

## State labor legislation enacted in 2008

*Equal employment opportunity, human trafficking, immigration protections, independent contractors, the minimum wage, prevailing wages, time off, wages paid, and worker privacy were among the most active areas in which State legislatures either enacted or revised legislation during the year*

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The legislative areas of equal employment opportunity, immigration protections, the minimum wage, prevailing wages, time off, wages paid, and worker privacy were among the most active during the individual sessions of the State legislatures in 2008. Legislative activity in those areas and others resulted in the enactment or revision of State statutes or regulations during the course of the year.

In 2008, the States enacted a volume of labor-related legislation less than that enacted in 2007. The decrease was due in part to the fact that only 44 States and the District of Columbia met in regular session during 2008. (All 50 States had met in regular session in 2007.) However, several of the legislatures of the 6 States that did not meet in regular session (Arkansas, Montana, North Dakota, Nevada, Oregon, and Texas) met in special sessions dedicated to various issues of particular interest or immediate necessity. In addition, the legislature of the Commonwealth of Puerto Rico met in regular session in 2008 and submitted relevant data. At the time this article was submitted for publication, 44 of the 50 States, plus the District of Columbia, had enacted or amended labor legislation of consequence in the various categories tracked by the Wage and Hour Divi-

sion 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: agriculture, child labor, State departments of labor, employee discharge, drug and alcohol testing, equal employment opportunity, employment agency matters, employee leasing, family issues, garment activity, genetic testing, handicapped workers, hours worked, human trafficking, independent contractor issues, inmate labor, living wages, the minimum wage and tipped employees, miscellaneous or other categories, 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, workplace security, and workplace violence. Not every piece of labor legislation enacted during the course of the year falls into one of these 30-plus categories. Among the legislative issues that are excluded from the article are those which (1) amend existing State law, but in which the changes are strictly technical in nature, (2) affect only a limited number of individuals, (3) require the undertaking or the distribution of an issue study for a legis-

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lature or a governor, or (4) deal with operational or other funding related to a specific issue.

The lower volume aside, the legislation enacted by the States in 2008 addressed a significant number of employment standards areas and included a number of important measures. Legislation was enacted in 30 of the categories tracked.

In 2008, the minimum wage was again the “hot-button” issue, 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 \$6.55 per hour on July 24, 2008, a number of States had to put into effect an increased minimum wage of their own. Such States are empowered to do so as the result of their own previously enacted legislation. (The Federal minimum wage is scheduled for another increase, this time to \$7.25 per hour, on July 24, 2009.) 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, regular minimum-wage legislative activity can occur during any particular year, and in December 2008 there were 24 States plus the District of Columbia that had a minimum-wage requirement greater than the Federal minimum-wage rate. An additional 14 States had a minimum-wage rate equal to the Federal rate, 7 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).<sup>1</sup> Besides the minimum wage, areas that showed a substantial amount of legislative activity via new or amended legislation implemented in 2008 were equal employment opportunity, immigration protections, prevailing wages, time off, wages paid, and worker privacy.

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 that resulted in the enactment of laws, new or amended, by the individual State legislatures during 2008. 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 course of the past year.

*Equal employment opportunity.* California now requires that all contractors and subcontractors engaged in con-

struction provide equal opportunity for employment, without discrimination, under an expanded list of factors. The District of Columbia now requires employers to provide reasonable daily unpaid break periods and a sanitary location so that breast-feeding mothers are able to express milk for their children. The District also broadened the definition of “discrimination” by bringing within its scope the concept of a gender-related identity, appearance, expression, or behavior of an individual. Florida expanded the exemption regarding privacy of information contained in discrimination complaints from applying only to executive branch agencies to now include all State agencies and the times such data may become available to the public. The exemption applies until (1) a finding has been made relating to probable cause, (2) the complaint has become inactive, or (3) the complaint or other record is made part of the official record of any hearing or court proceeding. The Kansas Department of Labor is now permitted to establish the rules and regulations necessary to enforce State laws that prohibit employment discrimination relating to victims of domestic violence or sexual abuse. Louisiana added a section to its statutes that stipulates a 1-year prescriptive period for a discrimination case, but the period may be suspended if an administrative review or investigation of the claim conducted by the Federal Equal Employment Opportunity Commission on Human Rights is pending. In Maryland, if a civil action is filed no more than 2 years after the occurrence of an alleged act of discrimination, then the filing of the civil action shall serve to automatically terminate any proceeding before the State Human Relations Commission. New Jersey made it unlawful for employers to discriminate against employees because of religious practices.

*Human trafficking.* The California Civil Code was amended by the addition of a section that prohibits an employer from deducting from an employee’s wages the employer’s cost of helping the employee emigrate and transporting the employee to the United States. Hawaii statutes expanded the definition of “kidnapping” to include unlawfully obtaining the labor or services of a person, regardless of whether the action related to the collection of debt. Such activity by an employer results in the employer’s committing extortion. Illinois enacted a new law that will assist victims of trafficking in the State by allowing Federal resources to be used to prosecute local offenders. The Maine Revised Statutes were amended to define a “human trafficking offense” as kidnapping or criminal restraint. Tennessee created the Class B felony “trafficking offense” for the activity wherein a person

knowingly subjects or maintains another in labor servitude or sexual servitude. Utah statutes now state that an individual commits human trafficking for forced labor or forced sexual exploitation by recruiting, harboring, transporting, or obtaining a person through the use of force, fraud, or coercion by various means. Such action is considered a second-degree felony, except when it is judged to be aggravated in nature, in which case it is considered a first-degree felony.

*Immigration protections.* Arizona State or local agencies responsible for issuing licenses are now required to verify that the applicant is lawfully present in the United States. In addition, the State expanded the scope of the crime of identity theft to include knowingly accepting the identity of another person if, when hiring an employee, the person doing the hiring knowingly accepts any personal identifying information of another person from the prospective employee, knowing that the prospective employee is not the person identified, and if the person doing the hiring uses the said information for work authorization under Federal law. Prospective contractors in Colorado, prior to executing a contract for services with a State agency or a political subdivision thereof, shall certify that, at the time of certification, they are not knowingly employing or contracting with an illegal alien who will perform work under the contract for services. In addition, the Colorado Commission on Fire Protection Standards is required to implement a voluntary statewide certified volunteer firefighter identification program. The Minnesota Governor ordered the State to implement measures to ensure that all newly hired executive branch employees are legally eligible to work. Mississippi enacted the Mississippi Employment Protection Act, which requires employers in the State to hire only legal citizens or legal aliens of the United States. In South Carolina, legislation was enacted that requires every agency or political subdivision of the State to verify the lawful presence of any person 18 years or older who has applied for State or local public benefits or public employment. Utah now prohibits a public employer from entering into a contract with a contractor for the physical performance of services within the State, unless the contractor registers with, and participates in, the Status Verification System to verify the work eligibility status of the contractor's new employees who are employed within the State. Virginia now permits the State Corporation Commission to terminate the corporate existence of a corporation for actions of its officers and directors that constitute a pattern or practice of employing unauthorized aliens in the Commonwealth.

*Independent contractors.* Connecticut established a joint employment commission, along with an advisory board that will advise the commission on employee misclassification in the construction industry within the State. In Idaho, key employees or key independent contractors may enter into written agreements or covenants that protect the employer's legitimate business interests and prohibit the key employee or key independent contractor from engaging in employment or a line of business that is in direct competition with the employer's business after termination of employment. Michigan has created an Interagency Task Force on Employee Misclassification as an advisory body responsible for examining and evaluating the existing employee misclassification enforcement mechanism in the State and for making recommendations for more efficient mechanisms. The Missouri attorney general is authorized to investigate any alleged or suspected violation of the law in which an employer knowingly misclassifies a worker and fails to claim that worker as an employee. In addition, the State attorney general may seek an injunction prohibiting an employer from engaging in such conduct, for which penalties assessed may reach \$50,000. Utah has created the Independent Contractor Enforcement Council, which has been directed to design an independent-contractor database that may be accessed by one or more agencies, the attorney general, and the State Department of Public Safety. The database is to be used to identify when a person holds him- or herself out to be an independent contractor or when a person engages in the performance of work as an independent contractor who is not subject to the employer's control.

*Minimum wage.* Connecticut increased the amount of gratuities that it would recognize as part of the minimum fair wage for bartenders and others who are employed in the hotel and restaurant industry. In addition, the minimum wage in the State was increased to \$8.00 per hour on January 1, 2009, and will increase to \$8.25 per hour on January 1, 2010. Illinois camp counselors under the age of 18 and employed at a day camp are not subject to the State adult minimum wage if they are paid a stipend on a one-time or periodic basis and, for those who are minors, if their parent, guardian, or other custodian has consented in writing to the terms of payment before employment begins. With some exemptions, the Iowa minimum-wage requirements shall not apply to an enterprise whose annual gross volume of sales made or business done, exclusive of excise taxes at the retail level, which are separately stated, is less than \$300,000. Maine increased its minimum hourly wage to \$7.25 per hour on October 1, 2008.

An additional increase, to \$7.50 per hour, is scheduled for October 1, 2009. In an amendment to the New Mexico Minimum Wage Act, the definitions of “employer” and “employee” were changed to exclude State and political subdivisions from all parts of the Act except the section that sets the minimum wage.

Illinois, Kentucky, Michigan, and West Virginia increased their required hourly minimum-wage rates on July 1, 2008. The Illinois rate was increased from \$7.50 per hour to \$7.75, Kentucky increased its rate from \$5.85 per hour to \$6.55, Michigan increased its required rate from \$7.15 per hour to \$7.40, and the West Virginia required rate was increased from \$6.55 per hour to \$7.25.

On July 24, 2008, the following jurisdictions increased their required minimum-wage rates:

<i>Jurisdiction</i>	<i>Minimum wage</i>	
	<i>Old</i>	<i>New</i>
District of Columbia .....	\$7.00	\$7.55
Idaho .....	5.85	6.55
Indiana .....	5.85	6.55
Maryland.....	6.15	6.55
Montana.....	6.25	6.55
Nebraska.....	5.85	6.55
North Carolina .....	6.15	6.55
North Dakota.....	5.85	6.55
Oklahoma .....	5.85	6.55
South Dakota .....	5.85	6.55
Texas .....	5.85	6.55
Utah .....	5.85	6.55
Virginia .....	5.85	6.55

On September 1, 2008, New Hampshire increased its required hourly minimum wage from \$6.50 per hour to \$7.25.

Arizona, Colorado, Florida, Missouri, Montana, Ohio, Oregon, Vermont, and Washington increased their hourly required minimum wage rates on January 1, 2009, on the basis of language in previously passed legislation that contained required annual cost-of-living increases to be implemented in the State minimum wage.

*Prevailing wages.* California will continue to require a contractor or subcontractor charged with violating the laws regulating public-works contracts and the payment of prevailing wages to appear before a hearing officer for a hearing. After January 1, 2009, California will not require that the aforesaid hearing be held by an administrative law judge. Delaware has tied the prevailing wage in a trade or craft to the collectively bargained wage if the collectively bargained wage has prevailed for that trade or

craft for 2 consecutive years. A revision of the Hawaii Revised Statutes authorizes the State Governor to suspend the prevailing wage on public projects during a national emergency declared by the President or Congress or during an emergency declared by the Governor. In addition, contractors who violate the prevailing wage on public contracts in the State by falsifying records or delaying or interfering with an investigation shall be suspended for a period of 3 years. New Jersey now requires that the prevailing-wage rate be paid to workers employed in the performance of any construction contract, including contracts for millwork fabrication under the authority of financial assistance by the State. New Jersey also redefined the term “construction of a public utility” to mean the construction, reconstruction, installation, demolition, restoration, or alteration of facilities of the public utility. The term shall not be construed to include operational work such as flagging, plowing snow, managing vegetation in and around utility rights-of-way, marking out boundaries on roads, performing janitorial services, surveying for landscaping leaks, performing meter work, and making miscellaneous repairs. New York amended State labor law and general municipal law in order to provide additional guarantees of payment of prevailing wages to workers of the State, despite misdemeanor violations committed by their employers. New York also amended its law so that employers who owe back wages on State government contracts are now guilty of misdemeanors or various classes of felonies, depending upon the total amount of back wages owed. Rhode Island now requires general contractors and subcontractors who perform work on any State public-works contract worth \$1,000,000 or more to employ apprentices for the performance of the contract, while complying with the apprentice-to-journeyman ratio approved by the Apprenticeship Council of the State Department of Labor and Training.

*Time off.* Members of the Civil Air Patrol in Colorado are now permitted to take a leave of absence, during the period of a mission, for up to 15 days annually without loss of pay or other benefits. Persons in Connecticut shall be excused from jury service if, during the preceding 3 years, they appeared in court for jury service and were not excused from such service. Such persons, however, may request to be summoned for jury service. The District of Columbia established various requirements for employers who employ various numbers of employees to provide a certain amount of leave time for certain amounts of hours worked. Employers in Florida are now permitted to grant an employee up to 3 working days of leave during a 12-

month period if the employee or a family or household member of the employee is the victim of domestic violence or sexual abuse. Elected or appointed trustees of any fire protection district in Illinois are now entitled to absent themselves from work on the days and times of meetings of the board of trustees for the duration of the meeting and during any time necessary for traveling to and from the meeting. Iowa employers shall not discharge or take or fail to take action regarding an employee's promotion or proposed promotion, or penalize the employee in another manner, due to the service of the employee as a witness in a criminal proceeding or as a plaintiff, defendant, or witness in a civil proceeding. Employees in Nebraska acting as volunteer emergency responders shall make a reasonable effort to notify their employers that they may be absent from, or report late to, their place of employment. Employers in the State shall neither terminate nor take any other disciplinary action against any employee who is a voluntary emergency responder if such employee is absent or reports late to work because of responding to an emergency in his or her status as a voluntary emergency responder. Most New Jersey State government employees, along with employees of any county, municipality, school district, or other political subdivision, may not be laid off from their employment position if they have been on military leave of absence for active service in the Armed Forces of the United States in a time of war or emergency. Employers in New York are required, at their option, either to grant a 3-hour leave of absence every 12 months to an employee who seeks to donate blood or to allow their employees to donate blood during work hours at least 2 times per year, without using any accumulated leave time. Rhode Island employers of more than 50 employees are now required to provide up to 30 days of unpaid family military leave during the time Federal or State orders are in effect, as long as the employees meet certain requirements. The employee also must have exhausted all other types of leave, except for sick and disability leave. Employees in Vermont shall have the right to take unpaid leave from employment for the purpose of attending a town meeting, provided that they notify the employer at least 7 days prior to the date of the town meeting. In addition, employers in Vermont shall provide reasonable time, either compensated or uncompensated, throughout the day for employees who continue to express breast milk for a nursing child 3 years after the birth of the child. Employees of the State, county, city, or any other political subdivision of Washington shall be entitled to, and shall be granted, military leave of absence from such employment for a period not exceeding 21 days each year.

*Wages paid.* California has made it a misdemeanor for an employer to require an employee, as a condition of being paid, to execute a statement of the hours the employee may have worked during a pay period when the employer knows the statement to be false. Colorado established the following definition of "paycard": "an access device that employees use to receive their payroll funds from their employer." Employers must meet two conditions in order to utilize paycards. Persons in Florida who, because of financial hardship, cannot satisfy a civil penalty shall be allowed to satisfy the penalty by participating in community service and shall receive credit for their service at the hourly rate specified under the Federal Fair Labor Standards Act. Iowa law now states that, upon written request by an employee, an employer must send any wages due to the employee by mail. Employers in Maryland are required to give each employee, at the time of hiring, notice of the employee's rate of pay, the regular paydays set by the employer, and leave benefits. New Jersey law now states that when a contract between a principal and a sales representative to solicit orders is terminated, the commissions and other compensation earned as a result of the representative relationship, but remaining unpaid, shall become due and payable within 30 days of the date the contract is terminated or within 30 days of the date the commissions are due, whichever is later. Upon meeting certain requirements, employers in West Virginia are now permitted to pay the wages that are due employees via the utilization of a payroll card and a payroll card account.

