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DRI Employment and Labor Law Committee

New Laws for 2017

State by State Legislative Update

DRI Mission, Diversity Statements

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DRI is the international membership organization of all lawyers involved in the defense of civil litigation. As such, DRI wishes to express its strong commitment to the goal of diversity in its membership. Our member attorneys conduct business throughout the United States and around the world, and DRI values highly the perspectives and varied experiences that are found only in a diverse membership. The promotion and retention of a diverse membership is essential to the success of our organization as a whole as well as our respective professional pursuits. Diversity brings to our organization a broader and richer environment, which produces creative thinking and solutions. As such, DRI embraces and encourages diversity in all aspects of its activities. DRI is committed to creating and maintaining a culture that supports and promotes diversity, which includes sexual orientation, in its organization.

55 West Monroe Street, Suite 2000
Chicago, Illinois 60603
dri.org

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Federal

Harris Neal Feldman
John Neckonchuk
Parker McCay, P.A.
9000 Midlantic Drive, Suite 300
Mount Laurel, NJ 08054
Telephone: 856-810-5854
Email: hfeldman@parkermccay.com

While the legislative gridlock resulted in few legislative enactments in 2016, certainly 2017 and beyond promise to be active, given the Republican president and Republican-controlled Congress. Thus, contrasted with the gridlock that has marked the legislative process in recent years, the results of the election may have breached the dam, potentially resulting in a flood of new policy coming our way in the very near future.

Noteworthy 2016 Executive Orders

On April 15, 2016, President Obama signed Executive Order 13725 ("Steps to Increase Competition and Better Inform Consumers and Workers to Support Continued Growth of the American Economy"), designed to promote competition and eradicate "unlawful collusion, illegal bid rigging, price fixing, wage setting" as well as "anti-competitive exclusionary conduct and mergers." It encourages executive departments and agencies to use their resources and authority, especially with respect to rulemaking, to "promote competition, arm consumers and workers with the information they need to make informed choices, and eliminate regulations that restrict competition without corresponding benefits to the American public." The effects of this Executive Order on pertinent agencies such as the Department of Labor will remain to be seen.

Proposed/Final Regulations Related To Noteworthy Proposed Legislation

New Overtime Rules for White Collar Employees (81 FR 32391)

On March 13, 2014, President Obama directed the Secretary of Labor to update regulations promulgated under the Fair Labor Standards Act to extend overtime protections to a number of executive, administrative, and professional (i.e. "white collar") employees. The product of this direction was a Final Rule published on May 23, 2016 (81 FR 32391). The Final Rule increased the minimum salary level for exempt employees from $23,660 to $47,892 annually, and went even further in including automatic updates to the salary and compensation threshold. Predictions indicated that 4.2 million workers would be affected. While it was supposed to go into effect on December 1, 2016, implementation was halted by a nationwide preliminary injunction issued by Judge Amos L. Mazzant, III of the United States District Court for the Eastern District of Texas, Sherman Division, on November 22, 2016. In his Memorandum Opinion, Judge Mazzant noted that "the Final Rule creates new legal obligations for employers who must pay a higher salary level for certain employees to be exempt from overtime" and hinted that he would ultimately hold the Final Rule unlawful. On December 1, 2016, the same date the Final Rule was to go into effect, the Department of Justice appealed the grant of the preliminary injunction to the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit agreed to expedite the appeal, which remains pending.

Noteworthy Enacted Legislation

Defend Trade Secrets Act of 2016 (PL 114-153)

This legislation became law on May 11, 2016. It largely mirrors the Uniform Trade Secrets Act already implemented by nearly all states and creates a private civil cause of action for misappropriation of trade secrets.

Because it is federal, the misappropriation must relate to a product or service in interstate or foreign commerce. It includes a three-year statute of limitation, fee-shifting, and other provisions.

Noteworthy Proposed Legislation

Use It or Choose It Act of 2016 (HR 6467)

This bill would permit individuals, including part-time workers and independent contractors, to retain work-related benefits even when such individuals switch employers. The Act would require contractual providers of benefits to extend to them the same benefits, and would require employers holding leave or other benefit funds or reserves to transfer same to new employers upon request. Benefits included are health care; workers compensation; life insurance; family and medical leave; and annual sick, paternity, and maternity leave. It is currently in committee.

Fair SHARE Act of 2016 (HR 6293)

This bill would make it an unlawful employment practice for any employer to inquire of, or seek information about, a job applicant's salary history, unless an offer of employment has been made and the applicant volunteers such information and provides the employer with a written authorization allowing the employer to verify it. Procedures and remedies for enforcing this bill are found in the Civil Rights Act of 1964, Congressional Accountability Act of 1995, and Government Employee Rights Act of 1991. It is currently in subcommittee.

Pay Equity for All Act of 2016 (HR 6030)

This bill would amend the Fair Labor Standards Act to make it unlawful for employers to: screen applicants based on previous wage or salary histories, inquire of former or current employers of the applicant about such information, or retaliate against a current or prospective employee for objecting to any practice forbidden thereunder. It is currently in committee.

Education Support Professional Family Medical Leave Act (S 3444)

This bill would amend the Family and Medical Leave Act of 1993 to provide standards in determining when education support professionals are entitled to leave. Education support professionals include, but are not limited to, secretarial, clerical, or administrative support staff. It is currently in committee.

Grandparent-Grandchild Medical Leave Act (HR 5701)

This bill would amend the Family and Medical Leave Act and federal civil service law to permit eligible employees to take leave from work to care for not only spouses, children, and parents, but also adult children, grandparents, and grandchildren who have serious health conditions. It is currently in subcommittee.

Family Leave for Parental Involvement in Education Act (HR 5535)

This bill would entitle an employee covered under the Family and Medical Leave Act of 1993 to take a certain amount of "parental involvement leave" in order to participate in or attend school conferences or activities sponsored by a school or community organization for the employee's child or grandchild. Under this bill, employers would be permitted to require an employee to use paid time off if such leave is taken. It is currently in subcommittee.

Family and Medical Leave Enhancement Act of 2016 (HR 5518)

This bill would amend and expand the Family and Medical Leave Act of 1993 to cover employers with at least 15 employees, as opposed to 50. It adds that leave may be taken to "meet routine family medical care needs,

including for medical and dental appointments of the employee or a son, daughter, spouse, or grandchild of the employee, or to attend to the care needs of elderly individuals who are related to the eligible employee, including visits to nursing homes and group homes." It is currently in subcommittee.

Family and Medical Leave Inclusion Act (HR 5519)

This bill would expand the protections of the Family and Medical Leave Act of 1993 to entitle eligible employees to leave in order to care for a domestic partner, a domestic partner's child, a parent-in-law, an adult child, sibling, grandparent, grandchild, or "any other person related by blood or affinity whose close association with the employee is the equivalent of a family relationship," where such an individual has a serious health condition. A domestic partner is defined as someone "recognized as the domestic partner of the employee under any domestic partner registry or civil union laws of the State or political subdivision of a State[,]" or, where an employee is unmarried, "an unmarried adult person who is in a committed, personal relationship with the employee, is not a domestic partner to any other person, and who is designated to the employer by such employee as that employee's domestic partner." It is currently in subcommittee.

Family and Medical Leave Act Protections for Part-time Workers Act (HR 5496)

This bill would amend the Family and Medical Leave Act of 1993 to make an employee eligible to take leave if he or she has been employed with a covered employer for at least 12 months. It would also repeal the requirement that the employee must have served a minimum of 1,250 hours during the 12-month period preceding the request for leave. Its express purpose is to include a greater number of part-time employees within the Act's protections. It is currently in subcommittee.

Medical Leave for Disabled Veterans Act (HR 5165)

This bill would amend the Family and Medical Leave Act of 1993 to provide more expansive leave protections for disabled veterans meeting certain Department of Veterans Affairs disability rating and minimum service requirements. It is currently in subcommittee.

USA Retirement Funds Act (HR 6136)

This bill seeks to expand access to privately-managed, portable retirement plans in order to counter what has been referred to as a "retirement crisis." Under the proposal "covered employers" are those who do not maintain a qualifying plan for any part of a calendar year, have more than 10 employees each receiving at least $5,000 in compensation, and are not government and/or tax-exempt religious entities. It would subject employers to withholding obligations and other requirements. It was referred to the House Ways and Means Committee on September 22, 2016. See also the American Savings Account Act of 2016 (HR 5450 & S 2472) (establishing a new retirement option for employees and self-employed individuals).

State Retirement Savings Act of 2016 (S 3389)

This bill would authorize states to sponsor multiple employer plans and payroll deduction savings programs, in which any employer in the state could, but would not be required to, participate. Moreover, such plans could directly enroll individuals whose employers do not participate in the program. Under this system, the plan sponsor, fiduciary, and administrator would be the state. It is currently in committee.

Giving Workers a Fair Shot Act (HR 5939)

This bill would amend the Fair Labor Standards Act to require employers to give employees detailed information regarding their pay, leave time, and minimum wage and overtime pay eligibility. The bill also seeks to stem

over-classification of employees as supervisors for the purpose of restricting unionization, and has other goals beyond the scope of this publication. It is currently in committee. See also the Pay Stub Disclosure Act (HR 4376 & S 2630) (imposing certain disclosure, recordkeeping, and other requirements on employers).

Wage Theft Prevention and Wage Recovery Act (HR 4763 & S 2697)

This bill's express purposes are, among others: to strengthen penalties for employers engaging in wage theft; require employers to make certain disclosures, provide regular pay stubs, and maintain employee compensation records; and expand procedural protections for employees to sue their employer to recover stolen wages (e.g., increases applicable statutes of limitations and damages provisions). Both bills are currently in committee or subcommittee.

Menstrual Products for Employees Act (HR 5929 & HR 5915)

These bills would require employers with 100 or more employees to make free menstrual hygiene products available to employees in their bathrooms. They would amend the Occupational Safety and Health Act of 1970 to require the Secretary of Labor to promulgate a rule aimed at this objective. It is currently in subcommittee.

A Bill to Establish Requirements For Participants in the Peer-to-Peer Economy to be Considered Independent Contractors and Not Employees for Purposes of Several Employment-Related Statutes (HR 5918)

The bill defines "peer-to-peer economy" as any business "facilitating transactions between a user seeking a service and an individual providing that service using an online platform or mobile application[.]" Participants in a peer-to-peer economy would be considered independent contractors and not employees for purposes of the Fair Labor Standards Act, Family Medical Leave Act, and National Labor Relations Act. The bill sets forth four (4) factors for determining how such individuals should be classified. It is currently in subcommittee.

Eliminate So-Called Right-to-Work Legislation Nationwide Act of 2016 (HR 5894)

This bill would amend the National Labor Relations Act to preempt state or territorial law that conflicts with that Act's provision authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment. Right now, the Act contains a disclaimer that "[n]othing in [the law] shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law." 29 U.S.C. §164(b). It is currently in subcommittee.

Employee Free Choice Act of 2016 (HR 5000)

This bill would, among other things, establish a streamlined system to facilitate employees in forming, joining, or assisting labor organizations by requiring the National Labor Relations Board to certify, without an election, an individual or organization to be the exclusive representative of the employees in appropriate circumstances. It is currently in subcommittee.

Protecting Older Workers Against Discrimination Act (HR 5574 & S 2180)

These bills would amend the Age Discrimination in Employment Act of 1967 (ADEA) to replace the requirement that a plaintiff demonstrate that age, or participation in proceedings under the Act, was the sole factor motivating an unlawful employment practice, with the requirement that only a "motivating factor" be demonstrated. This bill expressly rejects the United States Supreme Court's holding in *Gross v. FBL Financial Services, Inc.*,

557 U.S. 167 (2009), which held that, because Congress did not amend the ADEA to address these "mixed motive" claims, such claims could not be made under the ADEA. It would affect all claims pending on or after its effective date. It is currently in subcommittee.

Workplace Advancement Act (HR 5237 & S 875 & S 2200)

These bills would amend the Fair Labor Standards Act of 1938 to make it unlawful to discharge or retaliate against an employee who inquires about, discusses, or discloses comparative compensation information in order to determine whether the employer is compensating employees with equal pay for equal work. These bills seek to eradicate and strengthen enforcement against gender-based discrimination in compensation. They are currently in various stages of committee and/or subcommittee review, but S 2200 was placed on the Senate Legislative Calendar.

Gender Advancement in Pay Act (S 2773 & S 2070)

These bills would amend the Fair Labor Standards Act of 1938 to broaden exceptions to the prohibition against sex discrimination to include payment differentials based on expertise, shift, or a business-related factor other than sex, such as education, training, or experience. There are also certain non-retaliation provisions touching upon a similar subject as is addressed in the Workplace Advancement Act discussed above. It is currently in committee.

EEOC Reform Act (S 2693)

This bill would delay the implementation of a proposed revision of the employer information report EEO-1, which is an annual requirement by the EEOC for most employers with 100 or more employees. The reason for the bill was apparently due to the increase in the amount of data that would be collected as a result of the revision, and its purported failure to comply with the Paperwork Reduction Act. Numerous additional requirements are imposed upon the EEOC pursuant to this proposed legislation, which are beyond the scope of this publication. This bill is currently in committee.

Protecting Local Business Opportunity Act (HR 3459 & S 2015 & S 2686)

Among other things, these bills seek to clarify the classification of two or more employers as "joint employers" under the National Labor Relations Act by stating that such a classification is only appropriate "if each employer shares and exercises control over essential terms and conditions of employment and such control over these matters is actual, direct, and immediate." They are currently in committee.

Fair Wage Act (HR 4508)

This bill would amend the Fair Labor Standards Act of 1938 to increase the federal minimum wage, with set annual increases built into the law. However, the Secretary of Labor must still review scheduled annual increases the year prior to when they are to go into effect to ensure that they should not be higher based upon the Consumer Price Index. It also amends the Internal Revenue Code to allow employers paying between $1.00 and $15.00 per hour more than the minimum wage a credit against their employment tax. It is currently in subcommittee. See also the Pay Workers a Living Wage Act (HR 3164 & S 1832) (providing for a similar mechanism and requiring employers to notify employees of their right to retain tips).

Regulatory Impact on Employment and Wages Act (HR 6326)

This and the next five (5) proposed bills discussed herein concern the Department of Labor's Final Rule regarding overtime for "white collar" employees, which was supposed to go into effect on December 1, 2016, as

described in greater detail below. This particular bill would delay, and potentially prevent, a "major rule" proposed by a federal agency from taking effect until the Bureau of Labor Statistics within the Department of Labor has studied and reports to Congress on how such rule would impact wage growth and employment in the industries affected by the rule. This bill would apply prospectively from the date of its enactment. It is currently in subcommittee.

Overtime Reform and Review Act (S 3464)

The purpose of this bill is to provide incremental increases to the salary threshold for exemptions for executive, administrative, professional, outside sales, and computer employees under the Fair Labor Standards Act of 1938. The initial threshold, which the Act places in effect on December 1, 2016, is a rate of compensation equal to $35,984 per year, and provides for annual increases thereafter, except beginning on December 1, 2021, the Secretary of Labor may issue a rule through notice and comment rulemaking to change the rate of compensation. It also nullifies the Department of Labor's overtime rule, discussed below in greater detail, and prevents automatic updating of the salary threshold without rulemaking. It was read twice and placed on the Senate Legislative Calendar.

Regulatory Relief for Small Businesses, Schools, and Nonprofits Act (HR 6094 & S 3462)

This bill would delay the effective date of the Department of Labor's rule relative to income thresholds for determining overtime pay for executive, administrative, professional, outside sales, and computer employees (which was intended to increase the number of workers entitled to overtime pay), by six (6) months. The rule was supposed to go into effect on December 1, 2016, but was met with an injunction. It is discussed below in greater detail. It is on the Senate Calendar.

Overtime Reform and Enhancement Act (HR 5813)

This bill would have required the Department of Labor to revise the new overtime exemption rule discussed below by December 1, 2016, in order to increase the defining rates of pay of exempted employees and substitute its automatic updating provisions with the requirement that updates be made only through the rulemaking process. It is currently in committee.

