

HR COMPLIANCE LIBRARY

Ideas & Trends

DECEMBER 3, 2014
ISSUE NO. 765



INSIDE

SOCIAL MEDIA	109
Accounts further protected	
MINIMUM WAGE	110
Adjustments coming in 2015	
RECORDKEEPING	115
Four states enhance laws	
PAID SICK LEAVE	115
Expanded by handful of states	
SAME-SEX MARRIAGE	116
2014 was pivotal year for the issue	

STATE LAW ROUND-UP

Ban the box laws are new state law trend for 2014

The year 2014 saw a great deal of state legislative activity with ban the box laws taking center stage. These laws regulate the use of arrest and criminal conviction information by employers during the hiring process. Generally, the laws are intended to remove barriers to gainful employment for those who were formerly incarcerated. Six states enacted ban the box laws in 2014.

In addition, 2014 has been a turning point for same-sex marriage. Having bounced around state legislatures, ballot boxes, and state and federal courts, the issue finally landed on the U.S. Supreme Court docket. To the surprise of many, however, on October 6, 2014, the Supreme Court declined to rule on the lawfulness of same-sex marriage bans in five states. It appeared that the patchwork state-by-state “system” would continue to determine whether same-sex couples could marry. But less than a month later, a circuit split has virtually guaranteed that the Supreme Court will once again face the issue in the near future.

A handful of states expanded sick leave and recordkeeping laws, and a number also furthered their protection of employees’ social media accounts, prohibiting employers from seeking access to private accounts.

These are just a few of the legal issues state legislatures took up in 2014. This issue of *Ideas & Trends* contains Part 1 of our annual roundup of state legislative activity. Detailed below is state action concerning ban the box, sick leave, same-sex marriage, and social media laws. Also covered in this issue are new and modified laws pertaining to state minimum wage. Part 2, to publish in January, will highlight state immigration activity, changes to family and medical leave laws, wage payment and marijuana laws. Also look for coverage of new and modified whistleblower protection laws, fair employment practice laws, equal pay and credit information laws as well.

Detailed information on these and other recent state law developments is available in the Human Resource Compliance Library. ■

BAN THE BOX

New laws regulate use of arrest, conviction records

California. Governor Edmund G. Brown, Jr. signed the Fair Chance Employment Act into law on September 30, 2014. The new law, which will take effect January 1, 2015, will require that any person submitting a bid to the state on a contract involving onsite construction-related services shall certify that the person will not ask

an applicant for onsite construction-related employment to disclose orally or in writing information concerning the conviction history of the applicant on or at the time of an initial employment application.

The law shall not apply to a position for which the person or the state is otherwise required by state or federal law to conduct a conviction history background check, or to any contract position with a criminal justice agency. Exception is also made for a person to the extent that he or she obtains workers from a hiring hall pursuant to a bona fide collective bargaining agreement (Ch. 880 (A. 1650), L. 2013, enacted September 30, 2014).

Delaware. Emphasizing that one of the best predictors of whether ex-offenders will commit more crimes is whether they have a job, Governor Jack Markell on May 8 signed legislation to prohibit public employers from inquiring into an applicant's criminal record before their first interview. House Bill 167 forbids the practice of asking job candidates to check a box if they have a criminal record. The same prohibition will apply to asking for an applicant's credit history or score.

This law permits consideration of criminal background after an applicant's initial interview, and does not place any requirements on private employers. When making solicitations for state contracts, agencies will note the state's policy and encourage companies to adopt the same practice without asking them whether they do so.

Police forces, the Department of Corrections and other positions with a statutory mandate for background checks are excluded from the law's provisions (*State of Delaware, Office of the Governor, Press Release*, May 8, 2014; Ch. 277 (H.167), L. 2013).

District of Columbia. Mayor Vincent C. Gray signed a "ban the box" law to regulate the use of arrest and criminal conviction information by employers during the hiring process. The Fair Criminal Record Screening Amendment Act of 2014 (Act Number 422) took effect August 29, 2014.

The law is intended to assist the successful reintegration of formerly incarcerated people into the community by removing barriers to gainful employment. It will prohibit the consideration of a job applicant's arrest record during the hiring process and restrict an employer's inquiry into a job applicant's prior convictions before a conditional offer of employment.

For purposes of the law, "employer" means any person, company, corporation, firm, labor organization, or association, including the District government, but not including the courts, that employs more than 10 employees in the District.

Penalties for violations of the law will depend on the number of employees working for an employer, with the maximum fine set at \$5,000 (Act 422 (B. 642), L. 2013, enacted August 22, 2014).

Illinois. Governor Pat Quinn signed "ban the box" legislation that prevents criminal background checks until after an applicant is deemed qualified for a job. The law is intended to help ex-offenders secure employment in the private sector and become productive members of society.

House Bill 5701, the Job Opportunities for Qualified Applicants Act, prohibits a private employer with 15 or more employees or employment agency from inquiring about or considering an applicant's criminal history until the applicant has been determined to be qualified for the job and selected for an interview, or if there is no interview, a conditional job offer is made. The new law does not apply to certain jobs where employers must exclude applicants with criminal histories. The legislation will take effect January 1, 2015.

