case or issues a determination of probable cause.

*Hours worked.* Legislation was enacted that amended Subsection 10 of Section 39-06.1-06 of the State Century Code. Under the amended legislation, commercial drivers are in violation of hours-of-service provisions if they drive more than 11 hours straight since the last 10 hours off duty or if they drive after 14 hours on duty since the last 10 hours off duty.

*Human trafficking.* The legislature created and enacted a new chapter of the State Century Code relating to human trafficking. The chapter defined a number of terms. "Human trafficking" means "trafficking in labor or sex." A person is guilty of human trafficking if the person (1) benefits financially or receives anything of value because he or she knowingly participates in human trafficking; (2) promotes, recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to promote, recruit, harbor, transport, provide, or obtain by any means, another person, knowing that the person will be

subject to human trafficking. Such activities result in the commission of a AA felony if the person subject to human trafficking is under 18 years of age or an A felony if the person is 18 years or older. "Debt bondage" is defined as "the status or condition of a debtor arising from a pledge by the debtor of the debtor's personal services or those of a person under the debtor's control as a security for debt if either the value of those services, as reasonably assessed, is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined." "Forced labor or services" is defined as "labor or services that are performed or provided by another person and are obtained or maintained through a person's threat—either implicit or explicit—scheme, plan, pattern, or other action intended to cause a person to believe that if the person did not perform the labor or services, he or she or another person would suffer bodily harm or physical restraint, or that any fact or alleged fact tending to cause shame or to subject any person to hatred, contempt, or ridicule would be exposed. "Labor trafficking" is defined as "the promotion, recruitment, transportation, transfer, harboring, enticement, provision, obtaining, or receipt of a person by any means, whether the person is a U.S. citizen or foreign national, for purposes of debt bondage, forced labor or services, slavery, or the removal of organs, through the use of coercion or intimidation."

*Minimum wage.* The State minimum-wage requirement was increased to \$7.25 per hour.

*Miscellaneous.* The State amended Subsection 2 of Section 52-04-11 of the State Century Code, relating to the penalties for failure to submit employer contribution wage reports. Those penalties now include the criteria that the first month of the first delinquent report in a calendar year may be no less than \$25, the first month of any subsequent delinquent reports in a calendar year may be no less than \$100, and the maximum penalty imposed may not exceed \$500 for any single report.

The State enacted legislation that provides a tax credit for salary and related retirement plan contributions by employers who employ workers who have been mobilized for military service. Such employers are entitled to a credit equal to 25 percent of the reduction in compensation that the employer continues to pay during the taxable year to, or on behalf of, each employee during the period that the employee is mobilized. The maximum credit allowable for each eligible employee is \$1,000. The amount of the tax credit may not exceed the amount of the employer's State tax liability for the tax year, and an excess credit may be carried forward for up to 5 taxable years.

*Plant closing.* Any State or national bank organized under the supervision of the State Banking Board may maintain itself and operate separately and apart from its main banking house facilities. Any activity incidental to the business of banking may be transacted at a separate facility. Whenever any banking institution that has been granted approval to establish and maintain a separate facility deems it advisable to discontinue the facility, the banking institution may apply to the commissioner or board for cancellation or closing of that business appendage. The commissioner or board may approve the cancellation within the timeframe the board specifies. The banking institution must provide notice of the application for closure as required, and according to the rules established, by the board.

*Wages paid.* For purposes of State law as defined in the State Century Code, employee wages are due at each regular payday immediately following the work period during which the wages were earned. An employee may file a claim for wages due under the State Century Code with the State Department of Labor no later than 2 years from the date the wages are due.

The legislature enacted legislation to amend the State Century Code relating to unfair compensation of insurance company employees. Insurance company employers may no longer base the compensation, including performance bonuses or incentives, of claims employees or contracted claims personnel on either (1) the number of policies canceled, (2) the number of times coverage is denied, (3) the use of a quota limiting or restricting the number or volume of claims, or (4) the use of an arbitrary quota or cap limiting or restricting the amount of claims payments, without due consideration given to the merits of the claim.

*Whistleblower.* The State amended Section 34-11.1-04 of the State Century Code by providing that employees can claim reprisal and appeal to the State Human Resource Management Services Division if they have been subject to disciplinary action based on intentionally furnishing false information. The bill stipulates that employees can now receive assistance from the State Department of Labor, as long as a complaint is filed within 300 days after the alleged act of wrongdoing.

*Worker privacy.* The portion of the State Century Code relating to access to public records in arbitration proceedings and law enforcement work schedules was amended. The amended code states that any record containing the work schedule of employees of a law enforcement agency is exempt from public disclosure.

## Ohio

*Prevailing wage.* By law, threshold amounts for contract coverage under the State prevailing-wage law are adjusted every 2 years in accordance with the change in the Census Bureau's Implicit Price Deflator for Construction, provided that no increase exceeds 6 percent for the 2-year period. As a result, effective January 1, 2010, the threshold amount for new construction rose from \$73,891 to \$78,258 and the threshold amount for reconstruction, remodeling, or renovation increased from \$22,166 to \$23,447.

## Oklahoma

*Drug and alcohol testing.* When there is reasonable grounds to believe that an amusement park operator is operating an amusement ride while under the influence of drugs or alcohol, the commissioner of the State Department of Labor may require the operator to submit to voluntary drug and alcohol testing by a competent, qualified facility, pursuant to standards and procedures consistent with operating a motor vehicle in the State. Failure to submit to a voluntary drug or alcohol test under such circumstances shall result in the termination of the operator's certification for a period of 90 days. A positive test for drugs or alcohol pursuant to the foregoing shall result in the loss of such certification for a period of at least 30 days and until the applicant passes a subsequent drug and alcohol test, which shall be at the expense of the applicant.

*Minimum wage.* The State minimum-wage requirement was increased to \$7.25 per hour.

*Miscellaneous.* Legislation was enacted that amended the State Home Care Act. Now, no home care agency, except where provided otherwise by State law, shall place an individual in the role of supportive home assistant with a client on a full-time, temporary, or other basis, unless the individual has completed agency-based supportive home assistant training taught by a registered nurse in the sections applicable to the assistance required by the client. Each supportive home assistant who completes agency-based training shall demonstrate competence by passing a test administered by an independent entity approved by the State Department of Health. Requirements related to the application, approval, renewal, and denial of such testing entities shall be set forth in administrative rules promulgated by the State Department of Health.

*Worker privacy.* Legislation was enacted to make it unlawful for any private or public employer or any public official in the State to ask an applicant for employment to pro-

vide information about whether the applicant owns or possesses a firearm. Upon conviction, a private employer who violates this provision will be guilty of a misdemeanor punishable by a fine of at least \$1,000. A public employer or official who violates the provision shall be deemed to be acting outside the scope of his or her employment and will be barred from seeking statutory immunity from any exemption or provision of the State Governmental Tort Claims Act. "Private employer" is defined as "an individual, firm, partnership, association, corporation, or nonprofit organization that employs or offers to employ one or more persons in the State." "Public employer" is defined as "the State or any political subdivision thereof, including any department, agency, board, commission, institution, authority, public trust, municipality, county, district, or instrumentalities thereof." "Public official" is defined as "an elected or appointed official in the executive, legislative, or judicial branch of a subdivision of the State."