Protecting Workplace Advancement and Opportunity Act (HR 4773 & S 2707)

This bill would nullify the Department of Labor's new overtime rule, impose new requirements on its attempt to pass a similar rule, and would prevent an automatic update mechanism with respect to salary thresholds. The bills are currently in committee.

Small Business Survival from Disaster Act (S 3429)

This bill would postpone the Department of Labor's new overtime rule from its intended effective date of December 1, 2016, until December 1, 2018, for any states which, after August 14, 2016, the President has declared that a major disaster exists. It is currently in committee. In light of the injunction discussed in greater detail below, the implementation of the new rule has already been delayed.

Alabama

Michael L. Jackson
Wallace, Jordan, Ratliff & Brandt, LLC
800 Shades Creek Pkwy., Suite 400
Birmingham, AL 35209
Telephone: 205-874-0315
Email: mjackson@wallacejordan.com

Local Governments Prohibited from Requiring Minimum Wages, Minimum Leave, or Other Benefits for Employees and Prohibited from Enacting Any Requirements Relating to Collective Bargaining (Act 2016-18)

Effective February 25, 2016, the "Alabama Uniform Minimum Wage and Right-to-Work Act" (Act 2016-18) provides that a county, municipality, or any other political subdivision of the state may enact no ordinance or policy requiring an employer to provide any employee, class of employees, or independent contractors with any employment benefit, including (but not limited to) paid or unpaid leave, vacation, minimum wage, or work schedule not required by state or federal law. The Act declared void any existing ordinance or policy of a county or municipality inconsistent with the Act. The Act also prohibits local governmental entities from enacting any ordinance or policy that creates requirements relating to labor peace agreements or similar agreements or that requires an employer or employee to waive any rights provided by the National Labor Relations Act.

The stated purpose of the Act is to "establish within the [Alabama] Legislature complete control over regulation and policy pertaining to collective bargaining under federal labor laws or the wages, leave, or other employment benefits provided by an employer to an employee, class of employees, or independent contractor in order to ensure that such regulation and policy is applied uniformly throughout the state."

Constitutional Amendment Protecting the Right to Work Without Regard to Membership or Nonmembership in a Labor Union (Act 2016-86)

On November 8, 2016, the voters of Alabama approved an amendment to the Alabama Constitution declaring that "the right of persons to work may not be denied or abridged on account of membership or nonmembership in a labor union or labor organization" and that "[n]o person shall be required by an employer to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment." It also provides that "[a]n employer may not require a person, as a condition of employment or continuation of employment, to pay dues, fees, or other charges of any kind to any labor union or labor organization." The amendment causes no significant substantive change to the law in Alabama, as existing statutes are consistent with this amendment. Rather, the amendment provides greater assurance to businesses and employees that the right-to-work law cannot be changed by the legislature without a vote of the people to amend the constitution.

Alaska

Renea I. Saade
Stoel Rives LLP
510 L Street, Suite 500
Anchorage, AK 99501
Telephone: 907-263-8412
Email: renea.saade@stoel.com

Employer Report of Workplace Injury/Death (SB 148)

This law amends Alaska Statute 18.60.058(a) to expand the circumstances under which an employer must report a workplace injury to the State's Division of Labor Standards & Safety Division to include situations where the employee loses an eye or suffers an amputation within 30 days of the underlying workplace incident. The act already required reporting if the employee is hospitalized, it is not clear why this amendment was necessary. It appears it was implemented to simply clarify the obligation.

Arizona

Scott F. Gibson
Marshall R. Hunt
Davis Miles McGuire Gardner, PLLC
40 East Rio Salado Parkway, Suite 425
Tempe, AZ 85281
Telephone: 480-733-6800
Email: sgibson@davismiles.com
Email: mhunt@davismiles.com

Independent Contractor Presumption (HB 2114)

This law creates a process whereby a business and a contractor hired by the business may create a rebuttable presumption of an independent contractor relationship under Arizona law. To create the presumption, the business and contractor must sign a written agreement—known as a Declaration of Independent Business Status (DIBS) form—stating, among other things, that the contractor is not entitled to workers' compensation, and that the business does not have authority to supervise or control the actual work of the contractor. Notably, the failure to execute a DIBS form is not admissible evidence to deny an independent contractor relationship.

This is a first-in-the-nation law. Its sponsors conceived of the law as a response to the Department of Labor's "economic dependence" test.

Independent Contractors in Sharing Economy (HB 2652)

This law, chaptered at A.R.S. §23-1603, seeks to ensure the independent contractor status of workers providing services in the "sharing economy"—i.e., services such as Uber, Airbnb, etc.

Under the law, a "Qualified Marketplace Platform"—an organization, such as Uber, that operates a website or smartphone app to facilitate providing services—can ensure that those providing the services are treated as independent contractors for purposes of state law if: (1) the person providing the service—a "Qualified Market Contractor" (QMC)—is paid based on the performance of the service; and (2) the parties enter a written contract specifying certain provisions that make clear the QMC's independent contractor status.

State Ban on Regulating Employee Scheduling (HB 2191)

This law enacts a statewide law barring municipalities from passing ordinances requiring employers to adjust employee schedules, unless the change is required by state or federal law. This does not apply to the municipality's own employees.

This law appears to be an effort by the statehouse at preemption to ban laws such as those recently passed in San Francisco that regulate employee scheduling.

State Ban on Municipal Regulation of Nonwage Compensation (HB 2579)

This is another instance of statehouse preemption through which Arizona specified that "nonwage compensation" is a matter of statewide concern and is not subject to regulation by municipalities.

This bill appears to have been motivated by the City of Tempe's attempt to pass an ordinance requiring paid sick leave for employers within the municipality.

Minimum Wage Increase and Employee Sick Leave (Prop. 206)

In the General Election, Arizona voters approved a ballot initiative that amended Arizona's minimum wage law. Prior to the initiative, Arizona's minimum wage was adjusted annually for inflation based on the Consumer Price Index. Prop 206 creates additional increases from the current amount ($8.05/hour) to $10/hour in 2017, $10.50/hour in 2018, $11/hour in 2019, and $12/hour in 2020. In 2021, the minimum wage will resume tracking inflation based on the Consumer Price Index.

Prop 206 also requires employers with 15 or more employees to grant employees 1 hour of paid sick time for every 30 hours worked, up to 40 hours of paid sick time per year. Employers with fewer than 15 employees must also provide 1 hour of paid sick time per 30 hours worked, but only up to 24 hours of paid sick time per year. Paid sick time may be carried over from year to year. An employee is not, however, entitled to reimbursement from the employer for unused accrued paid sick time upon termination.

Arkansas

Brian A. Vandiver
Cox, Sterling, McClure & Vandiver, PLLC
8712 Counts Massie Road
North Little Rock, AK 72113
Telephone: 501-954-8073
Email: bavandiver@csmfirm.com

In 2016, the Arkansas General Assembly held a fiscal session. Thus, no substantive laws were passed affecting labor and employment.

Medical Marijuana Legalization

In November 2016, Arkansas voters passed Issue 6, a constitutional amendment legalizing medical marijuana. Among other things, the new constitutional amendment prohibits Arkansas employers from discriminating against qualified users of medical marijuana.

California

Michael S. Kalt
Emily J. Fox
Wilson Turner Kosmo LLP
550 West C Street, Suite 1050
San Diego, CA 92101
Telephone: 619-236-9600
Email: mkalt@wilsonturnerkosmo.com
Email: efox@wilsonturnerkosmo.com

New State-Wide Laws

California's Minimum Wage to Increase to $15.00 by 2022 (SB 3)

In June 2016, the California Legislature quickly introduced and passed this law increasing the state-wide minimum wage to $15.00 an hour by 2022. For employers with more than 25 employees, the minimum wage will increase according to the following schedule:

Increase Date	New Rate	New Salary Threshold for Overtime Exemption
January 1, 2017	$10.50	$43,680
January 1, 2018	$11.00	$45,760
January 1, 2019	$12.00	$49,920
January 1, 2020	$13.00	$54,080
January 1, 2021	$14.00	$58,240
January 1, 2022	$15.00	$62,400

For employers with 25 or fewer employees, the minimum wage will increase on a slightly slower schedule, as follows:

Increase Date	New Rate	New Salary Threshold for Overtime Exemption
January 1, 2018	$10.50	$43,680
January 1, 2019	$11.00	$45,760
January 1, 2020	$12.00	$49,920
January 1, 2021	$13.00	$54,080
January 1, 2022	$14.00	$58,240
January 1, 2023	$15.00	$62,400

SB 3 also contemplates annual subsequent increases after the final scheduled increase, generally tied to consumer inflation, which the Director of Finance will determine by August 1st of each year with the increase, rounded to the nearest ten cents, to become effective the following January 1st. Once this formula is applied, the minimum wage may increase or stay the same, but it will not decrease.

Beginning in July 2017, the Director of Finance will be required to determine whether economic conditions can support the next scheduled minimum wage increase and, if not, the Governor would have the authority through

a proclamation to temporarily suspend the next increase. The Governor would not be permitted to temporarily suspend scheduled minimum wage increases more than two times, and if the Governor does temporarily suspend a scheduled minimum wage increase, all remaining scheduled increases shall be postponed by an additional year.

As noted above, these increases to the hourly minimum wage will also impact the salary level needed for exempt employee purposes, with the salary level ultimately increasing to $62,400 when the $15.00 level is reached in 2022.

Lastly, this new law amends Labor Code §245.5 to remove the exemption from California's Paid Sick Leave requirements for in-home supportive service employees. Accordingly, beginning on July 1, 2018, in-home supportive service employees who work 30 or more days in California within a year from commencement of employment will be entitled to accrue and use paid sick leave, albeit on a slightly different schedule enumerated in new subsection (e) to Labor Code section 246.

No Duty to Track "Hours Worked" on Itemized Wage Statements for Exempt Employees (AB 2535)

While Labor Code §226 requires employers to provide written wage statements containing specifically-enumerated information, including identifying the total hours worked, it contains an exception from the reporting the total hours worked for employees who are paid solely on salary and are exempt from overtime. Responding to concerns that there are many employees who are exempt from overtime, in which case employers may not track hours worked, but whose compensation is not "solely based on a salary" (*e.g.*, salespersons paid on commission, high-ranking executives partially compensated with stock options, etc.), this law amends Labor Code §226 to expand this exception.

Specifically, in addition to the current language exempting tracking hours for those compensated solely on salary, new subsection (j) eliminates the need to show hours worked for employees exempt from minimum wage and overtime under a specified exemption for: (a) executive, administrative, or professional employees; (b) the "outside sales" exception; (c) salaried computer professionals; (d) parents, spouses, children, or legally-adopted children of the employer provided in applicable orders of the IWC; (e) directors, staff, and participants of a live-in alternative to incarceration rehabilitation program for substance abuse; (f) crew members employed on commercial passenger fishing boats; and (g) participants in national service programs.

Salary History by Itself not a Bona Fide Factor Justifying Gender-Based Wage Differential (AB 1676)

In 2015, California enacted SB 358, substantially revising its Equal Pay Act protections, including materially revising the standard when attempting to justify a gender-related wage differential. Citing a concern that salary history potentially institutionalizes prior discriminatory pay practices, this law originally proposed adding new Labor Code §432.3 to prohibit any employer from seeking salary history information about an applicant for employment.

However, facing substantial opposition and since Governor Brown had vetoed a very similar bill in 2015 (AB 1017), this law was materially amended during the legislative process. As a result, rather than creating a new Labor Code provision prohibiting salary history discussions, it instead amends California's Equal Pay Act (Labor Code §1197.5) to provide that "prior salary shall not, by itself justify any disparity in compensation."

Equal Pay Regardless of Race or Ethnicity (SB 1063)

Following up on last year's amendments to California's Equal Pay Act regarding gender-based wage differentials (SB 358), the Wage Equality Act of 2016 enacts nearly identical language to preclude wage differentials based

on race or ethnicity. Specifically, it amends Labor Code §1197.5 to prohibit employers from paying an employee at wage rates less than the rates paid to employees of another race or ethnicity for substantially similar work when viewed as a composite of skill, effort, and responsibility and performed under similar working conditions.

As with gender, the employer bears the burden of demonstrating that the wage differential is based upon one or more of the following factors: (a) a seniority system; (b) a merit system; (c) a system that measures earnings by quantity or quality of production; or (d) a bona fide factor other than race or ethnicity, such as education, training, or experience. As with the "bona fide factor" exception following SB 358's enactment, the employer must demonstrate that the factor is not derived from a race or ethnicity-based differential, is job-related to the position in question, and is consistent with a business necessity (*i.e.*, an overriding legitimate business purpose that cannot be achieved through an alternative business practice). The employer must also demonstrate that each factor relied upon is applied reasonably and the one or more factors relied upon account for the entire wage differential.

Lastly, because SB 1063 amends Labor Code §1197.5 generally, it also prohibits employers from discriminating against employees who report or assist with concerns about race/ethnicity-based wage differentials, provides the same enforcement mechanisms, and incorporates its protections for employees to disclose, inquire, or discuss wages.

"Immigration-Related Practices" Protections Expanded (SB 1001)

California has made immigration-related abuses a legislative priority, including last year's bill enacting a new $10,000 penalty for E-Verify violations (AB 622), the 2014 amendment to FEHA prohibiting discrimination against holders of drivers licenses issued to undocumented workers (AB 1660), and the 2013 bills prohibiting retaliation for "immigration-related practices" (AB 263 and SB 666). Continuing that trend, this law adds new Labor Code §1019.1 to broaden the protections from "unfair immigration-related practices" beyond the retaliation context and extend them to any employee or applicant regardless of whether they have made a complaint. The law's author states it is intended to expand the current law to include applicants, and also to provide a state law remedy in addition to the currently-existing federal remedy for such violations which, in the author's estimation, operate too slowly.

Lastly, the law's author had expressed concern that immigrant workers who have been provided temporary legal status and the ability to apply for work authorization under President Obama's Executive Orders, including the Deferred Action for Parents of Americans of United States Citizens (DAPA) and the Deferred Action for Childhood Arrivals (DACA), may be subject to abuse. To address these concerns, this new section specifies that it shall be unlawful for an employer, in the course of satisfying federal law requirements for eligibility determinations (8 U.S.C. §1324(b)) to: (1) request more or different documents than required under federal law to verify eligibility; (2) to refuse to honor documents that on their face reasonably appear to be genuine; (3) refuse to honor documents or work authorization based upon the specific status or term of status that accompanies the authorization to work; or (4) attempt to reinvestigate or re-verify an incumbent employee's authorization to work using an "unfair immigration practice" (defined in Labor Code §1019).

This section also authorizes an employee or applicant (or their representative) to file a complaint with the Division of Labor Standards Enforcement, and authorizes the Labor Commissioner to award a penalty up to $10,000 and equitable relief.

Removing the Wage/Hour Exemption for Agricultural Employees (AB 1066)

Known as the Phase-In Overtime for Agricultural Workers Act of 2016, this law phases in additional daily and weekly overtime requirements for agricultural workers (as defined in Wage Order 14-2001) over the course of four years, beginning in 2019 (but with a three-year delay for employers with fewer than 25 employees). Under new Labor Code §862, employers with more than 25 employees must pay daily and weekly overtime under the following schedule: (1) beginning January 1, 2019, agricultural workers are entitled to one-and-a-half times their regular rate

for hours worked over nine and one-half hours daily or 55 hours weekly; (2) beginning January 1, 2020, agricultural workers are entitled to one-and-a-half times their regular rate for hours worked over nine hours daily and 50 hours weekly; (3) beginning January 1, 2021, agricultural workers are entitled to one-and-a-half times their regular rate of pay for hours worked over eight and one-half hours daily and 45 hours weekly; and (4) beginning January 1, 2022, agricultural workers are entitled to one-and-a-half times their regular rate for hours worked over eight hours daily and 40 hours weekly. Beginning January 1, 2022, agricultural workers are entitled to double their regular rate of pay for hours worked beyond twelve hours daily.

As mentioned, employers with fewer than 25 employees have a three-year grace period, meaning these phase-in requirements do not commence until January 1, 2022, and the requirement to pay double-time commences January 1, 2025.

