



## News & Trending

PUBLICATIONS & ALERTS

### ETRENDS - RECENT WORKPLACE STATE LAW DEVELOPMENTS ACROSS THE COUNTRY

11.30.2009

In 2009, more than twenty-five states have enacted legislation governing a variety of workplace issues. Topics include compensation, mobile texting, background checks, breastfeeding, veteran/military service rights, privacy, leave, misclassification of independent contractors, religious accommodation, state WARN and e-verify.

Employers with employees in multiple states should take care to familiarize themselves with these recently enacted laws. A summary by state is provided below.

*(as of November 20, 2009)*

#### **Arizona**

##### *Minimum Wage*

Arizona's minimum wage was increased to \$7.25/hour; tipped employees may be paid \$4.25/hour (applying the \$3.00/hour tip credit provided in the state's minimum wage statute) if the employer can establish that the employee's weekly hourly rate is not less than the minimum wage.

Effective date: 1/1/09

##### *Gun Law*

Under Arizona's new "Parking Lot Law," gun owners and concealed weapon permittees will be allowed to bring firearms onto employer property. The law prohibits property owners, tenants, employers or businesses from having or enforcing policies that preclude individuals from transporting or storing any firearm in a locked vehicle. Employers may, however, provide separate, proximate parking facilities for vehicles storing weapons.

Effective date: 9/30/09

#### **California**

##### *Same-Sex Marriage*

The "Marriage Protection Act" (so-called "Proposition 8") was passed by California voters in the November 2008 general election, thereby amending the state's Constitution to ban same-sex unions and limit marriage to opposite-sex couples only. Litigation was filed challenging the validity of the amendment, and on May 26, 2009 the state's Supreme Court upheld the ban, but allowed to stand the marriages of approximately 18,000 couples who wed during the 5-month period before the law was passed. A federal challenge to Prop 8, seeking to stop its enforcement, has been filed by the attorneys who opposed each other in *Bush v. Gore*, and may eventually be brought before the U.S. Supreme Court.

#### *Overtime Pay for Computer Professionals*

California's Labor Code was amended to exempt from overtime pay eligibility fulltime computer software professionals with a salary of \$75,000 or more (or \$36/hour or more and paid on a true "salary basis"). Analysts believe the change could affect 250,000 computer professionals. The law had the support of the state's high-tech business community which faced class action suits brought by employees who calculated their annual pay as less than the minimum hourly pay rate required under the earlier version of the law.

Effective date: 9/23/08

#### *Texting While Driving*

California drivers of any age are prohibited from reading, writing, or sending electronic text messages while driving, under a law signed by Gov. Schwarzenegger in late September 2008. The law does, however, allow drivers to read, select or enter a name or telephone number in an electronic wireless device in order to make or receive a phone call. Emergency services professionals are exempt from the Act. While the law does not impose any specific obligations on employers, a policy addressing texting while driving company vehicles or personal vehicles on company business may be advisable.

Effective date: 1/1/09

#### *Paychecks for Temporary Workers*

California's Labor Code was amended to require temporary services employers operating in the state to pay temporary employees at least once a week rather than the day the temporary assignment ends. Employers must pay the wages for work performed during the calendar week no later than the company's regular payday during the following calendar week. Final paychecks must be issued at the time of the temporary employee's discharge or within 72 hours of the employee quitting. Termination of an assignment does not constitute a discharge. Exceptions include certain day-to-day basis workers, workers assigned to a client engaged in a trade/labor dispute, and workers on a 90-or-more days assignment. Failure to comply may result in substantial criminal and civil penalties.

Effective date: 1/1/09

#### *Disability Access*

California passed legislation designed to increase equal access for disabled persons and decrease unwarranted disability access litigation brought by plaintiffs who appear interested more in monetary gain than improving access. The new law offers early judicial evaluation of the merits of a suit and allows plaintiffs to recover damages only for a violation of their *personal* access, rather than prevailing against an establishment they do not intend to use.

Effective date: 1/1/09 (and 7/1/09 for submittal by plaintiff's counsel of a written advisory of plaintiff's complaint or demand for money for any construction-related accessibility claim)

#### *Wages*

California's Civil Code was amended by adding Section 1670.7 to provide that any contract provision that allows for a deduction from an employee's wages for the cost of transporting the employee to the United States is void as against public policy.