*Worker privacy.* Connecticut expanded the list of public employees in the State whose residential addresses may not be released under the Freedom of Information Act. Colorado employers may no longer require, as a condition of employment, that employees not disclose their wages or require employees to sign a waiver or other document that purports to deny them the right to disclose information about their wages. Florida added a number of positions of employment to those categories which are exempt from the State's public-records requirement. Among these positions are general and special magistrates, judges of compensation claims, administrative law judges of the Florida Division of Administrative Hearings, and child support enforcement hearing officers. Florida also excluded the records and timesheets of employees who are victims of sexual violence from the State's public-records requirement. Legislation enacted in Hawaii now requires each State and county government agency to designate an agency employee to have policy and oversight responsibilities for the protection of personal information. Idaho

employment security law was amended to provide that certain specified employment security information be exempt from disclosure, except that such information may be disclosed as necessary for the proper administration of employment security programs or, subject to certain restrictions and fees, may be made available to public officials for use in the performance of their official duties. Indiana expanded the types of public records that are exempt from public disclosure unless access to the records is specifically required by Federal or State statute or is ordered by a court under the rules of discovery. Maine expanded the protection provided for the personal-contact information of public employees; however, such protection is not extended to elected officials. Missouri prohibits employ-

ers from requiring personal identification microchips to be implanted into employees for any reason. New York employers may not publicly post or display an employee's Social Security number, visibly print a Social Security number in files with unrestricted access, or communicate an employee's personal identifying information to the general public. Tennessee now prohibits the disclosure of home addresses, phone numbers, dates of birth, Social Security numbers, and driver's license information of State and local government employees, including law enforcement officers and their family members. Utah amended the State Government Records Access and Management Act to add protected status to certain information if the information is properly classified by a government entity.

## Arizona

*Immigrant protections.* The State Legal Workers Act was amended by modifying the crimes of (1) taking the identity of another person or entity and (2) trafficking in the identity of another person or entity. The Act, as amended, now requires any State or local agency issuing a license in the State to verify that the applicant is lawfully present in the United States. The Act also expanded the scope of the crime of identity theft to include knowingly accepting the identity of another person if, when hiring an employee, the person doing the hiring knowingly accepts any personal identifying information of another person from the prospective employee, knowing that the prospective employee is not the person identified, and if the person doing the hiring uses the said information for work authorization under Federal law. Accepting the identity of a person when one knows that the person is not the one identified is a Class 4 felony. The State Legal Workers Act also establishes the Voluntary Enhanced Employer Compliance Program, which allows employers to voluntarily comply with certain verification requirements in cooperation with the State attorney general's office. First violations shall subject the employer to a 3-year probationary period for the business location where the unauthorized alien performed work. For a second violation, the court shall order the appropriate agencies to permanently revoke all licenses held by the employer specific to the business where the unauthorized alien performed work. If the employer does not hold a license specific to the business location where the unauthorized alien performed work, but a license is necessary to operate the employer's business in general, the court shall order the appropriate agencies to permanently revoke all licenses that are held at the employer's primary place of business.

*Minimum wage.* As a result of previously enacted legislation in which the State minimum wage was indexed to inflation, the minimum wage in the State was increased to \$7.25 per hour on January 1, 2009.

*Miscellaneous.* If an employer interviews a law enforcement or probation officer and reasonably believes that the interview could result in the dismissal, demotion, or suspension of the officer, the latter may request to have a representative present during the interview at no cost to the employer. Before the interview begins, the employer shall provide the officer with a written notice informing the officer of the specific nature of the investigation, of all known allegations of misconduct that are the reason for the interview, and of the officer's right to have a representative present. The employer may require the officer to submit to a polygraph examination if the officer makes a statement to the employer during the investigation that differs from other relevant information that is known to the employer and if reconciling that difference is necessary to complete the investigation. If a polygraph examination is administered, the employer or the person administering the examination shall make an audio recording of the complete procedure and provide a copy of the recording to the officer. The employer is not required to stop the interview to issue another notice for allegations based on information provided by the employee during the interview, nor is the employer required to disclose any fact to the employee or his or her representative that would impede the investigation. In any appeal of a disciplinary action (that is, a dismissal, demotion or suspension for more than 24 hours) in which a single hearing officer or administrative law judge has been appointed to conduct the proceedings, the officer or the employer may request a different hearing official. In cases before the office of administrative

hearings or when the employer is a county with a population of 250,000 or a city with a population of 65,000 or more, the first request for an appeal shall be granted. All other requests may be granted only upon showing that a fair and impartial hearing cannot be obtained due to the prejudice of the official who has been assigned. The burden of proof in an appeal of a disciplinary action by a law enforcement or probation officer shall be on the employer.

*Worker privacy.* Public bodies shall maintain all records that are reasonably necessary or appropriate to maintain an accurate knowledge of disciplinary actions involving public officers or other employees of the public body. The records shall be open to inspection and copying pursuant to State law, unless their inspection or disclosure is contrary to public law. The law does not require the disclosure of the home address, the home telephone number, or a photograph of any person who is protected pursuant to State law.

In any county, an eligible person may request that the general public be prohibited from accessing certain information maintained by the county recorder, county treasurer, or county assessor, including (1) the unique identifier and the recording date contained in indexes of recorded instruments maintained by the county recorder and (2) the voting precinct number, residential address, and telephone number of the requestor. An eligible person is a peace officer, a justice, a judge, a commissioner, a public defender, a prosecutor, a code enforcement officer, an adult or juvenile corrections officer, a corrections support staff member, a probation officer, a member of the Board of Executive Clemency, a law enforcement support staff member, a National Guard member who is acting in support of a law enforcement agency, a person who is protected under an order of protection or an injunction against harassment, a firefighter assigned to the State Counterter-

rorism Center in the State Department of Public Safety, or a victim of domestic violence or stalking who is protected under an order of protection or an injunction against harassment. The State Revised Statutes now require the county recorder to notify certain persons 6 months prior to the expiration of a court-ordered redaction of their personal information. The statutes also allow the Anti-Racketeering Revolving Fund to be used for the payment of relocation expenses of any law enforcement officer who is a victim of a bona fide threat.

## California

*Equal employment opportunity.* The State may direct a local agency to require that all contractors and subcontractors engaged in construction provide equal opportunity for employment, without discrimination, under an expanded list of factors that now covers marital status, race, national origin, age, sex, sexual orientation, color, medical condition, religious creed, ancestry, mental disability, and physical disability.

*Human trafficking.* The State Civil Code and the State Penal Code were amended by the addition of a section to each that relates to human trafficking. The new civil law prohibits an employer from deducting from an employee's wages the employer's cost of helping the employee emigrate and transporting the employee to the United States. Because the existing penal law provides jurisdiction over certain crimes committed in more than one county, this new legislation requires a local prosecutor to present evidence to the court and requires the court to hold a hearing to consider whether a matter involving human trafficking in multiple jurisdictions should proceed in the county of filing or whether one or more counts should be severed. Charges alleging multiple violations that involve the same victim or victims in multiple territorial jurisdictions shall be subject to judicial review to determine the location and complexity of the likely evidence, to identify where the majority of the offenses occurred, and to consider the convenience of, or hardship on, the victims and witnesses.

*Overtime.* The State has extended the exemption from overtime pay requirements under State law to computer professionals who earn no less than \$75,000 per year for full-time employment and are paid at least once per month in an amount no less than \$6,250 per month.

*Plant closing.* Under existing law, the State Department of Public Health is responsible for licensing and regulating health facilities, including hospitals, and requires a hospital that is planning to reduce or eliminate

emergency medical services to notify various entities at least 90 days before it takes that action. Legislation was enacted that changes the required notification period to 30 days prior to closing a general acute-care or psychiatric hospital or relocating the provision of a supplemental service to a different campus. Notification should be made to the public and the applicable administering department. The facility shall provide public notice of the proposed closure, including a notice posted at the entrance to all affected facilities, and shall also notify the board of supervisors of the county in which the health facility is located. In addition, an impact statement reflecting the changes in the delivery of care to the community must (1) specify how the elimination of services will be met by other existing agencies and (2) describe the three nearest available comparable services in the community.

*Prevailing wages.* Under existing law, the State labor commissioner is required to issue civil wage and penalty assessments to a contractor, a subcontractor, or both if, after an investigation, it is determined that the contractor or subcontractor violated the laws regulating public-works contracts and the payment of prevailing wages. The affected contractor can obtain a review of a civil wage and penalty assessment by transmitting a written request for a hearing to the office of the State labor commissioner within 60 days after receiving the assessment. A hearing officer or an administrative law judge must then commence a hearing within 90 days of receipt of the request. This legislation continues to require a hearing officer to hold the hearings, but, after January 1, 2009, does not require that the hearing officer be an administrative law judge. Further, the contractor or subcontractor may deposit the full amount of the assessment with the State Department of Industrial Relations, for that agency to hold in escrow pending review by the office of the labor commissioner. The director of the Department of Industrial Relations is authorized to waive payment of liquidated damages, or any portion thereof, if the contractor demonstrates that there were substantial grounds for its appeal.

*Wages paid.* The State Labor Code was amended to require that employees of temporary-service employers be paid weekly or daily wages if an employee is assigned to a client. The code does not apply to employees who are assigned to a client for more than 90 consecutive days, unless the employer pays the employee weekly. The code applies civil and criminal penalties of \$100 for an initial violation and \$200, plus 25 percent of the amount unlawfully withheld, for each subsequent violation. An employer who fails to pay any wages of an employee who is discharged or who has quit the company will be required to continue to pay

the regular wages of that employee until action is commenced as a penalty or for no more than 30 days. Employees who refuse to receive payment, including any penalty accrued, will not be entitled to receive any benefits under the bill. Salaries of executive, administrative, and professional employees of employers covered by the Fair Labor Standards Act may be paid once a month on or before the 26th day of the month during which the labor was performed if the entire month's salaries, including the unearned portion between the date of payment and the last day of the month, are paid at that time. Employees covered by collective-bargaining agreements will be paid according to their specified pay arrangements.

It shall be considered a misdemeanor for an employer to require an employee, as a condition of being paid, to execute a statement of the hours the employee may have worked during a pay period when the employer knows the statement to be false. This statement, called an *execution of release*, is a way for the employer to have a record of paying the employee in advance for work not yet actually done. An employer shall not require any such execution of release unless the wages have been paid. A violation of this law shall render the execution of release null and void between the employer and the employee.

## Colorado

*Agriculture.* The State created the Non-immigrant Agricultural Seasonal Worker Pilot Program in the State Department of Labor and Employment in order to expedite the Federal H-2A visa certification process so that eligible workers might legally come to Colorado to meet the needs of State farmers and ranchers. The directors of three State agencies (the commissioner of the State Department of Agriculture, the director of the State Department of Labor and Employment, and the director of the State Governor's Office of Economic Development and International Trade) are required to seek agreements between the State and foreign countries to assist in the recruitment and selection of eligible H-2A workers. The State Department of Labor and Employment is authorized to establish offices in foreign countries and retain local agents to aid in prospective employees' application processes, medical screening, and travel, as well as in the documentation of employee returns to their countries of origin. The program is limited to 1,000 employees the first year, with increases of 1,000 employees annually for 4 years. Employers and employees each have multiple requirements concerning pay, transportation, housing, working conditions, meals, minimum hours of work, background checks, identity cards, withholding of wages, and employees' return to their country of origin that must be met in order to participate in the program. The afore-

mentioned officials will work closely with the U.S. Departments of Labor and State, along with the U.S. Citizenship and Immigration Services, to establish a timely, efficient, and effective process for incorporating workers into the State Non-immigrant Agricultural Seasonal Worker Pilot Program and guiding them through H-2A visa certification.

*Employee leasing.* The State statutes governing employee-leasing companies that have ongoing relationships with employers at the sites at which the leased employees work were amended. Such companies are now required to become annually certified with the State Department of Labor and Employment for a fee not to exceed \$500 per year. Each leasing company shall pay wages and collect, report, and pay all payroll-related taxes from its own accounts for all covered employees. The executive director of the department is authorized to take disciplinary action against leasing companies that violate the State statutes regarding required actions of such companies. The disciplinary action taken may include penalties such as probation, financial penalties, and revocation of certification.

*Handicapped employees.* Legislation was enacted that established an income tax credit for taxpayers who hire individuals with a developmental disability. The credit is to be awarded for qualified employees first hired on or after January 1, 2009, and is applicable for income years 2009 through 2011 only. A qualified employee must be (1) a person with a developmental disability, (2) employed at a workplace located in 1 of 7 designated State counties, and (3) compensated in accordance with applicable minimum-wage laws. The income tax credit shall equal 50 percent of gross wages paid to the employee in the first 3 months of employment and 30 percent of gross wages paid in the subsequent 9 months.

*Immigrant protections.* The State statute concerning requirements relating to public contracts for services was amended. Prior to executing a contract for services with a State agency or a political subdivision thereof, prospective contractors shall certify that, (1) at the time of certification, they are not knowingly employing or contracting with an illegal alien who will perform work under the contract for services and (2) they will participate in the e-verify program, jointly administered by the U.S. Department of Homeland Security and the Social Security Administration, or in the State Department of Labor and Employment's employee verification program, in order to confirm the eligibility of all of their newly hired employees to perform work under the contract for services. In addition, prospective contractors shall include a provision stating that they have confirmed the eligibility of

all of their newly hired employees to perform work under the contract for services through participation in either the e-verify program or the department program.

*Minimum wage.* Because of previously enacted legislation in which the State minimum wage was indexed to inflation, the minimum wage in the State was increased to \$7.28 per hour on January 1, 2009.

*Time off.* The State Revised Statutes were amended to allow a public or private employee who is a member of the Civil Air Patrol and is called for duty in a patrol mission to take a leave of absence during the period of the mission, for up to 15 days annually, without loss of pay or other benefits. To obtain this leave, the member is required to return to his or her job immediately after being relieved of duty in the mission. After serving, the member is allowed to return to the same job position in the same location. An employer shall not discriminate against or discharge from employment any member of the Civil Air Patrol because of such membership and shall not hinder a member or prevent a member from performing his or her duty during any Civil Air Patrol mission for which the member is entitled to leave under State law. If an employer violates the provisions of the law, the member is allowed to bring a civil action for damages, equitable relief, or both. In such action, the court shall award reasonable attorneys' fees and costs to the prevailing party. Employers are not required to provide this leave when doing so would result in more than 20 percent of the employer's employees being on leave on any workday. In addition, employers are not required to provide such leave for any employee designated as an essential employee, defined as an employee whom the employer deems to be essential to the employer's daily enterprise and whose absence would likely cause the employer to suffer economic injury.

*Wages paid.* As the result of an amendment to the State Revised Statutes, the definition of "paycard" was established and employers may now deposit an employee's wages on a paycard as long as certain conditions are met. The term "paycard" is defined as an access device that an employee uses to receive his or her payroll funds from the employer. In order to be allowed to utilize paycards, the employer must (1) provide the employee free access to the entire amount of the net pay at least once per pay period and (2) permit the employee to choose other means for payment of wages as authorized by other sections of the State Revised Statutes.

*Worker privacy.* The State Revised Statute prohibiting action against an employee for

sharing wage information was amended. It shall now be a discriminatory or unfair employment practice, unless otherwise permitted by Federal law, for an employer to discharge, discipline, discriminate against, coerce, intimidate, threaten, or interfere with any employee because the employee inquired about, disclosed, compared, or otherwise discussed his or her wages. It is also prohibited for an employer to require, as a condition of employment, that an employee not disclose his or her wages or that the employee sign a waiver or other document that purports to deny the employee the right to disclose his or her wages. These prohibitions do not apply to employers who are exempt from the provisions of the National Labor Relations Act.

## Connecticut

*Child labor.* The State removed the sunset provision pertaining to conditions under which a 15-year-old minor can be employed in a mercantile establishment. Employers continue to be exempt from any fines for employing 15-year-olds after the September 30, 2007, sunset, provided that such employment is (1) limited to periods during which school is not in session for 5 or more consecutive days, except that any such minor employed in a retail food store may work on any Saturday during the year; (2) for not more than 40 hours in any week; (3) for not more than 8 hours in any day; and (4) between the hours of 7:00 a.m. and 7:00 p.m., except that from July 1 to the first Monday in September in any year, any such minor may be employed until 9:00 p.m.