Beginning January 1, 2017, and except as otherwise expressly specified, all other existing California provisions regarding overtime compensation shall apply to agricultural workers.

The Governor will have the discretion to temporarily suspend a phased-in overtime requirement if the Governor also suspends a scheduled phased-in increase in the state minimum wage for specified "economic conditions" (as defined in SB 3). If the Governor temporarily suspends a phased-in increase, all implementation dates will be postponed by an additional year, and the Governor's suspension authority shall end upon no later than January 1, 2022.

Lastly, the law directs the Department of Industrial Relations to update IWC Wage Order 14-2001 regarding agricultural workers to be consistent with this new law's requirements, except that any existing provisions providing greater protections to agricultural workers shall continue to apply.

Overtime Provisions for Domestic Worker Employees (SB 1015)

In 2013, California enacted the Domestic Worker Bill of Rights (AB 241) which added Labor Code §1454 and amended Wage Order 15-2001 to entitle a domestic work employee working as a personal attendant (as defined) the right to daily overtime after nine hours worked and weekly overtime after 45 hours worked. Entitled the Domestic Worker Bill of Rights of 2016, SB 1015 removes the prior January 1, 2017 sunset provision for Labor Code §1454, thus making those overtime provisions permanent.

"Foreign Labor Contractor" Requirement Update (SB 477)

As a reminder, in 2014, California enacted SB 477 to strengthen its regulations regarding "foreign labor contractors" who recruit foreign workers to relocate to California. For purposes of SB 477, "foreign labor contracting activity" is defined as "recruiting or soliciting for compensation a foreign worker who resides outside of the United States in furtherance of that worker's employment in California, including when that activity occurs wholly outside the United States." However, foreign labor contracting for purposes of SB 477 does not include recruiting activities undertaken directly by the employer to locate workers for the employer's own use, and is also limited to the recruitment of non-agricultural employees (since farm labor contractors are subject to other regulations).

In light of SB 477's focus on unscrupulous traffickers, by July 1, 2016 all foreign labor contractors were required to register with the Labor Commissioner. By August 1, 2016, the Labor Commissioner was required to post on its website the names of all registered foreign labor contractors, as well as a list of the labor contractors who were denied renewal or registration.

Although this law focuses on foreign labor contractors rather than employers, it has several implications for employers. First, new Business and Professions Code §9998.2(c) precludes employers from knowingly entering into an agreement for the services of an unregistered foreign labor contractor. While employers are not subject to these registration requirements for their direct recruitment efforts, and SB 477 specifically exempts from joint and

several liability those employers who use a registered foreign labor contractor, this liability exemption for the contractor's tortious activities only applies if the employer works with a registered foreign labor contractor.

Second, new Business and Professions Code §9998.2(a) requires, by July 1, 2016, an employer using the services of a foreign labor contractor to disclose to the Labor Commissioner the contact information of the employer's designated person to work with the foreign labor contractor, and submit a declaration consenting to jurisdiction if the employer's contact person has left the jurisdiction or is unavailable.

Lastly, the employer must be mindful that Business and Professions Code §9998.6 precludes any person from discriminating or retaliating against a foreign worker or their family members because they have exercised any rights under this new law.

Expanded Protections for Janitorial Service Workers (AB 1978)

Known as the Property Service Workers Protection Act, this law enacts numerous measures to protect janitorial industry employees from sexual assault and other Labor Code violations. Amongst other things, it requires the Department of Industrial Relations to develop by July 1, 2018 training materials for both supervisors and workers regarding sexual harassment and sexual violence, and to establish requirements for such training. It also directs Cal-OSHA to require janitorial industry employers to include this training as part of its injury and illness prevention plans. It also establishes a system of janitorial contractor registration to encourage labor standards compliance and to establish prompt and effective sanctions for violating this part.

Employers to Provide New Hires with Written Information about Time-Off Related to Sexual Assault, Domestic Violence or Stalking (AB 2337)

Labor Code §230.1 prohibits employers with more than 25 employees from discriminating or retaliating against employees who are victims of domestic violence, sexual assault, or stalking from taking time off from work for specified purposes to address the domestic violence, sexual assault, or stalking. This law adds new subsection (h) to require employers to provide written information regarding these rights under §230.1 and rights under Labor Code §230, subsections (c), (e) and (f) prohibiting retaliation and requiring employers to reasonably accommodate victims of domestic violence, sexual assault or stalking. Employers will be required to provide this written information to new employees upon hire and to other employees upon request.

By July 1, 2017, the Labor Commissioner must post on its website a form employers can use, and employers need not comply with these notice requirements until the Labor Commissioner posts the form. Alternatively, employers may develop and use their own notice provided it is "substantially similar in content and clarity" to the Labor Commissioner's form.

Prohibition on Inquiring About Juvenile Court Actions (AB 1843)

Consistent with the "ban the box" trend advancing nationwide, Labor Code §432.7 prohibits employers from requesting applicants to disclose, or from using as a factor in determining employment conditions, information concerning an arrest or detention that did not result in a conviction, or information concerning a referral to or participation in a pre- or post-trial diversion program. Since 2014 (SB 530), California employers have also generally been prohibited from inquiring about or using information related to a conviction that has been judicially dismissed or ordered sealed.

This law amends Labor Code §432.7 to provide similar protection related to juvenile-related arrests as it currently provides for adult criminal histories. Specifically, new subsection (a)(2) precludes employers from requiring applicants to disclose, verbally or in writing, or from utilizing as a condition of employment, information con-

cerning an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while the person was subject to the process and jurisdiction of juvenile court.

New subsection (a)(3) further provides that "conviction," for both subsections (a)(1) dealing with adults and (a)(2) dealing with juvenile courts, shall not include any adjudication by a juvenile court or any other court or action taken with respect to a person who is under the process and jurisdiction of juvenile court law.

Currently, Labor Code §432.7 authorizes health facilities to ask applicants seeking specific types of positions for information about certain crimes, notwithstanding this general prohibition applicable to most employers. This law retains this ability for convictions but imposes new limits regarding inquiries about juvenile-related offenses. Specifically, new subsection (f)(2) prohibits inquiries from health facilities about juvenile-related arrests, detentions, adjudications, etc. unless the information relates to a juvenile court conviction of a misdemeanor or felony for specific crimes within five years of the application. An employer seeking such disclosures will be required to provide the applicant with a list of the specific offenses under Health and Safety Code §11590 or Penal Code §290 for which disclosures are sought. However, even health providers are precluded from inquiring into an applicant's juvenile offense history that has been sealed by the juvenile court.

Non-California Venue Provisions in Employment Agreements (SB 1241)

This law adds new Labor Code §925 prohibiting an employer from requiring an employee, who primarily resides and works in California, as a condition of employment to agree to a provision that would require the employee to adjudicate outside California a dispute arising in California, or deprive the employee of the protection of California law with respect to a controversy arising in California. For purposes of this new law, "adjudication" includes litigation and arbitration.

Any such choice of law or venue provision would be voidable at the request of an employee. If the court invalidated such a provision, the matter would be adjudicated in California and under California law, and the prevailing employee would be entitled to recover reasonable attorneys' fees incurred enforcing this provision.

This new law will not apply to an employee who is individually represented by legal counsel in negotiating the terms of an agreement to designate either the choice of venue or law provisions.

This section applies to any contract entered into, modified, or extended on or after January 1, 2017.

FEHA Protections Extended to Handicapped Employees Hired Under Special Licenses (AB 488)

While the Fair Employment and Housing Act (Government Code section 12940 *et seq.*) generally prohibits harassment or discrimination against "employees," Government Code §12926 had excluded from the definition of "employee" individuals employed by their parents, spouse or children, and also excluded "individuals employed under a special license in a non-profit sheltered workshop or rehabilitation facility." In 2014, California expanded the FEHA to protect unpaid interns and volunteers (AB 1443), and this new law continues that expansion trend by ensuring individuals with disabilities hired under a special license for sheltered work are provided the same protections as other employees under the FEHA.

New Government Code §12926.05 provides that individuals employed under a special license under Labor Code §1191 or 1191.5 (regarding hiring employees with physical or mental handicaps) may bring an action for harassment or discrimination under the FEHA. If so, the employer may establish an affirmative defense by showing that (1) the challenged activity was permitted by statute or regulation; and (2) the challenged activity was necessary to serve employees with disabilities under a special license pursuant to Labor Code §§1191 and 1191.5. This new section further specifies that it shall not be disability discrimination for employers to pay less than the state minimum wage to disabled employees employed pursuant to Labor Code §§1191 or 119.5.

DFEH Authorized to Investigate and Prosecute Human Trafficking Complaints (AB 1684)

Since 2005, Penal Code §236.1 and Civil Code §52.5 have authorized human trafficking victims to pursue civil and criminal claims against traffickers. However, citing a concern that these remedies are rarely utilized, this law amends Government Code §12930 to authorize the DFEH to receive, investigate, conciliate, mediate, and prosecute human trafficking complaints on behalf of a human trafficking victim. The law further provides that any damages recovered will belong to the victim, but costs and attorney's fees awarded in such action will belong to the DFEH. This law unanimously passed the Legislature without opposition.

Increased Paid Family Leave Benefits (AB 908)

Under California's family temporary disability insurance program, employees may receive up to six weeks of wage replacement benefits when taking time off work to care for specified persons (*e.g.*, child, spouse, parent, etc.) or to bond with a minor child within one year of the birth or placement of the child in connection with foster care or adoption. Citing a concern that the relatively low wage replacement rate dissuaded employees from using this benefit, this newly-enacted law amends Insurance Code §3301 to increase the wage replacement benefits. Specifically, it modifies the formula for calculating these benefits to ensure a minimum weekly benefit of $50, and to increase the wage replacement rate from the current 55% to 70% for most low-wage workers, and to 60% for higher wage earners.

Beginning January 1, 2017, this bill also removes the seven-day waiting period for these family leave benefits.

New Workplace Smoking Prohibitions (ABx2 6 and SBx2 6)

Labor Code §6404.5 prohibits smoking of tobacco products inside an enclosed space at a place of employment and enumerates fines for violations of these protections. ABx2 6 amends this section to use the new definition of "smoking" (contained in amended Business and Professions Code §22950.5) that includes "the use of an electronic smoking device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking."

SBx2 6 also expands these prohibitions to include so-called "owner-operated businesses" (*i.e.*, those with no employees and the owner-operator is the only employee). It eliminates most of the specified exemptions that permit smoking in certain work environments, such as hotel lobbies, bars and taverns, banquet rooms, warehouse facilities, and employee break rooms.

Because of their unique procedural history and subject matter, these laws took effect June 9, 2016.

Heat Illness Prevention Regulations for Indoor Employees (SB 1167)

Since 2006, California's Division of Occupational Safety and Health (DOSH) has adopted and enforced regulations establishing a heat illness prevention standard for outdoor workers. This law requires DOSH, by January 1, 2019, to propose for the review and adoption a heat illness and injury prevention standard applicable to workers working in indoor places of employment. This standard shall be based on environmental temperatures, work activity levels, and other factors. The DOSH also will have the authority to propose high heat provisions limited only to certain industry sectors.

As a reminder, the DOSH has previously produced a flyer entitled "Cal/OSHA Heat Illness Prevention for Indoor Working Environments" which focuses on five key areas of prevention: a written IIPP; frequent drinking of water; rest breaks; acclimation and weather monitoring; and emergency preparedness.

Employer Participation in State-Sponsored Retirement Program (SB 1234)

In 2012, California enacted SB 1234 to create the California Secure Choice Retirement Savings Program (SCRSP) and to create a feasibility study to determine whether the legal and practical conditions of implementation of SCRSP could be met. Simply summarized, the SCRSP would establish a state administered retirement program for employees that do not have a private retirement plan through their employers, but exempts employees covered under the Railway Labor Act, or provided certain types of pensions, or that have certain enumerated private retirement plans through their employers.

This law expresses legislative approval of the SRSCP and its implementation on January 1, 2017, and also changes the implementation requirements for employers, depending on size. Specifically, employers with 100 or more employees must have an arrangement to allow employees to participate in the SRCSP within 12 months after opening of enrollment, employers with 50 or more employees must have such an arrangement within 24 months after opening of enrollment, and employers of five or more employees must have an arrangement within 36 months after opening of enrollment. Notwithstanding these deadlines, any employer may enact a payroll deposit retirement savings arrangement early if they prefer.

The Employment Development Department will be required to develop and disseminate to employers information about the SCRSP, which employers must provide to employees at time of hire, and the employee must acknowledge receipt of these materials.

New Temporary Pay Rules Regarding Security Guards (AB 1311)

Labor Code §201.3 sets forth specific rules regarding wages for temporary service employees, including generally requiring such employees be paid weekly and not later than the regular payday of the following "calendar" week. Responding to a recent court decision regarding security guards, this law enacts new subsection (b)(1)(B) and creates a new industry-specific rule for security guards employed by temporary service providers since that industry generally uses a different payday than other industries. Under this new rule, registered security guards working for temporary service employers must be paid weekly, regardless of when the assignment ends, and must be paid no later than the regular payday of the following "workweek" (rather than "calendar week" for other industries). This law was enacted on an urgency basis and is immediately effective.

Expedited Release of Prevailing Wage Escrowed Amounts (AB 326)

Labor Code §1742.1 presently provides that in prevailing wage proceedings, a contractor or subcontractor may avoid certain penalties by depositing the full amount of an assessment or notice with the Department of Industrial Relations (DIR). Responding to concerns the DIR is not required to release these funds within any particular timeframe, this law amends Labor Code §1742.1 to specify the DIR must release the escrowed funds, plus any interest earned, to the person entitled to those funds "within 30 days" following either the conclusion of all administrative and judicial review, or upon receiving written notice from the Labor Commissioner of a settlement or a final disposition of an assessment issued, or from the authorized representative of the awarding body or a settlement or final disposition.

Bond Requirements for Minimum Wage Violations (AB 2899)

Labor Code §1194 prohibits employers from paying employees a wage less than the minimum wage, and allows aggrieved employees to recover lost wages, civil penalties, and liquidated damages for violations. Labor Code §1197.1 allows a party to contest a citation issued by the Labor Commissioner through the superior court.

This law amends Labor Code §1197.1 to require a person seeking a writ of mandate contesting the Labor Commissioner's ruling to post with the Labor Commissioner a bond equal to the unpaid wages, excluding penalties,

in favor of the aggrieved employee. It also specifies the procedures for an appellant to pay any judgment as a result of that hearing or the withdrawal of the writ. It provides that if the employer fails to pay the amounts owed within 10 days after the proceedings are concluded, the portion of the bond needed to cover the amount owed will be forfeited by the employer to the employee.

Municipal Developments

In addition to California's many unique employment laws, many of its major municipalities have enacted their own versions of paid sick leave, family leave, "ban the box," minimum wage, and scheduling laws. Some of the more significant municipal developments are noted below:

San Diego's Minimum Wage and Paid Sick Leave Ordinance

San Diego increased the current minimum wage from $10 per hour to $10.50 per hour. Starting January 1, 2017, the minimum wage became $11.50, and starting January 1, 2019, the minimum wage will increase "by an amount corresponding to the prior year's increase, if any, in the cost of living, as defined by the Consumer Price Index."

In addition to those sick leave benefits outlined within the general California law, beginning in July 2016, San Diego passed its own sick leave Ordinance, which similarly entitles employees who work in California for 30 or more days within a year from the beginning of employment to use 5 days or 40 hours of sick leave per year. Also in line with the California law, the San Diego Ordinance states that sick leave must begin to accrue when employment starts, but employers need not allow employees to use it until the employee's 90th day of employment. Employers may also cap accrual at 80 sick leave hours. (As reminder, under the California law, employees may accrue up to 48 hours, or double the 24 hours of usage allowed).

Unlike the California law, leave under the new Ordinance is protected if a place of business is closed by order of a public official due to a Public Health Emergency, or an employee is providing care or assistance to a child, whose school or child care provider is closed by order of a public official due to a Public Health Emergency.