Additionally, the state amended its Labor Code to prohibit an employer from requiring an employee to sign a time card that the employer "knows to be false" as a condition of being paid.

Effective date: 1/1/09

#### *Background Check*

California amended its Public Utilities Code to prohibit individuals (both employees and independent contractors) from entering the premises of a customer prior to undergoing a background check. The law applies to telephone companies, and state video franchise holders and video providers.

Effective date: 1/1/09

#### **Colorado**

##### *Breastfeeding/Express Milk*

The “Workplace Accommodation for Nursing Mothers Act” covers public and private employers with one or more employees. For up to two years after the birth of a child, employers must provide reasonable unpaid breaks or allow employees to use their own paid break/meal break to express breast milk in private – *i.e.*, in a room or other location in close proximity to their work area, but not a bathroom stall. An employee must engage in non-binding mediation before filing suit under the law against her employer.

Effective date: 8/5/08

##### *Misclassification of Workers*

Governor Bill Ritter signed an amendment to the state’s Employment Security Act, permitting first-time fines of up to \$5,000/misclassified employee and up to \$25,000/misclassified employee for subsequent willful violations by employers who classify employees as independent contractors. For multiple willful violations, employers may be barred from contracting with the state for a 2-year period.

Effective date: 6/2/09

##### *Unpaid Leave*

On June 1, 2009 Colorado passed the “Parental Involvement in K-12 Education Act” requiring employers with 50 or more employees to allow non-executive and non-supervisory employees up to 6 hrs/month (18 hrs/academic year) of unpaid leave to attend academic-related activities for or with their child. Such activities include parent-teacher conferences, and meetings re special education services, dropout prevention, and disciplinary issues. Employers may require 1-week’s notice and written verification of the leave, and may allow employees to substitute paid leave through vacation, sick or personal leave allowances, or to make up time during the same workweek.

Effective date: 8/5/09

##### *Designated Beneficiaries*

On April 9, 2009 Governor Ritter signed legislation allowing unmarried individuals to be designated each other’s beneficiary for health insurance and retirement benefits, among other things, including end-of-life issues via a “designated beneficiary agreement.”

Effective date: 7/1/09

#### **Connecticut**

##### *Access to Employee Restrooms*

Retailers in Connecticut will soon have to permit customers with “eligible medical conditions” access during normal business hours to their employee-only restrooms. The law covers any business open to the public that sells goods or services, and any eligible individual on the business’s premises. To be eligible, customers must have written notice from a health provider of several specific medical conditions. Other requirements of the law include: the employer must have 3 or more employees on duty at the time, and the location of the restroom must not present any health or safety risk to the customer or the retailer.

Effective date: 10/1/09

*Same-Sex Marriage*

On April 23, 2009 Connecticut Governor M. Jodi Rell signed a law defining marriage as between two people, and allowing existing same-sex civil unions to become legally recognized as marriages as of 10/1/10. Earlier, in October 2008, the state's Supreme Court ruled that same-sex couples had the right to marry, overturning the existing law that had banned the marriages.

**Delaware**

*Sexual Orientation Discrimination*

Governor Jack Markell signed legislation prohibiting sexual orientation discrimination in employment, housing, public works contracting, insurance and public accommodations. Under the law, "sexual orientation" is defined as heterosexuality, homosexuality and bisexuality. Exempted from the employment discrimination ban are religious groups, unless the job duties at issue pertain only to organizational activities that generate unrelated business taxable income.

**Florida**

*Payroll*

Florida amended its wage law to allow employers in the state the option of using payroll debit cards to pay wages and salaries, as long as the card is payable in cash, on demand, without discount, and at an established place of business within the state.

Effective date: 7/1/09

*National Guard Members' Rights*

Under Florida's newly-amended Military Affairs law, employers are prohibited from terminating a returning member of the National Guard for one year after the date on which the service member returns to the job. The service member must give notice to his/her employer of their intent to return to work following completion of active duty; exceptions are allowed for an employer's hardship or changed circumstances, if the employment was for a brief non-recurrent period and is unlikely to continue, or if the employer had legal cause to terminate the service member when their active duty began.