## Oregon

*Child labor.* Legislation was enacted to amend ORS 653.315 in order to authorize the commissioner of the State Bureau of Labor and Industries to issue special permits for the employment of children under 16 years of age in agriculture for longer than 10 hours for any one day when the commissioner determines that such hours of work will not be detrimental to the health and safety of the children employed. The bill stipulates that a child under 16 years may not be employed at any work before 7 a.m. or after 7 p.m., except during the period between June 1 and Labor Day, when the child may be employed until 9 p.m. Exceptions apply to children under 16 years who are employed in agriculture, in youth camps, as newspaper carriers or vendors, or in private residences at domestic work.

*Equal employment opportunity.* The State enacted legislation which establishes that discrimination against a person because of his or her service in one of the uniformed services is an unlawful employment practice. The bill establishes a list of prohibited acts, including discrimination in initial employment; in reemployment following a leave from employment taken by reason of service in a uniformed service; in retention in employment; in promotion; or in any other term, condition, or privilege of employment, including, but not limited to, compensation. Employers will not be considered as having committed an unlawful act if the employer acted on the basis of a bona fide occupational requirement necessary to the normal operation of the employer's business and the employer's actions could not be avoided by making a reasonable

accommodation to the person's service in a uniformed service. "Service" is defined as "the performance of duty, on a voluntary or involuntary basis in a uniformed service, that may involve active duty, active duty for training, initial active duty for training, inactive duty for training, full-time duty in the National Guard, funeral honors duty, or an examination to determine fitness for service in a uniformed service." "Uniformed service" is defined as the Army, Navy, Air Force, Marine Corps, Coast Guard, National Guard, or military reserve forces.

Legislation was enacted relating to public-contracting opportunities for veterans with disabilities. The provisions of the State Public Contracting Code were amended to assert that the code may not be construed to prohibit a contracting agency from engaging in public contracting practices designed to promote affirmative-action goals, policies, or programs for disadvantaged or minority groups or to give a preference in awarding public contracts to veterans with disabilities. In carrying out an affirmative-action goal, policy, or program, a contracting agency, by appropriate ordinance, resolution, or rule, may limit competition for a public contract for goods and services, or for any other public contract estimated to cost \$50,000 or less, to contracting entities owned or controlled by the minority groups or groups of veterans with disabilities. A bidder or proposer who competes for or is awarded a public contract may not discriminate against a minority, women's, or emerging small-business enterprise certified under the State Revised Statutes or a business enterprise that is owned or operated by, or that employs, a veteran with disabilities by not awarding that entity a subcontract because it is a minority, women's, or emerging small-business enterprise or a business enterprise that is owned or operated by, or that employs, a veteran with disabilities.

The State legislature enacted the State Workplace Religious Freedom Act to protect individuals from religious discrimination related to employment practices. An employer is in violation of the act if the employer fails to allow an employee to use vacation leave or some other nonrestricted leave that is available to the employee for the purpose of allowing him or her to engage in a religious observance or practice, except when the use of the leave will impose an undue hardship on the operation of the employer's business. In addition, the employer is in violation of the act if the employer imposes an occupational requirement that restricts the ability of the employee to wear religious clothing, to take time off for a holy day, or to take time off to participate in a religious practice or observance, again except when the use of the leave will impose an undue hardship on the operation of the employer's business. A school district, education service district, or public charter school does not commit an unlawful employment practice by prohibiting a teacher

from wearing religious dress while engaged in the performance of his or her duties as a teacher.

Under the State Revised Statutes, as amended, an individual who has a physical or mental impairment that substantially limits one or more major life activities (for example, caring for oneself, performing manual tasks, seeing, hearing, walking, speaking, breathing, working, socializing, thinking, and employment) is qualified as an individual with a disability. An episodic condition or a condition that is in remission will not so qualify the individual. The bill also declares, as public policy, that individuals are guaranteed the fullest possible participation in the social and economic life of the State, the right to engage in remunerative employment, and the freedom to use and enjoy places of public accommodation without regard to disability. It is an unlawful employment practice for an employer to refuse to hire, employ, or promote; to bar or discharge from employment; or to discriminate against, in compensation or in the terms, conditions, or privileges of employment, any person on the basis of disability. Employers also are in violation of the act if they limit, segregate, or classify a job applicant or employee in a way that adversely affects the opportunities or status of the applicant or employee on the basis of the individual's disability, including uncorrected vision, unaided hearing, or a need for the employer to make a reasonable accommodation. It is unlawful for (a) an employment agency to fail to refer, or refuse to refer, for employment, or otherwise discriminate against, any individual because the person has a disability; (b) a labor organization to exclude, or to expel from its membership, an individual with a disability; or (c) a place of public accommodation to make any distinction, discrimination, or restriction because a customer has a disability.

*Family issues.* The State Family Military Leave Act, which relates to employee leave for family members of the military, was amended. During a period of military conflict, an employee who is a spouse of a member of the Armed Forces of the United States, the National Guard, or the military reserve forces of the United States who has been notified of an impending call or order to active duty or who already has been deployed is entitled to a total of 14 days of unpaid leave per deployment after the member of the military has been notified of the impending call or order to active duty and before deployment or when the member of the military is on leave from deployment. It is unlawful for an employer to (1) deny military family leave to an employee who is entitled to leave under the act or (2) retaliate or in any way discriminate against an individual with respect to hiring, tenure, or any other terms or conditions of employment because the individual has inquired about the



provisions of the act, submitted a request for military family leave, or invoked any provision of the act.

*Immigration protection.* Legislation was enacted that prohibits State agencies from expending funds to implement the Federal REAL ID Act of 2005, unless sufficient Federal funds are allocated to cover the estimated costs. The bill requires the State Department of Transportation to analyze and report on the costs of implementing the act and to provide sufficient security measures to protect individual privacy and to prevent unauthorized disclosure before issuing REAL ID-compliant identification. Further, the legislation prohibits participation in multistate or Federal shared databases, unless sufficient security measures are developed to prevent unauthorized disclosures.

Legislation was enacted that prohibits the State Department of Transportation from issuing a commercial driver's license with hazardous materials endorsement to an individual who is neither a U.S. citizen nor a permanent legal resident. The State increased the penalty for a violation of the department's out-of-service order (that is, an order suspending or revoking a license) from \$1,100 to \$2,500 for the first violation and \$5,000 for a second and each subsequent violation. The legislation also increases the civil penalty on the employer of a commercial motor vehicle operator who has violated a department out-of-service order if the employer knowingly allowed the violation. The penalty now ranges from a monetary fine of no less than \$2,700 to no more than \$25,000 and increases the suspension of the employer's commercial driver's license for the first violation of the out-of-service order from 90 days to 180 days.