The law will not prohibit employers from notifying applicants in writing of specific offenses that will disqualify an applicant from employment in a particular position due to federal or state law or the employer's policy.

The Illinois Department of Labor will enforce the law (P.A. 98-774 (H. 5701), L. 2013, enacted July 21, 2014).

HR COMPLIANCE LIBRARY

Ideas & Trends

Managing Editor
Heidi J. Henson, J.D.

Contributing Editors
Susan McLane
David Stephanides, J.D.

Newsletter Design
Publishing Production
& Design Services

Newsletter Layout
Chris Tankiewicz

No claim is made to original government works; however, the gathering, compilation, and arrangement of such materials, the historical, statutory and other notes and references, as well as commentary and materials in this Product or Publication are subject to CCH Incorporated's copyright.

HR Compliance library—Ideas & Trends (USPS 680-810)(ISSN 0745-0613), a Wolters Kluwer editorial staff publication, is published monthly by Wolters Kluwer, 4025 W. Peterson Ave., Chicago, Illinois 60646. Periodicals postage paid at Chicago, Illinois, and at additional mailing offices. POSTMASTER: SEND ADDRESS CHANGES TO HR COMPLIANCE LIBRARY—IDEAS & TRENDS, 4025 W. Peterson Ave., CHICAGO, IL 60646. Printed in U.S.A. ©2014 CCH Incorporated. All Rights Reserved.

Nebraska. Nebraska enacted a “ban the box” law with respect to public employers. With specified exceptions, a public employer shall not ask an applicant for employment to disclose information concerning the applicant’s criminal record or history, including any inquiry on any employment application, until the public employer has determined the applicant meets the minimum employment qualifications (L.B. 907, L. 2013, enacted April 16, 2014).

New Jersey. On August 11, 2014, Governor Chris Christie put his mark of approval on the “Opportunity to Compete

Act,” a so-called “ban-the-box” law that bars employers in the state from asking about an applicant’s criminal record during the initial employment application process. The stated purpose of the legislative measure, A1999, is “to improve the economic viability, health, and security of New Jersey communities and to assist people with criminal records to reintegrate into the community, become productive members of the workforce, and to provide for their families and themselves” – in other words, to give folks with criminal records a second chance in New Jersey. The Opportunity to Compete Act will take effect March 1, 2015. ■

SOCIAL MEDIA PRIVACY

2015 sees lawmakers further protect social media accounts

Louisiana. Governor Bobby Jindal signed into law a bill that bars employers from requiring applicants and employees to disclose information permitting access to personal online accounts. The Personal Online Account Privacy Protection Act also makes it unlawful for employers to take adverse employment actions against applicants and employees who refuse to disclose such information. However, the law also expressly protects employers’ legitimate needs for such information (Act 165 (H. 340), L. 2014, effective August 1, 2014).

New Hampshire. Employers in New Hampshire are now prohibited from requiring employees or prospective employees to disclose their social media or email passwords under a new law enacted on August 1, 2014.

Effective September 30, 2014, House Bill 1407 states that no employer shall request or require that an employee or prospective employee disclose login information for accessing any personal account or service through an electronic communication device. Further, an employer cannot compel an employee or job applicant to add anyone, including the employer or the employer’s agent, to a list of contacts associated with an electronic mail account or personal account, or require an employee or applicant to reduce privacy settings to enable a third party to view the contents of the account.

Employees are also protected from disciplinary action for refusing to comply with an employer’s request or demand to violate these privacy protections (Ch. 305 (H. 1407), L. 2014).

Oklahoma. Governor Mary Fallin approved legislation to prohibit employers from requiring access to social media accounts as a condition of employment or continued employment, effective November 1, 2014 (H. 2372, L. 2013, enacted May 21, 2014).

Rhode Island. Social media protections have been enacted in Rhode Island. The new law prohibits employers from ask-

ing or requiring employees or job applicants to provide their log-in information or to sign into social media accounts. Patterned on a statute in California that is considered one of the nation’s strongest social media privacy laws in the nation, the new law will establish what aspects of social media are private and protected and will set prohibitions against those who would request or try to compel this information.

The legislation provides that:

- No employer will be allowed to require, request, suggest or cause an employee or applicant to disclose personal social media information.
- No employer will be allowed to compel an applicant to add anyone, including the employer or agent, to the applicant’s list of contacts associated with the social media account.
- Employers will be prohibited from discharging, disciplining or otherwise penalizing any employee for refusing to divulge social media information.

In addition to punitive and actual damages, any civil action alleging a violation of those provisions could also result in injunctive relief against the employer.

The law would not apply to information about an applicant or employee that is publicly available. Further, the law would not prohibit or restrict an employer from complying with a duty to screen employees or applicants before hiring or to monitor or retain employee communications that is established by a self-regulatory organization or under state or federal law or regulation to the extent necessary to supervise communications of regulated financial institutions insurance or securities licensees for banking insurance or securities related business purposes (*State of Rhode Island General Assembly Press Release*, July 3, 2014; H. 7124, L. 2013, enacted and effective June 30, 2014).