Effective date: 7/1/09

**Illinois**

*Biometric Information Protection*

Illinois' "Biometric Information Privacy Act," which may cover private employers having biometric data for any purpose, governs the collection, use, storage, retention and destruction of biometric information such as fingerprints, retina or iris scans, voiceprints, and face geometry – information used, for example, to control entry to a workplace, to screen job applicants, or to control access to sensitive information or venues. Such data is at high risk for identity theft, and thus employers are required to have a written policy regarding the data's use, retention and destruction; employers may not collect the information without written notice to and written release from the subject. Other provisions of the law govern the sale, disclosure and storage of the information. Failure to comply may result in damages, injunctive relief, and attorneys' fees and costs.

Effective date: 10/3/08

*Electronically-transmitted Child Pornography*

Illinois IT workers and their employers, including outside consultants and service providers, are required to report immediately to law enforcement or to the National Center for Missing and Exploited Children any depiction of

child pornography found on electronic and information technology equipment under an amendment to the state's "Abused and Neglected Child Reporting Act." Failure to comply with the law subjects a business to a \$1,000 fine. Employees or employers who report finding such material are immune from criminal, civil or administrative liability unless "willful or wanton misconduct" is evident.

#### *Health Plan Coverage*

Illinois employers with health care policies or plans that provide coverage to dependents and that are amended, delivered, issued or renewed after June 1, 2009 must cover unmarried dependents up to age 26 – regardless of student status – and cover veterans residing in the state up to age 30. Employers may require employees to pay for such coverage. Self-insurers or employers whose providers are not regulated by the state are exempt from the law.

Effective date: 6/1/09; 1/1/10 for employers with calendar year plans

#### *Fair Pay*

The Illinois Equal Pay Act was amended on August 14, 2009, extending the period within which a worker may file a gender-based wage discrimination claim with the state Department of Labor from six months to one year. The amendment's statute of limitation relies on the federal Lilly Ledbetter paycheck-based standard. In addition, workers filing wage claims now have 5 years to file, instead of three years, and employers now are required to preserve records for 5 years.

Effective date: 8/14/09

#### *Discriminatory Employment Practices*

Illinois' Human Rights Act was amended to broaden the categories of classes protected under the law to include "order of protection status," *i.e.*, those individuals who are covered by an order of protection issued under the state's Domestic Violence Act or a comparable order issued by another state.

Effective date: 1/1/10

#### *Unpaid Leave*

Illinois Governor Pat Quinn signed legislation amending the Victims of Economic Security and Safety Act, broadening the Act's coverage to include employers with 15-49 employees, and requiring they provide eight weeks of unpaid leave to victims of domestic or sexual violence. The existing law required only employers of 50 or more employees to provide up to 12 weeks of unpaid leave to victims of such violence.

Effective date: 8/24/09

### **Iowa**

#### *Same-Sex Marriage*

Iowa's Supreme Court ruled unanimously on April 3, 2009 that the state law limiting marriages to a man and woman violated the state's constitution. Consequently, as of April 27, same-sex couples in Iowa are allowed to marry.

### **Maine**

#### *Same-Sex Marriage*

Governor John Baldacci signed into law on May 6, 2009 "An Act to End Discrimination in Civil Marriage and Affirm Religious Freedom," thereby allowing same-sex couples to marry. The Act has significance for employers because of benefits and tax implications granted to married couples under Maine law.

Effective date: September 2009

## **Maryland**

### *Disability Rights*

Maryland recently modified its fair employment practice statute to reflect recent revisions to the federal ADA, although the new law (the “Discrimination in Employment-Expansion of Disability Rights”) differs from the federal act. The law expands the definition of disability to include “a record of having a physical or mental impairment” and “being regarded as having” same, and prohibits employers and labor organizations from refusing a reasonable accommodation to employees involved in a charge of discrimination.

Effective date: 10/1/09

### *Employer Recordkeeping*

In order to provide the state’s Commissioner of Labor with data to probe issues of pay disparity, Maryland amended its employer recordkeeping statute to require the reporting of employees’ race and gender, in addition to their wages and job classifications. The law will remain in effect until December 31, 2013. Documentation of employee race and gender should be kept separate from personnel records, and collected in a way that will not violate anti-discrimination statutes.

