

THE AMERICAN BAR ASSOCIATION  
EMPLOYEE RIGHTS AND RESPONSIBILITIES COMMITTEE

REPORT OF THE  
SUBCOMMITTEE ON LEGISLATIVE DEVELOPMENTS

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2000 REPORT OF THE  
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OF THE AMERICAN BAR ASSOCIATION  
COMMITTEE ON EMPLOYEE RIGHTS AND RESPONSIBILITIES

San Diego, California  
MARCH 15, 2000

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**I. FEDERAL LAW**

A. Consumer Reporting Employment Clarification Act of 1998 (“CRECA”)

Under this amendment to the Fair Credit Reporting Act, the CRECA provides that consumer reporting agencies can obtain all criminal records regarding an applicant for employment regardless of the annual salary of the position for which the applicant is applying. Previously, a consumer reporting agency could only obtain criminal records beyond seven years if the applicant was applying for a position with a salary of above \$75,000 per year.

**II. ALABAMA**

No relevant legislation passed.

**III. ALASKA**

A. Airline Employees – Exempt from Overtime Protection

HB 61 exempts airline workers from the overtime wage statute for overtime worked when voluntarily trading shifts among themselves.

B. Other Exemptions from Minimum Wage and Overtime Compensation

HB 123 amends the exemption for volunteers of nonprofit organizations to specify that it is directed toward volunteers engaged in the organization’s “nonprofit activities.” In addition, it adds volunteer ski patrol members to the list of exemptions.

C. Computation of Overtime Wages

HB 201 overrides the superior court decision of Hallam v. Holland America Line, Inc. because of its calculation of overtime wages. The new Section 23.10.060(b) states that overtime is to be paid for hours that an employee works over eight hours per day. In addition, overtime is to be paid for hours worked in excess of forty hours per week. In determining whether an employee works more than forty hours per week, the employer cannot count the hours worked in excess of eight hours per day.

**IV. ARIZONA**

A. Overtime

HB2350 modifies the amount of time in which an employer is responsible for paying overtime for exception wages.

**V. ARKANSAS**

A. Annual Taxable Payroll

Senate Bill 839 amends the Arkansas Code concerning annual taxable payroll; affects the contribution rate of an employer who has had 3 or more years of benefit risk; and concerns the reserve ratio which is determined by the difference in contributions paid and regular benefits charged by the annual taxable payroll.

B. Income Tax Credit

Senate Bill 363 creates an income tax credit for companies that offer tuition reimbursement programs for their employees.

C. Employer Protection for Providing Reference Information

House Bill 1820 provides current and former business employers with protection for providing job information about current or former employees to prospective employers; provides for immunity for good faith actions; and allows information about wages, attendance and threats of violence, harassing acts or threatening behavior.

D. Jury Duty -- Leave of Absence

Senate Bill 623 provides that any person who is regularly employed in the state shall, upon call or subpoena to serve on a state petit or grand jury, central jury pool, be granted a leave of absence by his employer, of up to one day, for that period of time required for such jury duty. Such leave of absence shall be granted without loss of wages, or sick, emergency, or to resolve the dispute.

E. Whistle-Blower Act

House Bill 294 creates the "Whistle-Blower Act" to protect public employees from discharge or retaliation for reporting government waste or violations of law.

F. Drug-Free Workplaces Act

Senate Bill 773 establishes a program for drug-free workplaces; provides for drug testing; provides forfeiture of workers' compensation; relates to rules of the Department of Labor; relates to drug and alcohol rehabilitation programs.

**VI. CALIFORNIA**

A. Sick Leave

AB 109 will require an employer who provides sick leave, as defined, for employees to permit an employee to use in any calendar year accrued sick leave, in an amount not less than the amount earned during 6 months' employment, to attend to the illness of a child, parent, or spouse of the employee. This bill will prohibit an employer from denying the use of sick leave or from discharging, threatening to discharge, demoting, suspending, on in any manner discriminating in the terms and conditions of employment against, an employee for using, or attempting to exercise the right to use sick leave to attend to the illness of a child of the employee.

This bill will add Section 233 to the Labor Code.

B. Age Discrimination

Existing law makes it an unlawful employment practice for an employer to refuse to hire or employ, or to discharge, dismiss, reduce, suspend, or demote, any individual over the age of 40 on the ground of age, under specified circumstances. In Marks v. Loral Corp. (1997) 57 Cal. App.4th 30, the court held that

existing law permits an employer to choose employees with lower salaries, even though this may result in choosing younger employees.

SB 26 declares the Legislature's rejection of the opinion in Marks v. Loral Corp., supra, and states that the opinion does not affect existing law in any way, including, but not limited to, the law pertaining to disparate treatment. The bill will also declare the intent of the legislature that the use of salary as a basis for differentiating between employees when terminating employment may be found to constitute age discrimination if use of this criterion disproportionately affects older workers as a group.

This bill will add Section 1241.1 to the Government Code.

C. Time Off to Appear in Court

SB56 would amend Section 230 of the Labor code. Currently employers are prohibited from discharging or discriminating against an employee for taking time off from work to serve as a juror or witness, providing the employee gives reasonable notice of the anticipated absence. This amendment will revise and expand the prohibition to prohibit retaliation as well as discrimination and specify that the prohibition would be applicable to an employee, including, but not limited to, an employee who is a victim of crime. This bill will also prohibit employers from discharging, discriminating, or retaliating against employees who are victims of domestic violence and who take time off to appear in court to obtain or attempt to obtain any relief to help ensure the health, safety, or welfare of a domestic violence victim or his or her child, if the employee gives the employer reasonable notice, as specified by existing law.

D. Overtime

Existing law provides that 8 hours of labor constitute a day's work unless it is otherwise expressly stipulated by the parties to a contract.