As with the California law, the default accrual rule under the San Diego Ordinance is that employees must receive one hour of paid sick leave for every 30 hours worked. It also allows a "lump sum" or "frontloading" method that is allowed for under the general California sick leave law.

Similar to the California sick leave law, the rate of pay at which employers are charged with paying out sick leave is at the employee's regular rate of pay, as opposed to their base rate of pay. Employers with a non-exempt workforce who utilize different rates of pay, commissions, structured bonus plans, or any other wage that may require adjustment of their overtime rate, must be cognizant of this and revise their payment practices for sick leave or paid time off accordingly.

There are also unique posting and notice deadlines for the San Diego Ordinance, which can now be found here.

Berkeley's Paid Sick Leave Law and Minimum Wage Increase

Berkeley, California recently passed its own minimum wage increase and sick leave ordinance.

Minimum wage increases in Berkeley are now scheduled as follows:

Date	Minimum Wage
October 1, 2016	$12.53
October 1, 2017	$13.75
October 1, 2018	$15.00
October 1, 2019 and annually thereafter	Increase determined using local CPI

As with similar municipal ordinances in California, the Berkeley Ordinance applies to any employee who, in a calendar week, performs at least two hours of work within the city boundaries.

In addition to those sick leave benefits outlined within the general California law, beginning on October 1, 2017, Berkeley employees are to begin accruing additional paid sick leave at a rate of 1 hour for every 30 hours of work (and in 1-hour increments only). For small businesses with fewer than 25 employees, there is an accrual cap of 48 hours per year, and for all other businesses, the cap is 72 hours. All employers may limit use of sick leave to 48 hours per year. Like with the general California sick leave law, accrued but unused sick leave must carry over from year to year, but need not exceed the cap. Note, the ordinance does not address the use of a "lump sum" or "front-loading" method for providing sick leave.

Berkeley's ordinance also states that these requirements may be waived in a bona fide collective bargaining agreement, if the waiver is explicitly included in unambiguous terms. It also provides that employers with other paid leave policies that meet the law's accrual, cap, carry-over, and use requirements, are not required to provide additional paid sick leave.

There are also several notice, posting, and record-keeping requirements, as well as enforcement and penalties associated with not adhering to the ordinance, which are outlined within the Berkeley Ordinance itself.

Los Angeles' Paid Sick Leave Law and Minimum Wage Increase

Somewhat similar to the San Diego and California minimum wage increases, the minimum wage for Los Angeles employers with more than 25 employees increased to $10.50, and will continue to increase each July 1st, reaching $15.00 on July 1, 2020. For employers with 25 or fewer employees the minimum wage will increase in a similar format, starting to $10.50 on July 1, 2017 and reaching $15.00 on July 1, 2021.

On July 1, 2016, the Los Angeles Paid Sick law took effect for employers with more than 25 employees, and the law will take effect for employers with 25 or fewer employees on July 1, 2017. While the Los Angeles version more closely tracks the California version than the San Diego version, there are several key differences, including that employees are entitled to use 6 days of paid sick leave and accrue up to 72 hours (compared to 3 days and 48 hours respectively), and there is no exemption for collective-bargaining level employees.

The City of Los Angeles has issued the required poster providing a general overview of the minimum wage increase and sick leave law here.

Los Angeles Bans the Box

On December 9, 2016, Los Angles Mayor Eric Garcetti signed into law the Fair Chance Initiative, an ordinance that restricts certain employers from asking job applicants about criminal convictions until after a conditional offer of employment has been made. This Ordinance took effect on January 1, 2017.

The Ordinance applies to any employer that is located or doing business in the City of Los Angeles and employs 10 or more employees. An employee is defined as any person who performs at least two hours of work on average within the City and who qualifies as an employee entitled to minimum wage under California's minimum wage law.

Specifically, the Ordinance prohibits employers from including on any application for employment any questions that seeks disclosure of a candidate's criminal history. It also prohibits, among other things, inquiring about or requiring disclosure of a candidate's criminal history unless and until a "Conditional Offer of Employment" has been made. "Conditional Offer of Employment" is defined as an employer's offer of employment to an applicant conditioned only on assessment of the applicant's criminal history, if any, and the duties and responsibilities of the position.

There are also exceptions to these prohibitions, including: (1) when an employer is obligated by law to obtain information regarding a candidate's conviction history; (2) when the candidate will be required to possess a firearm in the course of employment; (3) when a candidate who has been convicted of a crime is prohibited by law from holding the position sought; and (4) when the employer is prohibited by law from hiring an individual convicted of a crime.

The Ordinance also makes it unlawful for any employer to retaliate against an individual who has complained about non-compliance with the Ordinance, or who has opposed any practice made unlawful by the Ordinance.

San Jose's Opportunity to Work Ordinance Will Require Employers to Offer Part-Time Employees Additional Hours Before Hiring New Staff

The San Jose "Opportunity to Work Ordinance" (the Ordinance), a ballot measure that passed during the recent election, will require San Jose employers with more than 35 employees to: (1) offer hours of work to existing qualified part-time employees before hiring new staff; (2) keep records of their compliance with the Ordinance; and (3) refrain from retaliating against employees who exercise their rights under the Ordinance.

The Ordinance was enacted to promote full-time jobs and prevent San Jose employers from choosing to employ workers on a part-time basis in order to avoid providing health insurance and other benefits. To this end, the ordinance requires employers to offer additional hours of work to *existing* qualified employees with the skills and experience to perform the work *before* hiring additional employees or subcontractors. Whether an employee is "qualified" to be offered the additional hours is determined by the employer's "good faith and reasonable judgment" and hours must be distributed using a "transparent and nondiscriminatory process." The Ordinance, however, does not require employers to offer employees work hours if the acceptance of such offer would require payment of overtime.

Although the Ordinance does not contain specific guidance on the method to distribute or communicate offers of additional hours to employees, its requirement that employers document and retain records of the offers made to existing employees suggests such offers should be made in writing. Employers are also required to retain all employee work schedules and other records to demonstrate compliance. The Ordinance, however, does allow employers to seek a hardship exemption for up to twelve months by showing the employer has taken reasonable steps to comply with the Ordinance, and that full and immediate compliance would be impracticable, impossible, or futile.

The Ordinance will become effective March 13, 2017. Prior to its enforcement, San Jose's Office of Equality Assurance will publish a Notice of Employee Rights that all San Jose employers will be required to post, templates for offers of additional work to part-time employees, FAQs, and pamphlets. In the meantime, a copy of the Opportunity to Work Ordinance can be found here, and the City of San Jose's information memorandum on the Ordinance can be found here.

San Francisco Soon to Approve Final Rules Regarding Paid Parental Leave, Effective January 1, 2017

On November 18, 2016, San Francisco's Office of Labor Standards Enforcement (OLSE) drafted proposed rules interpreting the city's Paid Parental Leave Ordinance. The OLSE then solicited public comments, through December 12, 2016, and held a rulemaking hearing on December 2, 2016.

As our clients may recall, San Francisco Paid Parental Leave (SF PPL) is available for leave taken to bond with a new child, and essentially requires covered employers to pay the difference between an employee's wages and the benefits received under California Paid Family Leave fund. It is essentially meant to "top off" paid family leave benefits that employees are already receiving from the State of California to make the employee whole, subject to a cap. It applies to employers with total employees in any location as follows:

— 50+ Employees: January 1, 2017

— 35+ Employees: July 1, 2017

— 20+ Employees: January 1, 2018

Further, in order to receive this benefit, employees must meet the following eligibility requirements: (1) work for a covered employer; (2) have worked for the employer for at least 180 days prior to the start of leave; (3) work at least eight hours per week within the City of San Francisco; (4) work at least 40% of their total hours within the City of San Francisco; and (5) be eligible to receive paid family leave from California for bonding, as well.

Some highlights from the Proposed Final Rules, include how to count employees to determine if the employer is covered by the Ordinance, how to calculate entitlement when an employee becomes eligible for paid parental leave during a parental leave, paid leave calculations for tipped employees, the ability to use paid leave intermittently and how to calculate this, and the relationship between California Paid Family Leave and San Francisco's Ordinance.

New forms and notices are also mentioned within the Final Rule and can be found here.

Colorado

Lauren Lantero
Miletich PC
1660 Wynkoop, Suite 1160
Denver, CO 80202
Telephone: 303-825-5500
Email: llantero@mcpclaw.com

Minimum Wage Increase (Amendment 70)

In November 2016, Colorado voters passed Amendment 70, which requires Colorado's minimum wage to be increased to $12.00 per hour by 2020. Pursuant to the Amendment, effective January 1, 2017, Colorado's minimum wage was increased to $9.30 per hour and shall be increased annually by $0.90 each January 1 until it reaches $12.00 per hour in January 2020. Also effective January 1, 2017, the tipped employee minimum wage was increased to $6.28 per hour. The tipped employee minimum wage will also increase annually by $0.90 until it reaches $8.98 in January 2020. Thereafter, both the minimum wage and the tipped employee minimum wage will be adjusted annually for cost of living increases, as measured by the Consumer Price Index used for Colorado.

Pregnant Workers Fairness Act (HB 16-1438)

Effective August 10, 2016, the Pregnant Workers Fairness Act enacted several amendments to the Colorado Anti-Discrimination Act (CADA) relating to the employment of pregnant women. The Act applies to all employers, regardless of the number of employees, and requires them to provide reasonable accommodations for any health conditions related to pregnancy or the physical recovery from childbirth. Upon request, reasonable accommodation must be provided to an applicant or employee unless the accommodation would impose an undue hardship on the employer's business.

The Act specifically defines reasonable accommodations to include: more frequent and longer break periods; more frequent restroom, food, and water breaks; acquisition or modification of equipment or seating; limitations on lifting; temporary transfer to a less strenuous or hazardous position if available, with return to the current position after pregnancy; job restructuring; light duty, if available; assistance with manual labor; and modified work

schedules. An employer is not, however, required to hire new employees that it would not have otherwise hired; discharge an employee; transfer another employee with more seniority; promote another employee who is not qualified to perform the job; create a new position; or provide paid leave beyond that which is provided to similarly situated employees.

Pursuant to the Act, employers cannot take adverse action against employees who request or use reasonable accommodations and also cannot require an applicant or employee to accept an accommodation that she has not requested. Furthermore, an employer cannot request an employee to take leave if the employer can provide another reasonable accommodation for the employee's pregnancy or related condition. Finally, the Act requires employers to provide notice of its requirements. This notice must be posted in the workplace.

Employee Access to Personnel Files (HB 16-1432)

Effective January 1, 2017, private-sector employees have the right to access and obtain a copy of their personnel files at least once per year. HB 16-1432 also permits former employees to inspect their personnel files once after termination of employment.

HB 16-1432 defines a personnel file as the personnel records of an employee that are used or have been used to determine the employee's qualifications for employment, promotion, additional compensation, employment termination, or other disciplinary action. It also specifically excludes from the definition of personnel file documents or records that are required by federal or state law to be placed or maintained in a separate file; documents or records pertaining to confidential reports from previous employers; documents or records relating to an active criminal, disciplinary, or regulatory investigation; and documents or records that identify any person who made a confidential accusation against the employee.

These requirements apply to all private employers in Colorado, with the exception of financial institutions chartered or supervised under state or federal law.

Whistleblower Protection Expanded for State Employees (SB 16-056)

On June 10, 2016, SB 16-056 was signed into law. It amends C.R.S. §24-50.5-101 to provide whistleblower protections for Colorado government employees who reveal confidential information while reporting waste, mismanagement of public funds, abuses of authority, or illegal and unethical practices to a designated whistleblower review agency. Designated whistleblower review agencies include the office of legislative legal services, the state attorney general, and the commission on judicial discipline.

Affirmations of Legal Work Status Are No Longer Required (HB 16-1114)

Effective August 10, 2016, HB 16-1114 repealed the portions of C.R.S. §8-2-122 that required Colorado employers to collect Affirmation of Legal Work Status Forms from each new employee within twenty days of hire. The Colorado General Assembly determined that the Affirmations were unnecessary and redundant due to the existing federal I-9 requirements.

Employment Opportunities for Persons with Disabilities (SB 16-077)

On June 10, 2016, SB 16-077 was signed into law. This law, which became effective on July 1, 2016, requires the heads of several state agencies to develop an employment first policy that increases competitive integrated employment for persons with disabilities. It does not require employers to give hiring preferences to persons with disabilities. Rather, its intent is to strengthen supports and relationships for employers to hire persons with disabilities.

Classification Guidance (SB 16-179)

Effective August 10, 2016, SB 16-179 requires the Colorado Department of Labor and Employment (CDLE) to develop guidance for employers on the statutory factors used to determine classification of workers. The Bill further directs the CDLE to establish an individual to serve as a resource for employers with respect to proper classification of workers, audit findings, and options for curing or appealing an audit.

Connecticut

Duncan J. Forsyth
Halloran & Sage LLP
225 Asylum Street
One Goodwin Square
Hartford, CT 06103
Telephone: 860-297-4696
Email: forsyth@halloransage.com

Connecticut Family and Medical Leave Act and Active Duty Military Service (P.A. 16-195)

This public act expands the circumstances under which certain employees may take time off from work and, after a specified time period, return to work without losing benefits. The act requires that state and private employers with 75 or more employees allow employees to take unpaid time off for a qualifying emergency, as determined in regulations adopted by the U.S. Secretary of Labor because the employee's spouse, child, or parent is on, or has been notified of an impending call or order to, active duty in the armed forces. In such circumstances, private employees may take up to 16 workweeks of time off, which may be unpaid, during any two-year period. State employees may take up to 24 workweeks of unpaid time off within a two-year period. The act maintains current eligibility criteria for any such time off. A private employee must have been employed for at least 12 months and worked at least 1,000 hours during that time period.

Creating The Connecticut Retirement Security Program (P.A. 16-29)

This public act creates the Connecticut Retirement Security Authority to establish a retirement program with Roth individual retirement accounts for eligible private-sector employees, who will be automatically enrolled in the program unless they opt out. "Qualified Employers" are private-sector employers which employ at least five people who were paid at least $5,000 in wages during the preceding calendar year. "Covered employees" are those who have worked for a qualified employer for at least 120 days and are at least 19 years old. Qualified employers must automatically enroll each covered employee into the program no later than 60 days after the employer provides the employee with certain information required by the public act. If the employee does not affirmatively choose a contribution level, the employer must enroll the employee with a contribution of at least 3% but not more than 6% of the employee's taxable wages. Employers cannot contribute to the program. A covered employee may opt out of the program by electing a contribution level of zero.

"Fair Chance Employment" Act Limits Criminal Background Inquiries (P.A. 16-83)

P.A. 16-83 prohibits employers from asking prospective employees about their prior arrests, criminal charges, or convictions on an initial employment application unless: (1) the employer is required to do so under a state or federal law, or (2) the prospective employee is applying for a position for which the employer must obtain a security or fidelity bond, or some type of equivalent bond.

PA. 16-83 also (1) prohibits employers from requiring an employee or job applicant to disclose an arrest, criminal charge, or conviction when the records have been erased under certain conditions; (2) requires employers to include a notice on job applications stating, among other things, that an applicant is not required to disclose these matters; (3) prohibits employers from denying employment to an applicant, or discharging or discriminating against an employee, based solely on such matters or a prior conviction for which the employee or applicant received a provisional pardon or certificate of rehabilitation; and (4) requires employers to comply with certain requirements related to the confidentiality of a job application's criminal history section.

If an employer violates P.A. 16-83, the prospective employee may file a complaint with the Labor Commissioner. Violators are subject to a $300 per violation civil penalty imposed by the Labor Department and other designated penalties.

Paying Wages Using Payroll Cards (P.A. 16-125)

P.A. 16-125 allows employers to pay their employees through payroll cards under certain conditions. An employee must voluntarily and expressly authorize, in writing or electronically, that he or she wishes to be paid with a card. No employer can require payment through a card as a condition of employment or for receiving any benefits or other type of remuneration. The act also provides for three free withdrawals per period and prohibits any of the employer's costs regarding payroll cards to be passed on to the employee.

Filing Workers' Compensation Claims Against Municipality Employers (P.A. 16-112)

P.A. 16-112 requires a municipal employee who files a claim with the Workers' Compensation Commission to send a copy of the claim notice to the town clerk of the municipality where the employee works so the municipality has direct notice of the claim.