Effective date: 10/1/08

### *Fair Pay*

Under the Lilly Ledbetter Civil Rights Restoration Act of 2009, the state of Maryland expanded the protections of the federal Lilly Ledbetter Fair Pay Act to state fair pay claims, authorizing employees to recover back pay for up to 2 years prior to filing a complaint of discrimination (that potentially would affect pay), thus covering even discriminatory employment practices that occurred decades earlier.

Effective date: 10/1/09

### *Misclassification of Workers*

Maryland’s “Workplace Fraud Act of 2009” attempts to prevent the misclassification of construction and landscaping services employees as independent contractors by their employers. The Act presumes that an employer-employee relationship exists if work is performed for pay unless the employer can demonstrate an independent contractor relationship or an exemption under the Act. Employers who fail to properly classify these workers face penalties of up to \$1,000/employee, or \$5,000/employee where the employer knowingly misclassified. Larger penalties may be assessed if there is a history of non-compliance and a failure to comply in a timely manner, and if an individual knowingly conspires with the employer to violate the Act.

Effective date: 10/1/09

### *Paid Sick Leave*

Amendments to the 2008 Maryland Flexible Leave Act define and clarify key terms and provisions in the Act. The amendments define such terms as employee, employer, child and parent; they clarify that the law covers employers with “15 or more employees for each working day in each of 20 or more calendar weeks” and serves to allow employees to use any paid personal leave “to care for an immediate family member who is ill under the same conditions and policy rules that would apply” to leave taken for an employee’s own illness. Under the Act, almost any illness would trigger paid leave, not just those defined as “serious.”

Effective date: 5/19/09

## **Massachusetts**

### *Employee Health Care*

Massachusetts’ 2006 health care reform act requires state residents 18 years and older to have “minimum

creditable coverage” (MCC) or be subject to tax penalty. On October 17, 2008 the Massachusetts Health Insurance Connector Authority issued final regulations under the act establishing MCC standards for health plans. Under these standards, a plan is considered to provide “creditable coverage” if it provides, among other things, “core services” and a “broad range of medical benefits;” in addition, the regulations establish limits on amounts set for co-payments, deductibles, and maximum benefits. Employers with employees in the state must determine that their health plans are in compliance with the new regulations – even generous plans may fail to qualify as MCC.

Effective date: 1/1/09, and 1/1/10 for additional provisions regarding “broad range of medical benefits”

#### *Safeguarding Personal Information*

Regulations designed to protect the personal information of Massachusetts employees and consumers were passed in October 2008 pursuant to the state’s 2007 security breach law, and revised in August 2009 in response to small businesses’ compliance concerns. The regulations require that businesses or individuals that own or license (*i.e.*, receive, maintain, process or have access to) personal information about a Massachusetts consumer, in connection with either the provision of goods and services *or* with employment, in either paper or electronic format, develop, implement, and maintain a comprehensive written security program that safeguards the information. Thus, even if an employer has no presence in the state, the regulations may apply if the business has personal info on any resident of Massachusetts.

Effective date: 3/1/10 (extended from an original 1/1/09 date and revised dates of 5/1/09 and 1/1/10)

### **Nebraska**

#### *E-Verify*

Nebraska passed legislation requiring public employers and contractors to use the federal E-Verify system to confirm work eligibility and legal status for state and local agencies’ new hires after October 1, 2009. While the law does not apply to private employers, it provides tax incentives to the private sector for use of the verification system.

Effective date: 10/1/09

### **Nevada**

#### *Unpaid Leave*

Nevada Governor Jim Gibbons signed legislation on May 28, 2009 expanding the leave allowed employees to participate in their children’s school activities. The law is significant because it extends to parents of private school students. Employers with 50 or more employees are required to grant employees up to 4 hr/school year of unpaid leave for each of their student’s school-related activities, which definition covers a broad range of activities. Employees are protected from retaliation for exercising these rights.

Effective date: 8/15/09

#### *Safeguarding Personal Information*

Legislation signed by Governor Gibbons on May 29, 2009 amended the state’s 2005 data security law, prohibiting entities doing business in the state from transferring any personal information through an electronic, non-voice transmission – other than fax – to someone outside the secure system of the entity, or moving any data storage device containing such information beyond the logical or physical controls of the entity or its storage contractor, unless encryption is used to ensure the security of the information.