*Labor department.* The State Department of Labor and Employment, in its quarterly electronic publication distributed to employers, shall, at a minimum, notify every employer of the Federal law against hiring or continuing to employ an unauthorized alien. In addition, the notice shall include information about the e-verify program jointly administered by the U.S. Department of Homeland Security and the Social Security Administration. Notifications are required on a quarterly basis for 2 years and twice per year thereafter. The State Department of Labor and Employment and the secretary of State will post the notification and information about the program on their Web sites, as well as providing a link thereto.

*Employment agencies.* State Public Act No. 08-105 was amended to better codify (1) the criteria and responsibilities for professional employer organizations, (2) the steps for becoming registered within the State, and (3) all appropriate fiduciary responsibilities for the organization. In addition, the State legislature established a joint enforcement commission on employee misclassification. The commis-

sion members will consist of the State commissioners for labor, revenue services, and workers' compensation; the attorney general; and the chief State's attorney—or their designees. The commission shall meet no fewer than 4 times each year and shall review the problem of employee misclassification by employers for the purpose of avoiding the employer's obligations under State and Federal labor, employment, and tax laws. The commission shall coordinate the civil prosecution of violations of State and Federal laws as a result of employee misclassification and shall report any suspected violation to the chief State's attorney or the State's Attorney serving the district in which the violation is alleged to have occurred. The commission shall report to the Governor and the relevant joint standing committee of the State General Assembly.

*Independent contractor.* Legislation was enacted that established a joint enforcement commission on employee misclassification and the State Employee Misclassification Advisory Board. Civil prosecution will be coordinated by the commission in the event that an employer is found to have violated State and Federal laws as a result of employee misclassification. Beginning in 2010, the commission is required to produce a yearly report that summarizes its actions for the preceding calendar year and includes recommendations for administrative or legislative action. The board will advise the commission on employee misclassification in the construction industry in the State, and the members of the board will consist of management and labor representatives in the construction industry.

*Minimum wage.* The hourly minimum-wage rate of pay required under State law was increased to \$8.00 per hour, effective January 1, 2009. The rate on January 1, 2010, will again increase, this time to \$8.25 per hour. State law requires that whenever the highest Federal minimum wage is increased, the State minimum wage shall be increased to the amount of the Federal minimum wage plus one-half of 1 percent more than said Federal rate, rounded to the nearest whole cent, effective on the same date as the increase in the highest Federal minimum wage. The rates for learners, beginners, and persons under 18 years shall be no less than 85 percent of the minimum fair wage for the first 200 hours of such employment and equal to the minimum wage thereafter, except for institutional training programs specifically exempted by the State commissioner of labor.

On January 1, 2009, the State increased the amount of all gratuities that it shall recognize as part of the minimum fair wage. From that date, the State shall recognize gratuities in an amount (1) equal to 31 percent of the minimum fair wage per hour for persons, other

than bartenders, who are employed in the hotel and restaurant industry, including a hotel restaurant, and who customarily and regularly receive gratuities; (2) equal to 11 percent of the minimum fair wage per hour for persons employed as bartenders who customarily and regularly receive gratuities, and (3) not to exceed 35 cents per hour in any other industry.

*Time off.* A person shall be excused from jury service if, during the preceding 3 jury years, such person appeared in court for jury service and was not excused from serving, except that the person may request to be summoned for jury service during such a 3-jury-year period in the same manner as persons are summoned who are not excused from jury service. Such request may be made at any time, written to the jury administrator. Any juror-employee who has served 8 hours of jury duty in any one day shall be deemed to have worked a legal day's work, and an employer shall not require the juror-employee to work in excess of 8 hours. Any employer who fails to compensate a juror-employee pursuant to the State General Statutes and who has not been excused from such duty to compensate the juror-employee pursuant to the 2008 supplement to the General Statutes shall be liable to the juror-employee for damages.

*Wages paid.* Legislation was enacted that amended the acceptable reasons for which an employer can withhold or divert any portion of an employee's wages by adding instances in which deductions are made for contributions attributable to automatic enrollment, as defined as a provision of an employee retirement plan, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, as established by the employer. Employers that provide automatic enrollment are relieved of liability for the investment decisions they make on behalf of participating employees, provided that (1) the investment plan allows the participating employee at least quarterly opportunities to select among investment alternatives available under the plan that are to serve as the employee's contribution to the plan; (2) the employee is given (a) notice of the investment decisions that will be made in the absence of the employee's direction, (b) a description of all the investment alternatives available under the plan, and (c) a brief description of procedures available for the employee to change investments; and (3) the employee is given at least annual notice of the actual investments made on behalf of the employee under the organization's automatic contribution arrangement. The employer's relief from liability extends to any other official of the plan who actually makes the investment decisions on behalf of participating employees under the aforesaid automatic contribution arrangement.

*Worker privacy.* The list of public employees in the State whose residential addresses may not be released under the Freedom of Information Act was amended. The residential address of an employee of the State Department of Mental Health and Addiction Services who provides direct care to patients was added to the list.

## Delaware

*Prevailing wage.* The Division of Industrial Affairs of the State Department of Labor shall establish the prevailing wage for each craft or class of laborers and mechanics at the same rates established in collective-bargaining agreements between labor organizations and their employers that govern work for those classes of laborers and mechanics for the county where the public-works contract will be performed if that particular labor organization's collective-bargaining rate prevailed and the said labor organization participated in the prevailing-wage survey for that particular trade or craft in that particular county for 2 consecutive years. The agreed-upon rate of pay will become the prevailing wage for a period of 5 years, and the raise will be determined on the basis of the collective-bargaining agreement rate at the time the survey is conducted for that craft, county, and year. If the prevailing wage cannot be reasonably and fairly determined in any locality because no agreements exist or the rate has not prevailed for 2 consecutive years, the Department shall use the rate established by the annual prevailing-wage survey. There will be a one-time challenge of the prevailing-wage rate per cycle as stated in departmental regulations.

## District of Columbia

*Equal employment opportunity.* The District's Human Rights Act of 1977 was amended (1) to prohibit discrimination against breast-feeding women, (2) to ensure a woman's right to breast-feed in any location, public or private, where she has the right to be with her child, (3) to require employers to provide reasonable daily unpaid break periods and a sanitary location so that breast-feeding mothers are able to express breast milk for their children, and (4) to require the District Department of Health to monitor both breast-feeding rates in the District and the number and nature of complaints received by the District Office of Human Rights regarding violations of the act.

The Prohibition of Discrimination on the Basis of Gender Identity and Expression Amendment Act of 2008 is an attempt by the District government to broaden the definitions by which discrimination is practiced. The District Office of Human Rights Establishment

Act of 1999 was amended by striking the phrase “sexual orientation” and substituting the phrase “sexual orientation, gender identity or expression” in its place, thereby bringing into the arena the concept of “a gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual’s assigned sex at birth.” As part of this broader definition as well, the Office of Human Rights uses the term “transgender” to refer to any individual whose identity or behavior differs from stereotypical or traditional gender expectations. The term now refers to transsexual individuals, cross-dressers, androgynous individuals, and others whose appearance or characteristics are perceived to be gender atypical. These newly expanded definitions shall be applicable in such areas as employment, renting or leasing of housing and commercial space, public accommodations, educational institutions, and agencies of the District government and its contractors.

*Minimum wage.* As a result of requirements that were included in previously enacted legislation, the minimum wage in the District was increased to \$7.55 per hour on July 24, 2008.

*Time off.* An employer with 100 or more full-time-equivalent employees shall provide not less than 1 hour of paid leave for every 37 hours worked, not to exceed 7 days per calendar year; an employer with at least 25, but not more than 99, full-time-equivalent employees shall provide 1 hour of paid leave for every 43 hours, not to exceed 5 days per calendar year; and an employer with 24 or fewer full-time-equivalent employees shall provide not less than 1 hour for every 87 hours worked, not to exceed 3 days per calendar year. Employees who are exempt from overtime payment under the Fair Labor Standards Act shall not accrue leave for hours worked beyond a 40-hour workweek. Paid leave shall accrue in accordance with the employer’s established pay period, at the beginning of the employee’s employment, and the employee may begin to access paid leave after 90 days of service. An employee’s unused paid leave accrued during a 12-month period shall carry over annually, but the employee shall not be reimbursed for this leave upon termination or resignation. An employee who is discharged after the completion of a 90-day probationary period and is rehired within 12 months may access paid leave immediately. The employee shall make a reasonable effort to schedule paid leave in a manner that does not unduly disrupt the employer’s operations. Paid leave requests, if foreseeable, should be provided at least 10 days in advance or as early as possible, with reasonable certification, including a signed document by a health care provider, a police report, or a court order by a witness advocate or domestic violence counselor. This act does not prevent an employer from adopting or retaining a

paid-leave policy more generous than the one herein required. Further, an employer shall in no manner discharge or discriminate against an employee who (1) opposes any practice by the employer pursuant or related to this act, (2) files a complaint, (3) facilitates the institution of a proceeding, or (4) gives any information or testimony in connection with a relevant inquiry.

*Wages paid.* The Minimum Wage Act Revision Act of 1992 was amended to establish minimum-compensation requirements for District security officers working in the metropolitan area. An employer shall pay a security officer working in an office building in the metropolitan area wages (or any combination of wages and benefits) that are no less than the combined amount of the minimum-wage and fringe-benefit rate for the Guard 1 position classification established by the U.S. Secretary of Labor pursuant to the Service Contract Act of 1965. The Minimum Wage Act Revision Act shall take effect following approval by the mayor after a 30-day period of congressional review pursuant to the State Home Rule Act and publication in the municipal register. (In the event of a veto by the mayor, the act shall take effect following an override of the veto by the council.)

## Florida

*Minimum wage.* As a result of legislation that was previously enacted in which the State minimum wage was indexed to inflation, the State minimum wage was increased to \$7.21 on January 1, 2009.

*Time off.* The State permits an employer to grant an employee up to 3 working days of leave during a 12-month period if the employee or a family or household member is the victim of domestic or sexual violence. It will be at the discretion of the employer whether the leave will be with or without pay. Employees must use the leave from work to, among other things, (1) obtain medical care or mental health counseling, (2) seek legal assistance in addressing issues arising from the act of domestic or sexual violence, or (3) make the employees’ homes secure from the perpetrator. Except in cases of imminent danger, employees must provide appropriate advance leave notice as required by the employer’s policy, along with documentation of the act of domestic or sexual abuse. All personal identifying information documenting domestic or sexual violence in the workplace will be deemed confidential.

*Wages paid.* The maximum authorized amount of day-labor contracts was increased in the State’s school districts to \$280,000, an amount to be adjusted annually by the Consumer Price Index. The contracts affected include those for

construction, renovation, remodeling, or maintenance of existing facilities.

If a person has been ordered to pay a civil penalty for a noncriminal traffic infraction and the individual is unable to comply with the court’s order due to certifiable financial hardship, the court shall allow the person to satisfy the civil penalty by participating in community service until the penalty is paid. The person shall then receive credit for the penalty at the hourly credit rate specified under the Federal Fair Labor Standards Act, and each hour of community service shall reduce the civil penalty by that amount. The specified hourly credit rate is the wage rate then in effect under the Act and that an employer subject to the Act’s provisions must pay per hour to each employee. If the individual has a trade or profession for which there is a need, the specified credit rate for each hour of community service shall be the average prevailing wage for that particular trade or profession. The community service agency shall record the number of hours worked and the date the service is completed and shall submit the information to the clerk of the court on appropriate agency letterhead bearing an authorized signature. The letter shall certify that the hours completed by the individual equal the amount of the civil penalty and that the debt is paid in full. The legislation took effect on July, 1, 2008.

*Worker privacy.* The home addresses, telephone numbers, and addresses of places of employment of the spouses and children, and of the schools and daycare facilities attended by the children, of active or former law enforcement personnel, including correctional officers and correctional probation officers, personnel of the State Department of Children and Family Services who are involved in investigations, personnel of the State Department of Health whose duties support investigations, and personnel of the State Department of Revenue or of local governments whose responsibilities include revenue collection and enforcement, are currently exempt from the State’s public-records requirements. Added to this exempt category are the following State employment positions: general and special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers. It is feared that the release of such identifying information might place these individuals and their family members in danger of physical and emotional harm from disgruntled criminal defendants or litigants. Therefore, the harm that might result from the release of the information outweighs any public benefit that could be derived from disclosure of the information.

The State amended statutes concerning the expansion of exemptions from public-records

requirements for records and timesheets of employees who are victims of sexual violence. The bill, which would extend future legislative review and repeal, revises a statement expressing the public necessity to make sure that an employee's request for leave is temporarily confidential and exempt from exposure until 1 year after the leave has been taken.

*Worker privacy.* All complaints, and other records in the custody of any agency regarding a complaint, of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status in connection with hiring practices, position classifications, salary, benefits, discipline, discharge, employee performance, evaluation, or any related activities shall be confidential. Any Federal or State agency that is authorized to have access to such complaints or records shall be granted access in the furtherance of such agency's statutory duties. If the victim chooses not to file a complaint, he or she may request that records of the complaint remain confidential and exempt from relevant public-record requirements. The request is upheld until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding. This exemption is necessary because the release of such information could be defamatory to an individual under investigation or could cause unwarranted damage to the good name or reputation of the complainant. Further, exclusion of the records is a public necessity in order that the investigation not be significantly impaired and that a secure environment be created for the conduct of the investigation.

## Georgia

*Unfair labor practice.* Except for exclusions provided by State Code, no private or public employer, including the State and its subdivisions, shall condition employment upon any agreement by a prospective employee that prohibits the employee from entering the parking lot and from access thereto when the employee's privately owned motor vehicle contains a firearm that is locked out of sight within the trunk, glove box, or other enclosed compartment or area within such privately owned motor vehicle, provided that the employee possesses a State firearms license. In addition, except for exclusions provided by State Code, no private or public employer, including the State and its subdivisions, shall establish, maintain, or enforce any policy or rule that has the effect of allowing such employer or its agents to search any locked, privately owned vehicles of employees or invited guests on the employer's parking lot or to gain access thereto.

## Hawaii

*Human trafficking.* The State Revised Statutes were amended in order to expand the definition of kidnapping to include unlawfully obtaining a person's labor or services, regardless of whether it is or is not related to the collection of debt. The statutes now specify that a person commits extortion if the person obtains, or exerts control over, the property, labor, or services of another with the intent to deprive that other person of property, labor, or services by threatening, by word or conduct, to destroy, conceal, remove, confiscate, or possess any actual or purported passport, any other actual or purported government identification document, or any immigration document of another person. Further, the legislation explains that a person commits the offense of promoting prostitution in the first degree if the person knowingly advances prostitution by compelling a person by force, threat, or intimidation to engage in prostitution, by profiting from such coercive conduct, or by advancing or profiting from prostitution of a person younger than 18 years.

*Inmate labor.* The State House of Representatives requested that the State Department of Land and Natural Resources, along with the State Department of Public Safety, develop a plan to establish a statewide Inmate Conservation Corps Pilot Program. The purpose of the program is to perform resource conservation projects, including forest fire prevention, forest and watershed management, maintenance of recreation areas, fish and game management, soil conservation, forest and watershed revegetation, preventive maintenance or reconstruction of levees, and any other work necessary to prevent flood damage.

*Prevailing wage.* The revision of the State Revised Statutes resulted in the State Governor's being authorized to suspend the prevailing wage on public projects during a national emergency declared by the President or Congress or a state of emergency declared by the Governor.

Under State law, contractors can be suspended for failure to pay back wages and penalties. For a first or second violation in this area, if a person or firm fails to pay wages found due, any penalty assessed, or both, the person or firm shall be immediately suspended from doing any work on any public work of a governmental contracting agency until all wages and penalties are paid in full. For a third violation, the contractor shall immediately be suspended from doing any work on any public work of a governmental contracting agency for a mandatory 3-year period. If, after the 3-year suspension (also mandated for falsification of records or delay or interference with an investigation), wages or penalties remain unpaid, the suspension shall remain in force until pay-

ment in full is made. As amended, the law now authorizes the State Department of Labor and Industrial Relations to immediately suspend and begin debarment proceedings against contractors that purposely defraud the State on a public-works project or that delay or interfere with the department in determining whether there has been a violation of the prevailing-wage law.