An Act Concerning Unemployment Compensation Appeals and Hearings, Employee Pay Periods and Minor and Technical Revisions to The General Statutes Relating to The Labor Department (P.A. 16-169)

P.A. 16-769 makes several changes to the unemployment compensation statutes that generally give the Department of Labor (DOL) greater flexibility in processing unemployment claims and appeals. Among other things it: (1) allows the DOL to deliver certain unemployment notices and decisions by means other than by mail – such as email; (2) starts the appeal period when the decision is "provided" to the party, rather than when it is mailed; and (3) allows the Labor Commissioner to prescribe ways, other than a hearing, for employers and claimants to present evidence and testimony in certain unemployment proceedings.

Delaware

Marc S. Casarino
White and Williams LLP
824 N. Market Street, Suite 902
Wilmington, DE 19801
Telephone: 302-467-4520
Email: casarinom@whiteandwilliams.com

Protection for Reproductive Health Decisions (HB 316)

Signed into law on June 30, 2016, HB 316 prohibits discrimination in employment based upon an individual's reproductive health decisions. Although Delaware law already prohibited discrimination in employment

on the basis of sex or pregnancy, this law expressly prohibits adverse employment action against an individual based on his or her reproductive health care decisions. For purposes of this law, "Reproductive health decision" means any decision by an employee, an employee's dependent, or an employee's spouse related to the use or intended use of a particular drug, device, or medical service, including the use or intended use of contraception or fertility control or the planned or intended initiation or termination of a pregnancy. This law went into effect on December 30, 2016.

Protection for Caregiving Responsibilities (HB 317)

Signed into law on June 30, 2016, HB 317 prohibits discrimination in employment based upon an individual's caregiving responsibilities. Delaware workers with responsibilities for child care, elder care, or both, are to receive equal employment opportunities and are protected from discrimination in the workplace. For purposes of this law, "family responsibilities" means the state of being, or the potential to become, a contributor to the support of a person or persons in a dependent relationship, irrespective of their number, including the state of being the subject of an order of withholding or similar proceedings for the purpose of paying child support or a debt related to child support. This law went into effect on December 30, 2016.

Wage Confidentiality Requirements Prohibited (HB 314)

Signed into law on June 30, 2016, HB 314 makes it unlawful for an employer to require an employee to not disclose his or her wages, and prohibits adverse employment action against any employee who discloses his or her wages. The law does not obligate an employee to disclose his or her wages. This law was effective upon signing.

Workers Compensation Changes (HB 308)

Signed into law on September 6, 2016, HB 308 is in response to recent Delaware case law restricting an injured worker's recovery to compensation under the Workers' Compensation Act, to the exclusion of other contractual obligations, such as uninsured and underinsured motorist benefits, personal injury protection benefits, short-term and long-term disability benefits. Injured Delaware workers may now pursue relief under both the Workers Compensation Act and other available contractual obligations. This law went into effect upon signing.

In *Roos Foods v. Guardado*, No. 160, 2016 (Del. Nov. 29, 2016), the Delaware Supreme Court held that a worker compensation claimant's status as an undocumented worker does not constitute prima facie evidence that the claimant is a displaced worker. Rather, the Court concluded that a claimant's undocumented status is one of many factors to be considered by the administrative panel evaluating a displaced worker claim. The undocumented worker factor can be rebutted by the employer showing that there are categories of employment within the claimant's capabilities that are available to an undocumented worker. The employer need not show that there is a specific employer willing to break the law by hiring an undocumented worker.

Department of Labor Policy Change Regarding Record Access

It is the position of the Delaware Department of Labor, Office of Anti-Discrimination that its charge files are not subject to disclosure under the Freedom of Information Act. Historically, the Office only released a copy of the charge file upon a request by a party to the charge after litigation was commenced. The Office announced a modification of its policy as of November 2016 to release a copy of the charge file upon request by a party to the charge within 90 days of the issuance of a final determination. Presumably the purpose is to allow counsel an opportunity to evaluate the merits of a claim before commencing litigation.

Florida

Jeffrey J. Wilcox
S. Gordon Hill
Hill Ward Henderson
3700 Bank of America Plaza
101 E. Kennedy Blvd.
Tampa, FL 33602
Telephone: 813-221-3900
Email: jwilcox@hwhlaw.com
Email: ghill@hwhlaw.com

Minimum Wage Increase

Florida's minimum wage is subject to increase each year based upon the percentage increase in the federal Consumer Price Index for Urban Wage Earners and Clerical Workers in the South Region. Thus, the Florida state minimum wage increased from $8.05 per hour to $8.10 per hour. The direct minimum wage for tipped employees increased from $5.03 per hour to $5.08 per hour. This minimum wage increase took effect on January 1, 2017.

Medical Marijuana

In November, Florida voters approved an amendment to the Florida Constitution to allow the medical use of marijuana by individuals with debilitating medical conditions as determined by a licensed Florida physician. The amendment provides that employers are not required to accommodate any "on-site" use of medical marijuana in any place of employment. This amendment took effect on January 3, 2017. However, it will take time for the Legislature and the Florida Department of Health to establish needed governing rules and regulations, and both are predicted to prioritize several other matters over this. It is unclear at this point what, if any, effect this amendment will have on Florida employers.

Georgia

Robert A. Luskin
Goodman McGuffey LLP
3340 Peachtree Road, NE, Suite 2100
Atlanta, GA 30326-1084
Telephone: 404-926-4102
Email: RLuskin@GMLJ.com

Increased EEOC Enforcement (Atlanta)

Georgia has been slow to make significant changes in the employment arena over the years. However, as a pure at-will state, with essentially no exceptions, the lack of change fares rather well for employers in the state. However, at the federal level, the Atlanta District of the Equal Employment Opportunity Commission has made clear that disability discrimination will be its targeted area. Moreover, it has become more committed to onsite visits in such cases. It is still unknown if the increased attention to these matters will trickle into the Georgia state legislation, but it is something that Georgia employers should watch out for.

Workers Compensation—Insurance—Rates and Charges GA. ST. §33-9-40.3 (H.B. 402)

While not purely employment law related, in the workers' compensation arena, Georgia has begun implementing new incentives for employers. This law provides further incentive for employers to hire student workers,

whether through paid or unpaid internships, externships, or other educational programs. Prior to its enactment, employers received workers' compensation insurance premium discounts if they enforced a certified drug free workplace program. Now, in addition, if certified by the State Board of Education to the State Board of Workers' Compensation as a work-based-learning employer, the insured employer may also receive a 5% premium discount on workers' compensation insurance. Insureds must inform their insurer in writing of such certification in order to receive a premium discount and certification is subject to annual renewal. If granted, the premium discount will be applied to the insured's policy pro rata as of the date of certification, but may not be credited to the insured's account until the final premium audit under such policy. This law took effect for each policy of workers' compensation insurance issued or renewed in the state on or after July 1, 2016.

Hawaii

Corianne W. Lau
Chrystn K. A. Eads
Alston Hunt Floyd & Ing
1001 Bishop Street, 18th Floor
Honolulu, HI 96813
Telephone: 808-524-1800
Email: clau@ahfi.com
Email: ceads@ahfi.com

Background Checks and Reporting of Child Care Providers (Act 88, HB2343 HS2SD1 CD1)

This bill expands the definition of "child abuse record check" for child care providers to include household members and a check of the child abuse and neglect registries of states where the provider has resided during the past five years. Additional requirements were added for child care providers exempt from regulation to be eligible to receive payment from the family of a child whose family receives a state child care subsidy. These childcare providers must agree to a sex offender registry check, to complete a pre-service or orientation training and on-going training in health and safety topics, and to monitoring inspections for verification of compliance with minimum health and safety standards and investigations as a result of reports of health and safety concerns. Similar sex offender registry background checks are implemented for licensed child care facility operators, prospective or new employees, household members, and new household members. Household members of licensees are treated the same as employees with respect to background checks and criminal history requirements. License applications will be denied or licenses will be revoked when an employee or household member refuses to consent to a background check, knowingly makes a false statement regarding the background check, or is on or is required to be on the sex offender registry.

Records of inspection results, notification of deficiencies, corrective action taken, complaints of violations of rules, investigation results, resolution of complaints, and suspensions, revocations, reinstatements, restorations, and reissuances of licenses, temporary permits, and registrations may be posted online by the State. This law took effect on July 1, 2016.

Worker's Compensation Submission of Treatment Plans (Act 101, HB2017 HD1 SD2 CD1)

The new law allows physicians to transmit a worker's compensation treatment plan to employers via mail or facsimile to an address or phone number provided by the employer. A treatment plan is deemed accepted if an employer fails to file an objection to the treatment plan with documentary evidence supporting the denial and a copy of the denied treatment plan. The denial must be sent to the physician and the injured employee. Beginning January

1, 2021, employers are required to allow physicians to transmit treatment plans by mail, facsimile or secure electronic means to an address or facsimile number provided by the employer. This law became effective on June 21, 2016.

Temporary Disability Insurance Exclusions and Workers' Compensation Penalties (Act 187, HB2363 HD1 SD1 CD1)

This bill increases several fines for non-compliance. The submission of reports is expanded to include "electronic means as approved by the Director." The bill also excludes from Temporary Disability Insurance (TDI) coverage requirements service performed by an individual for a corporation if the individual owns 50% or more of the corporation, by a member of a limited liability company when the member has a distributional interest of at least 50%, by a partner of a partnership when the partner is an individual, by a partner of a limited liability partnership when the partner is an individual and has a transferable interest of at least 50%, and by a sole proprietor. No employer shall require the formation of a corporate entity as a condition of employment. This law took effect July 1, 2016.

Employer Records (Act 190, SB2289 SD1 HD1 CD1)

Every employer is required to keep a record of the former physical addresses and current physical address of the employer and the North American Industry Classification System (NAICS) code applicable to the employer. This bill also eliminates the Department of Labor and Industrial Relations' responsibility to compile insurance information, study the feasibility of establishing various insurance plans for employees or employers, assisting in the negotiations with insurance companies, and working to develop groups for insurance purposes. This law became effective on July 1, 2016.

Prevention of Unfair Labor Practices (Act 191, SB2896 SD1 HD1 CD1)

The Hawaii Labor Relations Board may require a complainant to serve a copy of a complaint filed upon the person charged with having engaged in an unfair labor practice, rather than the Board being responsible for service. Electronic service may be accomplished through a company designated by the Board to the person's last known address. This changes the hearing notice requirement to provide an additional five days (15 days total) in advance and the notice may be given by first class mail or electronic service. This law took effect on July 1, 2016.

Enforcement of Wage Laws on Public Works Projects (Act 192, SB2723 SD1 HD2 CD1)

Penalties for first violations of the wage and hour laws on public works projects is increased to 25% of the amount of back wages found due or $250 per offense, whichever is greater, with the addition of a $2,500 cap. After notice and opportunity for a hearing, penalties for second violations within the two years of the first violation increased to the greater of the amount of back wages found due or $500 per offense, with a cap of $5,000. For a third violation within three years of the second violation, with notice and opportunity for a hearing, penalties increase to the greater of two times amount of back wages or $1,000 for each offense, with a cap of $10,000. This law became effective on July 1, 2016.

Reciprocal Discipline, Health Care Licensing (Act 38, SB2675 SD1 HD2)

This Act allows oversight Boards to issue orders imposing disciplinary action upon a licensee following receipt of evidence of revocation suspension or other disciplinary action against a licensee by another state or federal agency. A hearing may be requested by the licensee before suspension of the license. The new law applies to Board of Dental Examiners which licenses dentists and dental hygienists, the Hawaii Medical Board, the Board of Nursing, and the Board of Pharmacy. This Act became effective on April 29, 2016.

Prohibition on use of Latex Gloves (Act 180, SB911 SD2 HD2 CD1)

Use of latex gloves by personnel in a food establishment is prohibited. Personnel providing ambulance services or emergency medical services are prohibited from using latex gloves. Personnel working in dental health facilities and health care facilities are prohibited from using latex gloves for patient care when patient is unable to communicate. Latex gloves may be used if the patient affirmatively states he or she is not allergic to latex. This prohibition became effective on January 1, 2017.

Idaho

Tara Martens Miller
SPINK BUTLER, LLP
251 E. Front Street, Suite 200
Boise, ID 83702
Telephone: 208-388-1000
Email: tmiller@spinkbutler.com

Non-Compete Clause Violation, Key Employee, Breach (HB 487)

HB 487 amends the existing Idaho non-compete law to provide that a rebuttable presumption of irreparable harm is established under certain circumstances. The new provision provides: If a court finds that a key employee or key independent contractor is in breach of an agreement or a covenant, a rebuttable presumption of irreparable harm has been established. To rebut such presumption, the key employee or key independent contractor must show that the key employee or key independent contractor has no ability to adversely affect the employer's legitimate business interest. This law became effective July 1, 2016.

Minimum Wage, Political Subdivision No Higher than Code (HB 463)

HB 463 amends existing law to prohibit political subdivisions from establishing minimum wages higher than the minimum wages provided by state law. The current minimum wage rate is $7.25 per hour. The law became effective July 1, 2016.

Illinois

Alison B. Crane
Jackson Lewis P.C.
150 N. Michigan Avenue, Suite 2500
Chicago, IL 60601
Telephone: 312-803-2560
Email: Alison.Crane@jacksonlewis.com

City of Chicago's Minimum Wage Increases

Pursuant to the Chicago Minimum Wage Ordinance, on July 1, 2016, the Chicago minimum wage increased to $10.50, and on July 1, 2017, the Chicago minimum wage will increase to $11.00.

Further, starting on July 1, 2020, and every July 1st after that, the Chicago minimum wage will increase in relation to increases in the Consumer Price Index (CPI). Any increases would be capped at 2.5% per year and would not occur in years when the Illinois Department of Employment Security reports that the unemployment rate in Chicago is equal to or greater than 8.5%. The Ordinance assumes that the Chicago minimum wage will be higher

than the state or federal minimum wages, but provides that if the state or federal minimum wage rates are higher, those rates will be used to compute the Chicago minimum wage.

The Ordinance also increased the minimum regular hourly rate for tipped employees in Chicago by $.50 per hour on July 1, 2016 (to $5.95 per hour). Starting on July 1, 2017, and on every July 1st after that, the tip-credit minimum wage increase will use the same CPI-based formula established for increasing the regular Chicago minimum wage. The Ordinance applies to employers who employ at least one covered employee and who maintain a business facility within the boundaries of the City of Chicago or are otherwise subject to the City's business licensing rules.

City of Chicago's Leave Ordinance

Effective July 1, 2017, an amendment to the Chicago Minimum Wage Ordinance requires employers in the City of Chicago to provide eligible employees up to 40 hours of paid sick leave in each 12-month period of their employment.

Individuals are entitled to benefits under the Ordinance if they meet the following requirements: (i) they perform at least two hours of work for a covered employer while physically present within the geographic boundaries of the City in any particular two-week period; and (ii) they work at least 80 hours for a covered employer in any 120-day period. Time spent traveling in the City that is compensated time, including making deliveries, making sales calls, and travel related to other business activity taking place in the City, can count toward the two-hour requirement. However, uncompensated time spent traveling in the City for purposes of commuting will not be counted in determining whether an employee conducted two hours of work within the City.

Covered employers include individuals and companies that maintain a business facility within the geographic boundaries of the City of Chicago or who are subject to one or more of the City's licensing requirements. The Ordinance applies to all employers, regardless of the number of employees. The Ordinance explicitly provides that it applies to domestic workers, even those who are employed by employers with fewer than four employees.

If an employer has a policy that grants employees paid time off in an amount and a manner that meets the requirements of the new Ordinance, the employer is not required to provide additional paid leave. However, any existing paid sick leave policy must meet each requirement of the Ordinance in order for an employer to qualify for this exemption, including the reasons for which the time off may be used.

Employees will accrue 1 hour of paid sick leave for every 40 hours worked. With respect to exempt employees, for purposes of calculating accruals, the Ordinance assumes that they work 40 hours per workweek, unless their normal workweek is fewer than 40 hours, in which case the accrual of paid sick leave will be based upon the number of hours in their normal workweek.