Effective date: 1/1/10

## **New Hampshire**

### *Same-Sex Marriage*

Governor John Lynch signed legislation on June 3, 2009 that legalized same-sex marriage, while at the same time clarifying that religious institutions and their employees are free to determine whether to recognize same-sex unions and to choose not to participate in marriage-related activities that violate fundamental religious beliefs.

Effective date: 1/1/10

### *State WARN*

New Hampshire's Worker Adjustment and Retraining Notification Act was signed on August 10, 2009, a more stringent version of the federal WARN. The state law covers employers of 75 workers, not the 100 workers covered by WARN, and allows the state to place liens on business revenues and real and personal property of non-compliant companies. In addition, violators may be assessed civil penalties of up to \$2,500 and \$100 fines per employee/per day.

Effective date: 1/1/10

## **New Jersey**

### *Workers' Compensation*

New Jersey signed into law four new workers' compensation laws which include, among other things: assessing additional penalties on employers that fail to comply with the state's workers' compensation laws or orders of a workers' compensation judge; requiring that employers provide proof of workers' compensation with the submissions of their annual reports; and allowing an employee in need of physician-certified emergent medical care to file a motion for emergent medical treatment with or after the filing of a workers' comp claim.

Effective date: 10/1/08

### *Background Checks by Adoption Agencies*

In a bill signed by New Jersey Governor John Corzine in December 2008, employees of adoption agencies that are approved by the state's Division of Youth and Family Services must undergo criminal background and child abuse background checks. Agencies already operating within the state have 60 days to complete background checks and submit the reports to the Department of Children and Families; agencies established after the law's effective date must submit the reports prior to commencing operation.

Effective date: 6/15/09

### *Misclassification of Workers*

Governor Corzine signed legislation on July 10, 2009 amending the Workers' Compensation Fraud statute, permitting the state to issue a stop-work order against a contractor who either knowingly fails to provide workers' comp insurance for employees, who misclassifies employees as independent contractors, or who gives false, incomplete or misleading information pertaining to numbers of employees in order to pay lower workers' comp premiums. Knowing violations are punishable by up to 18 months in prison and \$10,000 fines.

Effective date: 7/10/09

### *Minimum Wage*

Effective July 24, 2009 New Jersey's minimum wage increased to \$7.25/hour from \$7.15/hour, as the federal minimum rate increased.



## **New York**

### *State WARN*

New York Governor David Paterson signed into law in August 2008 a “Worker Adjustment and Retraining Notification Act” that is far more stringent than the federal WARN in several areas, including: it applies to employers with just 50 fulltime employees (vs. the 100-employee minimum required under WARN); it requires at least 90 days advance written notice of mass layoffs, relocations or plant closings (as compared to 60 days notice under WARN); and its notice requirements are triggered when 25 fulltime employees representing at least 33% of the workforce suffer a job loss (as opposed to 50 fulltime employees under WARN). In calculating penalties for non-compliance with notice provisions, New York’s WARN will count calendar, not working, days; additionally, the state WARN covers *relocations*, and requires notice to employees, any representative of employees, the New York Department of Labor and the local workforce investment board in which the mass layoff, plant closing or relocation occurs, in the same form as the federal WARN notice.

Effective date: 2/1/09

### *Employing Persons with Criminal History*

Article 23-A of the New York Correction Law was amended in late 2008 to improve job prospects for persons with past criminal convictions. The amendments: (1) require all New York employers to post a copy of Article 23-A and related regulations conspicuously and in a location accessible to workers; (2) require employers to provide a copy of Article 23-A to prospective applicants/employees who are subject to background checks, and to those persons whose background check produces criminal history information.

Effective date: 2/1/09

Additionally, New York’s Human Rights Law was amended to protect from lawsuits employers who hire applicants having criminal records by affording employers who are sued for negligent hiring a rebuttable presumption in court that the criminal background information should be excluded from evidence.