*Worker privacy.* Legislation was passed that authorizes the State to protect the security of personal information collected and maintained by State and county government agencies by designating an agency employee to have policy and oversight responsibilities for the protection of personal information. The designated employee will (1) ensure and coordinate agency compliance; (2) assist individuals who have identity theft and privacy-related concerns; (3) provide agency staff with education and information on privacy and security issues; (4) coordinate with Federal, State, and county law enforcement agencies on identity theft investigations; and (5) recommend policies and practices to protect individual privacy rights relating to individuals' personal information. The legislation establishes an information privacy and security council within the Department of Accounting and General Services. The council will identify best practices to assist government agencies in improving security and privacy programs relating to personal information. Every State government agency maintaining one or more personal information systems will be required to submit an annual report to the council on the existence and character of each personal information system added or eliminated since that agency's previous annual report. Government agencies must develop a plan to protect and redact personal information—for example, Social Security numbers—contained in existing hardcopy documents prior to making the documents available for public inspection. State and county government agencies that have primary responsibility for human resource functions shall develop and distribute, to the appropriate agencies, written guidelines detailing recommended practices to minimize unauthorized access to personal information and personal information systems relating to personal recruitment, background checks, testing, employee retirement and health benefits, and time-reporting and payroll issues. Notification policies dealing with security breaches also shall be developed by State agencies.

## Idaho

*Independent contractor.* Key employees and key independent contractors may enter into written agreements or covenants that protect the employer's legitimate business interests

and prohibit the employee or independent contractor from engaging in employment or a line of business that is in direct competition with the employer's business after termination of employment. The agreement or covenant shall be enforceable if it is reasonable as to its duration, geographical area, type of employment, or line of business and does not impose a greater restraint than is reasonably necessary to protect the employer's legitimate business interests.

*Minimum wage.* As a result of requirements that were included in previously enacted legislation, the State minimum wage was increased to \$6.55 per hour on July 24, 2008.

*Miscellaneous.* Both houses of the State legislature resolved by memorandum to urge that the U.S. Congress take action to help stop children and employees from accessing Internet pornography and that legislation be enacted to facilitate a technology-based solution that allows parents and employers to subscribe to Internet access services that exclude adult content.

*Worker privacy.* The State employment security law was amended to provide that certain specified employment security information is exempt from disclosure, except that such information may be disclosed as is necessary for the proper administration of employment security programs or may be made available to public officials for use in the performance of their official duties, both conditions subject to such restrictions and fees as determined by the director of employment security. If a determination finds that a person has made any unauthorized disclosure of employment security information in violation of State law or code, a penalty of \$500 for each act of unauthorized disclosure shall be assessed against the person.

## Illinois

*Genetic testing.* Genetic testing and information derived from genetic testing are confidential and privileged and may be released only to the individual being tested or to persons specifically authorized by that individual to receive the information. The information may not be admissible as evidence or discoverable in any action of any kind in any court or before any tribunal, board, or agency. Though confidential, the information may be disclosed for purposes of criminal investigation or prosecution and is admissible in any actions alleging a violation of this legislation. An employer shall not directly or indirectly solicit, request, require, or purchase genetic-testing information from a person or from a family member as a condition of employment, preemployment, labor

organization membership, or licensure, nor shall the employer terminate the employment of an individual as a result of genetic testing. Neither can genetic information be used in furtherance of a workplace wellness program benefiting employees, unless health or testing services are offered by the employer; only the employee or family member may receive testing services, and any individually identifiable information is available only for purposes of the service provided. Genetic testing may be used for genetic monitoring of the biological effects of toxic substances in the workplace. Any person aggrieved by a violation of this legislation shall have a right of action against any party for liquidated damages of \$2,500 or actual damages, whichever is greater. In addition, any party that intentionally or recklessly violates this act can be liable for damages of up to \$15,000 or actual damages, whichever is greater.

*Human trafficking.* The U.S. House of Representatives passed a legal framework for fighting trafficking by combining and streamlining efforts against the international and domestic sale of human beings. The State legislature has adopted a resolution supporting the adoption of this Federal legislation, known as HR 3887, and urging the U.S. Senators from the State to support the legislation as passed, without modification, and to support Federal anti-trafficking legislation in the U.S. Senate. The purpose of the resolution is to expand Federal antitrafficking legislation so that it more accurately represents the experiences of victims in the State and expands the ability of Federal prosecutors to bring domestic traffickers to justice. The State General Assembly implemented Public Act 94-0009, the Trafficking of Persons and Involuntary Servitude Act, a powerful first step in the fight against sex trafficking. Many local traffickers are not held accountable and continue to prey upon victims due to a lack of resources for researching, uncovering, and prosecuting domestic trafficking cases. The new law will assist victims in the State by allowing Federal resources to be used to prosecute local offenders.

*Independent contractor.* The State now excludes an employee, independent contractor, or other agent of a telecommunications carrier, communications cooperative, or mobile radio service from its definition of "electronic and information technology worker."

*Minimum wage.* The minimum-wage law in the State was amended to prohibit a camp counselor under the age of 18 and employed at a day camp from being subject to the adult minimum wage if the camp counselor is paid a stipend on a one-time or periodic basis and, for a camp counselor who is a minor, if the mi-

nor's parent, guardian, or other custodian has consented in writing to the terms of payment before the employment begins. In the past, the State stipulated that a camp counselor who resided on the premises of a seasonal camp was subject to the adult minimum wage if the camp counselor worked more than 40 hours per week and received a total weekly salary of no less than the adult minimum wage for a 40-hour workweek. Under the law, counselors who worked less than 40 hours per week were paid the minimum hourly wage for each hour worked.

Because of requirements included in previously enacted legislation, the State minimum wage was increased to \$7.75 on July 1, 2008.

*Time off.* The legislation that amended the State Fire Protection District Act provides that elected or appointed trustees of a fire protection district will be entitled to absent themselves from work on the days and times of meetings of the board of trustees for the period of the meeting and for any time required to travel to and from the meeting. Employers can neither penalize nor discriminate against a trustee as a result of his or her absence. Employers will not be required to compensate the trustee for the time during which the trustee is absent.

## Indiana

*Minimum wage.* Because of requirements included in previously enacted legislation, the State minimum wage was increased to \$6.55 per hour on July 24, 2008.

*Worker privacy.* New legislation expanded the listing of types of public records that are exempt from public disclosure unless access to the records is specifically required by State or Federal statute or is ordered by a court under the rules of discovery. Records requested by an offender (a person confined in a penal institution as the result of having been convicted of a crime) that contain information relating to (1) a correctional officer, (2) the victim of a crime, or (3) a family member of a correctional officer or the victim of a crime, or that concern or could affect the security of a jail or correctional facility, are now normally exempt from disclosure.

## Iowa

*Discharge.* Legislation was enacted that prohibits employment discrimination in the State by an employer against an employee who serves as a witness in a criminal proceeding or as a plaintiff, defendant, or witness in a civil proceeding.

*Minimum wage.* With some exceptions, the

State minimum-wage requirements shall no longer apply to an enterprise whose annual gross volume of sales made or business done, exclusive of excise taxes at the retail level, which are separately stated, is less than \$300,000. The minimum-wage requirements now apply to an enterprise engaged in the business of laundering, cleaning, or repairing clothing or fabrics and also apply to an enterprise engaged in construction or reconstruction. In addition, the requirements apply to an enterprise engaged in the operation of a hospital, a preschool, an elementary or secondary school, and an institution of higher education. Finally, the requirements also apply to a public agency.

*Time off.* An employer shall not discharge an employee, or take or fail to take action regarding an employee's promotion or proposed promotion, or take action to reduce an employee's wages or benefits for actual time worked, due to the service of the employee as a witness in a criminal proceeding or as a plaintiff, defendant, or witness in a civil proceeding.

*Wages paid.* The State law requirement regarding an employer's payment of wages to employees was amended. Henceforth, upon written request by an employee, employers must send any wages due to the employee by mail. The employer shall maintain a copy of the request for as long as it is effective and for 2 years thereafter. If an employer fails to pay an employee's wages on or by the regular payday, the employer is liable for the amount of any overdraft charge if the overdraft is created on the employee's account because of the employer's failure to pay the wages on or by the regular payday.

## Kansas

*Discharge.* Employers are now prohibited from terminating any employee because the employee serves as a volunteer firefighter, volunteer certified emergency medical services attendant, volunteer reserve law enforcement officer, or volunteer part-time law enforcement officer. The protection does not apply to full-time firefighters or law enforcement officers who volunteer as emergency medical services attendants, to firefighters, or to law enforcement officers.

*Equal employment opportunity.* An amendment of the State Age Discrimination in Employment Act increased the age of protection from 18 years to 40 years.

## Kentucky

*Immigrant protections.* The State Commission on Fire Protection Personnel Standards is required to implement a voluntary statewide

certified volunteer firefighter identification program. The program shall issue a color photo nondriver's identification card to all certified volunteer firefighters. Applicants for the card shall provide proof that they are citizens of the United States, permanent residents of the United States, or otherwise lawfully present in the United States. The commission is to promulgate administrative regulations to establish the standards of proof for citizenship or legal status of an applicant.

*Minimum wage.* Because of requirements included in legislation that was previously enacted, the State minimum wage was increased to \$6.55 per hour on July 1, 2008.

## Louisiana

*Child labor.* The State child labor statutes were amended to provide for the employment, under certain conditions, of minors 12 and 13 years of age. Minors under 14 years may be employed if all of the following conditions are met: (1) the minor must be at least 12 years of age, (2) the minor's parent or legal guardian is an owner or partner in the business in which the minor is employed, (3) the minor shall work only under the direct supervision of the parent or legal guardian who owns or is a partner in the business, (4) all of the protections afforded to minors between 14 and 15 years of age shall be afforded to minors 12 and 13 years of age, and (5) the minor obtains an employment certificate pursuant to State law.

*Drug and alcohol testing.* The State amended statutes concerning the provisions for drug testing of certain public employees by certain public employers of parishes and municipalities. The legislation modifies the following definitions, among others: "public vehicle," to include any motor vehicle, watercraft, aircraft, or rail vehicle owned or controlled by the State or by a local governmental subdivision that has adopted an ordinance; and "public employer," to mean the State and any local governmental subdivision that has adopted any ordinance, provided that the subdivision is a public employer for that purpose.

Legislation was enacted that amended the provisions for drug testing at refining or chemical-manufacturing facilities to allow certain people involved in construction, maintenance, or manufacturing to reduce or modify the initial cutoff level of 50 nanograms per millimeter for marijuana testing. This amendment will not apply to any person, firm, or corporation engaged or employed in the exploration, drilling, or production of oil or gas in the State or its territorial waters.

*Equal employment opportunity.* The State's Revised Statutes were amended to add a sec-

tion that allows no interruption in the prescriptive time requirement because the plaintiff failed to give the appropriate amount of time pursuant to an upcoming discrimination case. Currently, Section C of the Statute specifies that a plaintiff who believes that he or she has been discriminated against and who intends to pursue court action must give the person who has allegedly discriminated written notice of this fact at least 30 days before initiating court action. The notice should detail the alleged discrimination, and both parties shall make a good-faith effort to resolve the dispute prior to initiating court action. The new Section D stipulates that the prescriptive period for the case shall be 1 year, but can be suspended during the pendency of any administrative review or investigation of the claim conducted by the Federal Equal Employment Opportunity Commission or the State Commission on Human Rights. However, no suspension of the 1-year prescriptive period shall last longer than 6 months, and the prescriptive period shall not be interrupted for failure to give the appropriate written notice even if there are other investigations pending.

*Overtime.* The Governor of the State implemented an Executive order that suspends Federal regulations pertaining to hours of service for drivers of utility service vehicles operated by utilities that are engaged solely in intrastate commerce and are regulated by the Louisiana Public Service Commission or the city of New Orleans. This order is active under the rules of State Proclamation No. 51 BJ 2008, which declares Louisiana to be in a state of emergency as a result of forecasted hurricane activity that threatens the lives and property of the citizens of the State. The order will remain effective until amended, modified, terminated, or rescinded by the Governor or until terminated by the operation of the law.

*Whistleblower.* The whistleblower protections provided for public employees in the State were amended. Any public employee who reports, to a person or entity of competent authority or jurisdiction, information that the employee reasonably believes indicates a violation of any law, of any order, rule, or regulation issued in accordance with law, or of any other alleged acts of impropriety related to the scope or duties of public employment or public office within any branch or other political subdivision of State government shall be free from discipline, reprisal, or threats of discipline or reprisal by the public employer for reporting such acts of alleged impropriety. No supervisor, agency head, or any other employee with authority to hire, fire, or discipline employees, and no elected official, shall subject to reprisal or threaten to subject to reprisal any public employee because of the employee's efforts to disclose such acts of al-

leged impropriety. If any public employee is suspended, demoted, dismissed, or threatened with suspension, demotion, or dismissal, as an act of reprisal for reporting an alleged act of impropriety in violation of State statute, the employee shall report such action to the State Board of Ethics.

*Worker privacy.* Trust companies were added to the list of financial institutions, such as banks, savings and loan associations, or credit unions, that may provide, to any other such financial institution, a written employment reference that may include information reported to Federal banking regulators. Where written employment references contain such information, and where a copy of the written employment reference is sent to the last known address of the employee in question, a bank, savings and loan association, trust company, or credit union shall not be liable for providing such an employment reference unless the information provided is false and the financial institution providing the information does so with knowledge and malice.

## Maine

*Family issues.* The State definition of “family medical leave” under State requirements for such leave was amended. “Family medical leave” is now defined as leave requested by an employee for (1) a serious health condition of the employee, (2) the birth of the employee’s child, (3) the placement of a child 16 years or younger with the employee in connection with the employee’s adoption of the child, or (4) a serious health condition of a child, a domestic partner’s child, a parent’s domestic partner, or a sibling or spouse. The definition of “sibling” was also clarified to mean “an employee’s sibling who is jointly responsible with the employee for each other’s common welfare as evidenced by joint living arrangements and joint financial arrangements.”

*Human trafficking.* The State Revised Statutes regarding human trafficking were amended. A “human trafficking offense” is now defined as kidnapping or criminal restraint when the crime involves either (1) restraining a person by destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of the other person or (2) using any scheme, plan, or pattern intended to cause a person to believe that if he or she does not perform certain labor or services, including prostitution, then the person will suffer serious harm or restraint. In addition, the amended statutes now allow a trafficked person to bring a civil action for damages, compensatory damages, punitive damages, injunctive relief, any

combination of those conditions, or any other appropriate relief. A prevailing plaintiff also is entitled to an award of attorneys’ fees and costs. Actions brought pursuant to this section of the State statute must be commenced within 10 years of the date on which the trafficked person was freed from the trafficking situation. The statute of limitations is tolled for an incompetent or minor plaintiff even if a guardian *ad litem* has been appointed. A defendant is estopped from asserting a defense of the statute of limitations if the trafficked person did not file before the expiration of the statute of limitations due to (1) conduct by the defendant inducing the plaintiff to delay the filing of the action or preventing the plaintiff from filing the action or (2) threats made by the defendant that caused duress to the plaintiff.