Accrual and usage of paid sick leave is capped at 40 hours for each 12-month period, unless an employer sets a higher limit. Employees are permitted to carry over half of their unused paid sick leave (up to 20 hours) to the next 12-month period. Additionally, if an employer is subject to the Family and Medical Leave Act, employees are entitled to carry over up to 40 hours of accrued, unused paid sick leave (in addition to the standard carryover) to use exclusively for FMLA-eligible purposes.

New employees can begin using accrued paid sick leave no later than the 180th day following the commencement of employment. It is unclear from the Ordinance how the 180-day waiting period will apply to current employees who were hired prior to July 1, 2017.

Employees may use paid sick leave for their own illness, injuries, or medical care (including preventive care) or for the illness, injuries, or medical care of certain covered family members. The Ordinance defines "family member" broadly to include a child, legal guardian or ward, spouse under the laws of any state, domestic partner, parent, the parent of a spouse or domestic partner, sibling, grandparent, grandchild, or any other individual related

by blood or whose close association with the employee is the equivalent of a family relationship. The definition of "family member" also includes step- and foster relationships. Further, employees can use paid sick leave if either the employee or a family member is a victim of domestic violence or a sex offense.

Finally, employees are entitled to use paid sick leave if his or her place of business or the child care facility of his or her child has been closed by an order of a public official due to a public health emergency.

If the need for paid sick leave is foreseeable, employers may require that employees provide seven days' advance notice. If the need for leave is unforeseeable, employees must provide as much notice as is practical. The Ordinance explicitly provides that employees may notify their employers of the need for leave by phone, email, or text message.

Employers also may require employees using paid sick leave for more than three consecutive work days to provide certification that the use of the leave was for a qualifying purpose. However, employers cannot require that the certification specify the nature of the medical issue that necessitated the need for leave.

Unless a collective bargaining agreement provides otherwise, unused, accrued sick leave is not required to be paid out upon termination or separation of employment.

Employers must post a notice of employees' rights under the Ordinance along with postings related to the Chicago Minimum Wage. The posting must be located in a conspicuous place at each facility where any covered employee works that is located within the geographic boundaries of the City.

In addition, the existing requirement that employers provide employees with a notice advising them of the current minimum wage along with the first paycheck subject to the Ordinance has been extended to require notice of employees' rights with respect to paid sick leave.

Cook County, Illinois Passes a Sick Leave Ordinance

Effective July 1, 2017, the Cook County "Earned Sick Leave" Ordinance mandates that employers in Cook County, Illinois, allow eligible employees to accrue up to 40 hours of paid sick leave in each 12-month period of their employment. Individuals are entitled to benefits under the Ordinance if they: (i) perform at least 2 hours of work for a covered employer while physically present within the geographic boundaries of the County in any particular two-week period; and (ii) work at least 80 hours for a covered employer in any 120-day period.

Compensated time spent traveling in Cook County, including for deliveries and sales calls and for travel related to other business activity taking place in the County, can count toward the two-hour requirement. However, uncompensated commuting time in the County will not be counted. Certain railroad employees are not covered by the Act.

Covered employers include individuals and companies with a place of business within the County that gainfully employ at least one covered employee. Government entities and Indian tribes are not covered employers under the Ordinance.

If an employer has a policy that grants employees paid time off in an amount and a manner that meets the requirements of the new Ordinance, the employer is not required to provide additional paid leave. However, any existing paid time off policy must meet each requirement of the Ordinance, including the reasons for which the time off may be used, to qualify for this exemption.

Employees begin to accrue paid sick leave on the first calendar day after the start of their employment or July 1, 2017, whichever is later.

Employees will accrue one hour of paid sick leave for every 40 hours worked. For purposes of calculating accruals, the Ordinance assumes exempt employees work 40 hours per workweek, unless their normal workweek is less than 40 hours, in which case the accrual will be based upon the number of hours in their normal workweek.

Accrual and usage of paid sick leave is capped at 40 hours for each 12-month period. Employees may carry over half of their unused paid sick leave (up to 20 hours) to the next 12-month period. The Ordinance also provides for additional carryover and usage for employers covered by the Family and Medical Leave Act that can be used exclusively for FMLA-eligible purposes.

New employees can begin using accrued paid sick leave no later than the 180th day following the commencement of employment. The Ordinance is unclear as to how the 180-day waiting period will apply to current employees who were hired prior to July 1, 2017.

Employees may use paid sick leave for their own illness, injuries, or medical care (including preventive care) or for the illness, injuries, or medical care of certain covered family members. "Family member" is defined broadly to include a child, legal guardian, or ward, spouse under the laws of any state, domestic partner, parent, parent of a spouse or domestic partner, sibling, grandparent, grandchild, or any other individual related by blood or whose close association with the employee is the equivalent or a family relationship. "Family member" also includes step- and foster relationships.

Employees also can use paid sick leave if either the employee or a family member is a victim of domestic violence or a sex offense.

Finally, employees are entitled to use paid sick leave if their place of business or the child care facility or school of their child has been closed by an order of a public official due to a public health emergency.

Employers are entitled to set reasonable minimum increments for the use of paid sick leave, not to exceed four hours a day.

Employers may require that employees provide up to seven days' advance notice if the need for paid sick leave is foreseeable. Scheduled medical appointments and court dates for domestic violence will be considered reasonably foreseeable. If the need for leave is unforeseeable, employees must provide as much notice as is practical. The Ordinance expressly provides that employees may notify their employers of the need for leave by phone, email, or text message. Employers may adopt notification policies if they notify covered employees in writing of such policies and the policy is not unreasonably burdensome. If leave is covered by the FMLA, notice must be in accordance with the FMLA. Employees need not give notice if they are unconscious or medically incapacitated.

Employers also may require that employees using paid sick leave for more than three consecutive workdays provide certification that the leave was for a qualifying purpose. However, employers cannot require that certification specify the nature of the medical issue necessitating the need for leave, except as required by law. Employers cannot delay commencement of Earned Sick Leave or delay payment of wages because they have not received the required certification.

Unless a collective bargaining agreement provides otherwise, unused, accrued sick leave need not be paid out upon termination or separation of employment.

Employers must post notice of employees' rights in a conspicuous place at each facility where any covered employee works that is located within the geographic boundaries of the County.

In addition, at the commencement of employment, employers must provide each covered employee written notice advising of his or her rights to Earned Sick Leave under the Ordinance. The Cook County Commission on Human Rights will publish a form notice.

Illinois Freedom To Work Act Restricts Non-Compete Agreements With Low-Wage Employees (SB 3163, P.A. 099-0860)

Effective January 1, 2017, the Illinois Freedom to Work Act prohibits private sector employers in Illinois from entering into non-compete restrictions with "low-wage employees," which are defined as any employee who

earns the greater of (i) the hourly minimum wage under federal, state, or local law; or (ii) $13.00 per hour. The Act prohibits an employer from entering into an agreement that restricts the "low-wage employee" from performing: (i) any work for another employer for a specified period of time; (ii) any work in a specified geographical area; or (iii) work for another employer that is similar to such low-wage employee's work for the employer included as a party to the agreement.

Illinois Sick Leave Act Expands Employee Rights Under Employer Sick Leave Policies (HB 6162, P.A. 99-0841)

Effective January 1, 2017, the Illinois Employee Sick Leave Act requires Illinois employers who provide personal sick leave benefits to their employees to allow employees to take such leave for absences due to the illness, injury, or medical appointment of the employee's child, spouse, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent. The leave must be granted on the same terms under which the employee is able to use sick leave benefits for his or her own illness or injury. Employers may limit the use of sick leave benefits for absences due to the illness, injury, or medical appointment of a family member to an amount that is not less than the amount of personal sick leave the employee would accrue during six months at the employee's current accrual rate.

Illinois Child Bereavement Leave Act Requires Two Weeks Leave (SB 2613, P.A. 99-0703)

Effective July 29, 2016, Illinois employers with at least 50 employees must provide employees who suffered the loss of a child with up to two weeks (10 work days) of unpaid leave under the new Child Bereavement Leave Act. Employees otherwise eligible to take leave under the federal Family and Medical Leave Act are eligible to take leave under the Act. Employees may use unpaid bereavement leave: (i) to attend the funeral, or an alternative to a funeral, of a child; (ii) to make arrangements necessitated by the death of the child; or (iii) to grieve the death of the child.

Illinois Victims' Economic Security and Safety Act Expanded to All Employers in Illinois (HB 4036, P.A. 99-0765)

Effective January 1, 2017, the protections under the Illinois Victims' Economic Security and Safety Act, will be expanded to all employers in Illinois. Under the amended law, leave on account of domestic or sexual violence may be taken as follows: (i) an employee working for an employer that employs at least 50 employees shall be entitled to a total of 12 workweeks of leave during any 12-month period; (ii) an employee working for an employer that employs at least 15 but not more than 49 employees shall be entitled to a total of 8 workweeks of leave during any 12-month period; and (iii) an employee working for an employer that employs at least one but not more than 14 employees shall be entitled to a total of 4 workweeks of leave during any 12-month period.

Illinois Right to Privacy in the Workplace Act Protections Are Expanded (HB 4999, P.A. 99-0610)

Effective January 1, 2017, the Illinois Right to Privacy in the Workplace Act will be amended to expand employee protections, including provisions prohibiting an employer from forcing an employee or applicant to access an online account in an employer's presence, forcing an employee to invite the employer to join a group affiliated with the employee's or applicant's personal online account, and forcing an employee or applicant to join an online account established by the employer or add the employer to an employee's or applicant's list of contacts enabling the employer to access the employee's or applicant's personal online account.

Illinois Wage Assignment Act Amended (SB 2804, P.A. 099-0903)

Effective January 1, 2017, the Illinois Wage Assignment Act will be amended to add provisions allowing employees to revoke wage assignments at any time by submitting written notice that they are revoking the wage assignment.

Indiana

Robert D. Shank
Denlinger, Rosenthal & Greenberg Co., LPA
425 Walnut Street, Suite 2300
Cincinnati, OH 45202
Telephone: 513-621-3440
Email: rshank@drgfirm.com

Franchise Employment (HB 1218)

Provides that, for purposes of the Indiana franchise law, a franchisor (as defined under federal regulations) is not considered to be an employer or co-employer of: (1) a franchisee (as defined under federal regulations); or (2) an employee of a franchisee, unless the franchisor agrees in writing to assume the role of an employer or co-employer. This law took effect on July 1, 2016.

Workforce Policies (SB 20) (Section 3); July 1, 2016 (Section 1-2, 4)

Provides that a local governmental unit may not establish, mandate, or otherwise require an employer to provide to an employee who is employed within the jurisdiction of the unit a scheduling policy that exceeds the requirements of federal or state law, rules, or regulations, unless federal or state law provides otherwise. Provides that an attorney who represents an employer, an employing unit, or a claimant in a claim for unemployment benefits (benefits) pending before an administrative law judge, the review board, or another individual who adjudicates claims must be: (1) an attorney in good standing admitted to the practice of law in Indiana; or (2) an attorney in good standing admitted to the practice of law in another state who has been granted temporary admission to the state bar under the Rules for Admission to the Bar and the Discipline of Attorneys adopted by the supreme court. Specifies the persons that may represent an employer or employing unit, or a claimant, having an interest in a pending claim for benefits. Provides that a claimant may also designate a lay person of the claimant's choice to assist the claimant in the presentation of the claimant's case. Directs the department of workforce development to update its rules concerning representation of parties involved in claims for benefits. This law took effect on March 23, 2016.

Public Employees' Defined Contribution Plan (SB 148)

Provides that the state or a political subdivision may elect whether certain retired members of the public employees' retirement fund (fund) may begin or resume membership in the public employees' defined contribution plan (plan) for periods of re-employment with the state or a participating political subdivision. Provides that an individual who is both a member of the fund and a member of the plan may purchase service credit in the fund after the member is vested in the fund with money in the annuity savings account that is attributable to service in the plan. This bill took effect July 1, 2016.

Workforce Education (SB 301) (Section 1-5, 8-9, 13-18); July 1, 2016 (Section 6-7, 11-12); January 1, 2017 (Section 10)

Requires the Department of Workforce Development (DWD) to prepare an occupational demand report before July 1, 2016, regarding the expected workforce needs of employers for a 10-year projection and the training and education that will be required to meet those expected workforce needs. Requires the DWD to categorize these workforce needs and training and education requirements by job classification on a statewide basis and also for each region designated under the federal Workforce Innovation and Opportunity Act of 2014 (WIOA). Provides that in preparing the labor market demand report and the average wage level report used in determining school funding for career and technical education, the DWD shall consider the information included in the report. Requires the DWD, with the assistance of the Commission for Higher Education (CHE), Ivy Tech Community College (Ivy Tech), the Department of Education, and local workforce development boards, to take certain actions for each region designated under the WIOA. Requires the DWD, with the assistance of the CHE, Ivy Tech, and local workforce development boards, to annually take certain actions. Requires the DWD, in consultation with the CHE and Ivy Tech, to develop a procedure for measuring certain outcomes for credential or degree completers and separately for current or previously enrolled students of Ivy Tech. Requires advisory committees established by Ivy Tech to take certain actions. Requires the Department of Education and the DWD to prepare a report containing certain information for each high school and each school corporation for the immediately preceding school year. Provides that in carrying out its duties to match education and training programs with current and future needs of the state's job market, the Indiana Career Council shall consider the workforce needs and training and education requirements reported by the DWD. Specifies that certain of these requirements sunset on July 1, 2020. This law took effect on March 23, 2016.

Criminal History Background Checks for Home Health Workers (SB 350)

Requires a home health agency or personal services agency to obtain a national criminal history background check or an expanded criminal history check on employees. (Current law requires a limited criminal history record unless certain circumstances exist that would require a national criminal history background check or an expanded criminal history check.) This law took effect on July 1, 2016.

Various Pension Matters (HB 1032)

Provides that the assets of the state excise police, gaming agent, gaming control officer, and conservation enforcement officers' retirement plan may be commingled for investment purposes with the assets of other funds administered by the Board of Trustees (Board) of the Indiana public retirement system. Provides that an employer who elects to purchase special death benefit coverage for an eligible emergency medical services provider must pay for the coverage annually as prescribed by the Board. Eliminates the guaranteed fund investment option after December 31, 2016, for members of the Public Employees' Retirement Fund (PERF) and the Teachers' Retirement Fund (TRF) and replaces the guaranteed fund with an unguaranteed stable value fund investment option. Provides that a miscellaneous participating entity that freezes its participation in PERF must begin payment of its additional contributions to fully fund the service of its PERF members not later than July 1, 2016, or a date determined by the board. Allows the board to charge interest on any amount that remains unpaid after the payment date determined by the Board. Provides for the disbursement or investment of annuity savings account money if an unvested member or PERF or TRF is suspended, and discontinues the practice of moving that annuity savings account money to a reserve account. Provides that a retired or disabled member of PERF or TRF who has begun to receive benefits may change the member's designated beneficiary or the form of the member's benefit any number of times. Allows an individual who: (1) is an employee of the state on July 1, 2016; (2) became for the first time, after January 1, 2013, a full-time employee of the state in a position that is eligible for membership in PERF; and (3) is a member of PERF;

to elect to become a member of the public employees' defined contribution plan (plan). Requires the individual to make the election not later than July 30, 2016. Provides that for an individual who makes the election: (1) the individual's service in PERF is considered participation in the plan for purposes of vesting in the employer contribution subaccount, and the individual waives service credit in PERF for the service; (2) the amount credited to the individual's annuity savings account in PERF is transferred to the individual's member contribution subaccount in the plan; and (3) the amounts paid to PERF by the state as employer normal cost contributions for the individual are transferred to the individual's employer contribution subaccount in the plan. This law took effect on July 1, 2016.

Pension Thirteenth Checks (HB 1161)

Provides for a thirteenth check in 2016 for certain members of the: (I) Indiana state teachers' retirement fund; (2) public employees' retirement fund; (3) state excise police, gaming agent, gaming control officer, and conservation enforcement officers' retirement plan; (4) state police 1987 benefit system; and (5) state police pre-1987 benefit system. This law took effect on July 1, 2016.

