HR COMPLIANCE LIBRARY
Ideas & Trends

JANAURY 7, 2015
ISSUE NO. 766

INSIDE

STATE LAW ROUND UP

Fair employment practices, leave rights, and equal pay laws expanded by state legislatures in 2014

State lawmakers expanded fair employment practices in 2014, focusing in particular on discrimination relating to pregnancy, veteran-status and domestic violence. Leave rights and equal pay laws were also hot issues last year. Two more states, New York and Minnesota, made changes to their medical marijuana laws in 2014. In addition to fair employment, leave, equal pay, and medical marijuana laws, this issue of *Ideas & Trends*, the second of two parts, contains a full rundown of the latest state whistleblower protection laws, immigration and employment verification laws, same-sex marriage and wage payment laws. Legislative action at the state level involving equal pay and credit information checks is also covered in this issue.

Note to readers: The December issue of *Ideas & Trends* indicated that the minimum wage in Alaska would increase to $8.75 on January 1, 2015. However, while the voter-approved Ballot Measure 3 called for a January 1 increase, in accordance with the Alaska Constitution, the effective date is 90 days after the November 26, 2014, certification of election results by the Division of Elections—February 24, 2015.

Please note that this summary is not exhaustive and generally covers only laws of broad application in the specified subject areas. Keep in mind that state executive orders, rules and regulations, administrative agency actions, and case law are also determinative. This summary focuses almost exclusively on statutory activity.

Detailed information on these and other recent state law developments is available in the HUMAN RESOURCE MANAGEMENT COMPLIANCE LIBRARY. ■

FAIR EMPLOYMENT PRACTICES

Pregnancy discrimination and protecting victims of violence were focus of fair employment changes

California. *National origin discrimination/driver's licenses.* The state enacted a law to prohibit employment discrimination against an individual who obtains a driver's license under special provisions that allow for licensure despite an individual's inability to submit satisfactory proof that his or her presence in the United States is authorized under federal law. Specifically, the California Fair Employment and Housing Act is amended to provide that national origin discrimination includes, but is not limited to, discrimination on the basis of possessing a driver's license granted under the conditions described just above.

Wolters Kluwer

The state's Vehicle Code was also amended to provide that an employer may not require a person to present a driver's license unless possessing such a license is required by law or is required by the employer, and the employer's requirement is otherwise permitted by law.

Additionally, driver's license information obtained by an employer shall be treated as private and confidential, is exempt from disclosure under the California Public Records Act, and shall not be disclosed to any unauthorized person or used for any purpose other than to establish identity and authorization to drive (Ch. 452 (A. 1660), L. 2013, enacted September 19, 2014, and effective January 1, 2015).

Public assistance. In other legislation, Governor Edmund G. Brown, Jr. signed a law prohibiting an employer from discharging or in any manner discriminating or retaliating against an employee who enrolls in a public assistance program. Additionally, an employer shall not refuse to hire a beneficiary for reason of being enrolled in a public assistance program.

The law, which will take effect January 1, 2015, and remain in effect only until January 1, 2020, also prohibits an employer from disclosing to any person or entity, unless otherwise permitted by state or federal law, that an employee receives or is applying for public benefits.

For purposes of these provisions, "public assistance program" means the Medi-Cal program. Under this program, which is administered by the State Department of Health Care Services, qualified low-income persons receive health care benefits (Ch. 889 (A. 1792), L. 2013, enacted September 30, 2014).

Leave for victims of violence. California law prohibits an employer from discharging, discriminating or retaliating against an employee who is a victim of certain violent offenses because the employee takes time off from work, upon request, to appear in court to be heard at any proceeding, including any delinquency proceeding, involving a postarrest release decision, plea, sentencing, postconviction release decision, or any proceeding in which a right of the victim is at issue (Ch. 756 (S. 288), L. 2013, effective January 1, 2014).

Emergency personnel. Current California law prohibits an employer from discriminating against an employee for taking time off to perform emergency duty as a volunteer firefighter, reserve peace officer, or emergency rescue personnel.

Effective January 1, 2015, that law will expand the definition of emergency rescue personnel to include an officer, employee, or member of a disaster medical response entity sponsored or requested by the state. An employee who is a health care provider will be required to notify his or her employer at the time the employee becomes designated as emergency rescue personnel and also when he or she will be deployed as a result of that designation (Ch. 343 (A. 2536), L. 2013, enacted September 15, 2014).

Abusive conduct training. The state enacted a law that will require employers having 50 or more employees to include prevention of abusive conduct as a component of the currently-required sexual harassment training and education.

For purposes of this law, "abusive conduct" means conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious (Ch. 306 (A. 2053), L. 2013, enacted September 9, 2014, and effective January 1, 2015).

Unpaid interns. In other legislation, the state amended its Fair Employment and Housing Act to protect unpaid interns from discrimination and harassment.