This bill would delete the authority of parties to otherwise expressly stipulate the number of hours that constitute a work day. Except for an employee working pursuant to an alternative workweek schedule, as specified, hours worked in excess of 8 hours in one day, hours worked in excess of 40 hours in one workweek, and the first 8 hours worked on the 7<sup>th</sup> day of work in a given workweek are to be compensated at the rate of no less than one and one-half times the regular rate of pay of an employee. Hours worked in excess of 12 hours in one day as well as hours worked in excess of 8 hours on any 7<sup>th</sup> day of a workweek are to be compensated at the rate of no less than twice the regular rate of pay of an employee. This bill amends Sections 510, 554, 556, and 1182.1 of, adds Sections 500, 511, 512, 514, 517, and 558, repeals Section 1183.5 and amends and repeals Sections 1182.2, 1182.3, 1182.9, and 1182.10 of the Labor Code.

E. Employment Discrimination

In Aguilar v. Avis Rent A Car System, Inc., (1999) 21 Cal. 4th 121, the California Supreme Court held that the trial court's injunction order prohibiting offending employees from using racial epithets in the future did not violate the right of freedom of speech if there has been a judicial determination that the use of such epithets will contribute to the continuation of a hostile or abusive work environment and therefore will constitute employment discrimination.

## VII. COLORADO

### A. Wages - Minimum Wage - Preemption of Local Minimum-Wage Laws

SB 99-14 declares that issues related to minimum wages are a matter of statewide concern. This bill prohibits local governments from enacting any jurisdiction-wide laws with respect to minimum wages unless specifically authorized to do so by state law or required to do so to avoid a loss of federal funding. Does not preempt local ordinances covering only employees of the local government. Effective April 14, 1999.

### B. Unemployment Compensation - Denial of Benefits in a Defensive Lockout - Eligibility for Benefits in an Offensive Lockout.

SB 99-155 provides that employees are ineligible for unemployment compensation benefits where the employer is engaged in a defensive lockout. This bill defines a defensive lockout as a lockout reasonably imposed by an employer to protect materials, property, or operations where a union or 2 or more employees represented by a union take economic action against the employer causing the lockout or a lockout by any member of a multiemployer bargaining unit or by an employer engaged in coordinated bargaining with one or more other employers if such lockout is initiated because of a strike or labor dispute involving any member of such multiemployer bargaining unit or coordinated bargaining group. When unemployment is due to an offensive lockout initiated by the employer, makes the unemployed individual eligible for unemployment compensation benefits. Effective May 19, 1999.

### C. Workers' Compensation - Benefits - Acts of Employee Reducing Benefits - Use of Controlled Substances

SB 99-161 reduces workers' compensation disability payments, other than disbursements to medical providers, by 50% when injury results from the presence of not medically prescribed controlled substance in an employee's system. This bill amends the existing posted-notice provision to require the inclusion of notice that benefits may be so reduced. Effective July 1, 1999.

### D. Reference Checks - Employer Liability for Disclosing Information about Current or Former Employees

HB 99-1072 provides immunity to employers and their authorized employees, agents, or representatives who disclose information about a current or former employee's job history or job performance to prospective employers. This bill allows such immunity to only be overcome if the current or former employee shows, by a preponderance of the evidence, that the information was false and that the employer knew or reasonably should have known that the information was false. It defines the term "job performance" and requires an employer who provides information about a current or former employee to a prospective employer in writing to send a copy of that information to the current or former employee upon the request of such employee. Effective March 31, 1999.

## VIII. CONNECTICUT

### A. Compliance with Workforce Investment Act of 1998

P.A. 99-195, "An Act Concerning Education, Employment and Job Training Programs," creates new duties for the Connecticut Employment and Training Commission, primarily for the purpose of compliance with the federal Workforce Investment Act of 1998.

B. Regulations Concerning Minimum Wage

P.A. 99-199 changes the manner in which the Labor Commissioner adopts regulations related to the minimum wage. Such regulations now may only be adopted after publication and public hearing. Moreover, the Commission's regulations defining "executive, administrative and professional employee shall be updated not later than October 1, 2000, and every four years thereafter, to specify that such persons shall be compensated on a salary basis at a rate determined by the Labor Commissioner."

C. Expansion of Whistleblower Protection Act

P.A. 99-146 amends the Whistleblower Protection Act, Conn. Gen. Stat. § 31-379 to add "disciplining" or "penalizing" an employee whistleblower as prohibited conduct. Moreover, a person aggrieved under the statute now has 180 days after the violation occurs to file a complaint with the labor commissioner. The commissioner may award the aggrieved employee "all appropriate relief, including rehiring or reinstatement of the employee to the employee's former position, back pay and reestablishment of any employee benefits to which the employee would otherwise have been eligible if such violation had not occurred. The commissioner shall award the employee's costs, together with reasonable attorneys' fees . . . ." Any person aggrieved by the commissioner's decision may appeal the decision to Superior Court.

**IX. DELAWARE**

No relevant legislation passed.

**X. DISTRICT OF COLUMBIA**

Not available.

**XI. FLORIDA**

A. HIV Testing of Medical Employees

HB2125 provides that informed consent is not required for the performance of an HIV test upon an individual who comes into contact with medical personnel in such a way that a significant exposure has occurred during the course of employment or within the scope of practice, and where a blood sample is available that was taken from that individual voluntarily by medical personnel for other purposes. (Effective 7/1/99)

**XII. GEORGIA**

A. Fingerprint Records Check for Daycare Center Employees

HB30 provides that no person may be employed at a day-care center without a satisfactory state and national fingerprint records check determination within the previous twelve (12) months, or a satisfactory state fingerprint records check determination, with continued employment contingent upon a satisfactory national fingerprint records check. (Effective 7/1/99)

B. Sexual Harassment

HB311 would provide for a state cause of action for sexual harassment. (Pending)

C. “Retirement Savings Protection Act”

HB342 would provide that any person who engages in certain unlawful practices, which violation causes a loss to retirement savings of one or more other persons, shall be liable to any victim of such violation not only for the actual losses, but also for an additional amount equal to three (3) times the amount of the actual losses. (Pending)