Unemployment Insurance (HB 1344) Effective March 23, 2016 (Sections 1-9, 13-19, 21-52); July 1, 2016 (Sections 10-12, 20)

Abolishes the Indiana unemployment compensation board and transfers the Board's duties to the Department of Workforce Development (DWD). Revises the circumstances under which the DWD may waive work search requirements for an individual receiving benefits. Provides that, after an individual begins receiving benefits, the individual must visit and receive an orientation to the services available through a one-stop center in order to maintain eligibility to receive benefits. Allows the DWD to waive the orientation requirement under certain circumstances. Limits the amount of money from the special employment and training services fund (fund) that can be used by the DWD for certain purposes to not more than $5,000,000 per state fiscal year, unless the budget committee approves an additional amount. Provides that grants from the fund to various state educational institutions for apprenticeship programs and training and counseling assistance: (1) are the first expenditures from the fund each state fiscal year; and (2) are contingent only on the availability of money and do not require approval by the department.

Employment of Veterans as Public Safety Officers; 1977 Fund Retirement Age (HB 1359)

Waives the maximum hiring age restrictions that apply to the appointment and hiring of police officers and firefighters for an individual who is a veteran of the armed forces and who meets certain requirements. Provides that an individual who is appointed as a police officer or a firefighter as the result of a waiver is eligible to become a member of the 1977 police officers' and firefighters' pension and disability fund (1977 fund). Requires a member of the 1977 fund to retire at 70 years of age. This law took effect on July 1, 2016.

Veterans Matters (HB 1373)

Extends employment protections under the federal Uniformed Services Employment and Reemployment Rights Act and extends the rights, benefits, and protections under the Servicemembers Civil Relief Act to members of the National Guard of another state during state sponsored activation. Allows an individual (and the individual's dependent) who is: (1) an active member of the Armed Services of the United States or the National Guard; (2) a legal Indiana resident; (3) assigned for duty or deployed outside Indiana; and (4) eligible for Medicaid waiver services or Medicaid assistance; to resume Medicaid eligibility and remain on Medicaid waiver waiting lists. This law took effect on July 1, 2016.

Iowa

Bradley M. Beaman
Bradshaw, Fowler, Proctor & Fairgrave, P.C.
801 Grand Avenue, Suite 3700
Des Moines, IA 50309-8004
Telephone: 515-246-5879
Email: beaman.bradley@bradshawlaw.com

Veterans Preference (HF 2415)

HF 2415 added a new section to the veterans' preference law in Iowa Code chapter 35C. It requires the Department of Workforce Development, the Department of Administrative Services, and the Attorney General's Office to work together to provide information to the state, political subdivisions, and veterans concerning the rights and duties relating to providing veterans preference in appointment and employment. HF 2415 took effect on July 1, 2016.

Possession and Administration of Emergency Drugs for First Responders (SF 2218)

Iowa Code §147A addresses emergency medical care. This bill authorizes emergency medical service programs, law enforcement agencies, and fire departments to obtain a supply of opioid antagonists, and first responders to possess opioid antagonists for administration to drug overdose victims. The law provides immunity from legal liability to any first responder, emergency medical service program, law enforcement agency, fire department, and the person who prescribed the opioid antagonist from any injury arising from the provision or administration of an opioid antagonist, so long as such person acted reasonably and in good faith. The bill was signed by the Governor on April 6, 2016.

Facilitating Business Rapid Response to State-Declared Disaster Act (SF 2306)

SF 2306 was signed by the Governor on April 21, 2016, and provides an income tax exemption for out-of-state businesses and employees who come to Iowa to perform disaster or emergency-related work during a disaster. SF 2306 took effect on July 1, 2016.

Emergency Management Employees (HF 2353)

Signed by the Governor on March 31, 2016, HF 2353 removed restrictions on emergency management organization employees from holding elective office.

Residency Requirements for Civil Service Employees (HF 2267)

HF 2267 authorizes cities to adopt ordinances allowing employees to reside outside of Iowa. It also allows cities to give employees up to one year to comply with any distance or travel time requirements that are not met when hired or appointed. The bill was signed by the Governor on March 23, 2016.

Kansas

Kelly Campbell
Tara Bailes
Spencer Fane LLP
1000 Walnut St., Suite 1400
Kansas City, MO 64106
Telephone: 816-292-8885
Fax: 816-474-3216
Email: kcampbell@spencerfane.com
Email: tbailes@spencerfane.com

Regulation of The Possession of Firearms (HB 2502)

This bill makes numerous changes to Kansas firearm laws. This bill amends Kansas concealed carry statutes to allow active duty military personnel to apply for and receive a concealed carry license while stationed outside of Kanas. This bill prohibits a public employer from restricting or prohibiting by "personnel policies any employee, who is legally qualified, from carrying any concealed handgun while engaged in the duties of such employee's employment outside of such employer's place of business, including while in a means of conveyance." School districts are specifically exempted from the definition of "public employer."

HB 2502 makes the requirements for prohibiting concealed carry in public areas the same as those found in continuing law for prohibiting concealed carry in public buildings: the building or public area must have adequate security at all public access entrances to ensure no weapons are permitted to be carried in the area or building and must conspicuously post the prohibition.

This bill also prohibits a school district from adopting "a policy that prohibits an organization from conducting activities on school property solely because such activities include the possession and use of air guns by the participants." School districts may prohibit the possession of air guns at a school, on school property, or at a school-supervised activity except when a pupil is participating in activities conducted by an organization or is in transit to or from such activities. Individuals, or parents of individuals, participating in such activities can be required to sign a liability waiver. This bill took effect on July 1, 2016.

Workers Compensation; Medical Administrator; Electronic Filing; Records Disclosure (HB 2617)

HB 2617 allows workers' compensation claims to be filed electronically, pursuant to administrative rules and regulations implemented by the Director of Workers Compensation. This bill grants the Director the option to contract for the Medical Administrator position rather than appoint one. Upon implementation of an electronic filing system, this bill allows for the extension of a deadline falling on a weekend or legal holiday to the next accessible day. Under HB 2617, the referenced electronic filing system satisfies the signature requirements of documents filed. This bill took effect on July 1, 2016.

Allowing Health Insurers to Offer Policies That Require Health Services to be Rendered by a Participating Provider (HB 2454)

This bill permits a health carrier licensed to offer accident and sickness insurance in Kansas to offer an insurance product that requires some or all of the health care services to be rendered by participating providers, but requires emergency services to be covered even if not delivered by a participating provider. The bill allows for a gatekeeper requirement and allows the health carrier to determine the cost-sharing amount for the non-participating provider(s)'s services.

HB 2454 defines "gatekeeper requirement" as a requirement in which the insured is required to obtain a referral from a primary care professional in order to access specialty care. This bill took effect on April 7, 2016.

Kentucky

Tammy Meade Ensslin
Meade Ensslin, PLLC
333 West Vine Street, Suite 300
Lexington, KY 40507
Telephone: 859-368-8747
Email: tensslin@meadeensslin.com

Louisville's Minimum Wage Law Invalidated

On October 20, 2016, the Kentucky Supreme Court struck down Louisville's minimum wage ordinance in a 6 to 1 decision, stating that the Louisville Metro government did not have the authority to enact an ordinance requiring a higher minimum wage than the state's statutory minimum. Passed in 2014, the Louisville ordinance would have gradually raised the minimum wage to $9.00 an hour by July 2017. The rate was bumped to $7.75 an hour in 2015, and increased to $8.25 an hour starting July 1, 2016. The decision also means that the city of Lexington's minimum wage ordinance, which passed in November 2015, is no longer valid. *Kentucky Restaurant Ass'n, et al. v. Louisville/Jefferson City. Metro Gov't*, 2015-SC-000371-TG (Oct. 20, 2016).

Louisiana

Ellis B. Murov
Andrew J. Baer
Karuna Dave
Deutsch Kerrigan, LLP
755 Magazine Street
New Orleans, LA 70122
Telephone: 504-581-5141
Email: emurov@dkslaw.com
Email: abaer@deutschkerrigan.com
Email: kdave@deutschkerrigan.com

Executive Order JBE 2016-11 Update

Executive Order JBE 2016-11 was signed to protect lesbian, bisexual, gay, transgender individuals, and other protected classes from discrimination by businesses that contract to perform services for the State of Louisiana and its agencies. However, in December 2016, a state district court judge declared the order was unconstitutional.

Cellular Tracking Limits (La. R.S. 14:222.3)

This law amends La. R.S. 14:222.3 to potentially prohibit employers from tracking employees via cellular tracking devices. The law prohibits the use of cellular tracking devices "for the purpose of collecting, intercepting, assessing, transferring, or forwarding the data" from a device or data "that is stored on the communications device of another without the consent of a party to the communication and by intentionally deceptive means." However, an employer will likely meet one of the statutory exceptions if it shows the tracking is done for a good faith business purpose. Violation of the statute can carry fines up to $3,000, two years of imprisonment, or both.

Veterans Hiring Preference—(La. R.S. 23:1001)

The Louisiana Legislature authorized private employers to provide preference to hire veterans and certain relatives of the veterans through La. R.S. 23:1001. The preference applies to (i) honorably discharged veterans, (ii) spouses of veterans with a service related disability, and (iii) widows of veterans who died of a service-related medical condition when the widow has not remarried. The statute provides that the preference will not violate any state or local equal opportunity laws.

Wage Reporting Deadlines (HB 737)

This law changed the deadline to January 31 of each year for employers to submit annual reports regarding deductions and withholdings of reporting wages to the Department of Revenue. HB 737 also imposes these reporting requirements on motion picture production companies, motion picture payroll services companies, and other similar entities that are required to withhold tax from compensation that is taxable by Louisiana.

Workers Compensation Premium Charges (SB 1142)

Signed on June 13, 2016, this bill (i) reduces workers' compensation premiums for some employers, (ii) provides for recoupment of certain workers' compensation benefits from certain third persons, and (iii) provides a dollar-for-dollar credit for some amounts that are paid on the employer's behalf. Employers should check in the future whether they qualify for these benefits.

Limits on Employment Activities for Sex Offenders (La. R.S. 15:553)

Louisiana prohibits sex offenders from working as door-to-door salespeople under La. R.S. 15:553. This amendment expands the list of previously prohibited employment activities for sex offenders which includes bus, taxi or limousine operations for hire, service work requiring going to an individual's home to provide services, and operating carnival or amusement rides if the offense involved a child.

Maine

Christopher A. Callanan
Stevenson McKenna & Callanan LLP
21 Merchants Row, Fifth Floor
Boston, MA 02109
Telephone: 617-330-5005
Fax: 617-330-7575
Email: ccallanan@smcattorneys.com

An Act to Conform Maine Law to Federal Law Regarding Closings and Mass Layoffs and to Strengthen Employee Severance Pay Protections Public Law (LD 1389, PL 2016 Ch. 417)

This law amends the Maine severance pay statute to make employer notice requirements consistent with the federal Worker Adjustment and Retraining Notice Act (WARN). Prior to the new law, Maine required employers with 100 or more employees to provide advance notice to employees prior only to a workplace closing. The new law triggers the notice requirement in the event of a "mass layoff." The definition of "mass layoff" is consistent with federal law as a reduction in the workforce of the lesser of 33 percent of the employees and at least 50 employees or five hundred employees.

The new law also makes clear who is eligible for severance and how to calculate severance. Eligibility for severance requires that an employee worked at the establishment for at least three years (including leave of absence time) and must not have accepted employment at another establishment operated by the same employer or remains employed by the establishment. An employer who resigns employment to take a new job within the 30-day period prior to the date set by the employer for the closing or mass layoff is also eligible for severance. Eligible employees are entitled to one week's pay for each year or partial year of employment.

Effective July 19, 2016, the new law eliminates the exemption from severance pay and notice requirements when a closing or mass layoff is due to an adjudication of bankruptcy, and clarifies the elimination of the exemption from severance pay for an establishment that files for bankruptcy protection.

An Act to Improve the Workers' Compensation System (LD 1553, Public Law 2016, Chapter 469)

This law makes various changes to the Maine Workers' Compensation Act of 1992 (the Act). Beginning in fiscal year 2017-2018, the Workers' Compensation Board's assessment cap will be increased. The new law also clarifies that a criminal penalty or administrative dissolution may be imposed only if the employer has "knowingly" violated the Act, and provides that in assessing civil penalties, the Workers' Compensation Board shall take into account the employer's efforts to comply with the Act. Additionally, the law establishes penalties for employers who misclassify independent contractors.

An Act to Reform the Veteran Preference in State Hiring and Retention (LD 1658, PL 2016, Chapter 438)

This law repeals the existing procedure for the State of Maine's veteran hiring preference. Previously, honorably separated veterans (and certain widows, spouses, and parents of veterans) were given hiring preference by adding a number of points to the test scores of applicants. The new law repeals the point system and instead requires the hiring state agency to offer an interview to any veteran (and widow/widower of a veteran who is eligible for a Gold Star) who meets the minimum qualifications for the position. The new law also requires that in the event of a reduction in force by a state agency, qualifying veterans and Gold Star widows/widowers must be retained in preference to all other employees who have equal seniority, status, and performance reviews.

Maryland

Jaime W. Luse
Tydings & Rosenberg LLP
100 East Pratt Street, 26th Floor.
Baltimore, MD 21202
Telephone: 410-752-9700
Email: jluse@tydingslaw.com

Hiring and Promotion Preferences—Veterans and Their Spouses (SB 245)

Effective October 1, 2016, SB 245 permits employers to grant a preference in hiring and promotion to (1) veterans; (2) the spouse of a veteran with a service-connected disability; or (3) the surviving spouse of a deceased veteran. This law applies to veterans of any branch of the armed forces who received an honorable discharge or a certificate of satisfactory completion of military service. Granting a preference to a veteran or spouse under this law does not violate any state or local equal employment opportunity law.

Members of the National Guard—Employment and Reemployment Rights—Enforcement (HB 0249 and SB 0557)

Effective October 1, 2016, this law authorizes members of the National Guard whose employment and reemployment rights have been violated to bring a civil action for economic damages, including lost wages and benefits. The court may award damages, fees, costs, and "other appropriate relief" to any National Guard member entitled to judgment.

Equal Pay for Equal Work (SB 481 and HB 1003)

Maryland updated its Equal Pay for Equal Work Act, effective October 1, 2016, significantly expanding protections for Maryland employees against wage discrimination. The amendments state that an employer may not, because of sex or gender identity, discriminate between employees in terms of wages or provide any employee less favorable employment opportunities. The amendments also create pay transparency rights and forbid employers from prohibiting employee inquiries, discussions, or disclosures of their wages.

Equal Pay Commission (HB 1004)

Effective June 1, 2016, this bill establishes the Equal Pay Commission in the Division of Labor and Industry. The Equal Pay Commission is charged in part with continually evaluating the extent of wage disparities based on race, sex, or gender identity and establishing a mechanism to collect data from Maryland employers to assist the Commission in evaluating any such disparities.

Workers' Compensation Discount Program (SB 0505 and HB 1619)

Effective October 1, 2016, this new law authorizes a workers' compensation insurer to provide a premium discount of up to four percent to an insured employer that has an alcohol- and drug-free workplace policy that includes at least one of six specified programs. Insurers are not required to provide a discount if the employer is otherwise required to test its employees for alcohol/drug use under federal or state law or otherwise maintain an alcohol- and drug-free workplace.

Maryland Small Business Retirement Savings Program and Trust (SB 1007 and HB 1378)

This law, effective July 1, 2016, establishes a state-run retirement savings plan that is intended to serve as an alternative to employer-sponsored retirement plans. It requires certain private-sector employers to automatically enroll their employees in the state-run plan, but employees may opt out. Employers will use payroll systems to make deductions on behalf of participating employees.