Effective January 1, 2015, the law will prohibit discrimination against any person in the selection, termination, training, or other terms or treatment of that person in any apprenticeship training program, any other training program leading to employment, an unpaid internship or in any other program of limited duration to provide unpaid work

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

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.

experience for that person. The law also prohibits harassment of an unpaid intern or volunteer (Ch. 302 (A. 1443), L. 2013, enacted September 9, 2014).

Delaware. On September 9, 2014, Governor Jack Markell signed legislation (S. 212) to address pregnancy accommodations in the workplace and to clarify that current prohibitions against sex discrimination in employment include pregnancy.

Senate Bill 212 amends state law to make it an unlawful employment practice for an employer with four or more employees to fail to hire or to discharge an individual or to otherwise discriminate against that person with respect to compensation, terms, conditions or privileges of employment because of pregnancy. Employers are also prohibited from limiting, segregating or classifying employees in any way so as to deprive them of employment opportunities or otherwise adversely affecting an individual's status as an employee because of pregnancy.

The new law requires employers to provide notice of the right to be free from discrimination in relation to pregnancy, childbirth and related conditions, including the right to reasonable accommodation to known limitations related to pregnancy, childbirth and other related conditions. This notice must also be conspicuously posted at the employer's place of business in an area accessible to employees (Ch. 429 (S. 212), L. 2013, enacted and effective September 9, 2014).

The Protecting Pregnant Workers Fairness Act of 2014 will take effect following a 30-day period of congressional review and publication in the District of Columbia Register.

District of Columbia. Mayor Vincent C. Gray approved the Protecting Pregnant Workers Fairness Act of 2014. The measure, which was unanimously adopted by the D.C. Council by voice vote on September 23, will require employers to provide reasonable workplace accommodations for workers whose ability to perform job functions are limited by pregnancy, childbirth, a related medical condition, or breastfeeding.

The law will require employers to engage in good faith in a timely and interactive process with an employee requesting or otherwise needing a reasonable accommodation to determine a reasonable accommodation for that employee. An employer may require an employee to provide a certification from the employee's health care provider concerning the medical advisability of a reasonable accommodation to the same extent a certification is required for other temporary disabilities.

The Department of Employment Services (DOES) will enforce the law (Act 458 (B. 769), L. 2013, enacted October 23, 2014).

Illinois. *Pregnancy discrimination.* Governor Pat Quinn signed a new law intended to fight discrimination against pregnant women in the workplace. The law provides job protections for pregnant women and requires that reasonable accommodations be made in the workplace so expectant mothers can continue working without fear for their health or the health of their child.

House Bill 8 provides pregnant women with important worker protections such as limits on heavy lifting and assistance in manual labor; access to places to sit; more frequent bathroom breaks; time off to recover from childbirth; and break space for breastfeeding (*Illinois Government News Network, Press Release*, August 26, 2014; P.A. 98-1050 (H. 8), L. 2013, enacted August 25, 2014, and effective January 1, 2015).

Unpaid interns. In other legislation, Governor Quinn gave the final nod to a bill that extends the employment discrimination protections of the Illinois Human Rights Act (HRA) to unpaid interns in the state. On August 25, 2014, the Governor signed H. 4157, which amends the definition of "employee" under the HRA to include unpaid interns and provides a description of exactly what that term means.

An "unpaid intern" is a person who performs work for an employer in circumstances under which the employer is not committed to hiring the individual at the conclusion of the intern's tenure; the employer and the person performing the work agree that the person is not entitled to wages for the work performed; and the work performed:

- supplements training that is given in an educational environment that may enhance the intern's employability;
- provides experience for the benefit of the person performing the work;
- does not displace the employer's regular employees;
- is performed under the close supervision of existing staff; and
- provides no immediate advantage to the employer providing the training and may occasionally impede the employer's operations.

(P.A. 98-1037 (H. 4157), L. 2013, enacted August 25, 2014, and effective January 1, 2015).

Victims of violence. The state enacted a law including within the Victims' Economic Security and Safety Act's prohibited acts certain actions by employers subject to provisions of the Workplace Violence Prevention Act. The law relates to workplace protection restraining orders, affidavits, hearings, continuances, emergency orders, testimony, employment discrimination, effect on employment benefits, exemptions, and confidentiality and privacy, interference with lawful labor actions, irreparable harm, law enforcement responsibilities, and free speech (P.A. 98-766 (S. 3038), L. 2013, enacted and effective July 16, 2014).

Indiana. Indiana prohibits an employer from discriminating against a prospective employee on the basis of status as a veteran by (1) refusing to employ an applicant for employment on the basis that the applicant is a veteran of the armed forces of the United States; or (2) refusing to employ an applicant for employment on the basis that the applicant is a member of the Indiana National Guard or a member of a reserve component (H. 1242, L. 2014, effective July 1, 2014).