*Independent contractor.* Legislation was enacted that established a State Interagency Compliance Network to enforce compliance with laws relating to taxation and employment among persons paying employees in cash. The network will, among other things, (1) work to establish consistency in agency determinations relating to the classification of workers, including, but not limited to, the classification of workers as independent contractors; (2) gather and share information relating to persons who pay workers in cash and who do not comply with laws relating to taxation or employment; (3) gather and share information relating to the misclassification of workers, including, but not limited to, misclassification as independent contractors; (4) develop investigative methods for auditing persons who pay workers in cash, or who misclassify workers, and who do not comply with laws relating to taxation or employment; (5) conduct joint audits of persons who pay workers in cash, or who misclassify workers, and who do not comply with laws relating to taxation or employment; (6) identify opportunities for, and obstacles to, improving compliance with the laws relating to the classification of workers, taxation,

or employment; (7) create a coordinated enforcement process for the laws relating to the classification of workers that is efficient, fair, and effective for the public and for the regulatory agencies charged with enforcing laws relating to taxation or employment; (8) engage in public outreach efforts to educate the public generally on the distinctions between independent contractors and employees and on the laws and regulations governing the duties relating to the classification of workers; and (9) take other actions that the member agencies deem appropriate to improve compliance with laws relating to taxation or employment that are administered by the member agencies.

Legislation was enacted that authorizes the State Construction Contractors Board to sanction independent contractors classified as exempt under State law who hire one or more employees. Sanctions include the authority (1) to revoke, suspend, or refuse to issue or reissue a license if, after due notice and the opportunity for a hearing, the board determines that an applicant or licensee is unfit for licensure on the basis of information submitted or discovered by a board investigation; (2) to assess a civil penalty; or (3) to suspend or refuse to renew a license without a hearing in any case where the administrator finds a serious danger to the public welfare. The State now requires a written contract for residential construction if the aggregate contract is greater than \$2,000. The contract must contain the "Information Notice to Owner" guidelines, which explain the rights and responsibilities of the property owner and the original contractor. Further, the bill increases the renewal period during which a formerly expired contractor's license is valid to 2 years.

*Inmate labor.* Upon the discharge or parole of an inmate from the State Department of Corrections, the department shall ensure that the paroled or discharged inmate is properly clothed and is provided with verification of his or her work history, certification of any educational programs completed during incarceration, and certification of any treatment programs completed during incarceration.

*Prevailing wage.* The State Revised Statutes relating to interstate agreements concerning prevailing-wage rates were amended. A contracting agency may not enter into an agreement with another State, or with a political subdivision or agency of another State, in which the contracting agency agrees that a contractor or subcontractor may pay less than the prevailing-wage rate on a public-works contract. This amendment is especially relevant if the contracting agency is a party to, or a beneficiary of, the agreement.

The section of the State Revised Statutes relating to the State Prevailing Wage Education and Enforcement Account was amended. The commissioner of the State Bureau of Labor

and Industries is now charged with establishing a fee to be paid by the public agency that awards a public-works contract. The fee shall be established at 0.1 percent of the contract price; however, in no event may a fee be charged and collected that is less than \$250.00 or more than \$7,500.00. The commissioner shall pay the monies received under the revised statute into the State Treasury, and the monies shall be credited to the Prevailing Wage Education and Enforcement Account. The public agency shall pay the fee at the time that the agency enters into the public-works contract.

In an amendment to the certified statement for payroll requirements, the State added the condition that contractors and subcontractors must know that the content of the certified statement is true and that it accurately includes the gross wages the worker earned upon the public works during each week identified.

The State enacted a bill that deems a contractor, a subcontractor, or any firm, corporation, partnership, or association that is found to have or have had a financial interest in a public-works project ineligible to receive a contract or subcontract for public works for a period of 3 years from the date on which the commissioner of the State Bureau of Labor and Industries publishes the contractor's, subcontractor's, firm's, corporation's, partnership's, or association's name on the State Bureau of Labor and Industries ineligible list. The reasons for a contractor to be placed on the list were expanded by one. The additional reason states that if a contractor or subcontractor has intentionally falsified information on its certified statements, its name will be added to the list. A copy of the list will be published and, upon request, furnished and made available to contracting agencies.

*Unfair labor practice.* The State enacted legislation that prohibits an employer from taking adverse employment action against an employee for declining to participate in an employer-sponsored meeting or communication about religious or political matters. There are exceptions in the case of religious or political organizations and for legally required or voluntary meetings or communications. Mandatory meetings of the employer's executives or administrative personnel to discuss ideas, including those of a religious or political nature, are not prohibited. Employees may bring a civil cause of action within 90 days of the alleged violation. Employers subject to this bill are required to post a notice of employee rights in a place normally reserved for employment-related notices and commonly frequented by employees.

*Wages paid.* The State enacted legislation mandating that all compensation by a home health agency providing home health care services or a hospice program providing hospice services to nurses providing either home health care services or hospice services must be based on

an hourly rate rather than on a per-visit basis.

Legislation was enacted relating to excise taxes imposed upon employers with respect to the wages paid by those employers to their employees. By ordinance, a district may impose, on every employer, an excise tax equal to no more than eight-tenths of 1 percent of the combined annual wages of the employer's employees. Further, a district also may impose, on each individual, a tax equal to no more than eight-tenths of 1 percent of the individual's net annual earnings from self-employment. No employer shall make a deduction from the wages of any employee to pay all or any portion of the imposed tax. The State Department of Revenue may enforce collection by the issuance of a warrant for the collection of the delinquent amount and all penalties, interest, and collection charges. An increase in any tax imposed on wages or on net earnings from self-employment and that is authorized by a mass transit district must be phased in over a 10-year period, and the district must set each annual increment rate and may not increase the rate of tax by more than 0.02 percent of the wages or net earnings from self-employment.

The State enacted legislation making it clear that deductions on wage claims may be paid into the State General Fund after actual costs and disbursements, as well as costs incurred in the prosecution of the wage claim, are deducted. The commissioner of the State Bureau of Labor and Industries can charge a claimant or respondent on a wage claim in which the commissioner has obtained a judgment.

*Whistleblower.* Legislation was enacted that prohibits employers from discriminating or retaliating against any employee if the employee has, in good faith, reported anything that he or she believes is evidence of a violation of a State or Federal law, rule, or regulation. The bill also makes it clear that an employee may file a civil action in circuit court within 1 year after the occurrence of the unlawful employment practice.

*Worker privacy.* The State enacted a bill that expanded the types of public information that are exempt from public disclosure to include certain personal information about public-safety officers, district attorneys, deputy district attorneys, prosecuting city attorneys, U.S. attorneys and assistant attorneys, attorneys general, and assistant attorneys general. The exempted information now includes the person's name, home address, and telephone number. The bill allows for the disclosure of records to financial institutions and title companies for business purposes and requires that a request for non-disclosure be in writing and that specific documents be identified by the requester. Further, the bill limits the requester to 10 documents held by the county clerk's office.

Legislation was enacted which provides that Social Security numbers, driver's license numbers, dates of birth, and other personal identifier information included in a license or application for employment are confidential. The State Construction Contractors Board can disclose personal identifier information when the disclosure is made with the written consent of the person to whom the information pertains, is required by law, or is done for the purpose of causing, conducting, or assisting an investigation into possible violations of law or of rules and regulations.