*Minimum wage.* Effective October 1, 2008, the State minimum hourly wage was increased to \$7.25 per hour. An additional increase, to \$7.50 per hour, is scheduled for October 1, 2009. On September 30, 2009, and on September 30 of each year thereafter, the State Department of Labor shall calculate an adjusted minimum-wage rate to maintain employee purchasing power. The adjusted minimum-wage rate must be calculated to the nearest cent on the basis of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) or a successor index, as calculated by the U.S. Department of Labor, for the 12 months prior to each September 1. Each adjusted minimum-wage rate so calculated takes effect January 1 of the next year. An employer may consider tips as part of the wages of a service employee, but such a tip credit may not exceed \$3.00 per hour. An employer is liable to an employee for any amount of unpaid minimum wages. When a judgment is rendered in favor of any employee in any action brought to recover unpaid wages, such judgment must include among such wages an amount equal to the combined cost of liquidated damages, the cost of the suit (including reasonable attorneys’ fees), and a civil penalty of not less than \$1,000 or more than \$10,000, 90 percent of which civil penalty must be paid to the State. On October 1 of each year, beginning October 1, 2008, the minimum and maximum civil penalties must be adjusted by the State Department of Labor to reflect changes in the CPI-W or a successor index, as calculated by the U.S. Department of Labor.

*Worker privacy.* State Public Law 2005, c.381, Section 3, was amended to further protect the personal contact information records of public employees. Personal contact information is considered confidential, and the term means “home address, home telephone number, home facsimile number, e-mail address, cellular telephone, and pager number.” Elected officials

are not considered public employees under the amendment. Notwithstanding any other provision of law, complaints and investigative files that relate to court and judicial security are confidential; however, they can be disseminated to another criminal justice agency. Applications, resumes, and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to an applicant who has been hired are public records after the applicant is hired, except for the personal contact information. Upon the request of the employing agency, the State director of the Bureau of Human Resources shall make the determination as to whether the release of certain personal information not otherwise protected by law is permissible. The records and proceedings of the State agency-operated technology centers are public, except for (a) any record obtained or developed by a technology center prior to the receipt of a written application or proposal in a form acceptable to the center for assistance from the center; (b) any record pertaining to an application or proposal that has been received, unless that record is confidential under another provision of the law; (c) a peer review, analysis, or other document related to the evaluation of a grant application or proposal; and (d) a record that the individual or center requests to be designated confidential and that the center determines contains proprietary information which, if released, would be considered competitively harmful and could impair the center’s ability to get other proposals or similar necessary information in the future. Data submitted and deemed confidential by the Administrator of the U.S. Environmental Protection Agency may not be available for public inspection. A person who intentionally or knowingly discloses confidential information in violation of this section commits a Class E crime.

## Maryland

*Department of labor.* The enforcement authority of the State commissioner of labor and industry has been expanded. The commissioner may now initiate an investigation of a complaint that an employment agency has failed to submit a penal bond as required by statute. If, after investigation, the commissioner finds that the employment agency has failed to submit the required penal bond, the commissioner shall give written notice that requires the agency to complete certain actions within 15 days of receipt of the notice. The employment agency must (1) submit the bond or (2) show written cause why the agency is not required to comply with the statute. If the employment agency complies with the requirement to submit a bond or otherwise submits a timely response, the commissioner may (1) terminate proceedings against the

agency or (2) schedule a hearing and, by certified mail, give the agency written notice of the date, place, and time of the hearing. If the agency fails to comply with a lawful order of the commissioner or fails to submit a timely response, the commissioner may impose a civil money penalty of not less than \$500 and not more than \$1,000 for each failure to comply with the order or failure to submit a timely report. If, after a hearing, the commissioner finds that the employment agency has violated the provisions of the statute, the commissioner may impose a civil penalty of not less than \$500 and not more than \$1,000 for each violation.

*Equal employment opportunity.* Section 11-B of the State Human Relations Commission section of the State Annotated Code was amended to cover civil actions resulting from alleged discriminatory acts and the constraints for processing such actions. Within 180 days of the timely filing of a complaint or administrative charge alleging a discriminatory act, the complainant may bring a civil action against the respondent. If the civil action is filed no more than 2 years after the occurrence of the alleged act of discrimination, the filing shall serve to automatically terminate any proceeding before the commission that is based on the underlying administrative complaint and any amendments thereto. If a payment of compensatory damages is awarded to the complainant for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, the amount of damages awarded may not exceed (1) \$50,000 if the respondent employs not fewer than 15 and not more than 100 employees, (2) \$100,000 if the respondent employs not fewer than 101 and not more than 200 employees, (3) \$200,000 if the respondent employs not fewer than 201 and not more than 500 employees, and (4) \$300,000 if the respondent employs not fewer than 501 employees, in each of 20 or more calendar weeks in the current or preceding calendar year. The court may not inform the jury of the limitations imposed on compensatory and punitive damages, and if backpay is awarded, interim earnings or amounts earnable with reasonable diligence by the person(s) discriminated against shall operate to reduce the backpay otherwise allowable. If the State has sufficient money available at the time an award is made, the State shall pay the award as soon as practicable within 20 days after the award is final. If insufficient monies exist at the time of the award, the affected State unit shall report this fact to the State comptroller, who shall keep an accounting of all outstanding awards and report that accounting annually to the Governor, who shall include in the State budget sufficient funds to pay all awards made against the State under this section of the State code.

*Minimum wage.* Because of requirements included in legislation that was previously enacted, the State minimum wage was increased to \$6.55 per hour on July 24, 2008.

*Miscellaneous.* The State enacted legislation to establish paid-work-based learning programs in which arrangements are made between schools and employers to provide students certain structured employer-supervised learning. The legislation allows a credit against the State income tax and the tax on insurance premiums for wages paid to each student under an approved paid-work-based learning program. Students must work 200 or more hours before an employer is eligible to claim a tax credit, which cannot exceed \$1,500 per student. Further, the legislation defines a "student" as "a person at least 16 years old, but younger than 23, or who reaches the age of 23 while participating in an approved paid-work-based learning program, and who is enrolled in a public or private secondary or postsecondary school in the State."

*Time off.* The definitions pertinent to the State's Flexible Leave Act were expanded to provide clarification to employers and employees by defining the nature of the leave to be used and how it is to be accounted for, and, in accordance with any terms of a collective-bargaining agreement or employment policy, to prohibit an employer from taking certain actions against an employee for filing a complaint, testifying against or assisting in a certain action, and failing to comply with other provisions related to the State Flexible Leave Act. The relevant new definitions are as follows: (a) an *employer* is a person who employs 15 or more individuals and is engaged in a business, industry, profession, trade, or other enterprise in the State; (b) a person's *immediate family* includes a child, spouse, and parent; and (c) *leave with pay* includes sick leave, vacation time, and compensatory time and is time away from work for which an employee receives compensation. These amendments refer to employers who provide leave with pay under a collective-bargaining agreement or employment policy. An employee may use leave with pay for the illness of the employee's immediate family. An employee may only use leave with pay that has been earned and may designate the type and amount of leave with pay to be used. If the terms of a collective-bargaining agreement or employment policy provide a leave-with-pay benefit that is equal to or greater than the benefit provided by this act, the collective-bargaining agreement or employment policy prevails. An employer may not discharge, demote, suspend, discipline, otherwise discriminate against, or threaten to take any actions against an employee who files a complaint against, testifies against, or assists in an action brought against the employer for

a violation of this act. These specifications regarding leave with pay do not affect leave granted under the Federal Family and Medical Leave Act of 1993 and went into effect on October 1, 2008.

*Worker privacy.* The authorization for data collection and reporting requirements by the State commissioner of labor and industry concerning labor and employment pay disparity data has been amended. The commissioner may now collect and analyze data concerning the racial classification of employees and the gender of employees so that the data may be used to study pay disparity issues. The commissioner shall report to the State general assembly on or before October 1, 2013, regarding the analysis of the data collected and analyzed. The requirement took effect on October 1, 2008, and shall remain effective for a period of 5 years and 3 months. At the end of December 31, 2013, with no further action required by the general assembly, the requirement shall cease.

## Michigan

*Independent contractor.* Employers in the State and elsewhere too often misclassify individuals they hire as independent contractors, even when those individuals should legally be classified as employees. In doing so, the employer may be violating a number of legal obligations under State and Federal labor, employment, and tax laws. A State Executive order created the State Interagency Task Force on Employee Misclassification as an advisory body within the State Department of Labor and Economic Growth. The task force shall examine and evaluate existing employee misclassification enforcement mechanisms in the State and other jurisdictions and shall make recommendations for more effective enforcement mechanisms. The task force also shall (1) create a system for sharing information, (2) establish a protocol through which individual task force member agencies may refer relevant matters to other member agencies for assessment of potential liability under other relevant authority, (3) identify barriers to information sharing, (4) facilitate the pooling, focusing, and targeting of investigative resources, (5) develop strategies for systematically investigating employee misclassification, (6) establish joint investigatory strategies and enforcement teams where applicable, and (7) provide assistance to workers who have been exploited by employee misclassification. In addition, the task force shall work at increasing public awareness of employee misclassification and shall establish procedures for soliciting referrals or information from the public, including through a telephone hot line. Finally, the task force shall issue a report to the Governor on July 1 of each year, detailing its accomplish-

ments, identifying any administrative or legal barriers that might impede its effective operation, and recommending executive or legislative measures to improve enforcement of employee misclassification.

*Minimum wage.* Because of requirements included in previously enacted legislation, the State minimum wage was increased to \$7.40 per hour on July 1, 2008.

## Minnesota

*Immigrant protection.* The State Governor ordered that measures be implemented to ensure that all newly hired executive branch employees are legally eligible to work. As a result, the State commissioner of administration will implement procedures to ensure that State contracts in excess of \$50,000 are awarded to vendors that are in compliance with Federal employment verification laws. Those procedures will include (1) developing language for State contracts which certifies that the vendor and any of its subcontractors are complying with the Immigration Reform and Control Act of 1986 in relation to employees performing work in the United States and that the vendor and its subcontractors are not knowingly employing persons in violation of U.S. immigration laws; (2) requiring that, as of the date on which services on behalf of the State will be performed, vendors and any of their subcontractors will have implemented or will be in the process of implementing the e-verify program for all newly hired employees who will perform work on behalf of the State; and (3) developing language for State contracts that allows the State to terminate the contract or debar the vendor (or both) if the commissioner determines that the vendor or the subcontractor within control of the vendor has knowingly employed ineligible workers in violation of the Federal immigration laws. To the extent consistent with State law, the State commissioner of employment and economic development will establish procedures for recipients of business subsidies to certify their compliance with the Immigration Reform and Control Act in relation to employees performing work in the United States.

Illegal immigration and criminal activity related to illegal immigration are serious problems for the State. Local, State, and Federal authorities need to work on a cooperative basis to combat criminal activity. The Immigration and Customs Enforcement (ICE) of the Federal Department of Homeland Security has developed programs to allow State and local law enforcement officials to work cooperatively with Federal officials. The State Governor directed the State commissioners of public safety, corrections, and commerce to take appropriate actions and

enter into the necessary agreements to work cooperatively as part of the Agreement of Cooperation in Communities to Enhance Safety and Security program. This agreement will allow immigration cross-designation (pursuant to section 287(g)) of the Federal Immigration and Nationality Act, as well as allow a select number of State law enforcement officers working with ICE to assist ICE in enforcing Federal customs laws as part of the ICE task force operations relating to narcotics smuggling; money laundering; human smuggling and trafficking; perpetrating fraud; and targeting, dismantling, and seizing illicit proceeds from criminal organizations that exploit the immigration process through identity theft and fraud.

*Worker privacy.* The State Statutes 2007 Supplement, Section 325E.59, was amended by the inclusion of a clarification of the activities that may not be performed by a person or entity, not including a government entity. The selling of Social Security numbers obtained from individuals in the course of business is now prohibited. However, if the release of such numbers is incidental to a larger transaction and is necessary to identify the individual in order to accomplish a legitimate business purpose, or if the release is for the purpose of marketing, then the release does not constitute selling. Social Security numbers may be included in applications and forms sent by mail, including documents sent as part of an application or enrollment process; documents that seek to establish, amend, or terminate an account, a contract, or a policy; and documents that seek to confirm the accuracy of the Social Security number. The number may not be included on the outside of a mailing or in the bulk mailing of a credit card solicitation offer. Access must be restricted so that only an agency's employees, agents, or contractors who require access to records containing the number in order to perform their job duties are able to obtain the information.

## Mississippi

*Immigrant protection.* The legislature declared that it is a compelling public interest of the State to discourage illegal immigration by requiring all agencies within the State to cooperate fully with Federal immigration authorities in the enforcement of Federal immigration laws. Thus, the State Employment Protection Act was enacted. The act requires employers in the State to hire only legal citizens or legal aliens of the United States. Every employer shall register with and utilize the e-verify system to verify the Federal employment authorization status of all newly hired employees. It shall be a discriminatory practice for an employer to discharge an employee working in the State who is a citizen or permanent resident alien of the United

States while retaining an employee who the employing entity knows, or reasonably should have known, is an unauthorized alien hired after July 1, 2008, and who is working in a job category that requires equal skill, effort, and responsibility, and that is performed under similar working conditions, as the job category held by the discharged employee. An employing entity that, on the date of the discharge in question, was enrolled in and used the e-verify system to verify the employment eligibility of its employees in the State after July 1, 2008, shall be exempt from liability, investigation, or suit arising from any action under the act. Employers who violate the provisions of the act shall be subject to the cancellation of any State or public contract, resulting in ineligibility, for up to 3 years, for any State or public contract; the loss, for up to 1 year, of any license, permit, certificate, or other document granted to the employer by any agency department or government entity for the right to do business in the State; or both.

*Inmate labor.* The State Code of 1972 concerning the employment of county-housed State inmates or of county prisoners was amended. It is now lawful for the State, a county within the State, or a municipality of the State to provide prisoners for public-service work for churches according to criteria approved by the State Department of Corrections.

## Missouri

*Independent contractor.* Legislation was enacted that authorized the State attorney general (1) to investigate any alleged or suspected violations of an employer's knowingly misclassifying a worker and the employer's failure to claim that worker and (2) to seek an injunction prohibiting the employer from engaging in such conduct. The State shall have the burden of proving that the employer misclassified the worker. If it is found that an employer knowingly misclassified a worker, the court may enter a judgment in favor of the State and award penalties in the amount of \$50 per day per misclassified worker, up to a maximum of \$50,000. In awarding State contracts in excess of \$5,000, businesses must reaffirm their enrollment in a Federal work authorization program, with employers working in connection with the services contracted. Employers must be able to verify the employment eligibility of every employee in the employer's hire whose employment commences after the employer enrolls in the work authorization program. General contractors and subcontractors will not be held liable. The legislation also deems it unlawful for the purposes of trafficking to knowingly transport, move, or attempt to transport, within the State, any alien who is not lawfully present in the United States.

*Minimum wage.* As a result of legislation enacted in a previous year in which the State minimum wage was indexed to inflation, the State minimum wage was increased to \$7.05 per hour on January 1, 2009.

*Worker privacy.* In new legislation, the State mandates that employers are not allowed to require any employee to have a personal identification microchip implanted into his or her person for any reason. Employers who violate this mandate will be found guilty of a class A misdemeanor. The legislation also prohibits an employer from terminating an employee who has been activated to a national disaster by the Federal Emergency Management Agency and, as a result, has been absent from or late to work. Employees should make a reasonable effort to notify their employers that they may be absent from or late to work due to an emergency.

## Montana

*Minimum wage.* The State minimum wage was increased to \$6.55 per hour on July 24, 2008, thus matching the Federal minimum wage. As a result of legislation that was enacted in a previous year in which the State minimum wage was indexed to inflation, the State minimum wage was increased again, to \$6.90 per hour, on January 1, 2009.

## Nebraska

*Minimum wage.* Because of requirements included in legislation previously enacted, the State minimum wage was increased to \$6.55 per hour on July 24, 2008.

*Time off.* The State legislature also adopted the Volunteer Emergency Responders Job Protection Act. Under the act, employees acting as volunteer emergency responders shall make a reasonable effort to notify their employers that they may be absent from or report late to their place of employment in order to respond to an emergency. No employer shall terminate or take any other disciplinary action against any employee who is a volunteer emergency responder if such employee is absent from or reports late to his or her place of employment in order to respond to an emergency prior to the time the employee is to report to the place of employment. However, an employer may subtract from an employee's earned wages an amount of pay the employee would have earned during the time the employee was away from the place of employment acting as a volunteer responding to an emergency. At an employer's request, an employee acting as a volunteer emergency responder who is absent from or reports late to the place of employment in or-

der to respond to an emergency shall provide the employer, within 7 days of such request, a written statement, signed by the individual in charge of the volunteer department or some other authorized person, that includes appropriate information about the date and time of the emergency in which the employee participated as a volunteer. An employee who is wrongfully terminated or against whom any disciplinary action is taken in violation of the act shall be immediately reinstated to his or her former position without any reduction in wages, seniority, or other benefits and shall receive any lost wages or other benefits, if applicable, during any period for which such termination or other disciplinary action was in effect. An action to enforce the act may be brought by the employee.