Maryland. On May 15, 2014, Governor Martin O'Malley signed the Fairness for All Marylanders Act (Ch. 474 (S. 212), L. 2014), legislation that expanded protections for transgender individuals effective October 1, 2014.

Massachusetts. Under the domestic workers' bill of rights law, which takes effect April 1, 2015, it is an unlawful discriminatory practice for an employer to: (1) engage in unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature to a domestic worker if submission to the conduct is made either explicitly or implicitly a term or condition of employment, is used as a basis for employment decisions, or if the conduct has the purpose of interfering with the person's work performance by creating an intimidating, hostile or offensive working environment; (2) subject a domestic worker to unwelcome harassment based on sex, sexual orientation, gender identity, race, color, age, religion, national origin or disability, where such conduct has the purpose or effect of creating an intimidating, hostile or offensive working environment; or (3) refuse job-protected leave for the birth or adoption of a child by the domestic worker or a spouse (Ch. 148 (S. 2132), L. 2014).

Minnesota. The Minnesota Human Rights Act was amended to provide that a person bringing a civil action seeking redress for an unfair discriminatory practice or a respondent is entitled to a jury trial (Ch. 233 (S. 2322), L. 2013, enacted May 13, 2014).

Mississippi. The Mississippi Religious Freedom Restoration Act, which largely tracks the federal Religious Freedom Restoration Act (RFRA), took effect July 1, 2014. Specifically, S. 2681 provides that the government may substantially burden a person's exercise of religion only when it demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest and it is the least restrictive means of furthering that compelling interest.

The Mississippi law, like the federal RFRA, also provides that a person whose religious exercise has been burdened in violation of the law's provisions can assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against the government. As in the federal law, standing to assert a claim or defense is the same as the general rules of standing under Article III of the U.S. Constitution.

S. 2681 also expressly states that it does not "create any rights by an employee against an employer if the employer is not the government" (S. 2681, L. 2014).

New Hampshire. The state enacted a law prohibiting employers from discriminating against employees who are victims of domestic violence (Ch. 208 (S. 390), L. 2013, enacted July 11, 2014, and effective September 9, 2014).

New Jersey. Governor Chris Christie signed legislation that prohibits employment discrimination based on pregnancy, childbirth and related medical conditions. The law also requires employers to make reasonable accommodations in the workplace for employees who are pregnant (Ch. 220 (S. 2995), L. 2013, enacted and effective January 17, 2014).

New York. Governor Andrew M. Cuomo signed legislation intended to extend to unpaid interns the same civil rights protections afforded to paid interns.

Under the new law (Ch. 97 (A. 8201), L. 2013), which took effect immediately (July 22, 2014), employers may not discriminate against interns with respect to hiring, discharge, or terms or conditions of employment based on the intern's age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status, or domestic violence victim status. Employers are also prohibited from discriminating against interns based on the same protected classes with regard to applications for internships; advertising, application forms or application inquiries.

In addition, the law makes it an unlawful discriminatory practice for employers to engage in unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature to an intern when:

- submission to such conduct is made a term or condition of employment;
- submission to or rejection of such conduct by the intern is used as the basis for employment decisions affecting such intern; or
- such conduct has the purpose or effect of unreasonably interfering with the intern's work performance by creating an intimidating, hostile, or offensive working environment.

Employers are also prohibited from subjecting interns to unwelcome harassment based on age, sex, race, creed, color, sexual orientation, military status, disability, predisposing genetic characteristics, marital status, domestic violence victim status, or national origin, where the harassment has the purpose or effect of unreasonably interfering with the intern's work performance by creating an intimidating, hostile, or offensive working environment.

The new law also bars employers from compelling an intern who is pregnant to take a leave of absence, unless the intern

is prevented by the pregnancy from performing the activities involved in the job or occupation in a reasonable manner.

Pennsylvania. Effective December 31, 2014, protection from employment discrimination will be extended to persons required to report suspected child abuse (Act 2014-34 (S. 33), L. 2013, enacted April 15, 2014).

West Virginia. Governor Earl Ray Tomblin signed the Pregnant Workers' Fairness Act (H. 4284, L. 2014, effective June 4, 2014). The law makes it an unlawful employment practice for a "covered entity" to do any of the following:

(1) Not make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of a job applicant or employee, following delivery by the applicant or employee of written documentation from the applicant's or employee's health care provider that specifies the applicant's or employee's limitations and suggesting what accommodations would address those limitations, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business;
(2) Deny employment opportunities to a job applicant or employee, if such denial is based on the refusal of the covered entity to make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of an employee or applicant;
(3) Require a job applicant or employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation that such applicant or employee chooses not to accept; or
(4) Require an employee to take leave under any leave law or policy of the covered entity if another reasonable accommodation can be provided to the known limitations related to the pregnancy, childbirth, or related medical conditions of an employee. ■