*Workplace violence.* It is an unlawful employment practice for an employer to (1) refuse to hire an otherwise qualified individual because the person is a victim of domestic violence, sexual assault, or stalking; (2) discharge, threaten to discharge, demote, suspend, or in any manner discriminate or retaliate against an individual with regard to promotion, compensation, or other terms, conditions, or privileges of employment because the individual is a victim of domestic violence, sexual assault, or stalking; or (3) refuse to make a reasonable accommodation requested by an individual who is a victim of domestic violence, sexual assault, or stalking, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business. Prior to making a reasonable safety accommodation, an employer may require an individual to provide certification that the individual is a victim of domestic violence, sexual assault, or stalking. A protective order, a police report, or documentation from an attorney, law enforcement officer, health care professional, licensed mental health professional, or member of the clergy constitutes certification. A person who feels aggrieved may file a civil action, and a court may order injunctive relief and any other equitable relief, including, but not limited to, reinstatement or the hiring of employees with or without backpay.

## Pennsylvania

*Minimum wage.* The State minimum-wage requirement was increased to \$7.25 per hour.

*Whistleblower.* No licensee of the State Department of Banking or of the secretary of the department may discharge, threaten, or otherwise discriminate or retaliate against an employee regarding the employee's compensation or terms, conditions, location, or privileges of employment because the employee (or a person acting on behalf of the employee) makes (or is about to make) a good-faith report, verbally or in writing, to the employer or an appropriate authority regarding a violation of the law. Similarly, no licensee may act to retaliate against an employee because a legitimate authority requests the employee to participate in

an investigation, a hearing, or an inquiry held either by the legitimate authority or in a court action relating to a violation of the law.

## Puerto Rico

*Equal employment opportunity.* Legislation was enacted establishing a Commonwealth policy that all departments, agencies, and State and municipal dependencies shall prepare training and educational programs focused on guaranteeing equal pay for equal work for women. The Commonwealth's Department of Education, Department of Labor and Human Resources, and Women's Advocate Office were directed to prepare training and educational programs for female employees so that they may receive equal pay for equal work.

*Wages paid.* New legislation enacted by the Commonwealth established the schedule and minimum wage per hour for Sunday openings in certain commercial establishments. The wage in those covered establishments was set at \$11.50 per hour.

## Rhode Island

*Child labor.* The State General Law entitled "Employment of Women and Children" was amended by the addition of a section prohibiting the employment of minors younger than 18 years from working in a commercial adult entertainment establishment.

*Equal employment opportunity.* Discrimination based on disability, age, or sex is prohibited, and any person with a disability shall be entitled to the same full and equal access to all public accommodations as are other members of the general public. A disability is a physical or mental impairment that substantially limits one or more of the major life activities and includes any disability that is provided protection under the Americans with Disabilities Act. With respect to employment, a person who, with or without reasonable accommodations, can perform the essential functions of the employment position in accordance with the written job description and that the employer deems important to the job must be considered without reservations. An individual with a disability does not have to accept any accommodation, aid, service, opportunity, or benefit. If appropriate, accommodations for individuals must take into account the overall financial resources of the covered entity, the size of the business with respect to the number of employees, and the overall financial resources, with the proviso that undue financial strain on the facility does not enter into the accommodation equation.

*Human trafficking.* The State amended Section 11-67-6 of the State General Laws by making sex trafficking of a minor a felony. A "minor" is defined as "any natural person less than 18 years of age." Any person who recruits, employs, entices, solicits, isolates, harbors, transports, provides, obtains, persuades, or maintains, or attempts to recruit, employ, entice, solicit, isolate, harbor, transport, provide, obtain, persuade, or maintain, any minor for the purposes of engaging in commercial sex acts, or sells or purchases a minor for the purposes of engaging in commercial sex acts, or benefits financially by receiving anything of value from participation in a venture in which a minor is engaged for the purposes of a commercial sex act will be subject to no more than 40 years of imprisonment, or a fine of up to \$40,000, or both. If anyone obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of laws prohibiting a commercial sex act involving minors, the individual will be subject to no more than 20 years of imprisonment, or a fine of up to \$20,000, or both. The State also will create an interagency task force on the human trafficking of persons, which will examine and report on the extent of the existence of human trafficking for commercial sex activity within the State. In addition, each law enforcement agency in the State will submit a semiannual report concerning the agency's enforcement of human trafficking. The report shall contain information about the number of persons arrested who are subject to the State General Law entitled "Trafficking Persons and Involuntary Servitude"; of those arrested, the number of those convicted and the number placed on probation; whether those persons pled guilty or were found guilty after a trial; and the fines or sentences of those persons. The report also shall contain a summary of the amounts of fines levied and the lengths of sentences passed.

*Prevailing wage.* Every contractor and subcontractor awarded a contract for a public work shall furnish a certified copy of its payroll records for its employees who are employed on the project to the director of the State Department of Labor and Training on a monthly basis for the preceding month's work. The director will develop reasonable rules and regulations to enforce the provisions of this legislation. Any contractor or subcontractor who fails to comply with the provisions shall be deemed guilty of a misdemeanor and shall pay the office of the director \$500 for each calendar day of noncompliance. Any person, firm, or corporation found to have willfully made a false or fraudulent representation in connection with reporting its certified payroll records shall be required to pay a civil penalty to the State Department of Labor and Training in the amount of no less than \$1,000 and no more than \$3,000 per representation.

Portions of the State prevailing-wage law were amended. The State or any city, town, agency, or committee awarding contracts for public works in excess of \$50,000 must now file, with the proper authority, good and sufficient bond covered by a surety company authorized to do business in the State. This warranty shall apply to all construction contracts awarded, and any waiver of the bonding requirements is expressly prohibited. Before being awarded a contract by the State Department of Transportation or by the State Department of Administration, every person awarded such a contract as a general contractor of construction or project manager for a project in excess of \$50,000 shall be required to furnish, to the respective department, a bond acceptable to that department in a sum no less than 50 percent and no more than 100 percent of the contract price. The bond shall contain the provisions to which the entity that provides the bond to the department is subject, and no extension of the time of performance of the contract or delay in the completion of the work thereunder or any alterations thereof shall invalidate the bond or release the liability of the surety. Any waiver of the bonding requirements of this section is expressly prohibited as well.

Legislation was enacted relating to the labor and payment of debts by contractors on public properties and works. Both contractors and subcontractors who are awarded a contract for public works shall furnish a certified copy of the payroll records of their employees employed on the project to the director of the State Department of Labor and Training on a monthly basis for the preceding month's work. Any contractor or subcontractor who fails to comply with the certified payroll requirements shall be deemed guilty of a misdemeanor and shall pay the department \$500 for each calendar day of noncompliance. Any person, firm, or corporation found to have willfully made a false or fraudulent representation in connection with reporting its certified payroll records shall be required to pay a civil penalty to the department in an amount no less than \$1,000 and no greater than \$3,000 per representation.

*Worker privacy.* The section of the State General Laws titled "Disclosure of Names of State Government" was amended to include public corporations among those bodies required to prepare and submit to the State secretary, on a quarterly basis, a listing containing (1) the name of any person who performed legal, medical, accounting, engineering, or any other professional, technical, or consultant services to the department commission, board, council, agency, or public corporation on a contractual basis during the previous quarter and (2) the amount of compensation received by each consultant during the previous quarter. In addition, copies of all contracts or agreements by which a nongov-

ernmental person or entity agrees to provide, to any of the aforesaid bodies, services valued at \$100,000 or more shall be submitted to the State secretary on an annual basis.