Tennessee. Governor Bill Haslam signed the Employee Online Privacy Act of 2014. Effective January 1, 2015, this

law will prevent an employer from requiring an employee to disclose the username and password for the employee's personal internet account except under certain circumstances (S. 1808, L. 2014).

Wisconsin. Governor Scott Walker signed legislation on April 8, 2014, that prohibits employers from requesting or requiring passwords or other protected access to personal Internet accounts of employees and applicants for employment.

Act 208 (S. 223), L. 2013, prohibits employers from requesting or requiring an employee or applicant, as a condition of employment, to disclose access to his or her personal

Internet account or to otherwise grant access to allow observation of that account.

The law provides exceptions to allow access to employer-supplied equipment, accounts used for business purposes, and to protect the employer's proprietary and confidential information. Employers would not be prohibited from viewing, accessing or using information about an employee or applicant that can be obtained without access information or that is part of the public domain, or from requesting or requiring an employee or applicant from disclosing his or her personal email address (*State of Wisconsin, Office of the Governor, Press Release, April 8, 2014*). ■

MINIMUM WAGE AND OVERTIME

Majority of states to see minimum wage adjustments in 2015

Alaska. The Alaska Wage and Hour Act was amended to clarify that individuals employed by motor vehicle dealers as salespersons and service writers are exempt from coverage under the Act.

According to Representative Steve Thompson, sponsor of the bill, such individuals are paid on a commission basis and are not hourly employees.

Thompson said clarification was necessary as a result of confusion caused by previous regulations from the Department of Labor and Workforce Development that defined straight commission as "a fixed percentage of each dollar of sales an employee makes." This became interpreted as meaning the commission must be applied to the gross amount of a sale, which is not a customary practice for auto sales. This legislation allows for auto dealers' common practice of using a net amount against which the commission is applied. The Department of Labor and Workforce Development has since amended its regulations. However, as a result of litigation and with the advice of legal counsel, it was deemed necessary to seek final clarification in the statute (Ch. 11 (H. 276), L. 2014, effective April 23, 2014).

On November 4, 2014, voters in Alaska approved Ballot Initiative 3 (13 MINW) to raise the state minimum wage from \$7.75 per hour to \$8.75 per hour on January 1, 2015; to \$9.75 per hour on January 1, 2016; and, after that, to adjust the state minimum wage annually based on inflation, with the provision that if the minimum wage determination is less than \$1 over the federal minimum wage, then the Alaska minimum wage would be set at \$1 over the federal minimum wage. Tips or gratuities would not count towards the minimum wage.

Arizona. The minimum wage in Arizona will increase from \$7.90 per hour to \$8.05 per hour effective January 1, 2015, according to the Industrial Commission of Arizona.

Arizona law provides for an annual increase in the state minimum wage based on the increase in the cost of living. At a public meeting held on October 16, 2014, the Industrial Commission of Arizona calculated that Arizona's minimum wage of \$7.90 per hour would be increased by \$0.15 to \$8.05 for calendar year 2015 (*Industrial Commission of Arizona, Press Release, October 17, 2014; Industrial Commission of Arizona, 2015 Minimum Wage Resolution, October 16, 2014*).

Arkansas. On November 4, 2014, voters in Arkansas approved a minimum wage increase. Issue Number 5 increases the state minimum wage from \$6.25 to \$7.50 per hour on January 1, 2015; to \$8.00 per hour on January 1, 2016; and to \$8.50 per hour on January 1, 2017.

California. Effective January 1, 2015, a suit for liquidated damages may be filed at any time before the expiration of the statute of limitations for bringing the underlying action alleging payment of less than the state minimum wage (Ch. 211 (A. 2074), L. 2014).

Employers who pay less than the minimum wage fixed by an order of the Industrial Welfare Commission are subject to a citation that includes a civil penalty, the payment of restitution of wages, and the payment of liquidated damages to the affected employee. Effective January 1, 2015, this provision will be expanded to also subject the employer to payment of any applicable penalties for the willful failure to timely pay wages of a resigned or discharged employee (Ch. 886 (A.B. 1723), L. 2014).

Overtime. The minimum wage computer software employees and physicians and surgeons must receive to be considered exempt under the state's overtime requirements has been determined for 2015.

The California Department of Industrial Relations (DIR) has adjusted the computer software employee's minimum

hourly rate of pay exemption from \$40.38 to \$41.27, the minimum monthly salary exemption from \$7,010.88 to \$7,165.12, and the minimum annual salary exemption from \$84,130.53 to \$85,981.40, effective January 1, 2015, reflecting a 2.2% increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers (August 2013 to August 2014).

Similarly, the DIR has adjusted the licensed physicians' and surgeons' minimum hourly rate of pay exemption from \$73.57 to \$75.19, to reflect a 2.2% increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers from August 2013 to August 2014.

Colorado. Enforcement provisions will be amended effective January 1, 2015, to clarify that an employee who receives less than the applicable minimum wage is entitled to recover in a civil action the unpaid balance of the full amount of the minimum wage, along with reasonable attorney fees and court costs (S. 5, L. 2014).