MARIJUANA

Two more states work to protect medical marijuana users

Minnesota. Minnesota enacted a medical cannabis law (Ch. 311 (S. 2470), L. 2013, enacted May 29, 2014). The law does not require any employer to accommodate the medical use of cannabis in the workplace, but unless a failure to do so would violate federal law or regulations or cause an employer to lose a monetary or licensing-related benefit under federal law or regulations, an employer may not discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalize a person, if the discrimination is based upon either of the following: (1) the person's status as a patient enrolled in the state's medical cannabis registry program; or (2) a patient's positive drug test for cannabis components or metabolites, unless the patient used, possessed, or was impaired by medical cannabis on the premises of the place of employment or during the hours of employment. An employee who is required to undergo employer drug testing may present verification of enrollment in the patient registry as part of the employee's explanation under the drug testing law.

New York. Governor Andrew M. Cuomo signed a bill on July 7, 2014, to establish a medical marijuana program for New York State. The new law includes provisions to ensure medical marijuana is reserved only for patients with serious conditions and is dispensed and administered in a manner that protects public health and safety.

Health insurers will not be required to provide coverage for medical marijuana.

The law also states that being a certified patient will be deemed to be having a "disability" under the state human rights law and the civil rights law. However, this provision specifically will not bar the enforcement of a policy prohibiting an employee from performing his or her employment duties while impaired by a controlled substance. It also does not require any person or entity to do any act that would put the person or entity in violation of federal law or cause it to lose a federal contract or funding. ■

WHISTLEBLOWER PROTECTIONS

State lawmakers protect whistleblowers from retaliation

California. California's Labor Code prohibits retaliation against an employee or job applicant because the person has filed a bona fide complaint or claim or has engaged in other protected conduct. Aggrieved employees are entitled to reinstatement and reimbursement of lost wages. Employers who fail to reinstate such employees are subject to a civil penalty of up to $10,000 per violation. This law was amended to specify that the penalty is to be awarded to the employee or employees who suffered the violation (Ch. 79 (A. 2751), L. 2014, enacted June 28, 2014, and effective January 1, 2015).

Delaware. Employees who report or are about to report to a public body or to their employer or the employer's supervisor any noncompliance or infractions involving campaign contributions and expenditures that the employee believes has occurred or is about to occur are protected under the Delaware Whistleblowers' Protection Act.

Employees are also protected from retaliation when participating in an investigation, hearing, trial or inquiry involving a person or entity other than the employee, or for refusing to participate or assist in such noncompliance or infraction involving campaign contributions and expenditures (Ch. 344 (H. 300), L. 2014).

Vermont. A Public Records Act exemption protects the identity of whistleblowers who submit complaints about public agency or government contractor misconduct (Act 129 (H. 863), L. 2014). ■

WAGE PAYMENT

Changes to wage payment laws seen in most states in 2014

California. For employees in the entertainment industry, existing law allows for collective bargaining agreements to establish time limits for payment of wages after an employee is discharged or laid off.

Effective January 1, 2015, the law that allows for civil suits and penalties on employers who fail to pay wages for an employee who is discharged or quits will also apply to a violation of the time limit for payment of wages established per such entertainment industry collective bargaining agreement (Ch. 210 (A. 2743), L. 2014).

In other legislation, effective January 1, 2015, the California Labor Law has been amended to require a client employer to share all civil legal responsibility and civil liability with a labor contractor for the payment of wages and failure to obtain valid workers' compensation coverage (Ch. 728 (A. 1897), L. 2014, enacted September 28, 2014).

Colorado. Enforcement provisions were amended to provide that, for wages and compensation earned on and after January 1, 2015, the director of the division of labor may establish an administrative procedure to receive wage complaints of $7,500 or less. The law also requires the director of the division of labor to promulgate rules providing for notice to employees of their rights under the law; of the limitations on the amount of wages, compensation and penalties available under the administrative remedy; and of the employee's option to bring a wage claim in court without pursuing the administrative remedy (unless the employee has accepted payment). The law also provides for notice to employers of employee wage claims, including any potential fines and penalties; the division may waive or reduce fines and penalties if employers comply within a 14-day period. The law also provides for review and appeal of administrative actions.

In addition, effective January 1, 2015, if an employer makes wages or compensation available at the worksite or local business office and the employee has not received the wages or compensation within 60 days after such were due, the employer will be required to mail the employee's check to the employee's last known mailing address (S. 5, L. 2014).

District of Columbia. The District's wage payment and collection law was amended by the "Wage Theft Prevention Amendment Act of 2014" to include general contractors and subcontractors as covered "employers" under the law and to remove the exemption for "any person employed in a bona fide executive, administrative or professional capacity," as defined by District of Columbia regulations.