*Workers with disabilities.* Legislation was enacted to prevent discrimination based on disability, age, or sex. An individual meets the requirement of being regarded as having an impairment if the individual can establish that he or she has been subjected to a prohibitive action 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. Major life activities include, but are not limited to, caring for oneself (for example, tending to one's personal physical needs, such as bathing, toileting, and grooming), performing manual tasks, seeing, hearing, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Due consideration must be given, with or without reasonable accommodation, to a person with a disability who can perform the essential functions of the job, especially if the employer has prepared a written description before advertising or interviewing applicants for the job. Job restructuring, part-time or modified work schedules, reassignment to a vacant position, and the acquisition or modification of equipment or devices are examples of accommodations for individuals with disabilities. Nothing requires an individual with disabilities to accept an accommodation that could include modifications in policies, practices, or procedures.

## **South Carolina**

*Immigrant protections.* The State General Assembly resolved to request that Congress make the Federal E-Verify program permanent and that Congress provide the funding and resources necessary to ensure the program's continued effectiveness.

## **South Dakota**

*Drug and alcohol testing.* Legislation was enacted to provide a drug-screening program for certain applicants and employees of the State Department of Agriculture Wildland Fire Suppression Division. The commissioner of the State Bureau of Personnel must establish and implement the program for applicants seeking positions in the division whose duties include firefighting, and may develop such a program for current employees whose duties include firefighting, if there is reasonable suspicion of illegal drug use by any employee. All printed public announcements or advertisements soliciting applications in the division for positions in which firefighting is a duty must disclose the requirements of the drug-screening program. Individual test



results and medical information collected are confidential, and applicants or employees may have access to their own information or test results only if they submit a written request to the commissioner. Any person illegally disclosing this information is guilty of a Class 2 misdemeanor.

*Minimum wage.* The State minimum-wage requirement was increased to \$7.25 per hour.

## Tennessee

*Immigration protections.* Legislation was enacted urging either an extension of deadlines for all phases of the State's implementation of the REAL ID Act of 2005 for at least an additional 2 years or repeal of the act in its entirety.

*Independent contractor.* The State enacted a bill that authorizes an independent contractor to employ private special deputies to provide security and law enforcement capabilities for governmental and resort property. The employment of such deputies by independent contractors would be subject to the same provisions of the law that currently apply to the employment of such deputies by the owner or management company of a resort area.

*Whistleblower.* The State amended the Tennessee Code Annotated, Title 50, Chapter 1, to clarify that civil action against a retaliatory discharge or termination of an employee by an employer for reporting illegal activities applies also to State employees and employers, private employees and employers, and persons receiving compensation from the Federal Government.

## Texas

*Drug and alcohol testing.* The State Transportation Code was amended by the addition of rules regulating the operation of a contractor carrier. The added rules require the carrier to perform alcohol and drug testing of vehicle operators upon employment, on suspicion of alcohol or drug abuse, and periodically as determined by the State Department of Transportation. Both contractor carriers and the railroad companies that employ them will be informed of the requirements of applicable State statutes.

*Equal employment opportunity.* The State Labor Code was amended to clarify the employer-employee relationship for individuals with disabilities. The amended legislation develops certain broad definitions of "disability," including "an impairment that is episodic or in remission [and] that substantially limits a major life activity when it is active; the condition is viable even if there are mitigating measures,

including medication, medical supplies and equipment, medical appliances, mobility devices, and oxygen therapy equipment." Some individuals require auxiliary aids and services, including (1) qualified interpreters or other methods of making aurally delivered materials available to the hearing impaired, (2) qualified readers, (3) taped texts or other effective methods of making visually delivered materials available to visually impaired persons, and (4) the modification of equipment to improve delivery systems. An employer is not obligated to make a reasonable workplace accommodation to a known physical or mental limitation of an otherwise qualified individual if the individual's disability is based solely on being regarded as an impairment that substantially limits at least one major life activity. A "major life activity" includes, but is not limited to, caring for oneself (for example, tending to one's personal physical needs, such as bathing, toileting, and grooming), performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. The term also encompasses the operation of a major bodily function, including, but not limited to, normal cell growth, functions of the immune system, and digestive, bowel, bladder, neurological brain, respiratory, circulatory, endocrine, and reproductive functions.

*Minimum wage.* The State minimum-wage requirement was increased to \$7.25 per hour.

*Overtime health care.* A hospital may not suspend, terminate, or otherwise discipline or discriminate against a nurse who refuses to work mandatory overtime. A hospital may not require a nurse to work overtime. Recognizing research indicating the adverse effect on patient safety when nurses work excessive hours, the legislature agreed that, in order to protect patients, support a greater retention of registered nurses, and promote adequate nurse staffing, a mechanism be established whereby nurses and hospital management participate in a joint process to determine reasonable nurse staffing. The governing body of a hospital shall adopt, implement, and enforce a written nurse staffing policy to ensure that an adequate number of nurses and an adequate mix of skills are available to meet the level of patient care needed. This goal requires the hospital to give significant consideration to the staffing plan recommended by the hospital's nurse staffing committee. The plan is based on the needs of each patient care unit and each shift and on evidence relating to patient care needs. There must be no retaliation against nurses who provide input into the committee's recommendations. The plan must be adjusted for each patient care unit in order

to provide staffing flexibility to meet patients' needs and must include a contingency option that comes into play when patient care needs unexpectedly exceed direct patient care staff resources. A nurse may volunteer to work overtime. A hospital may not use on-call time as a substitute for mandatory overtime, except in a health care disaster that increases the need for health care personnel. If a hospital determines that an emergency exists, every attempt shall be made to use voluntary overtime, call per diem nurses, assign floating nurses, and request an additional day of work from off-duty employees to meet staffing needs.

*Time off.* Legislation was enacted that allows a State employee on an unpaid leave of absence during military duty to continue to accrue State service credit for purposes of longevity pay, vacation leave, and sick leave. Leave earned during military duty is credited to the employee's balance when the employee returns to active State employment. Finally, the legislation provides that a position or membership in the State military forces is not considered to be a civil office of emolument.

*Wages paid.* The State Labor Code was amended to stipulate that a wage claim must be filed no later than the 180th day after the date that the wages claimed became due for payment. The 180-day deadline is a matter of jurisdiction. If a wage claim is filed later than the date described by Section 61.051 of the code, the examiner shall dismiss the claim for lack of jurisdiction.

The State Labor Code was amended to provide that wage claims must be filed in a manner, and on a form, prescribed by the State Workforce Commission and must be verified by the employee. The employee can now file a claim by faxing it to a telephone number designated by the commission or by any other means adopted by the commission by rule.

*Worker privacy.* Legislation that amended the State Education Code requires school districts that were previous employers to provide a copy of an individual's service records to their new employing district no later than the 30th day after the later of the date the request was made and the date of the last day of the individual's service to the district. If the previous employing school district fails to provide the newly employing school district with a copy of the record, the individual must do so, and the information must be sufficient to enable the district to determine the proper placement of the individual on the district salary schedule. The legislation defines "salary schedule" as "the minimum salary schedule or a comparable salary schedule used by a school district that specifies salary amounts based on an employee's level of experience" and "service record" as "a school district document

that indicates the total years of service provided to the district by a classroom teacher, librarian, counselor, or nurse.”