The Colorado Department of Labor and Employment, Labor Standards, adopted Colorado Minimum Wage Order No. 31 (7 CCR 1103-1) on November 10, 2014, to increase the state minimum wage from \$8.00 to \$8.23 per hour effective January 1, 2015. The state minimum wage for tipped employees will also increase from \$4.98 to \$5.21 per hour effective January 1, 2015.

Connecticut. The minimum wage will increase to \$9.15 per hour on January 1, 2015, to \$9.60 per hour on January 1, 2016, and to \$10.10 per hour on January 1, 2017, or to one-half of one percent, rounded to the nearest whole cent, more than the highest federal minimum wage, whichever is greater. Learners, beginners and persons under the age of 18 may be paid 85 percent of the minimum wage, for the first 200 hours of employment, and then must be paid the minimum wage after that (P.A. 14-1 (S. 32), L. 2014, enacted March 27, 2014).

In other legislation, the minimum wage law was amended to correct language and to clarify the tip credit for bartenders: effective January 1, 2015, the amount is eighteen and one-half percent percent of the minimum "fair" wage (P.A. 14-42 (S. 64), L. 2014, enacted May 28, 2014).

Additionally, effective January 1, 2015, the time allowed as exempt from hours worked for "sleeping time" has been clarified for domestic workers (P.A. 14-159 (H. 5453), L. 2014, enacted June 11, 2014).

Delaware. The minimum wage in Delaware will increase by \$1.00 in two 50-cent step increases. The rate increased to \$7.75 per hour on June 1, 2014, and will rise to \$8.25 per hour on June 1, 2015. Also, should the federal minimum wage rate ever increase to an amount higher than the state

rate, the minimum wage in Delaware will also increase automatically to equal the federal rate (Ch. 186 (S. 6), L. 2013, enacted January 30, 2014).

District of Columbia.—*Minimum wage.*— Mayor Vincent C. Gray signed the Minimum Wage Amendment Act of 2013 into law on January 15, 2014. The Act increased the minimum wage for all District workers to \$9.50 per hour on July 1, 2014. The Act also provides for scheduled increases to \$10.50 per hour on July 1, 2015, and to \$11.50 per hour on July 1, 2017, and no later than July 1 of each successive year, the minimum wage is to be increased based on the cost of living (*District of Columbia, Executive Office of the Mayor, Press Release*, January 15, 2014; Act B20-265 (B20-459), L. 2013, effective March 11, 2014).

Living wage.—In addition, the living wage in the District of Columbia increased to \$13.60 per hour, effective retroactive to January 1, 2014. The new wage is a slight increase from the 2013 living wage of \$13.40, and is calculated based on a formula set in the statute. As authorized by the Living Wage Act of 2006, all recipients of government contracts or assistance of \$100,000 or more are required to pay their affiliated employees no less than the living wage authorized by the District.

Subcontractors of D.C. government contractors who receive \$15,000 or more from the contract and subcontractors of the recipients of government assistance who receive \$50,000 or more from the assistance are also required to pay their affiliated employees no less than the current living wage rate.

The 2014 living wage rate also covers employees of home care agencies, community residential facilities, and group homes for individuals with developmental disabilities. Home health workers providing services as part of a managed care organization remain exempt (*District of Columbia Department of Employment Services Press Release*, February 24, 2014).

Wage Theft Prevention Amendment Act of 2014.— On September 19, 2014, the mayor signed into law the Wage Theft Prevention Amendment Act of 2014. This law amends both the Wage Payment and Collections Act and the Minimum Wage Revision Act for the following purposes: (1) to enhance applicable remedies, fines, and administrative penalties when an employer fails to pay earned wages, (2) to provide for suspension of business licenses of employers that are delinquent in paying wage judgments or agreements, (3) to clarify administrative procedures and legal standards for adjudicating wage disputes, and (4) to require the employer to provide written notice to each employee of employment terms (Act 20-426 (B20-671), L. 2014).

Florida. The minimum wage will increase from \$7.93 per hour to \$8.05 per hour effective January 1, 2015. Employ-

ers must pay their employees the hourly state minimum wage for all hours worked in Florida.

Employers of tipped employees who meet eligibility requirements for the tip credit under the FLSA may credit tips up to the amount allowed under federal law (\$3.02) towards satisfaction of the state minimum wage. However, the employer must pay tipped employees a direct wage. The direct wage is calculated as equal to the minimum wage (\$8.05) minus the tip credit (\$3.02), or a direct hourly wage of \$5.03, as of January 1, 2015 (*Florida Department of Economic Opportunity Announcement, 2015 Minimum Wage Increase*, October 15, 2014).

Hawaii. The Hawaii Wage and Hour law was amended to increase the state's minimum wage from \$7.25 to \$7.75 per hour beginning on January 1, 2015; to \$8.50 per hour beginning on January 1, 2016; to \$9.25 per hour beginning on January 1, 2017; and finally to \$10.10 per hour beginning on January 1, 2018.

In addition, the tip credit will increase to 50 cents per hour beginning on January 1, 2015, and to 75 cents per hour beginning on January 1, 2016; provided that beginning January 1, 2015, the combined amount the employee receives in wages and tips is at least \$7 more than the applicable minimum wage (Act 82 (S. 2609), L. 2014).