Effective date: 9/08

### *Mandatory Overtime Prohibitions*

New York passed legislation prohibiting mandatory overtime (*i.e.*, more than the “regularly scheduled work hours”) for RNs and LPNs who work for health care employers – *e.g.*, private and public hospitals, nursing homes, and other health care facilities. Nurses may work overtime voluntarily and without any cap on the hours they work in a day or week; home health care nurses are excepted from the legislation. Other exceptions are made for emergency and disaster-related situations and in situations where the nurse’s presence is necessary to ensure patient health and safety.

Effective date: 7/1/09

### *Discriminatory Employment Practices*

New York’s Human Rights Law was amended to impose significant fines and penalties on employers who engage in discriminatory employment practices. Civil penalties for violations of the law range from fines of \$50,000-100,000, which fines were previously assessed only in cases of housing discrimination.

Effective date: 7/6/09

### *Broadcast Industry Non-Compete Agreements*

New York’s “Broadcast Employees Freedom to Work Act,” signed into law in August 2008, restricts employers in the broadcasting industry from establishing and enforcing non-compete agreements with current or prospective employees (but not independent contractors). Specifically, no broadcast industry employer may require as a

condition of employment that an employee refrain from gaining employment in any specified geographic area for a specified time period or with any particular employer in a particular industry. Violations of the law subject broadcast industry employers to damages and attorneys' fees and costs.

Effective date: 8/6/08

#### *Minimum Wage*

To comport with new federal minimum wage rates, New York's minimum wage was increased from \$7.15/hour to \$7.25/hour effective July 24, 2009. Additionally, tip-credit wages, uniform maintenance rates, and the minimum salary required to qualify for the executive and administrative exemptions increased.

#### *Wages*

Governor Paterson signed legislation enhancing wage and hour protections for workers by increasing the minimum and maximum penalties (from \$200 to \$1,000, and from \$2,000 to \$10,000) against employers that retaliate against workers exercising their rights to recover unpaid wages under New York's Labor Law, and allowing for liquidated damages in certain circumstances.

Effective date: 11/27/09

Further legislation amending the state Labor Law requires employers to provide written notice of pay rate (including overtime, if applicable) and regular payday to all new hires prior to commencing work, and receive signed, written acknowledgement of the notice, which must be maintained for six years.

Effective date: 10/26/09

#### *Health Care Employees*

The Nursing Care Quality Protection Act was signed into law on September 16, 2009 requiring hospitals to disclose to the public and to state agencies nursing quality indicators (*i.e.*, numbers of RNs and LPNs vs. unlicensed workers, and patient-to-nurse ratios) and patient outcomes, including medication errors, patient injuries and infections. Further, the law requires that figures on complaints filed with state or federal regulatory agencies must be disclosed.

Effective date: 3/16/10

#### *Green Jobs*

The Green Jobs-Green New York Act of 2009 creates for New Yorkers a \$4 million training program for green jobs and a \$70 million revolving fund for energy audits and retrofitting of commercial and residential properties, furthering a clean energy economy.

Effective date: 10/13/09

#### **North Carolina**

##### *Texting While Driving*

North Carolina's "Ban Texting While Driving" law was signed by Governor Beverly Perdue on June 14, 2009, making the state the 14th in the country to prohibit texting while driving. Effective December 1, 2009, drivers are banned from typing or reading text messages or emails while driving. Exceptions are made for voice operated devices and GPS systems, among other things, and the law allows for the use of mobile phones to make calls. Violators will be fined \$100.

#### **Ohio**

##### *Mini-COBRA*

The American Recovery and Reinvestment Act (ARRA) amended COBRA to provide a premium subsidy to

employees involuntarily terminated on or after September 1, 2008, even those employees under small health plans not covered by COBRA if their state's laws mandated continued coverage. Ohio's governor signed the state's "mini-COBRA" statute on April 1, 2009, extending continuation coverage from 6 months to 12 months. Model notification forms are available on the Ohio Department of Insurance website.

Effective date: 4/1/09

#### *Minimum Wage*

Ohio increased its minimum wage to \$7.30/hour and to \$3.65/hour for tipped employees, effective January 1, 2009. Further, effective July 24, 2009 the minimum wage for minors ages 14 and 15 was increased to \$7.25/hour.

### **Oregon**

#### *Meal Periods*

Oregon amended its meal and rest period rules to allow an "undue hardship" exception for employers that demonstrate they are unable to provide an uninterrupted 30 minute meal period to employees. Employers invoking the exception must provide written notice to employees on specific state Bureau of Labor and Industries forms, and maintain a copy of the notice for their records.