D. Minimum Wage

HB549 would change the minimum wage in Georgia and provide for an adjusted minimum wage rate to be calculated by the Department of Labor annually, beginning March 30, 2001. (Pending)

E. Labor Unions and Political Contributions

HB662 would regulate political contributions and expenditures by labor organizations and separate segregated funds thereof. This bill would also regulate deductions from employees' earnings of contributions to labor organizations. Under this bill, no employer may deduct from the wages or other earnings of any employee any sum of money whatsoever to be paid over to a labor organization, except with the full, free, and written consent of the employee, obtained without intimidation or threat of discharge for refusal to permit the deduction. (Pending)

F. Breast Feeding Mothers in the Workplace

SR14 encourages employers to establish family-friendly workplace environments by establishing programs or policies to assist new mothers who continue to breast feed upon re-entering the work force. (Resolution Adopted 2/16/99)

**XIII. HAWAII**

A. Wage Payments

HB0102 HD2 (HSCR 945) provides that any employer who fails to pay wages without equitable justification shall be liable to the employee, in addition to the wages proven to be due, for a sum equal to the amount of unpaid wages and interest at a rate of 6% per year from the date the wages were due.

B. Mothers Who Breastfeed or Express Milk at the Workplace

HB0266 HD2 SD2 CD 1 (CCR 90) makes it an unlawful discriminatory practice for any employer or labor organization to refuse to hire or employ, to bar or discharge, or to withhold pay, demote, or penalize a lactating employee who breastfeeds or expresses milk at the workplace.

C. Privacy of Health Care Information

HB0351 HD2 SD1 CD1 (CCR 92) provides that an entity (health plan, employer, insurer) shall permit an individual who is the subject of protected health information to inspect and copy protected health information concerning the individual.

D. Health Benefits for Part-Time Temporary, and Seasonal or Casual State Employees

HB1044 HD1 (HSCR395) establishes provisions relating to state health benefits by requiring the board of trustees to offer medical, hospital and surgical benefits plans, after July 1, 2000, to part time, temporary, and seasonal or casual employees, at no cost to the employer and excluded from the minimum group requirements of accident and sickness insurance.

**XIV. IDAHO**

A. Punitive Damages for Violations of Idaho Human Rights Act

HB 35 raises the amount of punitive damages available for a willful violation of the state Human Rights Act from \$1,000 per violation to \$5,000 per violation.

B. Employee Wage Claims

SB 1034 substantially rewrites Idaho's Wage Claim Law. Among other changes, the bill amends the payment upon separation requirements to cover employees that are paid on a piece rate or commission basis; amends the wage payment provisions to allow for the direct deposit of wages in out-of-state financial institutions and allows a fifteen-day period between the end of the pay period and the regular payday; reduces the penalty provisions for failure to pay wages; and clarifies that employees can file wage claims with either the Labor Department or the District Court.

Most significantly, the bill adds new sections aimed at improving the Department of Labor's administrative process for handling wage claims and making the Department's wage claim decisions enforceable through filing liens.

C. Confidentiality in Employee Assistance Programs (EAPs)

SB 1083 resolves problems created by a 1998 Idaho Supreme Court decision regarding EAPs (programs which offer counseling services for personal or work-related problems that may affect on-the-job performance). The bill provides that information communicated during an EAP session is privileged and confidential, and that employers have no right to the information. It further provides that employers cannot be held liable for information communicated during an EAP session.

**XV. ILLINOIS**

A. Notification Of Layoff Of State Employees

P.A.91-0178 amended the Illinois Human Rights Act, effective January 1, 2000, to include a requirement that state agencies notify the Department of Commerce of upcoming layoffs.

1. Notice of any layoff must be given to the Department 30 days before the layoff occurs. Upon notice being given, the following also apply:
  - a. Layoffs may not be effective less than 10 working days after the notice, except in emergency situations.
  - b. Affected employees, their union representative, and the State Dislocated Worker Unit must be notified.

- c. The employees affected should be notified that transitional assistance may be available under the Economic Dislocation and Worker Adjustment Assistance Act. However, failure to give such notice does not invalidate the layoff. 775 Ill. Comp. Stats. Ann. 5/2-105(B)(6).

**XVI. INDIANA**

A. Disability Discrimination Regulations

Effective January 30, 1999, the Indiana Civil Rights Commission adopted regulations specific to the Indiana Handicap Discrimination Law. 910 Indiana Administrative Code 3-1-1, et. seq. The rules essentially follow the provisions of the statute.

**XVII. IOWA**

A. Alcohol Testing

SF115 amends the act relating to alcohol testing of private sector employees and prospective employees by allowing such testing to be conducted pursuant to an employer's written policy and also requiring confirmation of drug or alcohol testing by use of a different chemical process than the initial screen.

B. Worker and Public Safety

SF146 amends the language in the act relating to worker and public safety and protection, including redefining "dormant facility," "wheelchair lift" and "commissioner."

C. Limited Licensure of Motor Vehicle Rental Companies

HF777 regulates the limited licensure of motor vehicle rental companies, including the licensure of counter employees.

**XVIII. KANSAS**

A. Discrimination, Genetic Testing

SB22 prohibits an employer from seeking, obtaining, or using genetic screening or testing information to discriminate against any employee or prospective employee, and prohibits an employer from subjecting any employee or prospective employee to any genetic screening or testing.

B. New Employees

HB2050 eliminates the employer's responsibility to submit an additional form, which required the new employee to answer questions on child support orders, with all I-9 forms.

C. Public Officers and Employees

HB2136 provides legal representation of state officials and employees before grand juries and inquisitions.

**XIX. KENTUCKY**

No relevant legislation passed.

**XX. LOUISIANA**

A. Discrimination -- Medical Conditions

Senate Bill 865 provides civil remedies for plaintiffs who have a cause of action against an employer for discrimination based on pregnancy, childbirth, and related medical conditions. It also provides that a plaintiff who has a cause of action against an employer for a violation of this Part may file a suit in the district court for the parish in which the alleged violation occurred seeking compensatory damages, back pay, benefits, reinstatement, reasonable attorney fees, and court costs.