Illinois. Voters approved an advisory question in the November 4, 2014, General Election, that asked voters "Shall the minimum wage in Illinois for adults over the age of 18 be raised to \$10 per hour by January 1, 2015?" Although voters approved the measure, H.B. 3814 is considered to be a nonbinding advisory measure that requires further action by the state legislature.

Maryland. The minimum wage in Maryland will increase, through a series of step increases, to reach \$10.10 per hour by July 1, 2018. It will increase first to \$8.00 per hour on January 1, 2015. It will then increase to \$8.25 per hour on July 1, 2015, to \$8.75 per hour on July 1, 2016, to \$9.25 on July 1, 2017, and finally to \$10.10 per hour on July 1, 2018.

The tip credit for employers of employees who customarily and regularly receive at least \$30 per month in tips will also change. Currently, the tip credit may not exceed 50% of the minimum wage. The tip credit will change such that the tip credit amount may not exceed the state minimum wage rate for the employee less \$3.63.

Employers may pay a training wage to employees under the age of 20 for the first six months of employment at the rate of 85% of the state minimum wage. Those employed in certain amusement and recreational employments may also pay employees a reduced minimum wage of 85% of the minimum wage, or \$7.25 per hour, whichever is greater.

Exemptions relating to both minimum wage and overtime were also amended (Ch. 262 (H. 295), L. 2014, effective July 1, 2014).

Massachusetts. The state minimum wage will increase to \$11.00 an hour by 2017, through a series of step increases. The minimum wage in Massachusetts will first increase to \$9.00 per hour on January 1, 2015, then to \$10.00 per hour on January 1, 2016, and finally to \$11.00 per hour on January 1, 2017. In no case shall the minimum wage rate be less than 50 cents higher than the federal minimum wage rate. For agricultural and farm workers, the minimum wage will increase from \$1.60 to \$8.00 per hour on January 1, 2015.

The minimum cash wage for tipped employees will also increase, from the current \$2.63 per hour to \$3.00 per hour on January 1, 2015, then to \$3.35 per hour on January 1, 2016, and to \$3.75 per hour on January 1, 2017. "Tipped employees" are service workers who regularly and customarily receive more than \$20 a month in tips. The combination of cash wages plus tips received must equal at least the state minimum wage (Ch. 144 (S. 2195), L. 2014).

Michigan. The "Workforce Opportunity Wage Act," enacted on May 27, 2014, increases the minimum wage from \$7.40 an hour to \$9.25 an hour over a four-year period, and provides for future increases tied to inflation starting in 2019.

The minimum wage in Michigan increased from \$7.40 per hour to \$8.15 per hour on September 1, 2014. The rate will increase to \$8.50 per hour on January 1, 2016; to \$8.90 per hour on January 1, 2017; and finally to \$9.25 per hour on January 1, 2018. After that, each January beginning in 2019, the state treasurer is to adjust the minimum wage based on inflation, not to exceed 3.5%; the adjusted rate would take effect the following April 1. An increase based on inflation would not occur for any year where the rate of unemployment is 8.5% or greater for the prior year. Tipped employees would have a rate that is 38 percent of the minimum wage rate. The Act also provides for a training wage of \$4.25 per hour for youth under the age of 20 for the first 90 days of employment.

Overtime provisions were also amended (Act 138 (S. 934), L. 2014, effective May 27, 2014).

Minnesota. Effective August 1, 2014, large employers having an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated) must pay employees a minimum wage of \$8.00 per hour, and small employers having an annual gross volume of sales or business done of less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated) must pay employees a minimum wage of \$6.50 per hour.

Effective August 1, 2015, large employers must pay employees a minimum wage of \$9.00 per hour, and small employers must pay employees a minimum wage of \$7.25 per hour.

Effective August 1, 2016, large employers must pay employees a minimum wage of \$9.50 per hour, and small employers must pay employees a minimum wage of \$7.75 per hour.

Beginning in 2017, no later than August 31 of each year, the labor commissioner is to determine the minimum wage to take place on January 1 of the following year, based on increases in the cost of living. A training wage may be paid to employees under the age of 20 for the first 90 consecutive days of employment. Reduced wages also apply to minors under the age of 18, as well as to employees working under contract for employers that are hotels, motels, lodging establishments, or resorts, where such employees receive a food or lodging benefit, provided the employees are working under a summer work travel exchange visitor program (J) nonimmigrant visa (Ch. 166 (H. 2091), L. 2013, enacted April 14, 2014).

Missouri. The Missouri Department of Labor announced on November 7, 2014, that the minimum wage rate will increase to \$7.65 per hour effective January 1, 2015.

All businesses are required to pay the minimum wage of \$7.65 per hour, except retail and service businesses whose annual gross income is less than \$500,000. Per state law, the minimum wage rate is calculated once a year and may increase or decrease based on the cost of living. Missouri law does not allow the state's minimum wage rate to be lower than the federal rate.

Compensation for tipped employees must also total at least \$7.65 per hour. Employers are required to pay tipped employees at least 50 percent of the minimum wage (\$3.825 per hour), or the amount necessary to bring the employee's total compensation to a minimum of \$7.65 per hour.