Under the Act, general contractors and subcontractors will be jointly and severally liable to employees for wage payment violations and for violations of the Living Wage Act and Sick and Safe Leave Act, unless the violations were due to the general contractor's lack of prompt payment in accordance with the terms of the contract between the contractor and the subcontractor.

In addition, temporary staffing firms will be jointly and severally liable with employers for wage payment violations and for violations of the Living Wage Act and the Sick and Safe Leave Act to the employee and the District.

The law was also amended to enhance remedies, fines and administrative penalties for violations, including suspension of business licenses of employers that are delinquent in paying wage judgments or agreements (Act 20-426 (B20-671), L. 2014, approved and signed by the mayor on September 19, 2014).

Hawaii. The state's wage payment law was amended to authorize employers to pay employees their wages by pay card (payroll debit card) if certain requirements are met; to reflect direct deposit as a current practice in the payment of wages under certain conditions; to hold an employer responsible for any fees incurred if an employer has insufficient funds in the employer's bank account for an electronic transfer of the employee's wages; and to ensure protection of the payment of workers' earned wages (H. 1814, L. 2014).

Illinois. The Illinois Wage Payment and Collection Act was amended to authorize payment of wages by means of a pay-

roll card (P.A. 98-0862 (H. 5622), L. 2014, effective January 1, 2015).

Louisiana. The state's wage payment law was amended with regard to wage claims to allow for a good-faith exception. If, in a dispute over wages due, a court finds that the employer's dispute over the amount of wages due was in good faith, but the employer is subsequently found by the court to owe the amount in dispute, the employer shall be liable only for the amount of wages in dispute plus judicial interest incurred from the date that the suit is filed. If the court determines that the employer's failure or refusal to pay the amount of wages owed was not in good faith, then the employer shall be liable for a penalty (either for 90 days' wages at the employee's daily rate of pay or for full wages from the time the employee's demand for payment is made until the employer pays or tenders the amount of unpaid wages due, whichever is less) (Act 750 (S. 359), L. 2014).

In addition, the law relating to frequency of payment of wages was amended to require employers to pay wages no less than twice monthly. This law applies to employers with 10 or more employees in manufacturing, oil boring and mining operations, and public service corporations.

Paydays shall be two weeks apart as near as practical, and such payment or settlement shall include all amounts due for labor or services performed during any such payroll period, and shall be payable no later than the payday at the conclusion of the next payroll period; provided that, except in cases of public service corporations, this does not apply to the clerical force or to salespersons (Act 417 (H. 689), L. 2014).

Massachusetts. The state's wage payment law was amended with regard to compliance, to provide that the three-year limitation period for filing a complaint shall be tolled from the date the employee or a similarly situated employee files a complaint with the attorney general alleging a violation of the law until the date that the attorney general issues a letter authorizing a private right of action or the date that an enforcement action by the attorney general becomes final (Ch. 292 (S. 858), L. 2014).

Nebraska. The Nebraska Wage Payment and Collection Act was amended to require employers, on regular paydays, to provide employees with a wage statement that shows, at a minimum, the identity of the employer, the hours for which the employee was paid, the wages earned by the employee, and deductions made for the employee. Statements can be made available by mail, electronically, or at the workplace during employment hours for all shifts. The employer is not required to provide information on hours worked for employees who are exempt from federal overtime requirements unless the employer has established a policy or practice of paying to or on behalf of exempt employees overtime, or bonus or a payment based on hours worked, in which case the employer is to provide a statement to exempt employees showing hours worked or payments made. Employers who fail to furnish the required wage statements commit an infraction and will be subject to a fine.

New provisions were also added to provide that the Commissioner of Labor has authority to enforce the Act, including the authority to subpoena and inspect records, subpoena witnesses and gather testimony, and issue citations when investigation reveals the employer may have violated the Act. When a citation is issued, the Commissioner must notify the employer of proposed administrative penalties, which are limited to no more than $500 for a first violation and no more than $5,000 for a second or subsequent offense. Employers have 15 working days to contest the citation or penalty (L. 560, approved April 2, 2014).

In separate legislation, the Nebraska Wage Payment and Collection Act was amended, effective January 1, 2015, to provide requirements for wage payment by means of a payroll debit card (L. 765, enacted April 10, 2014).

New Hampshire. The state's law relating to wage deductions was amended to permit charitable organizations to withhold from employee wages voluntary contributions to such charitable organization where the employee has given his or her written authorization (Ch. 59 (H. 1334), L. 2014).

In addition, employer notice, posting and recordkeeping requirements were amended to require employers to keep posted in a place accessible to employees notice that paying employees different wages for the same work based solely on sex is illegal under state and federal law (Ch. 227 (S. 207), L. 2014, effective January 1, 2015).

Rhode Island. The penalty for violating the state's wage payment law was increased from a fine of up to $400 and/or jail time of 10 to 90 days to that of a fine of up to $400 and/or jail time of up to one year, for each separate offense, with each day of failure to pay wages due considered a separate and distinct violation (Ch. 413 (H. 7624), L. 2014, and Ch. 449 (S. 2673), L. 2014, effective July 3, 2014).