B. Civil Suits Against Employers

Senate Bill 871 authorizes civil suits against employers, employment agencies, or labor organizations for violations and authorizes compensatory damages, back pay, benefits, reinstatement, reasonable attorney fees and court costs.

The bill requires that venue in such suits be the district court in the parish in which the violation occurs and also provides that a plaintiff be liable for reasonable damages incurred, reasonable attorney fees and court costs if he or she brings a frivolous claim.

It also requires a plaintiff to give written notice to the defendant of plaintiff's intent to initiate court action and provides that such notice be at least thirty days in advance, that the plaintiff detail the alleged discrimination, and that both parties make a good faith effort to resolve the complaint.

The bill provides a prescriptive period of one year within which to bring an employment discrimination cause of action and provides for suspension of this prescriptive period, not to exceed six months, pending any administrative review or investigation by the federal Equal Employment Opportunity Commission or the Louisiana Commission on Human Rights.

This law prohibits discrimination by an employer against an employee or applicant for employment due to his or her opposition to any practice or activity determined to be an unlawful employment practice. It further prohibits discrimination against the employee or applicant because of any employment discrimination charge filed or because the employee or applicant testifies, assists, or participates in an employment discrimination investigation, proceeding, or hearing.

C. Employment Contract: Choice of Forum Clause

Senate Bill 915 nullifies any employment contract which specifies a choice of forum or choice of law in civil or administrative litigation arising over the terms of employment. However, such a clause is not prohibited if the employee knowingly and voluntarily agrees to it and the clause is ratified after the occurrence which is the subject of the civil or administrative litigation.

**XXI. MAINE**

A. Marijuana Drug Test Levels

Title 26 was amended to bring Maine's drug test levels for marijuana into conformity with federal standards. The cutoff levels for confirmation tests now may not be lower than 15 (as opposed to the original 20) nanograms per milliliter for urine samples. Me. Rev. Stat. Ann. tit. 26, § 683, sub-§ 2, ¶ G (eff. May 17, 1999).

B. Protection of Crime Victims in the Workplace

H.P. 688 requires an employer to grant "reasonable and necessary leave from work, with or without pay," for an employee to prepare for or attend court proceedings, receive medical treatment, or obtain necessary services to remedy a crisis caused by domestic violence, sexual assault, or stalking. Such leave must be needed because the employee is a victim of violence, assault, sexual assault, or stalking. An employer may not sanction or withhold the pay or benefits of such a victimized employee for the exercise of this right. However, an employer does not violate this new law if the employer "would sustain undue hardship from the victim's absence," the request for leave is not given to the employer "within a reasonable time under the circumstances," or the requested leave is "impractical, unreasonable or unnecessary based on the facts then made known to the employer." Me. Rev. Stat. Ann. tit. 26, § 850 (eff. June 9, 1999).

C. Peer Support Program for Displaced Workers

S.P. 594 creates "The Peer Support Program for Displaced Workers" to provide advocacy and information to workers displaced by significant layoffs. When a single employer lays off 100 or more workers, the department must initiate such a peer support project to assist the affected workers. The department may initiate a peer support project when 50 or more workers are laid off by a single employer if such a project is warranted after considering the particular needs of the workforce and affected communities. Me. Rev. Stat. Ann. tit. 26-A, §§ 2061-2 (eff. July 1, 2000).

**XXII. MARYLAND**

A. Adoption Leave

Under 3-802 of the Maryland Labor and Employment Code, an employer who provides leave with pay following the birth of an employee's child shall provide the same leave with pay to an employee when a child is placed with the employee for adoption.

**XXIII. MASSACHUSETTS**

A. Changes to Whistleblower Provisions

1999 Mass. Acts ch. 127, § 144, amends Mass. Gen. Laws ch. 149, § 148A: an employer that discharges or otherwise discriminates against an employee who makes a complaint to the attorney general or any other person, or assists the attorney general in an investigation or who institutes proceedings against an employer under Massachusetts' labor statute, now may be "punished" or "subject to a civil citation or order" as provided in Mass. Gen. Laws ch. 149, § 27C.

B. Expansion of Employee's Right to File Complaint Against Employer for Violations of Labor Statute

Under Mass. Gen. Laws ch. 149, § 150, an employee may file a complaint with the attorney general for certain violations of Massachusetts' labor statute and, after expiration of 90 days of the filing or sooner with the attorney general's consent, may bring a civil action for injunctive relief or damages. 1999 Mass. Acts ch. 127, § 145 expands the list of violations for which the employee may file a complaint to include: an employer's alleged violation of Mass. Gen. Laws ch. 151, § 19, which prohibits certain employer actions under Massachusetts "minimum fair wages" statute and an employer's alleged violation of Mass. Gen. Laws ch. 149, § 148B, which prohibits retaliation against an employee who seeks rights under the wage and hour provisions of the labor statute.

C. Employers to Provide Information to Welfare

1999 Mass. Acts ch. 127, § 129, amends Mass. Gen. Laws ch. 118E, § 23 to require all holders of health insurance information, including employers, "to provide sufficient information to the [Division of Medical Assistance] ... to enable the division: (a) to identify which recipients of and applicants for medical assistance or benefits ... are also or could also be beneficiaries under any policy of insurance available or in force and effect in the commonwealth; and (b) to determine the cost, scope, and terms of said policy of insurance."

D. Compliance with Workforce Investment Act of 1998

1999 Mass. Acts ch. 127, § 328 creates new obligations for the Department of Labor and Workforce Development, primarily for the purpose of compliance with the federal Workforce Investment Act of 1998.