Montana. The minimum wage in Montana will increase from \$7.90 per hour to \$8.05 per hour on January 1, 2015, pursuant to the state's cost of living adjustment provisions.

The 2015 rate reflects a 1.7 percent increase in the CPI-U from August 2013 to August 2014 (*Montana Department of Labor and Industry News Release*, October 1, 2014).

Nebraska. Voters approved Ballot Measure 425 in the November 4, 2014, General Election, to increase the state minimum wage from \$7.25 to \$8.00 per hour on January 1, 2015, and to \$9.00 per hour on January 1, 2016.

Nevada. The minimum wage rate for employees of employers who provide qualified health insurance benefits is currently \$7.25 per hour, and employers who do not provide

qualified health insurance benefits must pay employees a minimum wage of \$8.25 per hour. These rates apply to all employees in the state of Nevada unless otherwise exempt. These rates did not change on July 1, 2014, pursuant to the state's cost of living adjustment provisions (*State of Nevada Department of Business and Industry Press Release*, April 1, 2014; and *State of Nevada Minimum Wage 2014 Annual Bulletin*, April 1, 2014).

The threshold for the state's daily overtime requirement also remained unchanged on July 1, 2014.

New Jersey. The state minimum wage will increase from \$8.25 per hour to \$8.38 per hour on January 1, 2015, according to the New Jersey Department of Labor and Workforce Development, Division of Wage and Hour Compliance (*State of New Jersey Department of Labor and Workforce Development, Division of Wage and Hour Compliance, Notice of Administrative Change*, N.J.A.C. 12:56-3.1, September 24, 2014).

New York. As of September 30, 2014, employees who work for commercial tenants at projects in New York City that receive more than \$1 million in city subsidies must be paid a living wage of \$13.13 per hour, without benefits. If the tenant provides employees with supplemental health benefits, the employer must pay employees a living wage of \$11.50 per hour. The health benefits supplement rate is \$1.63 per hour. The living wage for these workers previously stood at \$11.90 without benefits, and \$10.30 with benefits.

The living wage increase was made through an Executive Order signed by Mayor Bill de Blasio on September 30, 2014. The living wage rate and health benefits supplement rate are adjusted annually, based upon increases, if any, in the cost of living (*City of New York, Office of the Mayor, Executive Order*, September 30, 2014).

Ohio. On January 1, 2015, the minimum wage in Ohio is scheduled to automatically increase to \$8.10 per hour, for non-tipped employees, and to \$4.05 per hour for tipped employees, pursuant to the state's cost of living adjustment provisions. The increased minimum wage will apply to employees of businesses that have annual gross receipts of more than \$297,000 per year.

Currently, the state's minimum wage is \$7.95 per hour for non-tipped employees and \$3.98 for tipped employees, and applies to employees of businesses with annual gross receipts of more than \$292,000 per year.

For employees at smaller companies (with annual gross receipts of \$292,000 or less per year in 2014, or \$297,000 or less per year after January 1, 2015) and for 14- and 15-year-old workers, the state minimum wage is \$7.25 per hour. For these employees, the state minimum wage is tied to the fed-

eral minimum wage (*Ohio Department of Commerce News Release*, September 30, 2014).

Oklahoma. Governor Mary Fallon signed legislation on April 14, 2014, to prohibit municipalities and other political subdivisions from establishing a minimum wage rate that an employer would be required to pay employees. The measure also prohibits such local government jurisdictions from requiring employers to provide a minimum number of vacation or sick leave days. Existing and future ordinances, orders or regulations are null and void. The measure does not affect the minimum number of vacation or sick leave days authorized by a municipality for its own employees as a benefit of employment. In addition, this ban does not affect any exemption from state statutes previously allowed for certain municipalities pursuant to Section 1-101 of Title 11 of the Oklahoma Statutes (S. 1023, L. 2013, effective July 1, 2014).

Oregon. Effective January 1, 2015, the minimum wage in Oregon will increase by 15 cents to \$9.25 per hour, reflecting changes in the cost of living (*Oregon Bureau of Labor and Industries Press Release*, September 17, 2014; *Oregon Bureau of Labor and Industries 2015 Minimum Wage Determination*, September 17, 2014).

Rhode Island. Effective January 1, 2015, the minimum wage in Rhode Island will increase from \$8.00 per hour to \$9.00 per hour (Ch. 273 (H. 7194 (Sub. A)) and Ch. 325 (S. 2249 (Sub. A)), L. 2014).

South Dakota. Voters in the November 4, 2014, General Election approved Initiated Measure 18—Minimum Wage to raise the state minimum hourly wage from \$7.25 per hour to \$8.50 per hour on January 1, 2015, and, after that, to annually adjust the minimum wage by any increase in the cost of living. In addition, the Measure increases the hourly minimum wage for tipped workers to be half the state minimum hourly wage for non-tipped workers. The Measure also provides for limited exemptions for those employed by seasonal amusement or recreational establishments, organized camps, or religious or nonprofit educational conference centers.