Utah. Effective May 13, 2014, employers licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act are required to provide employees with a pay statement, either in written form or electronically, that states the following information: (1) the employee's name; (2) the employee's base rate of pay; (3) the dates of the pay period for which the individual is being paid; (4) if paid hourly, the number of hours the employee worked during the pay period; (5) the amount of and reason for any money withheld in accordance with state or federal law, including (a) state and federal income tax, (b) Social Security tax, (c) Medicare tax and (d) court-ordered withholdings; and (6) the total amount paid to the employee for that pay period. These requirements must be complied

with regardless of whether the employer pays the employee by check, cash, or other means. Employers who violate these requirements will be subject to a civil fine of $50 for the first violation within a one-year period; $100 for a second violation within a one-year period; $100 for a third violation within a one-year period; and $500 for a fourth violation and each subsequent violation within a one-year period.

In addition, these employers must retain a copy of each pay statement for at least three years after the date on which the employer gives a copy of the pay statement to the employee (S. 87, L. 2014).

Vermont. For filing of wage complaints, an employee or the Vermont Department of Labor may file a complaint that wages have not been paid to an employee, not later than two years from the date the wages were due.

In investigating the complaint, the Commissioner is to provide notice and a copy of the complaint to the employer by service, or by certified mail sent to the employer's last known address, together with an order to file a response to the specific allegation in the complaint with the Department within 10 calendar days of receipt (Act 173 (H. 646), L. 2014, effective July 1, 2014).

Washington. In a claim for unpaid wages, the Director of Labor and Industries may issue a notice and order to withhold and deliver property when there is a reason to believe that there is property belonging to the employer upon whom a notice of assessment has been served for penalties or civil penalties due to the Department of Labor and Industries (L&I). This law was amended to provide, as an alternative, that L&I may electronically serve a financial institution with a notice and order to withhold and deliver by providing a list of its outstanding warrants, except those for which a payment agreement is in good standing, to the Department of Revenue.

The Department of Revenue may include the warrants provided by L&I in a notice and order to withhold and deliver served under RCW 82.32.235(3). A financial institution that is served with a notice and order to withhold and deliver must answer the notice within the time period applicable to service under RCW 82.32.235(3) (Ch. 210 (S. 5360), L. 2014, enacted April 3, 2014, and effective June 12, 2014).

Wisconsin. Rules of the Department of Workforce Development governing traveling sales crews have been amended.

Employees must now be paid on regularly agreed upon pay dates no less often than semimonthly. Also, any wage deductions made must be clearly stated on the traveling sales crew worker's paycheck, pay envelope, paystub, other paper accompanying the wage payment, or simultaneously issued electronic statement corresponding to the wage payment.

In addition, the rules have been amended to require that the operator of a traveling sales crew obtain an identification card, in addition to obtaining a work permit, for each traveling sales crew worker who works in Wisconsin or who is recruited from Wisconsin before the traveling sales crew member begins work. The operator of a traveling sales crew and anyone supervising or transporting such workers must carry at all times, while engaged in such activities, a copy of each work permit and identification card, and must provide such copies, upon request, to a deputy of the Department of Workforce Development, a law enforcement officer, or a person with whom the employer, traveling sales crew worker, agent, or representative is doing business. Traveling sales workers must also carry their original traveling sales crew worker permits and identification cards, as well as their government-issued picture ID, at all times when engaged in traveling sales crew activities (Act 361 (A. 516), L. 2013, effective April 25, 2014). ■

EQUAL PAY

Equal pay on the agenda for five state legislatures in 2014

Illinois. The Illinois Equal Pay Act of 2003 was amended to provide that the Department of Labor may refer for investigation a complaint alleging a violation of the Equal Pay Act of 2003 to the Department of Human Rights if the complaint also alleges a violation of the Human Rights Act over which the Department of Human Rights has jurisdiction. The amendment will take effect January 1, 2015 (P.A. 98-1051 (H. 5563), L. 2013, enacted August 26, 2014).

Louisiana. It is unlawful discrimination in employment for an employer to intentionally pay wages to an employee at a rate less than that of another employee of the opposite sex for equal work on jobs in which their performance requires equal skill, effort and responsibility, and which are performed under similar working conditions. An employer who violates the law may not reduce the wages of other employees in order to comply. It would not be unlawful discrimination, however, for an employer to apply different standards of compensation or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system that measures earnings by quantity or quality of production, or any other differential based on any factor other than sex, or to employees who work at different locations, provided that such differences are not the result of an intention to discriminate based on race, color, religion, sex or national origin. This provision

applies to employers with 20 or more employees in each of 20 or more calendar weeks in the current or preceding calendar year (Act 750 (S. 359), L. 2014).