E. Massachusetts Commission Against Discrimination Backlog Mandate

1999 Mass. Acts ch. 127, § 325 requires the Massachusetts Commission Against Discrimination ("MCAD") to "complete the investigations, issue determinations of probable cause, or lack thereof, or otherwise resolve before such determination all the cases pending before the commission that were filed before to [sic] June 30, 1998, processing first those cases filed with the commission before January 1, 1997." MCAD is required to submit a report to the Massachusetts legislature no later than March 1, 2000; such report must identify the cases that were filed before June 30, 1998, which the commission has failed to resolve and the reasons therefor.

Moreover, MCAD must "develop and implement a mandatory tracking order for all pending cases that shall include the following features: (a) clearly delineated, reasonable time frames for each significant step in the procedures of the commission to promote the most efficient processing of cases before the commission while ensuring fairness and quality; (b) a process for identifying cases for an expedited processing or referral for voluntary alternative dispute resolution procedures as appropriate; (c) scheduling of periodic status conferences to narrow areas of dispute and promote resolution; and (d) consistent enforcement of time frames, including the use of default and dismissal sanctions for failure to abide by such time frames, subject to reasonable exceptions in limited circumstances as determined by the commission."

Finally, MCAD "shall develop and implement a comprehensive training program to provide introductory and ongoing training of its investigators, attorneys, conciliators and hearing officers in appropriate investigative and case processing techniques to ensure efficiency and quality in the processing of cases before said commission."

**XXIV. MICHIGAN**

A. Prohibitions Against Discrimination Based On Genetic Composition and Genetic Testing

H.B. 4556, introduced on April 22, 1999, if enacted, would amend Michigan's Elliott-Larsen Civil Rights Act to prohibit employment discrimination based upon genetic composition. Requiring a person to submit to a genetic test as a condition of employment or promotion would also be prohibited.

1. The bill defines "Genetic Composition" as the biological elements existing in a person that evidence and serve to control the transmission of a hereditary character or trait.

2. "Genetic Test" is defined as a procedure to determine the presence or absence of an inherited genetic characteristic, including but not limited to, testing of chromosomes, proteins, or nucleic acids such as DNA, RNA, or Mitochondrial DNA to identify a predisposing genetic characteristic.

**XXV. MINNESOTA**

A. Employee Breaks -- Nursing Mothers

Minn. Stat. § 181.939 requires employment "break time" for a nursing mother. The new law states that employers must provide reasonable unpaid break time each day to an employee who needs to express breast milk for her infant child. The break time must, if possible, run concurrently with any other break time already provided to the employee, and employers must make reasonable efforts to provide a room or other location where the employee can express her milk in privacy. Employers are not required to provide the break if it would unduly disrupt their operations.

**XXVI. MISSISSIPPI**

A. Selective Service

House Bill 1136 provides that every male between the ages of 18 and 26 who are not registered under the Federal Military Selective Services Act shall not be employed by the state unless he submits satisfactory documentation of his registration under the Federal Military Selective Services Act. The bill also provides that males between the ages of 18 and 26 who are employed by the state shall not be promoted to higher positions of employment if they are not registered.

B. Whistle-Blower Act

Senate Bill 2385 relates to the Public Employee Whistle-blower Law. It provides that upon receipt of a signed written complaint of alleged improper governmental action, a state investigative body shall keep a record of the complaint and shall have the authority to investigate the complaint. It also prohibits workplace reprisal or retaliatory action against a public employee whistle-blower.

C. Child Support and Enforcement

House Bill 852 relates to child support enforcement. It authorizes the child support unit of the Department of Human Services to maintain certain information with respect to the child support case registry; takes certain administrative actions relating to genetic testing, modification, income withholding,

liens and subpoenas without the necessity of court order and uses high-volume automated enforcement in interstate cases in response to requests from other states.

D. Insurance Referral Fees

House Bill 1229 authorizes an insurance agent, agency or affiliate to pay a referral fee to any unlicensed employee of the agent, agency or affiliate when the employee refers a prospective insured to the licensed agent or agency, and authorizes the Commissioner of Insurance to promulgate rules and regulations regarding the payment of commissions to unauthorized agents.

E. Employment Background Checks: Child Residential Homes

Senate Bill 2258 requires the executive director of a residential home to swear by affidavit the obtaining of required criminal record checks for employees; includes criminal records checks as a mandated inspection item; authorizes the Department of Health to maintain an action for a court order to close a child residential home; and provides for court-directed appropriate placement for the residents thereof.

**XXVII. MISSOURI**

A. Employment Discrimination

HB568 clarifies that, in regard to age discrimination against firefighters and law enforcement personnel, Missouri's anti-discrimination law is no more strict than federal age discrimination law.

B. Information on Employees

SB32 allows employers to avoid civil liability when providing information on employees to new or prospective employers so long as the employer does not make any statements with reckless disregard to their truth or falsity.

C. Child Labor

SB234 modifies child labor laws by allowing the Director of the Division of Labor Standards to grant a waiver for children under 16 years of age to work beyond the current hourly and weekly limits.

**XXVIII. MONTANA**

A. Domestic Service Employees—Exempt from Minimum Wage and Overtime

SB 245 exempts from state minimum wage and overtime laws domestic service employees who provide live-in care to individuals unable, because of age or infirmity, to care for themselves.

B. Disclosure of Employment Information

SB 271 limits the liability of employers who disclose information about a former or current employee's employment-related performance. Such employers are not liable for civil damages unless the employer knowingly or negligently provided false information.

**XXIX. NEBRASKA**

A. Child-Care Leave

LB134 provides that adoptive parents, subject to some restrictions, will be entitled to commensurate leave to which natural parents are entitled, and creates a cause of action for cases in which commensurate leave is not provided.

B. Qualified Employee Leasing Companies

LB539 defines Qualified Employee Leasing Companies and provides for changes in their tax treatment.

C. Criminal Background Checks

LB722 provides that for certain state employees already subject to fingerprinting, these fingerprints will now be sent to the Identification Division of the Federal Bureau of Investigation.

**XXX. NEVADA**

A. Discrimination Based upon Sexual Orientation

Effective October 1, 1999, AB311 05-29 revises provisions governing employment practices of certain employers to prohibit discrimination based upon sexual orientation.