Vermont. Legislation that will gradually increase the minimum wage in Vermont to reach \$10.50 per hour by 2018 was signed by Governor Peter Shumlin on June 9, 2014. The Vermont minimum wage rate will climb from the current rate of \$8.73 per hour to \$9.15 per hour on January 1, 2015; to \$9.60 on January 1, 2016; \$10.00 on January 1, 2017; and finally to \$10.50 on January 1, 2018. Beginning January 1, 2019, the state minimum wage in Vermont will be adjusted annually according to the standard cost-of-living adjustment.

For those in the hotel, motel, tourist place, and restaurant industry, employers will be required to pay service and tipped employees who customarily and regularly receive more than

\$120 per month in tips for direct and personal customer service a basic rate no less than one-half the minimum wage (Act 176 (H. 552), L. 2014, enacted June 9, 2014).

Washington. The minimum wage in Washington will increase by 15 cents to \$9.47 per hour beginning January 1, 2015, according to the Washington Department of Labor and Industries.

The Department calculates the state's minimum wage each year as required by state cost of living adjustment provisions.

The minimum wage applies to workers in all industries, including agriculture, although 14- and 15-year-olds can be paid 85 percent of the adult minimum wage, or \$8.05 an hour (*Washington State Department of Labor and Industries News Release*, September 30, 2014).

West Virginia. Governor Earl Ray Tomblin signed a law on April 1, 2014, to increase the state minimum wage in two steps: first to \$8.00 per hour on January 1, 2015, and then to \$8.75 per hour on January 1, 2016. The law also amends provisions relating to a training wage for persons under the age of 20 for the first 90 days of employment and makes increases in employer credits that may be taken for employers of tipped employees and for board and lodging provided, and makes changes to who is a covered employer under the law. Although Governor Tomblin signed the law on April 1, 2014, he called the state legislature into an extraordinary session in May to address issues with the bill he said may have unintended consequences relating to overtime compensation and maximum hours (Ch. 124 (H. 4283), L. 2014, effective June 6, 2014).

Subsequently, H. 201 was passed in a 2nd extraordinary session on May 21, 2014, and the governor signed the measure on May 29, to address and clarify the issues and to provide for the commissioner of labor to issue emergency rules prior to January 1, 2015, to implement and administer the amendments and, if a finding is made that a conflict exists between state and federal standards defining employee exemptions, to adopt emergency rules to revise the state standards to conform with federal law (Ch. 5 (H. 201), L. 2014, effective May 21, 2014).

Wisconsin. Governor Scott Walker signed legislation on April 16, 2014, to exempt outside salespersons from the state minimum wage law, bringing Wisconsin law in line with federal law (Act 285 (A. 412), L. 2013, effective April 18, 2014).

The governor also signed legislation that amends recordkeeping requirements under the minimum wage law. Employers of salaried employees who are not eligible to receive overtime payments will be exempt from the requirement that employers keep a record of the number of hours worked by employees (Act 286 (A. 712), L. 2013, effective April 18, 2014). ■

EMPLOYMENT RECORDS AND PERSONNEL FILES

Four states pass legislation enhancing recordkeeping laws

California. The state's law prohibiting a person or entity, with specified exceptions, from publicly posting, displaying or otherwise compromising the security of an individual's social security number was amended to prohibit the sale of, advertisement for sale of, or offer to sell an individual's social security number. Current California law requires a person or business conducting business in the state that owns or licenses computerized data that includes personal information to disclose a breach of the security of the system or data following discovery or notification of the breach to any California resident whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. Likewise, a person or business that maintains computerized data that includes personal information that the person or business does not own must also notify the owner or licensee of the information of any breach immediately following discovery.

Effective January 1, 2015, the state will require with respect to the information to be included in a notification of a security breach described just above, that if the person or business was the source of the breach, appropriate identity theft prevention and mitigation services be provided for a specified time at no cost to the affected person (A. 1710, L. 2013, enacted September 30, 2014).

Colorado. Effective January 1, 2015, recordkeeping requirements for payment of wages will be amended to require that employers retain records reflecting the information contained in an employee's itemized pay statement for a period of at least three years after the wages or compensation were due. The employer must make such records available for inspection and must provide copies of the records upon

request by the Division of Labor or to the employee. Employers who violate the recordkeeping requirements will be subject to a fine of up to \$250 per employee per month, up to a maximum fine of \$7,500 (S. 5, L. 2014).

Delaware. Delaware enacted a law relating to the safe destruction of employment records containing personal identifying information.

Effective January 1, 2015, if an employer seeks permanently to dispose of records containing employees' personal identifying information within its custody and control, the employer shall take all reasonable steps to destroy or arrange for the destruction of each such record by shredding, erasing, or otherwise destroying or modifying the personal identifying information in those records to make it unreadable or indecipherable.

The law provides that an employee who incurs actual damages due to a reckless or intentional violation of this section may bring a civil action against the employer (Ch. 423 (H. 294), L. 2013, enacted September 2, 2014).