## New Hampshire

*Child labor.* Legislation was enacted to clarify the conditions and requirements for persons who are 16 and 17 years of age to train and be employed as firefighters. The legislation places limits on youth training and employment, including the following: (1) no youth under the age of 16 shall be employed or permitted to work in firefighting, except when the youth is enrolled in an explorer program approved by the State Department of Labor; (2) when any youth is employed or permitted to work in support of firefighting, fire organizations must follow Federal orders regulating youth employment in hazardous occupations at all times and in all places; (3) the supervisory person responsible for following the youth requirements must be the chief authority of the fire organization or his or her designee; (4) youths will not be employed at any task or duty in support of firefighting if they have not completed the required training; and (5) the rules adopted by the commissioner of labor must be followed by fire organizations when employing or permitting 16- or 17-year-old youths to work in support of firefighting. In addition, the legislation sets minimum training requirements for youths working in support of firefighting and requires an identification card to be issued upon completion of training.

*Minimum wage.* Because of requirements included in legislation that was previously enacted, the State minimum wage was increased to \$7.25 per hour on September 1, 2008.

*Overtime.* The State clarified the regular rate of compensation for an employee. The rate is one-fortieth of the weekly remuneration of delivery drivers or sales merchandisers covered under the provisions of the Fair Labor Standards Act. Exceptions will be made for those employees who are exempt under provisions of the Act.

## New Jersey

*Equal employment opportunity.* Legislation was enacted that made it unlawful to discriminate against employees because of their religious practices. Employers may not impose upon a person, as a condition of obtaining or retaining employment, including opportunities for promotion, advancement, or transfers, any terms or conditions that would require the person to violate or forego a sincerely held religious practice or observance, including, but not limited to, the observance of any particular day or days or any portion thereof as a Sabbath or other holy day in accordance with the requirements of the religion or the religious belief. This condition is applicable unless the employer is able to demonstrate that it is unable to reasonably accommodate the employee's religious observance or practice without undue hardship on the conduct of the employer's business. The enacted legislation does not affect the ability of the employer to require employees to adhere to reasonable workplace appearance, grooming, and dress standards not precluded by other provisions of State or Federal law, except that the employer shall allow an employee to appear, groom, and dress consistently with the employee's gender identity or expression.

*Family issues.* The State's temporary disability insurance provisions were extended to provide temporary disability leave benefits for workers caring for sick family members or for newborn or newly adopted children. Qualified workers will be entitled to receive 6 weeks of temporary disability leave benefits when providing care certified to be necessary for a family member suffering a serious health condition as defined by State statute. Employees are required to give at least 30 days' prior notice, except when unforeseeable circumstances prevent such notice. When possible, employees also should schedule the leave in a manner that minimizes any disruption in employer operations and should give 15 days' prior notice for leave that is intermittent. Employees are required to take benefits provided under the bill concurrently with any unpaid leave taken under the State Family Leave Act (P.L. 1989) or the Family and Medical Leave Act of 1993 (Pub.L.103-3). The legislation provides that the collection of an assessment on employees to pay for family temporary disability leave benefits commence on January 1, 2009, and that the payment of family leave benefits commence on July 1, 2009. During 2009, the bill will raise revenues necessary to pay the benefits through an assessment of 0.09 percent of the portion of each worker's wages subject to temporary disability leave taxes. In 2010 and subsequent years, the rate will be 0.12 percent. The funds raised thereby would be deposited into an account to be used only for family leave benefits and their administration, including the cost

of an outreach program to eligible employees and the cost of issuing annual reports on the use of the benefits. In addition, the legislation increases the penalties for misrepresentations, fraud, and other violations regarding the family temporary disability benefit program established by the bill. Penalties for knowingly making a false statement or knowingly failing to disclose a material fact in order to improperly obtain benefits or avoid paying benefits or taxes are increased from \$20 to \$250 per statement or nondisclosure. Penalties for other willful violations of the law are increased from \$50 to \$500, and additional penalties for violations with intent to defraud the program are increased from no less than \$250 to no more than \$1,000.

*Miscellaneous.* The State Senate memorialized the Congress of the United States to enact legislation requiring the annual publication of a list of companies outsourcing jobs to other countries. Such a requirement would raise public awareness and allow State and local governments to prepare initiatives targeted toward keeping companies from outsourcing critical U.S. jobs.

*Plant closing.* The State Revised Statutes concerning prenotification of certain plant closings, transfers, and mass layoffs were amended. The amendment affects employers who employ 100 or more full-time employees for not less than 60 days or for the period required pursuant to the Federal Worker Adjustment and Retraining Act or pursuant to any amendment thereto, whichever is longer. Before the first termination of employment occurs in connection with a termination or transfer of plant operations or a mass layoff, such employers must provide notification of the termination or transfer of operations or the mass layoff to the State commissioner of labor and workforce development, the chief elected official of the municipality in which the establishment is located, each employee whose employment is to be terminated, and any collective-bargaining units of employees in the establishment.

*Prevailing wage.* The State Economic Development Authority shall adopt rules and regulations requiring that workers employed in the performance of construction contracts, including contracts for millwork fabrication under the authority of financial assistance by the State, be paid at a rate not less than the prevailing-wage rate. This requirement also shall apply to the performance of any contract to construct, renovate, or otherwise prepare a facility for operations necessary for the receipt of authorized State financial assistance, unless the work is performed on a facility owned by a landlord of the entity receiving the assistance

and less than 55 percent of the facility is leased by the entity at the time of the contract and under any agreement to subsequently lease the facility. The prevailing wage rate shall be the rate determined by the State commissioner of labor and workforce development. The prevailing wage shall not be paid for construction commencing more than 2 years after an entity has executed a commitment letter regarding authorized financial assistance with the State and the first payment or other provision of the assistance is received.

When a public utility in the State is undergoing construction of some kind, the classification "construction" will refer to construction, reconstruction, installation, demolition, restoration, or alteration of facilities of the public utility. This classification shall not include operational work such as flagging, plowing snow, managing vegetation in and around utility rights-of-way, marking out boundaries or roads, performing janitorial services, landscaping, surveying leaks, performing meter work, and making miscellaneous repairs. Any construction contractor contracting with a public utility to engage in construction work on that utility shall employ, on the site, only employees who have successfully completed safety training certified by the Occupational Safety and Health Administration and required for work to be performed on that site. Any employee employed by a construction contractor to work on a public utility shall be paid the wage rate for that employee's craft or trade, as determined by the State commissioner of labor and workforce development pursuant to the provisions of the State Prevailing Wage Act. A construction contractor who is regulated under the provisions of Title 48 of the State Revised Statutes and is found by the commissioner to be in violation of this statute shall be subject to the provisions that apply to an employer for violation of the public law.

*Time off.* At present, a leave of absence with pay is given to every police officer or firefighter who is a duly authorized representative of certain specified organizations to attend any State or national convention of the organization. The leave of absence is for the duration of the convention, with a reasonable time allowed for travel to and from the affair. New legislation now includes the following organizations as well: the State Patrolmen's Benevolent Association, Inc.; Fraternal Order of Police; Firemen's Mutual Benevolent Association; Fire Fighters Association of New Jersey; and State Association of Chiefs of Police. Also included are any corrections officer who is a member of the Italian American Police Society, any affiliate of the International Association of Black Professional Firefighters, and the National Association of Hispanic Firefighters. Upon request, a certificate of at-

tendance shall be submitted by the representative who is attending the convention.

At no time shall a person holding any office, position, or employment other than for a fixed term or period under the government of the State, under the government of any county, municipality, school district, or other political subdivision of the State, or under any board, body, agency, or commission of the State or any county, municipality, or school district thereof be laid off from employment if such person has been on a military leave of absence for active service in the Armed Forces of the United States in time of war or emergency. If the employer's circumstances have so changed for reasons of economy or efficiency or for some other, related reason as to make it impossible or unreasonable for such person who entered service in time of war or other emergency to resume the office, position, or employment held prior to entry into such service, the employer shall restore the person to a position of like seniority, status, and pay, or, if requested by the person, to any position available for which the person is able and qualified to perform the duties. Such person shall not be entitled to layoff protection if the person voluntarily continues military service beyond the time that he or she is eligible to be released from the service.

*Wages paid.* When a contract between a principal and a sales representative to solicit orders is terminated, the commissions and other compensation earned as a result of the representative relationship, but remaining unpaid, shall become due and payable within 30 days of the date the contract is terminated or within 30 days of the date commissions are due, whichever is later. A sales representative shall receive commissions on goods ordered up to and including the last day of the contract, even if such goods are accepted by the principal, delivered, and paid for after the end of the agreement. The commissions shall become due and payable within 30 days after payment would have been due under the contract if the contract had not been terminated. A principal who violates or fails to comply with the provisions of this act shall be liable to the sales representative for all amounts due, for exemplary damages in an amount 3 times the amount of commissions owed to the sales representative, for all attorneys' fees actually and reasonably incurred by the sales representative in any action pursued, and for all court costs. In case of any court action, should the court determine that the action against the principal is frivolous, the sales representative shall be liable to the principal for all attorneys' fees and assorted costs incurred.

*Workplace security.* Under an amendment to the State Public Law, no employee of a public utility who is in possession of any identification badge, as provided for by the State Public

Law, shall loan, allow, or permit any other person to use or display such identification badge; in case of the loss of any such badge, the employee shall notify the public utility forthwith of such loss and the circumstances surrounding the same. Any employee who shall display or use the identification badge of a public-utility employee for the purpose of deceiving any person as to his or her identity shall be guilty of a crime of the fourth degree, punishable by imprisonment for up to 18 months, a fine of \$10,000, or both. Persons who knowingly sell, offer or expose for sale, or otherwise transfer, or who possess with the intent to sell, offer or expose for sale, or otherwise transfer, a document, printed form, or other writing that falsely purports to be a public-utility employee identification badge required under provisions of the State Public Law and that could be used as a means of verifying a person's identity as a public-utility employee is guilty of a crime in the second degree.

The State Waterfront Commission Act was amended in order to clarify the grounds for denial of license applications and revocation of licenses, as well as to provide for the postponement of certain hearings. The commission has the authority to deny an application for a license or registration for a variety of reasons, including association with a person who has been identified by a Federal, State, or local law enforcement agency as a member or an associate of an organized crime group, a terrorist group, or a career offender cartel. The amended act defines a terrorist group as either (1) a group associated or affiliated with, or funded in whole or in part by, an organization designated as a terrorist organization by the U.S. Secretary of State in accordance with Section 219 of the Immigration and Nationality Act, as amended from time to time, or (2) any other organization that assists, funds, or engages in crimes or acts of terrorism as defined in the laws of the United States, of the State of New Jersey, or of the State of New York. A person whose permit, license, or registration has been temporarily suspended may, at any time, demand that the commission conduct a hearing as provided for in the act. Upon failure of the commission to commence a hearing or render a determination within the time limits prescribed by the act, the temporary suspension of the permittee, licensee, or registrant shall immediately terminate. Notwithstanding other provisions of the act, if a Federal, State, or local law enforcement agency or prosecutor's office shall request the suspension or deferment of any hearing on the ground that such a hearing would obstruct or prejudice an investigation or prosecution, the commission may, in its discretion, postpone or defer such hearing for a certain length of time or indefinitely. Any action by the commission to postpone a

hearing shall be subject to immediate judicial review as provided within the contents of this act.

### **New Mexico**

*Inmate labor.* Research has shown that obtaining gainful employment for a person released from prison is a key factor in rehabilitation, reducing recidivism, and ensuring the safety and security of the State's citizens. Further, these individuals encounter many barriers when they seek employment or a lawful trade, occupation, or profession. The legislators of the State House of Representatives resolved that each State agency cooperate with the State Department of Workforce Solutions and the task force formed in 2007 to serve as a catalyst for helping to remove barriers to employment and to comply with all the provisions of the State Criminal Offender Employment Act.

*Minimum wage.* An amendment to the State Minimum Wage Act changed the definitions of "employer" and "employee" to exclude State and political subdivisions from all parts of the act except that section which sets the minimum wage. The amendment applies only to the provisions for governing how overtime is calculated and does not exclude State and local governments from having to pay the minimum wage, which rose to \$7.50 per hour on January 1, 2009.

### **New York**

*Agriculture.* The State private housing finance law was amended to offer assistance for the improvement of existing housing for farmworkers by providing advances to local loan administrators to make loans to agricultural producers in order to construct or improve nonconforming farmworker housing. Under the amended section of the law, agricultural producers are defined as those persons who produce food by the tillage of the soil or who raise, shear, feed, or manage animals or other dairying processes.

*Department of labor.* The duties of the State commissioner of labor relating to the promulgation of rules and regulations regarding the employment and education of child performers were amended. The commissioner shall promulgate such rules and regulations as shall be necessary and proper to effectuate the purposes of State statutes, including, but not limited to, the promulgation of regulations determining the hours and conditions of work necessary to safeguard the health, education, morals, and general welfare of child performers.

*Health care overtime.* Regularly scheduled

work hours shall refer to those hours a nurse has agreed to work and is normally scheduled to work pursuant to the budgeted hours allocated to the nurse's position by the employer. If no such allocation system exists, some other measure generally used by the employer to determine when an employee is minimally supposed to work that is consistent with the collective-bargaining agreement shall be used. Oncall time cannot be used as a substitute for mandatory overtime, and no employer shall require a nurse to work more than that nurse's regularly scheduled work hours. A nurse can be called to service in the case of a natural health care disaster that unexpectedly affects the county in which the nurse is employed or any contiguous county and increases the need for health care personnel. A Federal, State or county declaration of emergency may be used to call personnel to extra service, provided that a good-faith effort has been made to have overtime covered on a voluntary basis. An ongoing medical or surgical procedure in which a nurse is actively involved and whose continued presence through the completion of the procedure is needed is a reason to demand that a nurse stay on the job and not risk abandoning the patient. Also, the refusal of a licensed practical nurse or a registered professional nurse to work beyond regularly scheduled hours shall not solely constitute patient abandonment or neglect.

*Plant closing.* As part of the amended State Worker Adjustment and Retraining Notification Act, and as a result of relocation or consolidation of part or all of an employer's business, the employer is required to give notice of any impending mass layoff, relocation, or employment loss. A plant closing is a permanent or temporary shutdown of a single site of employment or of one or more facilities or operating units within a single site of employment. The employer is required to give at least a 90-day notification to the affected employees and their representatives. Such notice is not required if the employment loss is necessitated by a physical calamity or an act of terrorism or war. The mailing of a notice to an employee's last known address by either first-class or certified mail or the inclusion of a notice in an employee's paycheck shall be considered an acceptable method for fulfilling the employer's obligation to give appropriate notice to affected employees.

*Prevailing wage.* Legislation was enacted that amended the labor law and general municipal law of the State relating to guaranteeing payment of prevailing wages to the workers of the State. Any person contracting with the State, with a public-benefit corporation, with a municipal corporation, or with a commission appointed pursuant to law and who shall require more than 8 hours' work for a day's labor,

unless otherwise permitted by law, is guilty of a misdemeanor and, upon conviction thereof, shall be punished in accordance with the penal law for each offense. Notwithstanding the foregoing, the department of jurisdiction may release, to third parties who were not themselves involved in the violations, monies due and owing on the contract or subcontract that have not been withheld for the sole purpose of satisfying the contractor's or subcontractor's obligations under the contract or subcontract. Every contract for a public-works project shall contain a term stating that the filing of payrolls in a manner consistent with State law is a condition precedent to payment of any sums due and owing to any person for work done on the project. The department of jurisdiction is defined as the department of the State, board, or officer in the State, or the particular law, whose duty it is to prepare or direct the preparation of the plans and specifications for a public-works project. Each department of jurisdiction shall designate, in writing, an individual employed by such department as the person responsible for the receipt, collection, and review for facial validity of payrolls. Finally, any person or corporation that conspires to prevent competitive bidding on a contract for public work or purchase that is advertised for bidding shall be guilty of a misdemeanor under the law.