Effective date: 3/16/09

#### *Smoking*

Oregon's 2002 "Smokefree Workplace Law" was amended to expand workplace and public areas that must be smoke-free: private offices, restaurants, bars and taverns, fraternal and private organizations, movie theatres and indoor entertainment areas are among the venues covered by the amendments. Smoking within 10 feet of entrances and exits, windows that operate, and ventilation systems is also prohibited. Employers must post signs prohibiting smoking at building entrances and exits, and remove ash trays and receptacles from the entrance/exit areas. Penalties for violations include a \$500/day fine.

Effective date: 1/1/09

#### *Meeting Attendance*

Oregon Governor Ted Kulongoski signed legislation on June 30, 2009 protecting from discipline employees who opt-out of employer-sponsored meetings that promulgate the employer's positions on religious, political or union matters. Employees whose rights are violated may sue for injunctive relief, reinstatement, back pay and treble damages and attorneys' fees.

Effective date: 1/1/10

#### *Religious Accommodation*

Legislation was passed July 16, 2009 requiring Oregon employers to accommodate employees' religious practices by, for example, allowing shift changes and vacation time for religious observances and permitting certain jewelry or clothing, if such accommodation does not create an undue hardship on the employers. Public school teachers, however, will not be allowed religious dress at work.

Effective date: 1/1/10

#### *Whistleblower Protection*

Oregon employees in both the public *and* private sectors are now protected from discrimination and retaliation on the basis of whistleblowing, due to a sweeping amendment to Oregon's main whistleblower statute. The new law represents a change from existing law which protected only public employees, and will apply to actions commenced after the January 1, 2010 effective date.

## **Pennsylvania**

### *Mandatory Overtime Prohibitions*

New legislation signed by Governor Ed Rendell prohibits mandatory overtime for nurses, nurses' assistants and other direct patient caregivers in Pennsylvania's public and private hospitals and treatment facilities. Such facilities are prohibited from requiring an employee to work hours beyond agreed-to, pre-determined, regularly scheduled daily work shifts and from retaliating against a worker who exercises their rights under the law.

Effective date: 7/1/09

### *Mini-COBRA*

As in Ohio, Pennsylvania's governor signed legislation on June 10, 2009 implementing a small employer mini-COBRA statute that provides qualified employees in the state who are involuntarily terminated between 7/10/09-12/31/09, and who work for employers with 2-19 employees, the same 65% premium subsidy allowed under the ARRA for a period of 9 months after termination. Notice of the law must be made to policy holders within 45 days of the effective date; employers must provide employees notice of their right to continuation coverage within 30 days of a qualifying event, and employees must respond within 30 days of receipt of notice of their desire to elect coverage.

Effective date: 7/10/09

## **Rhode Island**

### *E-Verify*

In March 2008 Rhode Island's governor signed Executive Order 08-01 requiring state agencies and entities (*i.e.*, companies, contractors, subcontractors, vendors) doing business with (or, under the implementing regulations, proposing to do business with) the state to use the federal E-Verify program to confirm the legal status of all employees. In October 2008, the state's Department of Administration issued emergency regulations enforcing the E.O. immediately; in April 2009, a state trial court upheld the legality of the E.O. and the implementing regs. A bill to enforce mandatory E-Verify was passed the following month by the state's House of Representatives and is currently before the Rhode Island Senate.

## **Utah**

### *E-Verify*

Utah amended its "Identity Documents and Verification Act" to clarify that the requirement that government employers and public contractors use the federal E-Verify program applied only to contractors with contracts to provide services within the state.

Effective date: 7/1/09

## **Vermont**

### *Same-Sex Marriage*

On April 7, 2009 Vermont became the fourth state to allow same-sex marriage, but the first to legalize it via the legislature's vote to override the governor's veto of the measure. Nine years ago Vermont became the first state in the country to allow same-sex civil unions; these existing civil unions, established prior to the effective date of the new law, will continue to be recognized.