B. Overtime for State Employees

SB499 05-05 clarifies the circumstances under which state employees who work variable schedules or innovative work weeks are eligible for overtime.

**XXXI. NEW HAMPSHIRE**

A. Addition of Washington's Birthday to Paid State Holidays

S.B. 193 includes Washington's Birthday in the list of paid state holidays for certain state employees, provided they work the scheduled day before and after the holiday. These state workers include those involved in the care of persons in the state mental health system, the department of health and human services, the secure psychiatric unit, or the veteran's home on a part-time basis. N.H. Rev. Stat. Ann. 98-A:6-b (eff. August 30, 1999.)

B. Limitation of Civil Liability for Automatic External Defibrillation

S.B. 67 requires that every person or organization acquiring an automatic external defibrillator for use in cardiac arrests receive training in its proper use and C.P.R. Also, any person who in good faith and without compensation renders emergency care with an automatic external defibrillator or any person or organization that acquires or maintains one shall not be liable for civil damages for acts or omissions unless those acts or omissions were grossly negligent or willful or wanton. N.H. Rev. Stat. Ann. 151-B:25-28 (eff. July 16, 1999.)

C. Changes to Death Benefits under New Hampshire Retirement System

S.B. 182 allows the spouse of a member of the retirement system who was in service at the time of death to receive a reduced (50%) monthly retirement allowance or a lump sum benefit if the member had at least 10 years of credible service. The former law only allowed an allowance if the member was completely eligible for full service retirement. NH Rev. Stat. Ann. 100-A:9, II-IV (eff. July 1, 1999).

D. Committee to Study Employment Opportunities of Persons with Disabilities

S.B. 180 establishes a committee to study the improvement of employment opportunities offered by the state of New Hampshire for persons with disabilities. This committee shall examine: (1) the barriers to employment existing within the state personnel system, including budgetary factors preventing the state from hiring qualified employees; (2) provisions for providing reasonable accommodations to qualified persons with disabilities; and (3) any other policy or practice preventing such employees from “achieving successful career growth with the state of New Hampshire.” The committee shall also seek input from a number of state departments, state associations, and “other disability interest groups as necessary.” The committee shall report its findings and any recommendations for proposed legislation on or before November 1, 1999. N.H. Rev. Stat. Ann. 83:1-6 (eff. July 31, 1999).

**XXXII. NEW JERSEY**

A. Legislation Enacted in 1998/1999

1. New Jersey Minimum Wage to Equal Federal Minimum Wage

Assembly Bill No. 2008 sets the New Jersey minimum wage at the same level as the federal minimum wage, and any further changes in the federal minimum wage would be automatically incorporated into state law. N.J.S.A. 34:11-56a4 (eff. January 21, 1999).

2. Prohibition of Smoking in Child Care Centers

Assembly Bill No. 553 prohibits smoking in an indoor area of a child care center when children are present and in all vehicles when used for center-sponsored transportation. Smoking is also prohibited in an indoor area of a child care center even when children are not present unless that area is separately ventilated to the outside. Furthermore, the law requires the sponsor or other person in control of the child care center to post a clearly visible sign stating “Smoking Prohibited” or “Smoking Prohibited When Children Are Present” or the international “No Smoking” symbol. The Department of Human Services may deny, suspend, revoke, or refuse to renew a child care center’s license for failure to comply with any provisions of this law. N.J.S.A. 30:5B-1 et. seq. (eff. Aug. 30, 1998).

B. Pending Legislation of Interest

1. “The New Jersey Living Wage Act”

Assembly Bill No. 106 would establish the “New Jersey Living Wage Act” and require businesses receiving certain public benefits to pay employees at least \$6.50 an hour. (Introduced Pending Technical Review by Legislative Counsel)

2. Prohibition of Unilaterally Changing Terms and Conditions of Employment

Assembly Bill No. 179 prohibits a public employer from unilaterally changing the terms and conditions of employment prior to reaching an agreement with a majority representative of a public employee group, notwithstanding an expired collective bargaining agreement or an impasse in negotiations. (Introduced Pending Technical Review by Legislative Counsel)

**XXXIII. NEW MEXICO**

A. Minimum Wage

HB500 provides that every employer shall pay minimum wage of \$4.25 an hour, excepting that an employer furnishing food, utilities, supplies or housing to an employee who is engaged in agriculture may deduct the reasonable value of such furnished item from any wages due to the employee. This bill also provides that any employee that customarily and regularly receives more than thirty dollars a month in tips shall be paid a minimum hourly wage of \$2.125. The employer may consider tips as part of the wages, but such a wage credit shall not exceed 50% of the minimum wage. Lastly this bill provides that no employee covered under this bill shall be required to work more than forty hours in any week of seven days, unless he is paid one and one-half times his regular hourly rate of pay for all hours worked in excess of forty hours.

B. Wages

HB782 provides that employers of workers engaged in agriculture are exempt from the overtime provisions of the minimum wage act.

C. Obtaining Copies of Medical Records for Disability Benefits Applicants

HB497 provides that applicants for disability benefits can obtain copies of records within 30 days after requesting them. This bill also provides that no fees will be charged for providing the copies and lastly that there will be a civil penalty for the violation of this section.

D. Agricultural Laborers

HB 53 provides that employers of agricultural laborers shall no longer require an employee to use a hoe that has a handle shorter than four feet while performing agricultural labor. This section does not apply to employer of greenhouses or nurseries.

**XXXIV. NEW YORK**

A. Domestic Violence Victims' Eligibility for Unemployment Insurance

S. 827-B amends the state's definition of eligibility for unemployment insurance to provide that a voluntary separation from employment "may also be deemed for good cause if it occurred as a consequence of circumstances directly resulting from the claimant being a victim of domestic violence."