In other legislation, the Louisiana Equal Pay for Women Act was amended with regard to enforcement and filing of complaint procedures, to move jurisdiction for review and investigation of claims to the Louisiana Commission on Human Rights and/or the U.S. Equal Employment Opportunity Commission (previously, U.S. Department of Labor) (Act 702 (S. 322), L. 2014, effective August 1, 2014).

Michigan. Under the "Workforce Opportunity Wage Act," employers are prohibited from discriminating against employees on the basis of sex by paying wages to employees at a rate less than the rate at which the employer pays wages to employees of the opposite sex for equal work on jobs, the performance of which requires equal skill, effort, and responsibility and that is performed under similar working conditions, except if the payment is made under one or more of the following: (a) a seniority system; (b) a merit system; (c) a system that measures earnings by quantity or quality of production; (d) a wage differential based on a factor other than sex. Any amount owing to an employee that has been withheld in violation of equal pay requirements is considered unpaid minimum wages under this act (Act 138 (S. 934), L. 2014, effective May 27, 2014).

Minnesota. Governor Mark Dayton signed the Women's Economic Security Act into law on May 11, 2014. The law eliminates barriers for women by ensuring equal pay for equal work on state contracts, prohibits workplace discrimination based on "familial status," expands workplace accommodation and protections for nursing mothers, expands family and sick leave for working families, protects employees' right to discuss wages, and increases economic opportunity in high-wage, high demand jobs.

The Women's Economic Security Act (Ch. 239 (H. 2536), L. 2013), requires businesses with 40 or more employees seeking state contracts of over $500,000 to certify they are paying employees equal wages, regardless of gender. Contractors will also have to certify there are no pay gaps between men and women by job class. Prior law required equal pay for equal work in private employment, but provided exemptions for state and local government entities. While the Act extends equal pay to state contracts, exemptions in other aspects of state government remain. The Act also provides an exemption for "undue hardship" (State of Minnesota, Office of the Governor, Press Release, May 11, 2014).

New Hampshire. The state amended its equal pay law to allow employees to disclose the amount of their wages; to add a non-retaliation provision; to provide civil and criminal penalties for an employer who violates equal pay or non-retaliation provisions; and to amend statute of limitations provisions (Ch. 227 (S. 207), L. 2013, enacted July 14, 2014, and effective January 1, 2015; and Ch. 250 (H. 1188), L. 2013, enacted July 22, 2014, and effective January 1, 2015).

Also, effective January 1, 2015, employers will be required to keep posted in a place accessible to employees notice that paying employees different wages for the same work based solely on sex is illegal under state and federal law (Ch. 227 (S. 207), L. 2013, enacted July 14, 2014). ■

IMMIGRATION

Three states see changes to immigration and verification laws

California. Effective January 1, 2015, the definition of "unfair immigration-related practice" in the state's Labor Code will include threatening to file or the filing of a false report or complaint with any state or federal agency. Also, a civil action for equitable relief and any applicable damages or penalties by an employee or other person who is the subject of an unfair immigration-related practice will be authorized. Further, a court will be authorized to order, upon application by a party or on its own motion, the appropriate government agencies to suspend certain business licenses held by the violating party for prescribed periods based on the number of violations (Ch. 79 (A. 2751), L. 2013, enacted June 28, 2014).

New Hampshire. Effective August 15, 2014, no employer may employ any employee without obtaining documentation showing the employee's eligibility to work in the United States. The employer shall maintain such documentation for the period required by federal law. Acceptable documentation of eligibility to work in the United States shall include documents required by federal law or supporting documentation that satisfies the requirement of federal law (Ch. 123 (H. 1168), L. 2013, enacted June 16, 2014).

Utah. The Utah Immigration and Accountability Enforcement Act was amended to extend the trigger date for starting the Guest-worker Program from July 1, 2015, to July 1, 2017 (S. 203, L. 2014, enacted March 29, 2014, and effective May 13, 2014).

Similarly, the Utah Pilot Sponsored Resident Immigrant Program Act, which calls for the governor to create a program under which a resident immigrant may reside, work and study in Utah, was amended to extend dates for starting and ending the temporary pilot program. The start date is extended from July 1, 2015, to July 1, 2017, and the end date is changed from June 30, 2020, to June 30, 2022 (S. 203, L. 2014, enacted March 29, 2014, and effective May 13, 2014). ■

LEAVE LAWS

State lawmakers expand leave rights for victims of crime

Arizona. The state law protecting crime victims was amended. An employer who has 50 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of that employer, must allow an employee who is a victim of a juvenile offense to: (1) leave work to exercise the employee's right to be present at a proceeding; (2) obtain or attempt to obtain an order of protection, an injunction against harassment or any other injunctive relief to help ensure the health, safety or welfare of the victim or the victim's child (Ch. 269 (H. 2563), L. 2014, effective July 24, 2014).