Effective date: 9/1/09

## **Virginia**

### *Mini-COBRA*

On April 14, 2009 Virginia's General Assembly passed HB 2024, extending the ARRA's COBRA coverage to

small health plans in the state not covered by COBRA. For certain employees in Virginia involuntarily terminated between 9/1/08-12/31/09, the option is now available to continue group health insurance coverage for up to 9 months. Notification deadlines vary depending on employment termination dates.

Effective date: 4/8/09

## **Washington**

### *Minimum Wage*

Washington increased its minimum wage to \$8.55/hour for the state's agricultural and non-agricultural workers, including tipped employees. The state continues to have the country's highest minimum wage.

Effective date: 1/1/09

## **Wisconsin**

### *Employment Discrimination Damages*

Wisconsin amended its Fair Employment Act on June 8, 2009 to allow plaintiffs to recover compensatory and punitive damages, not just the job reinstatement, back pay and attorneys' fees recoveries previously permitted. Under the law, compensatory and punitive damages must be awarded to a prevailing claimant, subject to caps that range from \$50,000-\$300,000, depending on the size of the workforce. Employers with less than 15 employees are exempt from the Act.

### *Traveling Sales Crews*

Wisconsin enacted legislation aimed at protecting young people who work on traveling sales crews, selling products such as magazines, cleaning supplies, and training courses and business opportunities – some of which are scams. The law applies to workers traveling in groups of two or more, and who are away from home overnight, but not to sales people selling to businesses and government entities. The law requires these workers to be classified as employees, not independent contractors, and to be given a disclosure by the employer indicating, among other things, compensation, pay periods, and job descriptions. Further, employers must register with the state.

Effective date: 4/1/10

Please contact **Kimberly J. Korando** with any questions.

## **Employment, Labor and Human Resources**

- **Zebulon D. Anderson** zanderson@smithlaw.com
- **Megan P. Black** mblack@smithlaw.com
- **Sarah W. Fox** sfox@smithlaw.com
- **Blake S. Fricks** bfricks@smithlaw.com
- **Susan H. Hargrove** shargrove@smithlaw.com
- **Jamison H. Hinkle** jhinkle@smithlaw.com
- **J. Travis Hockaday** thockaday@smithlaw.com
- **Rosemary G. Kenyon** rkenyon@smithlaw.com
- **Kimberly J. Korando** kkorando@smithlaw.com
- **Isaac A. Linnartz** ilinnartz@smithlaw.com



- **Susan Milner Parrott** sparrott@smithlaw.com
- **Kerry A. Shad** kshad@smithlaw.com

#### Employee Benefits and Compensation

- **Jamison H. Hinkle** jhinkle@smithlaw.com
- **Caryn Coppedge McNeill** cmcneill@smithlaw.com
- **Susan Milner Parrott** sparrott@smithlaw.com
- **Craig B. Wheaton** cwheaton@smithlaw.com
- **Katherine Young Biegler** kbiegler@smithlaw.com

#### Environmental Health and Safety

- **Caroline N. Belk** cbelk@smithlaw.com
- **David W. Berry** dberry@smithlaw.com
- **Stephen T. Parascandola** sparascandola@smithlaw.com

#### Government Contracting

- **J. Mitchell Armbruster** marmbruster@smithlaw.com
- **David B. Clement** dclement@smithlaw.com
- **David L. Hayden** dhayden@smithlaw.com
- **Lee M. Kirby, Jr.** lkirby@smithlaw.com
- **Kimberly J. Korando** kkorando@smithlaw.com
- **H. Martin Lancaster** mlancaster@smithlaw.com
- **Wayne K. Maiorano** wmaiorano@smithlaw.com
- **Peter J. Marino** pmarino@smithlaw.com
- **Jackson W. Moore** jmoore@smithlaw.com
- **Susan Milner Parrott** sparrott@smithlaw.com
- **Jeffrey J. Truitt** jtruitt@smithlaw.com
- **Kirk G. Warner** kwarner@smithlaw.com
- **Jeffrey R. Wolfe** jwolfe@smithlaw.com

#### Privacy

- **Alicia A. Gilleskie** agilleskie@smithlaw.com
- **Frederick R. Zufelt** fzufelt@smithlaw.com

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## PROFESSIONALS

Kimberly J. Korando

## PRACTICE AREAS

Employment, Labor and Human Resources