The State labor law and general municipal law relating to guaranteeing payment of prevailing wages to workers in the State were amended. Any person participating in a public-works project in the capacity of a contractor or subcontractor and who willfully fails to pay or provide the prevailing wage rate for wages or supplements owed shall be guilty of a Class A misdemeanor when such failure results in underpayments that, in the aggregate amount to all workers employed by such person, results in an amount due of less than \$25,000; shall be guilty of a Class E felony when the amount due is greater than \$25,000; shall be guilty of a Class D felony when the amount due is greater than \$100,000; and shall be guilty of a Class C felony when the amount due is greater than \$500,000. Any person convicted of a second such offense within 5 years shall disgorge profits and shall not be entitled to receive any monies due and owing on the contract or subcontract, nor shall any officer, agent, or employee of the department of jurisdiction or its financial officer pay to such person any such monies without the written approval of the department fiscal officer or without a court order by a court of competent jurisdiction. Contractors and subcontractors shall keep original payrolls or transcripts thereof, subscribed and sworn to or affirmed by the aforementioned department fiscal officer as true under the penalties of perjury. If the contractor or subcontractor maintains no regular place of business in the State, and

if the amount of the contract is in excess of \$25,000, such payrolls shall be kept on the site of the work. Any person who willfully fails to file such payroll records with the department of jurisdiction shall be guilty of a Class E felony. In addition, any person who fails to file such payroll records within the time specified by law shall be subject to a civil penalty of up to \$5,000 per day.

Utility companies and their contractors and subcontractors who are required to use or open a street as a condition of issuance of a permit must agree that none but competent workers who are skilled in the work required of them shall be employed for those positions. Further, the prevailing scale of union wages shall be the prevailing wage for the similar titles established by the fiscal officer of the utility and its contractors and subcontractors. The department fiscal officer also has the responsibility of keeping original payroll records or transcripts, subscribed and sworn to or affirmed by him or her as true under the penalty of perjury. The records shall include the names and addresses of each employee, laborer, or mechanic and, for each of them, shall show the hours and days worked, the occupations worked, the hourly wage rates paid, and the supplements paid or provided.

*Time off.* The State labor law relating to employers permitting a leave of absence for blood donation granted to certain employees was amended. The law now requires an employer, at its option, to (1) grant 3 hours' leave of absence in any 12-month period to an employee who seeks to donate blood or (2) allow its employees, without using any accumulated leave time, to donate blood during work hours at least 2 times per year at a convenient time and place set by the employer. Condition (2) includes allowing an employee to participate in a blood drive at the employee's place of employment.

*Worker privacy.* Among the amendments to the State's executive, general-business, public-officers, and penal and criminal procedure law were changes to the labor law to protect the identity of the employee and any personal identifying information. An employer now may not publicly post or display an employee's Social Security number, visibly print a Social Security number in files with unrestricted access, or communicate an employee's personal identifying information to the general public. Personal identifying information shall include one's Social Security number, home address or telephone number, personal electronic mail address, Internet identification name or password, parent's surname prior to marriage, and drivers' license number. The Social Security number shall not be used as an identification number for any occupational licensing. The

commissioner may impose a civil penalty of up to \$500 on any employer for knowingly violating this law.

### North Carolina

*Minimum wage.* Because of requirements included in legislation enacted earlier, the State minimum wage was increased to \$6.55 on July 24, 2008.

*Whistleblower.* The State added agricultural workers to those protected against discrimination and retaliation in the workplace by employers if the employee files a complaint; initiates an inquiry, investigation, inspection, proceeding, or action; or testifies against or provides information to any person.

### North Dakota

*Minimum wage.* Because of requirements included in previously enacted legislation, the State minimum wage was increased to \$6.55 per hour on July 24, 2008.

### Ohio

*Minimum wage.* As a result of legislation that was enacted in a previous year in which the State minimum wage was indexed to inflation, the State minimum wage was increased to \$7.30 per hour on January 1, 2009.

### Oklahoma

*Minimum wage.* Because of requirements included in previously enacted legislation, the State minimum wage was increased to \$6.55 per hour on July 24, 2008.

*Unfair labor practice.* The State legislature created the State Freedom of Conscience Act, which prohibits employers from discriminating against certain persons for refusing to perform specified acts on the basis of certain of their beliefs. Employers shall not discriminate against employees or prospective employees by refusing to reasonably accommodate a religious observance or practice of the employee or prospective employee, unless the employer can demonstrate that the accommodation would pose an undue hardship on the program, enterprise, or business of the employer in certain circumstances. No health care facility, school, or employer shall discriminate against any person with regard to admission; hiring or firing; tenure; terms, conditions, or privileges of employment; student status; or staff status on grounds that the person refuses or states an intention to refuse, whether or not in writing, to participate in an activity specified by statute if the refusal is based on religious or moral precepts.

## Oregon

*Minimum wage.* As a result of legislation that was enacted in a previous year in which the State minimum wage was indexed to inflation, the State minimum wage was increased to \$8.40 per hour on January 1, 2009.

*Wages paid.* The State Revised Statutes were amended to exclude from the definition of the term “employment” those services provided in conjunction with skiing activities or events for a nonprofit employing unit by a person who receives no remuneration other than ski passes for the services provided. The amended statute also redefined the term “employee” to exclude those individuals who receive no wage other than ski passes or other noncash remuneration for performing volunteer ski-patrol activities or ski-area program activities sponsored by a ski-area operator or by a nonprofit corporation or organization. In addition, the redefinition of the term “employee” now excludes any individual who is registered with the National Ski Patrol or a similar nonprofit ski-patrol organization as a nonprofessional ski patroller and who receives no wage other than passes authorizing access to, and use of, a ski area for performing ski-patrol services, including, but not limited to, services related to preserving the safety of, and providing information to, skiers or snowboarders.

*Worker privacy.* The scope of public records exempted from disclosure was expanded to include records of the home address and home telephone number of any public-safety officer listed in the records of the State Department of Public Safety Standards and Training if said officer requests such an exemption.

## Pennsylvania

*Overtime health care.* Individuals who, as a condition of employment, have agreed to be available to return to the place of employment on short notice if the need arises shall do so in the event of an unforeseeable declared national, State, or municipal emergency that is unpredictable or unavoidable and that will substantially affect the provision of or the need for health care services. The employer must make reasonable efforts (1) to seek persons who will volunteer to work extra time from all available qualified staff working at the time of the unforeseeable emergency, (2) to contact all qualified employees who have made themselves available to work extra time, (3) to seek the use of per diem staff, or (4) to seek personnel from a contracted temporary agency. The health care facility shall neither require an employee to work in excess of an agreed-upon predetermined and regularly scheduled daily work shift nor prevent an

employee from voluntarily accepting work in excess of these limitations. An employee who refuses to accept overtime shall not be subjected to discrimination, dismissal, discharge, or any other employment decision adverse to the employee. The State Department of Labor and Industry may levy an administrative fine on a health care facility or employer that violates this regulation, and the fine shall be not less than \$100 or more than \$1,000 for each violation.

## Puerto Rico

*Discharge.* Legislation was enacted to discourage the incidence of employee discharge without just cause and to provide discharged employees with some resources that would enable them to make a reasonable transition to a new workplace. The allowance for compensation and progressive indemnity for discharge without good cause shall be computed on the basis of the highest number of regular working hours of the employee during any period of 30 consecutive calendar days within the year immediately preceding the discharge. Employees who are discharged due to technological changes or reorganization or due to the total or partial ceasing of operations of an enterprise are excluded from the compensation called for by the legislation.

*Equal employment opportunity.* The Commonwealth law concerning equal employment opportunity was amended to ensure that neither employers nor their establishments perform any discriminatory act. If such an act of discrimination should be committed, the entity performing the discrimination will be charged with a misdemeanor and will receive a fine of not more than \$5,000, 90 days' incarceration, or both.

*Wages paid.* Legislation was enacted to permit employers to deduct or withhold part of the salary earned by an employee when the employee authorizes the employer, in writing, to deduct an amount from the wages due as a contribution, gift, or donation to the fund-raising campaigns of the University of Puerto Rico.

## Rhode Island

*Prevailing wage.* All general contractors and subcontractors who perform work on any public-works contract awarded by the State and valued at \$1,000,000 or more shall employ apprentices for the performance of the contract. The number of apprentices shall comply with the apprentice-to-journeyman ratio for each trade approved by the apprenticeship council of the State Department of Labor and Training.

*Time off.* The State General Laws were amended by the legislative addition of the State Military Family Relief Act. Employers in the State who employ between 15 and 50 employees shall provide up to 15 days of unpaid family military leave to an employee during the time Federal or State orders are in effect. Any employer in the State who employs more than 50 employees shall provide up to 30 days of unpaid family military leave during the time Federal or State orders are in effect. The employee shall give at least 14 days of notice of the intended date upon which such leave will commence if the leave consists of 5 or more consecutive workdays. Employees taking less than 5 consecutive days shall give the employer advance notice as is practicable. Whenever possible, the employee shall consult with the employer to schedule the leave so as not to unduly disrupt the operations of the employer. An employee shall not take such leave unless he or she has exhausted all accrued vacation leave, personal leave, compensatory leave, and any other leave that may be granted, with the exception of sick leave and disability leave. Employers shall not interfere with, restrain, or deny an employee's exercise of or attempt to exercise the right to such leave under the law. Employers shall not discharge, fine, suspend, expel, discipline, or discriminate in any manner against any employee who exercises his or her right under the law.

## South Carolina

*Immigrant protection.* The State Code of Laws was amended to enact the State Illegal Immigration Reform Act, requiring that every agency or political subdivision of the State verify the lawful presence of any person 18 years or older who has applied for State or local public benefits or public employment. On or after January 1, 2009, every public employer shall register and participate in the Federal work authorization program to verify the authorization of all new employees. No contract will be let with a public employer unless the contractor and all levels of subcontractors agree to register and participate in the Federal work authorization program. Alternatively, the contractors and subcontractors may utilize another route to verify employees—for example, by executing an affidavit that the person is a U.S. citizen or an authorized alien. Individuals who possess a valid State driver's license or an identification card issued by the State Department of Motor Vehicles, or who are eligible to obtain either one, may be employed. If the individual has a valid driver's license or identification card from another State, the licensing requirements must be deemed to be as strict as South Carolina's. The Web site of the State Department of Motor Vehicles shall publish a list of States whose licensing requirements are at least as strict as those of South Carolina. The employer is compliant

with the act if appropriate documentation is supplied in good faith and the contractor certifies that the employer is compliant, in which case neither of them may be sanctioned or subject to any civil or administrative action for employing an individual not authorized for employment in the United States. A person who knowingly makes or files any false, fictitious, or fraudulent document is guilty of a felony and, upon conviction, must be fined within the discretion of the court, imprisoned for not more than 5 years, or both. A Memorandum of Understanding between the State Law Enforcement Division and the U.S. Department of Justice or Department of Homeland Security will be instituted covering the enforcement, detention, and deportation of unlawful aliens and the training of State and local law enforcement officials.

### South Dakota

*Minimum wage.* Because of requirements included in previously enacted legislation, the State minimum wage was increased to \$6.55 per hour on July 24, 2008.

### Tennessee

*Child labor.* An exception to the restrictions on the employment of minors between the ages of 14 and 16 years has been established. The general employment restrictions on minors would not apply to a minor 14 years or older who is a student enrolled in a course of study and training in a cooperative's career and technical training program, including a work experience and career exploration program, that is approved by the State Department of Education and that complies with Federal law. The student learner must be employed under a written agreement, a copy of which must be retained in the employer's personnel records.

*Drug and alcohol testing.* The State Code Annotated was amended to include considerations concerning drug testing performed on childcare employees. All persons or entities operating a childcare agency shall now establish drug-testing policies for employees, directors, licensees, and operators providing services under contract or for remuneration and who have direct contact with a child in the care of the agency. The policy shall specify how testing should be completed and shall provide for immediate and effective enforcement action in the event of a positive drug test. The policy shall be made available to all persons upon their initial employment, and its provisions must be satisfied prior to the employee's engaging in any transportation services. Drug testing is determinative if there is suspicion of drug usage by agency personnel and if there are events that may give rise to reasonable suspicion that em-

ployees are engaged in the illegal use of drugs. Among such events are a deterioration in job performance or changes in personal traits or characteristics; a reported observation of the individual's behavior in the work environment; changes in personal behavior not attributable to other factors; involvement in or contribution to an accident in which the use of drugs is reasonably suspected, regardless of whether the accident involves actual injury; and an alleged violation of, or conviction for a violation of, criminal drug law statutes involving illegal or prescription drugs. The agency shall maintain drug-testing results for 5 years, and the results shall be made immediately available to the State Department of Human Services. Individuals who are to be tested must pay the appropriate fees necessary to obtain a drug test pursuant to the agency's policies. Drug-testing results obtained under this act are confidential and may be disclosed only for purposes of enforcement. Childcare agencies failing to comply with the regulation may be denied a license or a license renewal, and ultimately the license can be suspended or revoked. The act becomes effective July 1, 2009.

*Human trafficking.* The State Code Annotated was amended by the addition of the State Human Trafficking Act of 2007. The amended legislation created Class B felony trafficking offenses for activities in which a person knowingly subjects another person to, or maintains another person in, labor or sexual servitude or knowingly recruits, entices, harbors, transports, provides, or obtains, by any means, another person for the purpose of labor or sexual servitude. The offense of involuntary labor servitude is committed if the person knowingly subjects, or attempts to subject, another person to forced labor by (1) causing or threatening to cause physical harm to any person, (2) physically restraining or threatening to physically restrain any person, (3) abusing or threatening to abuse the law or legal process, (4) knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported government identification, including immigration documents, or any other actual or purported government identification document, of any person, or (5) using blackmail or using or threatening to cause financial harm for the purpose of exercising financial control over any person. The commission of an act of involuntary servitude is a Class C felony. A Class C felony for trafficking of persons occurs when a person knowingly (1) recruits, entices, harbors, transports, provides, or obtains, by any means (or attempts to do so), another person, intending or knowing that the person will be subjected to involuntary servitude or (2) benefits financially or by receiving anything of value from participation in an involuntary-servitude venture that has

engaged in an act described in this paragraph as involuntary labor servitude.

*Time off.* The State Code Annotated relative was amended with regard to time off for volunteer firefighters. As amended, the code permits any employee who is an active volunteer firefighter to leave work in order to respond to fire calls during the employee's regular hours of employment, without loss of pay or any accumulated vacation time, sick leave, or earned overtime. Such employee may be permitted to take off the next scheduled work period within 12 hours following his or her response as a vacation day or sick leave day without loss of pay if the employee assisted in fighting the fire for more than 4 hours. If the employee is not entitled to such time off, the employee may be permitted to take off the work period in question without pay. The employer may require the employee to submit a written statement from the chief of the volunteer fire department verifying that the employee responded to a fire or was on call and specifying the date, time, and duration of the response.

*Worker privacy.* State code now prohibits the disclosure of home addresses, dates of birth, telephone numbers, bank account information, Social Security numbers, and driver's license information (unless operating a vehicle is part of the employee's job description or duties) of State and local government employees, including law enforcement officers and the family members of such exempted individuals.

The State Department of Labor and Workforce Development is required to maintain the confidentiality of the identity of any agency officer, employee, or entity filing a complaint regarding the employment of illegal aliens. However, such information may be discovered by a subpoena from a court of record. In addition, the department commissioner or the commissioner's designee shall inform the person against whom a complaint is made that such person may request the name of the complainant or, if the complaint is filed by an agency or entity, the name of the person who caused the complaint to be filed. If such person requests such name, the commissioner or the commissioner's designee shall provide the name requested.