California. Beginning July 1, 2014, the scope of the family temporary disability (paid family leave) program was expanded to include time off for an employee to care for a seriously ill grandparent, grandchild, sibling or parent-in-law. Prior law had extended such benefits to an employee's child, spouse, parent or domestic partner (Ch. 350 (S. 770), L. 2013).

Hawaii. On June 30, 2014, the state enacted a law allowing certain private employees to take a leave of absence in order to donate an organ, bone marrow or peripheral blood stem cells (S. 1233, L. 2013).

Illinois. The state's Organ Donor Leave Act was amended to allow the Director of Central Management Services to set the amount of compensated time that an employee may use to donate blood. A participating employee who wishes to donate blood, an organ, or bone marrow shall request leave in advance. The law delineates the hours that may be used to make donations (P.A. 98-758 (S. 2769), L. 2013, enacted and effective July 16, 2014).

Maryland. Governor Martin O'Malley approved legislation that provides up to six weeks of unpaid parental leave to employees in a 12-month period for the birth or adoption of a child. Employers, however, may deny the leave if "necessary to prevent substantial and grievous economic injury to the operations of the employer"; and the employer gives notice of the denial to the employee prior to the commencement of the leave.

If paid leave is available, the employer may require, or employees may elect, to substitute paid leave for all or part of the parental leave. Employers are barred from terminating employees during the leave period except for cause.

Employers, who are already required to maintain health insurance coverage during the leave period but may recover the cost of the premiums from employees who do not return from leave except in circumstances beyond their control, may now recover the premiums by deducting them from employees' wages upon termination (Ch. 333 (S. 737) and Ch. 334 (H. 1026), L. 2014, effective October 1, 2014).

Massachusetts. Massachusetts enacted a law relative to leave for employees who are victims of abusive behavior. The law applies to employers who employ 50 or more employees.

Specifically, an employer shall permit an employee to take up to 15 days of leave from work in any 12-month period if:

1. the employee, or a family member of the employee, is a victim of abusive behavior;
2. the employee is using the leave from work to: seek or obtain medical attention, counseling, victim services or legal assistance; secure housing; obtain a protective order from a court; appear in court or before a grand jury; meet with a district attorney or other law enforcement official; or attend child custody proceedings or address other issues directly related to the abusive behavior against the employee or family member of the employee; and
3. the employee is not the perpetrator of the abusive behavior against such employee's family member.

Additionally, the law provides that no employer shall discharge or in any other manner discriminate against an employee for exercising the employee's rights under the new law. The taking of leave as described just above shall not result in the loss of any employment benefit accrued prior to the date on which the leave taken commenced. Upon return from such leave, the employee shall be entitled to restoration to his or her original job or to an equivalent position. The employer has sole discretion to determine whether the leave taken is paid or unpaid.

The law specifies requirements for notice and documentation, and will be enforced by the attorney general (Ch. 260 (S. 2334), L. 2014).

Mississippi. Mississippi enacted a law allowing state employees to use earned major medical leave for adoption or foster care placement (S. 2084, L. 2014).

New Jersey. The state amended its Family Leave Act and its Security and Financial Empowerment (SAFE) Act concerning retained eligibility for certain leave and benefit programs during a disaster or state of emergency (Ch. 221 (S. 2996), L. 2013, enacted and effective January 17, 2014).

Pennsylvania. Every business offering employees paid leave for the specific purpose of organ or bone marrow donation will qualify for a tax credit (Act No. 2014-193 (H. 46), L. 2013, enacted and effective October 31, 2014). ■

CREDIT CHECKS

California, Colorado, Connecticut take up credit check laws

California. Effective January 1, 2015, employers will be prohibited from discharging or in any manner discriminating, retaliating, or taking any adverse action against an employee because the employee updates or attempts to update personal information based on a lawful change of name, social security number, or federal employment authorization document. An employer's compliance with these provisions shall not serve as the basis for a claim of discrimination, including any disparate treatment claim.

Under current law, an employer may take adverse action against an employee who updates personal information if the changes are directly related to the skill set, qualifications, or knowledge required for the job (Ch. 79 (A. 2751), L. 2013, enacted June 28, 2014).

Colorado. The Employment Opportunity Act was amended to add employment positions held at financial institutions to the circumstances under which an employer may use consumer credit information for employment purposes (S. 102, L. 2014).

Connecticut. The state enacted a law amending the definition of "financial institution" for the purposes of employer inquiries about employee or prospective employee credit ratings. The following have been added as financial institutions: mortgage brokers, mortgage correspondent lenders, mortgage lenders licensed pursuant to existing law, and mortgage servicing companies (P.A. 14-109 (S. 221), L. 2014, effective October 1, 2014). ■

SAME-SEX MARRIAGE

Same-sex marriage made its way to Supreme Court in 2014

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). ■