*Worker privacy.* The State enacted a bill that makes certain information confidential. The bill prohibits the disclosure of information contained in records in the custody of the pension fund for firefighters in a form that is capable of identifying a specific individual member, retiree, annuitant, or beneficiary of the fund, unless the information is disclosed to the individual or the individual’s attorney, guardian, executor, administrator, or conservator, or to some other person who the fund’s administrator determines is acting in the interest of the individual or the individual’s estate. The latter persons may include a spouse or former spouse of the individual, a governmental official or employee, or a person authorized by the individual, in writing, to receive the information. The bill authorizes the disclosure of such information if the information is disclosed pursuant to a subpoena and the fund’s administrator determines that the individual will have a reasonable opportunity to contest the subpoena.

Legislation was enacted stating that information concerning the employment of an employee of a public employee pension system is public information under the terms of Chapter 552 of the State Government Code. Included among such information is information concerning the income, salary, benefits, and bonuses received from the pension system by the employee in the person’s capacity as an employee of the system. This information is not removed from the application of the said chapter, made confidential, or otherwise excepted from the requirements of the chapter by any statute intended to protect the records of persons as members, beneficiaries, or retirees of a public employee pension system in their capacity as such. Information concerning the service of a trustee of a public employee pension system also is public information under the terms of this chapter; included among such information is information concerning the income, salary, benefits, and bonuses received from the pension system by the trustee in the person’s capacity as a trustee of the system. This information, too, is not removed from the application of the said chapter, made confidential, or otherwise excepted from the requirements of the chapter by any statute intended to protect the records of persons as members, beneficiaries, or retirees of a public employee pension system in their capacity as such.

## Utah

*Immigration protections.* Illegal immigration is an increasing concern in many States, and many are creating programs to establish some definitive direction in approaching the issue. To that end, through a concurrent resolution,

the State legislature submitted, to appropriate Federal and State entities, a resolution calling for waivers to withhold revenues received under the Federal Insurance Contributions Act (FICA) and under Medicare in order to implement employer-sponsored work programs and other strategies to deal with illegal immigration. The withheld funds would then be applied toward the health insurance and other administrative costs of the new programs. If the waiver is granted, the State’s employer-sponsored work programs would require that potential workers register as workers with the State be fingerprinted, have their names processed through the Interagency Border Inspection Name Check System, pass a medical examination, be sponsored by their employer, have health and automobile insurance, and have funds withheld by their employer to cover health insurance and the administrative costs of the work program.

Provisions of the State Identity Documents and Verification Act were amended. Among the sections added is one defining a “contract” in relation to verification of the Federal authorization status of a new employee. A “contract” is defined as “an agreement for the procurement of goods or services that is awarded through a request-for-proposals process with a public employer.” Included under the definition is a sole-source contract.

*Minimum wage.* The State minimum-wage requirement was increased to \$7.25 per hour.

*Plant closing.* The State enacted amending legislation that eliminated the reappointment register from which certain displaced career service employees formerly had to be rehired. The State Personnel Management Act holds fast, however, when career service employees appointed to an exempt position are not retained by the appointing authority because of inefficiency, incompetency, failure to maintain skills or adequate performance levels, insubordination, disloyalty to the orders of a superior, or misfeasance or malfeasance. Career service employees separated as a result of a reduction in force generally are given preferential consideration when they apply for another career service position, but the new legislation removes the Career Service Review Board’s ability to place the said employee on a reappointment register. The former employee still may be given preferential consideration, which applies only until he or she accepts a career service position. Reductions in force and determinations regarding rehiring that are caused by inadequate funds, a change of workload, or lack of work are governed by retention points established by the executive director of the State Career Service Review Board and will determine the basis and the individual ranking of the career service em-

ployee in considerations having to do with rehiring.

*Worker privacy.* The State enacted the Employment Selection Procedures Act, which places certain limits on information provided to an employer by an applicant during the initial selection process. The act limits the sharing of that information with a person other than the employer.

Legislation was enacted that modifies the conditions under which identifying information may be requested and when information may be disclosed. The bill provides that an employer may not request an applicant’s Social Security number, date of birth, or driver’s license number before the applicant is offered a job. Exceptions are when the information an employer requests is applicable to any applicant applying for the position to which the applicant in question is applying and when the information is requested during the time in the employer’s employment selection process when the employer obtains a criminal background check, a credit history, or a driving record. Another exception is when an employer has requested information from an applicant before the applicant is offered a position on the basis of a review of the employer’s internal records and the information is either (1) to be used to determine whether the applicant was previously employed by the employer, (2) to be used to determine whether the applicant previously applied for employment with the employer, or (3) to be provided to a government entity. Information disclosed to a government entity would be for the purposes of determining eligibility for, or participation in, a government service that requires the information to be collected on or before the day the offer of employment is made.

*Workers with disabilities.* The State Employment Support Act was amended to enable clients with disabilities to establish individual development accounts for the purpose of accumulating funds for the purchase of assistive technologies, modifications to vehicles, or home improvements that will allow the clients to participate in work-related activities.

## Vermont

*Worker privacy.* The State General Assembly enacted legislation that expanded the list of employers permitted to require polygraph examinations. Following is the list of employers that may now require an applicant for employment to take or submit to a polygraph examination: (1) the State Department of Fish and Wildlife (for applicants for law enforcement positions), (2) the State Department of Liquor Control, and (3) the State Liquor Control Board (for applicants for investigator positions).

## Virginia

*Child labor.* Legislation was enacted to amend Section 40.1-100 of the Commonwealth Code, relating to prohibited employment for children. The Commonwealth added the stipulation that children under 18 years of age shall not work as a driver or helper on an automobile, truck, or commercial vehicle. However, children who are at least 17 years of age may drive automobiles or trucks on public roadways if the automobile or truck does not exceed 6,000 pounds, gross vehicle weight; the vehicle has seatbelts for the drivers and passengers; and the employer requires the employee to use the seatbelts when driving. Other requirements are as follows: driving is restricted to daylight hours; the employee has a valid in-State driver's license for the type of driving involved and has no record of moving violations at the time he or she is hired; the employee has completed a Commonwealth-approved driver education course; the driving does not involve the towing of a vehicle, route deliveries or route sales, or the transportation for hire of property, goods, or passengers, including employees of the employer; the driving does not involve more than two trips away from the primary place of employment in a single day for delivering goods or transporting passengers; the driving takes place within a 30-mile radius of the employer's place of employment; and the driving is only occasional and incidental to the employee's employment and involves no more than one-third of the employee's worktime in any workday and no more than 20 percent of the employee's total worktime in any workweek.

*Human trafficking.* The Commonwealth Code was amended to broaden the definition of the term "abduction." Initially, the code stated, "Any person, who by force, intimidation, or deception, and without legal justification or excuse, seizes, takes, transports, detains, or secretes another person, with the intent to deprive such other person of his or her personal liberty or to withhold or conceal him from any person, authority, or institution lawfully entitled to his charge, shall be deemed guilty of abduction." The amended code now states, "Any person who, by force, intimidation, or deception, and without legal justification or excuse, seizes, takes, transports, detains, or secretes another person with the intent to subject him or her to forced labor or services shall be deemed guilty of 'abduction.'" The term "intimidation" shall include destroying, concealing, confiscating, withholding, or threatening to withhold a passport, immigration document, or other governmental identification or threatening to report another person as being illegally in the United States. The amendments do not apply to law enforcement

officers in the performance of their duties.