Massachusetts. Recordkeeping requirements have been amended to increase the time certain records must be kept from two years to three. Employers must keep true and accurate records of the name, address and occupation of each employee, of the amount paid each pay period to each employee, of the hours worked each day and each week, and any other information as the commissioner or attorney general shall deem material and necessary, for at least three years after the entry date of such record (Ch. 292 (S. 858), L. 2014). ■

PAID SICK LEAVE

Handful of state legislatures expand paid sick leave in 2015

California. On September 10, 2014, California Governor Edmund G. Brown Jr. signed the "Healthy Workplaces, Healthy Families Act of 2014," which will provide paid sick days to the millions of Californians who do not currently earn this benefit.

The new law will specifically require employers to provide paid sick leave to employees who work 30 or more days within a year from commencement of employment, and employees will earn a minimum of one hour of paid sick leave for every 30 hours worked.

Discrimination or retaliation against an employee who requests paid sick days will be prohibited, and employers

will have to meet certain posting, notice, and recordkeeping requirements.

The Healthy Workplaces, Healthy Families Act of 2014 will go into effect July 1, 2015, and applies to private employers as well as to the state, political subdivisions of the state, and municipalities (*State of California, Office of the Governor, Press Release*, September 10, 2014, <http://gov.ca.gov/news.php?id=18690>; Ch. 317 (A. 1522), L. 2014).

Connecticut. Governor Dannel Malloy has approved a bill intended to create parity between paid sick leave benefits and other leave benefits offered by employers. Effective January

1, 2015, the new law changes the method for determining whether a nonmanufacturing business is exempt from providing paid sick leave as required under Connecticut law.

Currently, nonmanufacturing businesses are required to provide paid sick leave if they employ 50 or more individuals in Connecticut during any quarter in the previous year. Businesses must determine whether they exceed this threshold by January 1 each year, based on the quarterly reports they submit to the labor commissioner.

Under H. 5269, nonmanufacturing businesses will be required to determine if they meet the annual 50-employee threshold based on the number of employees on their payrolls for the week containing October 1.

The new law also bars nonmanufacturing businesses from taking certain actions to avoid providing paid sick leave, including firing, dismissing, or transferring an employee from one job site to another in an effort to fall below the 50-employee threshold.

The timeframe for accruing paid sick leave is also modified by H. 5269. Under current law, employees accrue one hour of sick leave for every 40 hours worked per calendar year. The new law provides that employees accrue one hour of paid sick leave for every 40 hours worked during whatever 365-day year the business uses to calculate employee benefits. This change permits employers to start the benefit year on any date, rather than only on January 1.

Current paid sick leave rights granted to other service workers in specified occupational categories are also now extended to radiologic technologists (P.A. 14-128 (H. 5269), L. 2014).

District of Columbia. The Accrued Sick and Safe Leave Act of 2008 was amended to expand the definition of employee to give protection to additional types of workers and clarify those who are excluded, as well as by strengthening anti-retaliation provisions, among other measures (Act 259 (B. 480), L. 2013, enacted January 2, 2014).

Also, the Accrued Sick and Safe Leave Act of 2008 was amended with respect to enforcement (Act 426 (B. 671), L. 2013, enacted September 19, 2014).

Massachusetts. A ballot measure that would provide employees with earned sick time was approved by 59.5 percent of voters in the November 4, 2014, election. Question 4 provides: "Employees who work for employers having eleven or more employees could earn and use up to 40 hours of paid sick time per calendar year, while employees working for smaller employers could earn and use up to 40 hours of unpaid sick time per calendar year." The earned sick leave measure will take effect July 1, 2015.

New York. The first law to which the new mayor of New York City, Bill de Blasio, affixed his signature was the expanded version of the city's new paid sick leave law, known as the Earned Sick Time Act (ESTA). Under the new law, effective April 1, 2014, businesses with five or more employees are required to provide up to 40 hours of paid sick time to employees who work 80 or more hours per calendar year. Under the prior version of the law, the threshold number of employees was 15. However, the New York City Council reduced that threshold to five, among other things, by a vote of 46-5 on February 26, 2014. Businesses with less than five employees are required to provide the same amount of sick time to employees who work at least 80 hours a calendar year, but on an unpaid basis (Law 2014/007, enacted March 20, 2014). ■

SAME-SEX MARRIAGE

Tumultuous year for same-sex marriage legislation

2014 has been a turning point for same-sex marriage. Having bounced around state legislatures, ballot boxes, and state and federal courts, the issue finally landed on the U.S. Supreme Court docket. To the surprise of many, however, on October 6, 2014, the Supreme Court declined to rule on the lawfulness of same-sex marriage bans in five states. It appeared that the patchwork state-by-state "system" would continue to determine whether same-sex couples could marry. But less than a month later, a circuit split has virtually guaranteed that the Supreme Court will once again face the issue in the near future. Employers should continue to follow these developments and the impact on their policies and practices.

While the state legislatures were generally quiet on the topic of same-sex marriage in 2014, **New Hampshire** enacted a law providing that any legal union other than a marriage that provides substantially the same rights, benefits and responsibilities as a marriage that is legally contracted outside the state shall be recognized as a marriage in New Hampshire. In addition, any person in such legal union contracted outside the state may also marry the same party in New Hampshire without the dissolution of such legal union (Ch. 160 (S. 394), L. 2013, enacted and effective July 10, 2014). ■