**XXXV. NORTH CAROLINA**

A. Anti-Discrimination Ordinances

HB447 authorizes the City of Asheville to prohibit acts of discrimination in employment based on race, color, national origin, religion, sex, disability, or age. (Effective 6/23/99)

HB801 would also authorize the City of Durham and Durham County to prohibit these acts of discrimination in employment. (Pending)

B. “Persons with Disabilities Protection Act”

HB1071 prohibits discrimination based upon a disabling condition in the areas of employment and public accommodation. (Effective 10/1/99)

C. Minimum Wage

HB1230 amends the Wage and Hour Act to raise the state minimum wage to \$8.50. (Effective 1/1/2000)

D. Teacher Harassment Protection

HB1267 provides that no employee of a local board of education shall be disciplined in any way solely for the reason that the employee has filed a written complaint alleging sexual harassment by students, other local board employees, or school board members. (Effective 7/22/99)

E. OSHA Witness Statements

SB370 provides that the names of witnesses or complainants, and any information within statements taken from witnesses or complainants during the course of inspections that would name or otherwise identify the witnesses or complainants, shall not be released to any employer or third party and shall be redacted from any copy of the official inspection report provided to the employer or third party. (Effective 10/1/99)

F. Labor Unions’ Political Contributions

SB760 would include labor unions and their political committees among those groups subject to contribution limits in the new campaign finance laws. (Pending)

G. Workers’ Compensation for Prisoners

SB992 would allow prisoners who suffer death or total and permanent disability to receive compensation under the Workers’ Compensation Act based on the minimum wage. (Pending)

**XXXVI. NORTH DAKOTA**

A. Drug and Alcohol Testing - Payment

HB 1096 requires an employer to pay for drug and alcohol tests that it requires as a condition of obtaining or retaining employment.

B. Retaliation - Statute of Limitations

HB 1094 provides that in order for an employee to receive the North Dakota Department of Labor's assistance in obtaining voluntary compliance with the retaliation law, he or she must file a complaint within 300 days of the alleged misconduct.

**XXXVII. OHIO**

No relevant legislation passed.

**XXXVIII. OKLAHOMA**

Not available.

**XXXIX. OREGON**

A. Hazardous Materials -- Communication to Employees

SB 212 requires employers, upon request, to provide information to their employees regarding the hazardous substances located in their workplace.

B. Civil Cause of Action for Employment Disability Discrimination

SB 177 reinstates a civil cause of action for employment discrimination based on disability. A 1997 bill modified the state's disability discrimination laws, bringing them more in line with the federal Americans with Disabilities Act. In the process, the civil cause of action for disability discrimination was inadvertently omitted, leaving as the only remedy the filing of a complaint with the Bureau of Labor and Industries. SB 177 does not, however, revive any civil actions in which judgment was entered prior to its effective date.

**XL. PENNSYLVANIA**

Not available.

**XLI. RHODE ISLAND**

A. School Involvement Leave

Ch. 99-186 adds a new section to Rhode Island's Parental and Family Medical Leave Act to allow an employee, employed by the same employer for twelve consecutive months, a total of ten hours of leave per year to attend school conferences or other school-related activities for a child of whom the employee is a parent, foster parent or guardian. The employee must provide 24 hours notice and "make a reasonable effort to schedule the leave so as not to unduly disrupt the operations of the employer." The employer need not provide paid leave.

B. Broadening of Rhode Island Whistleblowers' Protection Act

Ch. 99-190 strengthens the Rhode Island Whistleblowers' Protection Act. An employer now cannot discharge, threaten or otherwise discriminate against an employee who, *inter alia*, "refuses to violate or assist in violating federal, state, or local law, rule or regulation." Moreover, under previous law, an employer could not act adversely to an employee who reports a violation to or cooperates with the

investigation of a “public body.” The definition of “public body” has been broadened to include “any Federal agency.” Finally, an employee who succeeds in an action under the statute may receive all or a portion of the costs of litigation, including attorneys' fees, if the court determines such award is appropriate.

C. Temporary Employees

Ch. 99-433 broadens Rhode Island's Temporary Employee Protection Act. Before assigning a temporary employee to a new position, the contractor or employment agency now must give notice to the employee of the “estimated longevity of the assignment” and “information concerning any job hazards.” Moreover, a penalty for violations of the job description notification provisions has been added.

D. Broadening Employer's Right to Jury Trial in Fair Employment Practices Litigation

Ch. 99-496, approved July 8, 1999, changes the procedures in which an employee complaint under the Fair Employment Practices Act filed at the Rhode Island Commission for Human Rights ultimately may be heard in superior court before a jury.

Specifically, in cases pending before the commission as of the act's effective date, where a finding of probable cause has been or will be made, the commission, within thirty days of the finding, must notify the respondent (employer) of its right to have the complaint heard and decided in superior court. If, within thirty days of receipt of the notice, the respondent elects in writing to have the case heard in the superior court, the commission shall promptly issue a right to sue letter to the complainant and all proceedings before the commission shall terminate. The complainant has the right to file suit in superior court within ninety days of the right to sue letter. Either party may claim a trial by jury.

In cases commenced after the act's effective date, the complainant or the respondent may elect, within twenty days after receipt of a finding of probable cause, “to terminate by written notice to the commission all proceedings before the commission and have the case heard in the superior court.” If that occurs, the commission shall issue a right to sue letter to the complainant who shall have the right to file suit in the superior court within ninety days. Again, either party may demand a jury trial.

The Legislature made clear that the act “shall not affect the right of any party in a case pending before the commission or on appeal to raise any constitutional issue relating to denial of a jury which issue was raised prior to the effective date” of the act.