*Minimum wage.* The Commonwealth minimum-wage requirement was increased to \$7.25 per hour.

*Offsite work.* Legislation was enacted that establishes a Commonwealth Office of Telework Promotion and Broadband Assistance. The legislation charges the director of the office with the duty to advise and assist private-sector employers in the Commonwealth in planning, developing, and administering programs, projects, plans, policies, and other activities for telecommuting by private-sector employees. The legislation also charges the director with the same duty in developing private-sector incentives to encourage private-sector employers to allow employees to telecommute. In addition, the director will report annually to the Commonwealth General Assembly regarding telework participation levels and trends for both private- and public-sector employees in the State. "Telecommuting" is defined as "a work arrangement in which supervisors direct or permit employees to perform their usual job duties away from their central workplace at least 1 day per week, in accordance with work agreements."

*Prevailing wage.* Legislation was enacted to amend sections of the Commonwealth Code relating to the Commonwealth Investment Partnership Act. A new provision under the amendment defines "eligible company" as "an employer, located in a Metropolitan Statistical Area with a population of 300,000 or more in the 2000 census, who creates or causes to be created at least 300 jobs with average salaries at least 100 percent greater than the prevailing average wage."

*Wages paid.* The Commonwealth Code section regarding the payment of wages or salaries by prepaid card was amended. Employers that elect not to pay wages or salaries by lawful money or by a check payable at face value upon demand may pay via electronic automated fund transfer or by credit to a prepaid debit card or card account from which employees are able to withdraw or transfer funds, as long as the employers have made full written disclosure of any applicable fees and there is affirmative consent thereto by the employees. However, employers that elect not to pay wages or salaries by lawful money or by check to employees who are hired after July 1, 2010, shall be permitted to pay wages or salaries by credit to a prepaid debit card or card account even though such employees have not affirmatively consented thereto. If employees fail to designate an account at a financial institution, then employers may arrange for such card or card account to be

issued through a network system for as long as the employees shall have the ability to make at least one free withdrawal or transfer per pay period. Such withdrawal may be for any sum the employees may elect from the card or card account, as long as the card or card account is used at financial institutions participating in the network system.

*Whistleblower.* The Commonwealth enacted a policy that employees of the Commonwealth government will be freely able to report instances of wrongdoing or abuse committed by their employing agency, other Commonwealth agencies, or independent contractors of Commonwealth agencies. "Abuse" is defined as "an employer's or employee's conduct or omissions that result in substantial misuse, destruction, waste, or loss of funds or resources belonging to or derived from Federal, Commonwealth, or local government resources." "Wrongdoing" is defined as "a violation, which is not merely technical or minimal in nature, of a Federal or State law or regulation or of a formerly adopted code of conduct or ethics of a professional organization designed to protect the interests of the public or the employee." The legislation prohibits discrimination or retaliatory actions against whistleblowers, including an employer's discharging, threatening, or otherwise discriminating or retaliating against a whistleblower. "Whistleblower" is defined as "an employee who witnesses or has evidence of wrongdoing or abuse and who makes or demonstrates, by clear and convincing evidence, that he or she is about to make a good-faith report of, or who testifies or is about to testify to, the wrongdoing or abuse to one of the employee's superiors, an agent of the employer, or an appropriate authority."

*Worker privacy.* In legislation that amended Section 10.1-1400 of the Commonwealth Code, the Commonwealth expanded the list of data that should be excluded from employee disclosure statements to the Commonwealth Waste Management Board when the employees are seeking to hold or are holding a permit from the board. The Social Security number is no longer a requirement on the disclosure statements.

The Commonwealth also amended Commonwealth Code Section 55-510 relating to the Property Owners' Association Act requiring a member in good standing of the association or his or her authorized agent to make available, for examination and copying, all books and records kept on behalf of the association, including books and records with information on the individual salaries of all employees and on payments to independent contractors. The association's membership list, its list of addresses, the salaries of the six high-



est compensated employees of the association earning more than \$75,000, and aggregate salary information of all other employees of the association that will be made available shall not be used for purposes of pecuniary gain or commercial solicitation. Information on individual salaries will not be available for examination or copying.

## Virgin Islands

*Discharge.* Legislation was enacted that added a new chapter to the Island Code. No employer, employer's agent, representative, or designee may require its employees to attend an employer-sponsored meeting or participate in any communication with the employer or its agents or representatives for the purpose of communicating the employer's opinion about religious or political matters. In addition, no employer or employer's agent, representative, or designee may discharge, discipline, or otherwise penalize any employee as a means of requiring that employee to attend a meeting or participate in such communications. Finally, no employer or employer's agent, representative, or designee may discharge, discipline, or otherwise retaliate against any employee because the employee or the person acting on behalf of the employee makes a good-faith report, verbally or in writing, about a suspected violation of the provisions of this chapter of the Island Code.

## Washington

*Family issues.* Legislation was enacted that amended the State Revised Code in order to delay the implementation of the State Family Leave Insurance Program. The date the program is to be implemented has been delayed from October 1, 2009, until October 1, 2012. This new date defines when family leave insurance benefits are payable to an individual during a period in which the individual is unable to perform his or her regular or customary work because he or she is on family leave. Benefits are payable if the individual meets certain conditions, such as filing the required claims or having been employed for a certain number of hours during the individual's qualifying year.

*Human trafficking.* The State Revised Code was amended to require both domestic employers of foreign workers and international labor recruitment agencies to disclose certain information to foreign workers who have been referred to or hired by an employer located in the State. The disclosure statement must (1) be provided in English or, if the worker is not fluent in English, in a language that is understood by the worker, (2) state that the worker may be considered an employee under

the laws of the State, is subject to State worker health and safety laws, and may be eligible for worker's compensation insurance and unemployment insurance, (3) state that the worker may be subject to both State and Federal laws governing overtime and work hours, including the minimum-wage act, (4) include an itemized listing of any deductions for food and housing that the employer intends to make from the workers' pay, (5) include an itemized listing of the international labor recruitment agency's fees, (6) state that the worker has the right to control his or her travel documents and that the employer may not require the worker to surrender those documents to the employer or the international recruitment agency while the employee is working in the United States, except as otherwise required by law or regulation or for use as supporting documentation in visa applications, and (7) include a list of services or a hot line that a worker may contact if the worker thinks that he or she may be a victim of trafficking.

*Independent contractor.* For prevailing-wage purposes, the State defined an independent contractor as an individual employed on a public-works project who is not considered to be a laborer, worker, or mechanic and, consequently, is not required to be paid prevailing wages. This classification is applicable when (1) the individual has been and is free from control or direction over the performance of his or her services, (2) the service is outside the usual course of business for the contractor for whom the individual performs services, (3) the individual is customarily engaged in an independently established trade, (4) the individual is responsible for filing paperwork with the Internal Revenue Service, (5) the individual has an active and valid certificate of registration with the State Department of Revenue for the business the individual is conducting, (6) the individual maintains books and records separately from noncontract employment records, and (7) the individual has a valid contractor registration or license if the nature of the work requires registration or licensure.