### Texas

*Minimum wage.* Because of requirements included in previously enacted legislation, the State minimum wage was increased to \$6.55 per hour on July 24, 2008.

### Utah

*Human trafficking.* Legislation was enacted that criminalized human trafficking and hu-

man smuggling. Human smuggling is defined as the transportation or procurement of transportation of one or more persons by an individual who knows or has reason to know that the person or persons transported or to be transported are not (1) U.S. citizens, (2) permanent resident aliens, or (3) otherwise lawfully in the State or entitled to be in the State. An individual commits human trafficking for forced labor or forced sexual exploitation by recruiting, harboring, transporting, or obtaining a person through the use of force, fraud, or coercion by various means, and the activity is considered a second-degree felony, except when it is deemed to be aggravated in nature. Such human trafficking includes forced labor in industrial areas, sweatshops, households, agricultural enterprises, and any other workplace. Human smuggling of one or more human beings for profit or for a commercial purpose is a third-degree felony, except when it is considered aggravated in nature. The activity is considered aggravated in nature if (1) it involves the death of or serious bodily injury to the victim, (2) it involves more than 10 victims in a single episode, (3) it involves a victim who is held against his or her will for more than 180 days, or (4) the victim is younger than 18 years and, if the activity is smuggling, the victim is not accompanied by a family member who is 18 years or older. Aggravated offenses are considered first-degree felonies.

*Immigrant protections.* Legislation was enacted that contains provisions related to the immigration status of individuals within the State. A number of those provisions deal with employment issues. Effective July 1, 2009, a public employer may not enter into a contract with a contractor for the physical performance of services within the State unless the contractor registers and participates in the e-verify system of the Department of Homeland Security to verify the work eligibility status of the contractor's new employees who are employed within the State. Contractors shall register and participate in the e-verify system in order to enter into a contract with a public employer. The contractor is responsible for verifying the employment status of only new employees who work under its supervision or direction, and not those who work for another contractor or subcontractor, except as provided under State law. Each contractor or subcontractor who works under or for another contractor shall certify to the main contractor by affidavit that the contractor or subcontractor has verified, through the e-verify system, the employment status of each of its new employees. It is unlawful for an employing entity in the State to discharge an employee working in the State who is a U.S. citizen or permanent resident alien and replace the employee with, or have the employee's duties assumed by, an employee who (1) the

employing entity knows or reasonably should have known is an unauthorized alien hired on or after July 1, 2009, and (2) is working in the State in a job category that requires skill, effort, and responsibility equal to, and that is performed under working conditions similar to, those of the job category held by the discharged employee. An employing entity that, on the date of discharge in question, is enrolled in and using its e-verify system to verify the employment eligibility of its employees in the State who are hired after July 1, 2009, is exempt from liability, investigation, or lawsuit arising from an action under this law.

*Independent contractors.* The State legislature enacted the State Independent Database Act, which modifies State provisions related to commerce. The act, created by the Independent Contractor Enforcement Council within the State Department of Commerce, allows an independent contractor database designed by the council to be accessed by one or more specified agencies, the State attorney general, and the Department of Public Safety and will become effective no later than July 1, 2009. It is expected that the database will (1) reduce costs to the State resulting from misclassification of workers as independent contractors, (2) extend outreach and education efforts regarding the nature and requirements of independent contractors' status, (3) promote efficient and effective information sharing among the member agencies, and (4) be coordinated with the State Uninsured Motorist Identification Database. The database will be used by accessing agencies to identify when a person (1) holds him- or herself out as an independent contractor or (2) engages in the performance of work as an independent contractor not subject to an employer's control. The database shall include a process to compare the information against that found in the State Uninsured Motorist Identification Database, at least on a monthly basis, in order to (1) identify a person who may be misclassified as an independent contractor and (2) promote compliance with State and Federal laws related to withholding taxes and making payments for Social Security, Medicare, and unemployment insurance, thereby preventing insurance fraud and ensuring payment of overtime and minimum wages.

*Minimum wage.* Because of requirements included in legislation previously enacted, the State minimum wage was increased to \$6.55 per hour on July 24, 2008.

*Worker privacy.* Legislation was adopted that amended the Government Records Access and Management Act to add protected status to certain information if the information is properly classified by a governmental entity.

Information containing the name, home address, work addresses, and telephone numbers of an individual engaged in, or providing goods or services for, medical or scientific research that is conducted within the State system of higher education and that uses animals is protected from disclosure under the act if the release of such information would jeopardize the life or safety of an individual.

## Vermont

*Minimum wage.* As a result of legislation enacted in a previous year in which the State minimum wage was indexed to inflation, the State minimum wage was increased to \$8.06 per hour on January 1, 2009.

*Time off.* Employees shall have the right to take unpaid leave from employment for the purpose of attending a town meeting, provided that they notify their employers at least 7 days prior to the date of the meeting. An employer shall not penalize the employee for exercising the right provided by the State Statutes Annotated.

State law relating to rights provided to nursing mothers in the workplace was amended. Employers of employees who continue to be nursing mothers for 3 years after the birth of a child shall provide reasonable time, either compensated or uncompensated, throughout the day for the employee to express breast milk for her nursing child. The employer has sole discretion regarding the decision to provide compensated time, unless the issue has been moderated by a collective-bargaining agreement. In addition, the employer shall provide appropriate private space, other than a bathroom, for such purpose. An employer may be exempted from this requirement if providing time or an appropriate private space for expressing breast milk would substantially disrupt the employer's operations. An employer shall not retaliate or discriminate against an employee who exercises the aforesaid right. An employer who violates the provisions described shall be assessed a civil penalty of not more than \$100 for each violation.

*Whistleblower.* The rights of whistleblowers, as defined in the State Statutes Annotated, were amended. A State employee employed as a trustee and servant of the people shall now be free to report (in good faith and with candor) waste, fraud, abuse of authority, violations of law, or a threat to the health of employees, the public, or persons under the care of the State without fear of reprisal, intimidation, or retaliation. Retaliatory action includes any adverse performance or disciplinary action, including discharge, suspension, reprimand, demotion, denial of promotion, the imposition of a warning period regarding the employee's

performance, and involuntary transfer or reassignment, that is given in retaliation for the State employee's involvement in a protected activity as enumerated by the statute. In addition, no entity shall prohibit a State employee from engaging in discussions with a member of the State General Assembly or from testifying before a legislative committee, provided that no confidential information is divulged and that the employee is not speaking on behalf of an entity of the State government. There shall be no retaliatory action as a result of the employee's provision of information to a legislator or legislative committee. No protections, however, apply to statements provided that constitute hate speech or threats of violence against a person. The employee has a right to seek remedies should an action be taken against him or her; however, if the claim is filed with the State Labor Relations Board, it may not also be brought before the Superior Court, but if it is filed with the Superior Court, the claim may not appear before any other process available to the employee. The grievance shall be brought to the Superior Court within 180 days of the date of the alleged retaliatory action. Through the Superior Court, the employee may be reinstated to the same position, seniority, and work location held prior to the retaliatory action, as well as to the same backpay, lost wages, benefits, and other remuneration. In the event of a showing of a willful and egregious violation of this legislation, the employee may be granted an amount up to the amount of backpay, in addition to the actual backpay and other compensatory damages, including interest on backpay, appropriate injunctive relief, and reasonable costs and attorneys' fees.

## Virginia

*Child labor.* The State Code was amended and now prohibits a minor who is under 18 years of age from being employed, or suffered or permitted to work, as a driver of school buses.

*Immigrant protections.* The State Code regarding the involuntary termination of corporate existence was amended. The existence of a corporation may now be terminated involuntarily by order of the State Corporation Commission when it finds that the corporation has been convicted of a violation of 8 U.S.C. Section 1342A(f), as amended, for actions of its officers and directors constituting a pattern or practice of employing unauthorized aliens in the Commonwealth. Any corporation convicted of such an offense shall immediately report such conviction to the commission and file with the commission an authenticated copy of the judgment or record of conviction. Certificates revoked for such cause shall be

ineligible for reentry for a period of not less than 1 year. The same penalty may be invoked against foreign corporations, a business trust, or a limited-liability company convicted of such a violation.

*Inmate labor.* The circuit court of any county or city may allow persons confined in the county or city jail who are awaiting disposition of, or serving sentences imposed for, misdemeanors or felonies to work on a voluntary basis on State, county, city, or town property or any property owned by a nonprofit organization that is organized and operated exclusively for charitable or social welfare purposes and is exempt from taxation under U.S. Code 501(c)(3). These individuals also may work on private property that is part of a community improvement project sponsored by a locality or that has structures which are found to be public nuisances, provided that the court has reviewed and approved the project for such purposes and permits the prisoners to work on such project or any private property utilized by a nonprofit organization that is, again, exempt from taxation under U.S. Code 501(c)(3).

*Minimum wage.* Because of requirements included in legislation previously enacted, the State minimum wage was increased to \$6.55 per hour on July 24, 2008.

*Offsite work.* The State has established the State Office of Telework Promotion and Broadband Assistance in the office of the State secretary of technology. The goals of the office are to encourage teleworking as a family-friendly, business-friendly public policy that promotes workplace efficiency and reduces strain on transportation infrastructure. The office shall work with public and private entities to develop widespread access to broadband services and shall promote and encourage the use of telework alternatives for public and private employees, including, but not limited to, appropriate policy and legislative initiatives.

The State Code was amended in order to redefine the term "telecommuting." It is now defined as "a work arrangement in which supervisors direct or permit employees to perform their usual job duties away from their central workplaces at least 1 day per week and in accordance with work agreements."

The State Code relating to State agency employee commuting policies was amended. The State has now set a goal to have each State agency, with the exception of the Department of State Police, have not less than 20 percent of its eligible workforce telecommuting by January 1, 2010.

*Worker privacy.* Legislation was enacted that

added a Freedom of Information Act exemption for investigator notes and for other correspondence and information with respect to an active investigation conducted by or for the State Board of Education and related to the denial, suspension, or revocation of teaching licenses. The legislation does not prohibit the disclosure of records to a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to the employee. Records of completed investigations shall be disclosed in a form that does not reveal the identity of charging parties, persons supplying the information, or other individuals involved in the investigation. If an investigation fails to support a complaint or does not lead to corrective action, the identity of the person who was the subject of the complaint may be released only with the consent of that person.

## Washington

*Minimum wage.* As a result of legislation enacted in a previous year in which the State minimum wage was indexed to inflation, the State minimum wage was increased to \$8.55 per hour on January 1, 2009.

*Time off.* The State Revised Code allowing unpaid leaves of absence for the needs of military personnel was amended. Every employee of the State or of any county, city, or other political subdivision thereof who is a member of the State National Guard; of the Army, Navy, Air Force, Coast Guard, or Marine Corps Reserve of the United States; or of any organized Reserve or Armed Forces of the United States shall be entitled to, and shall be granted, military leave of absence from his or her employment for a period not exceeding 21 days during each year, beginning October 1 and ending September 30. Such military leave of absence shall be in addition to any vacation or sick leave to which the employee might otherwise be entitled and shall not involve any loss of efficiency rating, privileges, or pay. During the period of military leave, the employee shall receive his or her normal pay from the State, county, city, or other political subdivision.

*Workplace violence.* The State Revised Code relating to increasing the safety and economic security of victims of acts of domestic violence, sexual assault, or stalking was amended. An employee may now take reasonable leave from work, intermittent leave, or leave on a reduced leave schedule, with or without pay, to (1) seek legal or law enforcement assistance, including, but not limited to, preparing for or participating in any civil or criminal legal proceeding related to or derived from

the aforementioned acts, in order to ensure the health and safety of the employee or the employee's family members; (2) seek treatment by a health care provider for physical or mental injuries caused by said acts or to attend to health care treatment for a victim who is the employee's family member; (3) obtain, or assist a family member in obtaining, services from a domestic violence shelter, rape crisis center, or other social services program for relief from said acts; (4) obtain, or assist a family member in obtaining, mental health counseling related to an incident of said acts in which the employee or the employee's family member was a victim thereof; or (5) participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or the employee's family members from future such acts. As a condition of taking leave for such purposes, the employee shall provide the employer with advance notice of the employee's intention to take leave. The timing of the notice shall be consistent with the employer's stated policy for requesting such leave, if the employer has such a policy. When advance notice cannot be given because of an emergency or unforeseen circumstances, the employee or his or her designee must give notice to the employer no later than the end of the first day the employee takes such leave. The employer may require that the leave requests be supported by verification that the employee or employee's family member is a victim of domestic violence, sexual assault, or stalking, or that the leave was taken for one of the five reasons listed in this section.

## West Virginia

*Drug and alcohol testing.* The State Alcohol and Drug-Free Workplace Act was created to require public-improvement contractors to have and implement a drug-free workplace program which requires that drug and alcohol testing be conducted by the contractor. Public funds of the State or of any of its political subdivisions may not be expended, unless the contractor that was awarded the contract has implemented a drug-free workplace policy and shall have provided a sworn statement in writing, under penalties of perjury, that it maintains a valid drug-free

workplace policy. The contract shall provide for its cancellation by the awarding authority if (1) the contractor fails to implement the drug-free workplace policy, (2) the contractor fails to provide implementation information on said policy at the request of the authority or the State Division of Labor, or (3) the contractor provides false information to the awarding authority. Among the requirements of a drug-free workplace policy are that (1) preemployment drug testing be conducted on all employees and (2) random drug testing be conducted annually on at least 10 percent of the contractor's employees who perform safety-sensitive duties. Violations of the State law pertaining to a drug-free workplace policy shall result in the following consequences: (1) for a first offense, upon conviction, the party is guilty of a misdemeanor and fined not more than \$1,000; (2) for a second offense, upon conviction, the party is guilty of a misdemeanor and fined not less than \$1,000 and not more than \$5,000; for a third and subsequent offense, upon conviction, the party is guilty of a misdemeanor and fined not less than \$5,000 and not more than \$25,000. In addition, for a third offense and subsequent offenses, the contractor shall be excluded from bidding on any additional public-improvement projects for a period of 1 year.

*Minimum wage.* Licensees operating charitable bingo games and charitable raffles may pay a salary, the minimum of which is the Federal minimum wage and the maximum of which is not more than 120 percent of the Federal or State minimum wage, whichever is applicable, to operators of games or raffles who are either (1) active members of the licensee's organization who have been active members in good standing for at least 2 years prior to the date of the filing of the application for the license or for renewal of the same or (2) employees of the licensee's organization or its authorized auxiliary organization who are residents of the State, who are residents of a bordering State if the county of residence is contiguous to the county where the bingo or charitable operation is conducted, or who reside within 35 miles of the county where the bingo operation is conducted. Wages paid to concession-stand workers at these functions may not

exceed more than 120 percent of the Federal minimum wage or the State minimum wage, whichever is applicable.

Because of requirements included in legislation previously enacted, the State minimum wage was increased to \$7.25 per hour on July 1, 2008.

*Wages paid.* Employers are now permitted to pay the wages that are due employees via the utilization of a payroll card and a payroll card account. Such payment is to be done by deposit or electronic transfer of immediately available funds in a federally insured depository institution that is directly or indirectly established through an employer and to which electronic fund transfers of the employee's wages, salary, commissions, or other compensation are made on a recurring basis. Such payment of employee compensation must be agreed upon in writing by the person, firm, or corporation that is compensating the employee and the person who is being compensated.

## Wisconsin

*Prevailing wage.* On January 1, 2008, the prevailing-wage thresholds for coverage under the State prevailing-wage laws for State and municipal contracts were administratively changed from \$216,000 to \$221,000 for contracts in which more than one trade is involved and from \$43,000 to \$45,000 for contracts in which a single trade is involved. On January 1, 2009, these amounts were administratively changed to \$234,000 for contracts in which more than one trade is involved and to \$48,000 for contracts in which a single trade is involved. □

## Note

<sup>1</sup> Several tables displaying information on State labor laws, including tables on current and historical minimum-wage rates and a table on State prevailing-wage laws, along with tables concerning child labor issues, are available on the Internet at the Employment Standards Administration's Web site, [www.dol.gov/esa/programs/whd/state/state.htm](http://www.dol.gov/esa/programs/whd/state/state.htm).