**XLII. SOUTH CAROLINA**

A. Workers' Freedom of Conscience Act

HB3433 would prohibit unions from compelling political contributions from members or making unauthorized political contributions from union coffers. (Pending)

B. “Right to Work”

HB3770 would prohibit an employer from requiring or prohibiting membership in a labor organization as a condition of employment. This bill would also allow labor union membership dues to be deducted from wages only if an employee enters into a written agreement authorizing the deduction. (Pending)

C. Payment of Wages

HB3887 would revise the definition of “wages” to clarify where and when payment is to be made, and clarifies the procedure for payment of wages due discharged employees. (Pending)

D. Employees’ Personnel Files

SB405 would provide that the employees of an employer doing business in the state have the right to examine or obtain copies of their personnel files maintained by the entity. (Pending)

E. “Fair Pay Act”

SB740 would make it unlawful for an employer who employs three or more persons to discriminate between employees on the basis of sex, race, or national origin by paying wages at a different rate for equal jobs. (Pending)

**XLIII. SOUTH DAKOTA**

A. Retaliation -- Workers’ Compensation

Senate Bill No. 49 provides that employers are liable for wrongful discharge if they terminate an employee in retaliation for filing a lawful workers' compensation claim. The burden of proof is on the employee to prove the dismissal was in retaliation for filing a workers' compensation claim.

B. Discrimination -- Preexisting Injury

Senate Bill No. 49 prohibits an employer from refusing to hire any individual because of a preexisting injury if the injury doesn't affect his or her ability to perform the job for which he or she is being hired.

**XLIV. TENNESSEE**

A. Employees’ Liens

HB263 would amend the Tennessee Code to create an “employees’ lien” for any sums due to the employee for labor and service performed for the employer. (Pending)

B. Inmate Labor

SB243 would create guidelines for an inmate’s workday and work week, including the number of hours to be worked. (Pending)

C. Employees' Personnel Records

SB647 provides that the records and information of any state or other public employee in the possession of a governmental entity in its capacity as an employer shall be treated as confidential and shall not be opened for inspection by members of the public. Information made confidential by this bill would include unpublished telephone numbers, bank account information, Social Security numbers, and driver’s license information, except where driving or operating a vehicle is part of the employee’s job description or job duties. (Effective 5/18/99)

D. Employee Liability

SB1657 would provide that no employee shall be required as a condition of employment or continued employment to make up cash shortages incurred in the course of such employee's duties, unless such shortage resulted from theft, fraud, or gross negligence on the part of the employee. (Pending)

E. Liability of County Employees

SB1895 would provide that, if the county is liable due to an individual employee's acts, the county may go after this individual for contribution if 1) the amount is not covered by insurance, and 2) the liability is the result of the individual's illegal conduct in the workplace. (Pending)

F. Affirmative Action

HJR29 proposes that the Constitution of Tennessee be amended to provide that the state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting. (Pending)

**XLV. TEXAS**

Not available.

**XLVI. UTAH**

No relevant legislation passed.

**XLVII. VERMONT**

A. State Reimbursement for Job-Related Losses

H.60 creates a mechanism for state employees to file claims, in writing and under oath, and to recover up to \$1,000 in property damages from their employing agency. Once a claim is approved, payment of the claim is charged against the employing entity's appropriation. 32 V.S.A. § 932a (eff. July 1, 1999).

B. Prohibition of Discrimination on the Basis of Age, Religion, or Disability in Labor

S.79 clarifies numerous existing labor laws by expressly prohibiting employers and employee organizations from discriminating against employees on the basis of age, religion, or disability. This act also provides for both compensatory and punitive damages for a violation of Title 21 relating to Fair Employment Practices. Effective July 1, 1999.

C. Minimum Wage Increase and Livable Wage Study

S.139 increases Vermont's minimum wage to \$5.75 as of October 1, 1999. It also requires a ten-member committee to study issues relating to a livable minimum wage rate, including a time frame for implementation, a system to maintain the minimum wage at a livable level in light of inflation and other economic factors, the wage levels of neighboring states, the impact of the rate on the economic health of the

state and its business, and other issues. The committee's report must be submitted on or before December 17, 1999. 21 V.S.A. § 384 (eff. May 13, 1999).

D. Replacement Workers in Municipal Labor Disputes

S.90 prohibits a municipality from permanently replacing workers during a permitted strike related to a labor dispute. 21 V.S.A. § 1730 (eff. July 1, 1999).

**XLVIII. VIRGINIA**

Not available.

**II. WASHINGTON**

A. Private School Employees -- Record Checks

SB 5213 requires private school employees who have regularly scheduled unsupervised access to children to undergo a record check through the Washington State Patrol Criminal Identification System as well as through the F.B.I. The law applies to current and prospective employees.

B. Whistleblowers – Retaliatory Actions (State Employees)

SB 5672 adds to the list of retaliatory actions a change in the physical location or the nature of the employee's job if either are against the employee's expressed wishes.

The bill also states that a state agency is presumed to have taken retaliatory action if it engages in any of the listed activities. However, an agency can rebut the presumption by proving by a preponderance that the agency's actions were justified and unrelated to the employee's status as a whistleblower.

C. Temporary Agricultural Worker Housing

SB 5599 require the Department of Health and the Department of Labor & Industries to establish joint rules for the licensing, operation, and inspection of temporary worker housing and the enforcement of those rules. The departments are also required to establish standards for temporary labor camps, as well as guidelines for the departments to follow. Finally, the amendments establish fines for violations of the rules contained in the section.

D. Workplace Violence -- Healthcare Settings

SB 5312 requires hospitals and other healthcare settings to develop and implement plans to prevent and protect employees from workplace violence. Each hospital and healthcare setting must provide training by July 1, 2001 and then regularly thereafter. New employees must be trained within 90 days of their initial hiring date. The law does not affect temporary employees. The law also requires healthcare settings to keep a record of any violent act against an employee.

**L. WEST VIRGINIA**

A. Women's Commission

House Bill 2676, effective May 1, 1999 reestablished and continues the West Virginia Women's Commission through July 1, 2002. West Virginia Stats. Sec. 29-20-2. It is the Commission's duty, in part, to:

1. Review and study the status of women in the state;
2. Recommend methods of overcoming discrimination against women in employment and exercise of their civil and political rights;
3. Promote more effective methods for women to develop skills, continue education and to be retrained.

**LI. WISCONSIN**

Not available.

**LII. WYOMING**

Not available.