*Prevailing wage.* In new legislation, the State provided that if the hourly minimum-wage rate stated in a public-works contract specifies residential construction rates and it is later determined that the work performed is commercial and subject to commercial construction rates, then the State, county, municipality, or political subdivision that entered into the contract must pay the difference between the residential rate stated and the actual commercial rate. The difference between the two rates must be paid to the contractor, subcontractor, or other person doing or contracting to do the whole or any part of the work under the contract.

*Time off.* The State Revised Code was amended to include the State school for the blind and the State school for the deaf as being among those institutions for which every educational service district board shall adopt written policies granting leaves to persons under contracts of employment with the district in positions requiring either certification or classified qualifications. Accumulated employee leave, as defined under the code, shall be transferred to and from one district to another, the office of the superintendent of public instruction, offices of the education service district superintendents and boards, and, now, the State School for the Blind and the State School for the Deaf, along with districts, schools, and offices of institutions of higher education, including community and technical colleges.

*Wages paid.* The State Revised Code was amended to prohibit the State Department of Social and Health Services from paying a licensed home care agency for in-home personal care services if the care is provided under the Medicaid in-home personal care program to a client by a family member of the client or by an agency employee who resides with the client receiving care. The prohibition does not apply if the family member providing care is older than the client. In addition, the legislation prohibits the department from paying a licensed home care agency if the agency does not verify its employees' hours of work by electronic timekeeping. Finally, the legislation states that if the preceding requirements are in conflict with Federal requirements that are a prescribed condition for the allocation of Federal funds to the State, the conflicting part of the enacted legislation is inoperative to the extent of the conflict and with respect to the agencies directly affected, and no further. Rules adopted under the legislation must meet Federal requirements that are a necessary condition for the receipt of Federal funds by the State.

*Worker privacy.* The State enacted a bill that amended Sections 46.52.130 and 46.01.260 of the Revised Code of Washington by allowing an employer, a prospective employer, a volunteer organization, or an agent acting on behalf of the employer, prospective employer, or volunteer organization to review a certified abstract of an individual's driving record. The review must be for employment purposes related to driving as a condition of that individual's employment or otherwise at the direction of the employer or organization.

## West Virginia

*Drug and alcohol testing.* The portions of the State Code related to the State Alcohol and Drug-Free Workplace Act were amended. The

definition of the term “preemployment drug test” was added to the act, and the term was defined as “a drug test taken within the 12 months prior to employment or 7 days after hiring.” In addition, a new section of the act states that, in instances where a worker is required by law to follow U.S. Department of Transportation drug-testing guidelines, no further drug tests are required under Section 21-1D-5a of the State Code. Finally, contractors shall provide, no less than once per year or upon completion of a project, a certified report to the public authority that let the contract for the project. The report shall include (1) information showing that education and training services were provided to the extent required by the appropriate section of the State Code, (2) the name of the laboratory certified by the U.S. Department of Health and Human Services or its successor that performs the drug tests pursuant to the code, (3) the average number of employees in connection with the construction of the public improvement; and (4) drug test results for specific categories of employees, including the number of positive tests and the number of negative tests.

*Inmate labor.* The State amended Sections 25 1-3a and 25 1-3b of the State Code, 1931. As amended, the two sections provide for the disposition of certain earnings and personal property of inmates, including money credited to a former inmate. Now, earnings must be received by the inmate within 30 days of receipt of the money by the commissioner of the State Department of Corrections. If the inmate does not claim the money within 30 days and the sum is less than \$10, the commissioner can place the money into the inmate benefit fund, from which it can be used toward the restitution of any negative balance on any inmate’s trustee account for medical copayments, legal and ancillary related postage, or photocopy fees that are due to the State if the balance is uncollectible from an inmate after 1 calendar year from the inmate’s discharge date or release on parole.

*Worker privacy.* Legislation was enacted that exempts certain records of the State Division of Corrections and Regional Jail Authority from the Freedom of Information Act. The records include information pertaining to the operation, staffing, equipping, or escape and emergency contingency plans relating to any jail or correctional facility where the disclosure of the information would jeopardize the safe,

secure, and orderly operation of the jail or correctional facility.

Legislation also was enacted that amended State Code Section 5-16-12a. The amended code requires employers to provide all documentation reasonably required to the director of the State Public Employees Insurance Agency. The documentation includes employment records sufficient to verify the actual full-time employment of the employer’s employees who participate in the Public Employees Insurance Agency plans.

### Wisconsin

*Employment agency.* The State enacted legislation that requires employment agencies to apply annually to the State Department of Regulation and Licensing for renewal of registration. Agencies will be prohibited from operating or advertising their services if their registration is not current.

*Equal employment opportunity.* Legislation was enacted which provides that a person discriminated against may bring an action in circuit court to recover damages caused by an act of employment discrimination after the completion of an administrative proceeding. If the circuit court finds that an employer has committed an act of discrimination, the employer must provide compensatory and punitive damages.

*Minimum wage.* The State minimum-wage requirement was increased to \$7.25 per hour.

*Miscellaneous.* The State enacted legislation which provides that no person may employ, offer to employ, or otherwise recruit an individual to work as a traveling sales crew worker without first obtaining a certificate of registration from the State Department of Workforce Development. “Traveling sales crew” is defined as “two or more individuals who are employed as salespersons or in related support work, who travel together as a group, and who are absent overnight from their permanent places of residence for the purpose of selling goods or services to consumers from house to house, on any street or in any other place that is open to the public. Two or more individuals who are traveling together for the purpose of participating in a trade show or convention, or two or more immediate family members who are traveling together for the purpose of

selling goods or services, are not considered to be members of a traveling sales crew. In the bill, “traveling sales crew activities” are defined as “the sale of goods or services to consumers from house to house or in any other place that is open to the public, or related support work.” The bill requires a person who employs traveling sales crew workers to (1) provide each worker with a disclosure statement listing information such as the worker’s place of employment, compensation, and work hours, (2) ensure that motor vehicles used to transport workers are properly maintained and operated, (3) provide insurance coverage, and (4) require each worker to carry a permit that is stamped by any city, village, or town in which the worker will be conducting sales activities.

*Prevailing wage.* The State implemented major changes in its prevailing-wage law, especially in the areas that concern monetary thresholds of contracts. Up until the new legislation was enacted, the State had established monetary thresholds of \$234,000 for contracts in which more than one trade was involved and \$48,000 for contracts in which a single trade was involved. With the passage of the new legislation, the monetary threshold was decreased to a flat \$25,000 for both single- and multiple-trade contracts. In addition, for those contracts for projects dominated by private enterprise, but funded for at least \$1,000,000 by local governments, the prevailing-wage rates would apply to the entire project, no matter how much private funding is responsible for the total cost of the project.

*Time off.* Legislation was enacted that requires employers with more than 11 employees to provide a leave of absence without pay for no more than 5 consecutive days, or 15 days total, to those employees serving in an emergency service operation of the State Civil Air Patrol. Further, the bill prevents employment discrimination based on an employees’ participation in the patrol. □

### Note

<sup>1</sup> For a complete table of State minimum wages in effect on January 1, 2010, see “Minimum Wage Laws in the States—January 1, 2010 (U.S. Department of Labor, Wage and Hour Division, 2010), on the Internet at [www.dol.gov/whd/minwage/america.htm](http://www.dol.gov/whd/minwage/america.htm) (visited Jan. 21, 2010).