Procurement-Prevailing Wage-Liquidated Damages (SB 1009 and HB 0689)

Effective October 1, 2016, this bill increases penalties for non-compliance with Maryland's prevailing wage laws. Applicable to contractors under a public work contract, the law states that contractors who knew, or reasonably should have known, of the obligation to pay the prevailing wage on a public work contract and deliberately failed or refused to do so must pay $250 (per laborer/employee) to the public body for each day that the laborer/employee was paid less than the required prevailing wage.

Unemployment Insurance—Recovery of Benefits and Penalties for Fraud (SB 0090)

SB 0090 provides significant civil penalties for the knowing misclassification of workers as independent contractors. The law alters the means by which Maryland's Department of Labor, Licensing, and Regulation (DLLR)

is authorized to recover overpayments of benefits, monetary penalties, and interest. It also implements interest assessments for unpaid unemployment contributions if an employer fails to properly classify an individual as an employee. Civil penalties are as follows:

- $5,000 per employee penalty for employers who knowingly misclassify workers as independent contractors.
- $10,000 per employee penalty for subsequent violations.
- $20,000 penalty for person who knowingly advises employer to misclassify.

Additionally, the law calls for interagency reporting of misclassification, whereby the DLLR shall "promptly" notify the Workers' Compensation Commission, the Insurance Administration, and the Comptroller of the misclassification. SB 0090 took effect on October 1, 2016.

Massachusetts

Christopher A. Callanan
Stevenson McKenna & Callanan LLP
21 Merchants Row, Fifth Floor
Boston, MA 02109
Telephone: 617-330-5005
Email: ccallanan@smcattorneys.com

An Act to Establish Pay Equity (Chapter 177 of the Acts of 2016)

Effective July 1, 2018, this law requires Massachusetts employers to pay men and women equally for different but comparable work. The definition of "comparable work" used in the Act is from the federal Equal Pay Act, which defines comparable work as work that involves substantially similar skill, effort and responsibility and is performed under similar working conditions.

While this new law prohibits gender based wage disparities for comparable work, it permits "variations in wages" that are based on: a seniority or merit system, the geographic location in which a job is performed, education, training or experience, travel that is a "regular and necessary condition" of the job, and a system which measures earnings "by quantity or quality of production, sales, or revenue." Once effective, the Act will forbid employers from asking prospective employees about salary history or restricting employee discussion of pay.

Under the new law, both employees and the Massachusetts Attorney General have the right to sue, and successful claims can recover unpaid wages, liquidated damages for 100 percent the amount of the unpaid wages, plus attorneys' fees and costs. Opening the door for collective actions, the Act explicitly provides that employees may proceed on behalf of themselves and other "similarly situated" employees. A complaining employee may proceed directly to court and need not file an administrative charge with the Equal Employment Opportunity Commission or the Massachusetts Commission Against Discrimination.

Employers that complete a "self-evaluation of [their] pay practices in good faith" and "can demonstrate that reasonable progress has been made towards eliminating wage differentials based on gender for comparable work" are entitled to use this as an affirmative defense under the law. This affirmative defense is available for three years after the self-evaluation.

Michigan

Paul A. Wilhelm
Mikyia S. Aaron
Clark Hill PLC
500 Woodward Ave, Suite 3500
Detroit, MI 48226
Telephone: 313-309-4269
Email: pwilhelm@clarkhill.com
Email: maaron@clarkhill.com

Minimum Wage Increase and Other Wage Adjustments (MCL 408.414)

Effective May 2014, the Workforce Opportunity Wage Act, signed into law by Governor Rick Snyder, increases the Michigan's minimum hourly rate of pay. The current Michigan minimum wage is $8.50. The rate increases as follows:

Effective Date	Minimum Hourly Wage Rate	85% of Minimum Hourly Wage Rate
January 1, 2016	$8.50	$7.25
January 1, 2017	$8.90	$7.57
January 1, 2018	$9.25	$7.86

Likewise, this Act increases the minimum hourly rate for a worker subject to "tip credit" provisions. The current Michigan minimum wage for tipped employees is $3.23. The rate increases are as follows:

Effective Date	Tipped Employee Minimum Hourly Wage Rate	Provided Reported Tips Per Hour Average At Least
January 1, 2016	$3.23	$5.27
January 1, 2017	$3.38	$5.52
January 1, 2018	$3.52	$5.73

Likewise, this Act increases the minimum hourly rate of pay for tipped employees working overtime. The current wage for tipped employees working overtime is $7.48. The rate increases as follows:

Effective Date	Tipped Employee Hourly Wage Rate for Overtime	Provided Reported Tips Per Hour Average At Least
January 1, 2016	$7.48	$5.27
January 1, 2017	$7.83	$5.52
January 1, 2018	$8.14	$5.74

Employer Responsibility Allocation in Franchisor-Franchisee Relationship ((MCL 408.1005) (MCL 408.471) (MCL. 408.412) (MCL 421.41) (amended))

Effective February 24, 2016, these Acts clarify that as between a franchisee and franchisor, the franchisee is considered the sole employer of employees for whom the franchisee provides a benefit plan or pays wages, unless otherwise provided in the franchise agreement.

Under these Acts, the franchisee is liable for wage and hour violations, minimum wage violations, and employee contributions and benefits.

Employment Discrimination against Members of the United States Airforce Civil Air Patrol Prohibited (MCL 408.921)

Effective April 12, 2016, the Civil Air Patrol Employment Protection Act protects an employee who takes a leave of absence for the purpose of responding as a member of the Civil Air Patrol (the civilian auxiliary of the United States Air Force) to an emergency declared by the governor of Michigan or the President of the United States from adverse employment action.

Under this Act, employers are prohibited from discriminating against, disciplining, or discharging an employee for responding to an emergency as a member of the Civil Air Patrol. Employees are expected to provide the employer with verification from the Civil Air Patrol of the emergency need for the employee's volunteer service. In addition, the employee is required to provide the employer with as much notice as possible of the dates the employee will be absent to serve with the Civil Air Patrol during the emergency.

NOTE: This Act does not prohibit an employer from complying with a collective bargaining agreement or employee benefit plan entered into before the effective date of this Act. This Act does not prohibit an employer from treating the time the employee is absent because of emergency Civil Air Patrol service as unpaid time off.

Employment Discrimination against Members of Military or Naval Forces Prohibited ((MCL 32.272 and 32.273) (amended))

Effective September 12, 2016, this Act protects employees who take a leave of absence from employment for military purposes from adverse employment action. Under this Act, employers are prohibited from discriminating against, disciplining or discharging an employee for requesting leave for military purposes.

Employers are prohibited from denying a leave of absence to any employee who gives advance notice of a need to take such leave time for the purpose of being inducted into or entering into active service, active state service, or the service of the United States, for the purpose of determining his or her physical fitness to enter the service, or for performing service as an officer or enlisted member of the military or naval forces of the state of Michigan or of the United States in active state service under applicable federal law.

Changes to OSHA's Reporting Requirement to Require Electronic Workplace Injury/Accident Data Submissions (81 Fed. Reg. 29624)

Effective August 10, 2016, OSHA now requires employers to establish a reasonable procedure that would not deter or discourage a reasonable employee from accurately reporting a workplace injury or illnesses. Under the new rule, employers are required to inform all employees that (1) they have the right to report work-related injuries and illnesses, and (2) employers are prohibited from discharging or in any manner discriminating against employees for making those reports. OSHA aims to prevent employee discipline for late reporting of injuries.

The new regulation also requires employers in certain high-hazard industries to electronically submit injury and illness data for posting on OSHA's publicly accessible website. Historically, OSHA has only required employers in high-hazard industries to maintain a log of accidents and injuries occurring in the workplace. Affected employers in certain high-hazard industries are scheduled to begin reporting accident and injury data in January 2017. OSHA is requiring that all relevant workplace injury and accident data from 2016 be reported no later than July 1, 2017.

Under the new reporting regulation, OSHA also encourages employers to review and revise drug testing policies to limit automatic post-incident testing to situations in which employee drug use is likely to have contributed to the incident, and for which the drug test can accurately identify impairment caused by drug use.

As Michigan is a State Plan State, MIOSHA is required to adopt or develop regulations as effective as the new OSHA rule.

Minnesota

Lisa M. Schmid
Amanda M. Cialkowski
Nilan Johnson Lewis PA
120 South Sixth Street, Suite 400
Minneapolis, MN 55402
Telephone: 612-305-7549
Email: lschmid@nilanjohnson.com
Email: acialkowski@nilanjohnson.com

The 2016 legislative session was again fairly uneventful for Minnesota employers, likely due to the fact that there is a split in control of the legislative bodies. The 2017 session may also be quiet as the state has a Democratic governor and a fully Republican-controlled legislature, but we may see a continued push for paid sick and family leave and predictable scheduling and predictability pay legislation. Minnesota employers may want to monitor the legislature for any development in those areas.

Minnesota employers with employees in Minneapolis and Saint Paul should prepare to comply with the cities' new paid sick leave ordinances, both of which become effective on July 1, 2017. Minneapolis' ordinance is facing a lawsuit challenging its validity, but until that shakes out, employers should plan for compliance. We also expect to see a continued push for a $15 minimum raise and a predictable pay and predictable scheduling ordinance at the municipal level, particularly in Minneapolis.

Minnesota's Minimum Wage Is Up and May Continue to Climb in the Future

Per legislation signed into law by Governor Dayton on April 14, 2014 (HF 2091), Minnesota's minimum wage increased in 2016 as follows:

- Large employers (gross annual sales of $500,000 or more):
  - August 1, 2016: $9.50
- Small employers (gross annual sales of less than $500,000):
  - August 1, 2016: $7.75

Additionally, HF 2091 outlines specific wage increases for certain types of employees, namely training wages, youth wages, and employees who are working for resorts on a J1 visa as part of a work travel visitor exchange program.

- Training wages apply to the first 90 days of employment for workers under the age of 20.
  - The minimum wage for training employees is or will be as follows:
    - August 1, 2016: $7.75
- Youth wages apply when an employee under the age of 18 works for a large employer.
  - The minimum wage for youth employees is or will be as follows:
    - August 1, 2016: $7.75
- J1 Visa rates apply when the employer is a hotel or motel, lodging establishment, or a resort and hires employees under a contract that includes the provision of food and lodging if the employee is working under authority of a summer work travel exchange visitor program J1 nonimmigrant visa.
  - The minimum wage for these employees is or will be:
    - August 1, 2016: $7.75

Starting on January 1, 2018, Minnesota's minimum wage will automatically increase every year. The amount of the increase will be the lesser of (a) 2.5% or (b) the inflation rate as calculated by the Minnesota Department of Labor and Industry (MNDOLI). The MNDOLI Commissioner can prevent an automatic increase if certain economic conditions indicate that a significant economic slowdown is coming. However, to do so, the Commissioner must consider a number of economic indicators, hold a public hearing and provide notice of that hearing, and allow for submission of comments. If the Commissioner decides not to allow an automatic increase, the Commissioner, taking into account the same economic factors, may order a supplemental increase the following year in addition to the amount that is due for that year, and he or she can even order a supplemental increase the year after to ensure the wage catches up.

Minnesota Attempts to Quash "Drive By" MHRA Accessibility Lawsuits (HF 2955)

Minnesota adopted a new law in 2016 that seeks to curb the number of so-called "drive by" Minnesota Human Rights Act (MHRA) accessibility lawsuits that are particularly troublesome for smaller business. HF 2955, which was signed by Governor Dayton on May 22, 2016, and became effective the same day, provides a short form letter that individuals may use to notify a business of potential violation of the MHRA's accessibility requirements. The law also provides additional affirmative defenses for employers, including dismissal of a case if the employer removes the architectural barrier in question, demonstrates that compliance with the accessibility requirements is not readily achievable or cannot be accomplished by alternative means, or that the alleged architectural barrier does not violate accessibility requirements.

While this law is a start, the Minnesota business community was not overjoyed with the final compromise, as there is concern the law does not do enough to curb abusive suits.

Small Changes to Minnesota's AWAIR Program

Minnesota also adopted small changes to the state's A Workplace Accident and Injury Reduction (AWAIR) program via SF 2733, which were effective as of August 1, 2016. Minnesota's AWAIR program requires employers within certain North American Industry Classification System (NAICS) classes to develop and maintain a written workplace accident and injury reduction program that encourages safe and healthy workplaces. Under the old law, Minnesota OSHA was required to update the list of covered NAICS classes every two years. Now, Minnesota OSHA need only update the list every five years, meaning that employers who are added to the list will remain on the list for at least five, instead of two, years.

Minneapolis' Paid Sick and Safe Leave Ordinance

Minneapolis adopted a paid sick and safe leave ordinance this year, which will be effective on July 1, 2017. The ordinance, which has already been amended, contains the following provisions, which will affect the vast majority of Minneapolis employers and possibly a significant number of non-Minneapolis employers:

- Coverage for all Minneapolis employers.
  - Employers who employ between 1 and 5 employees will be required to provide unpaid sick and safe leave in accordance with the terms of the ordinance.
  - Employers with 6 or more employees will be required to provide paid sick and safe leave.
    - Pay must be at the employee's regular rate when leave is used, meaning the employee's same hourly rate with the same benefits s/he would have earned if leave had not been used.
  - For the first five years after the effective date, employers, other than "chain establishments" as defined by the ordinance, operating in their first 12 months after the hire date of the employer's first employee may provide unpaid leave during the initial 12 months of operation.

- A requirement for Minneapolis and non-Minneapolis employers to provide sick and safe leave to employees who work at least 80 hours in the city each year (whether the leave is paid or unpaid will depend on the employer's size).
    - Employee includes: temporary and part-time employees who perform work within the geographic boundaries of the city.
    - Employee does not include independent contractors.
    - Some special considerations are given to certain construction and health care workers.
- Accrual of sick and safe leave at the rate of 1 hour per 30 hours worked, up to 48 hours per year; accrual begins upon employment or the ordinance's effective date or the employee's first day of employment.
    - Employers may satisfy the burden of providing sick and safe time by frontloading at least 48 hours of sick and safe time following the initial 90 days of employment for use by the employee during the first calendar year and providing at least 80 hours of sick and safe time at the beginning of every following year.
- Carryover of unused sick and safe time, with an overall cap of 80 hours of leave at any time, unless the employer agrees to a higher limit.
- After 90 calendar days of employment, leave may be used for a wide variety of reasons, including:
    - the employee's own illness, injury, or health condition or preventative care (for mental or physical health issues);
    - provision of care for a family member with an illness, injury or health condition or who needs preventative care;
    - leave to deal with domestic abuse, stalking, or other personal safety issues;
    - an employee's need to care for a family member whose school or place of care has been closed due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected closure;
    - the closure of the employee's place of business by order of a public official to limit exposure to an infectious agent, biological toxin, or hazardous material or other public health emergency; or
    - n employee's need to care for a family member whose school or place of care has been closed by order of a public official to limit exposure to an infectious agent, biological toxin, or hazardous material or other public health emergency.
- Employer notice: The city will provide a poster in all languages spoken by more than 5% of the city's workforce for posting by Minneapolis employers. The notice may be published in new languages by December 1 of each year, so employers should track this if necessary. Employers with employee handbooks must include a notice of employee rights and remedies under the ordinance in the handbook.
- Employee notice: If the need for leave is foreseeable, an employer may require advance notice of the intention to take leave. An employer cannot require more than 7 days' notice for foreseeable leave. If the need for leave is unforeseeable, an employer may require the employee to give notice of the need as soon as practicable.
    - Employers may seek reasonable documentation that the sick and safe leave is covered for absences longer than three consecutive days.
- Recordkeeping requirements: Employers must maintain accurate records for each employee showing:

- Hours worked for non-exempt employees (exempt employees are assumed to work 40 hours a week)
- Hours of leave available for sick and safe time purposes
- Hours of leave used for sick and safe time purposes

- The above accrual information must be calculated on a monthly basis, at minimum.
- Records must be maintained for at least three years and employees must be given a chance to review their records at a reasonable time and place upon request.
- If requested by the employee, employers must issue a written wage disclosure statement each pay period.
- Requirements for handling accrued sick and safe time for employees who transfer out of Minneapolis or who separate employment.
- Termination, transfer, and separation:
  - Accrued safe and sick leave need not be paid out at termination.
  - However, employers must maintain the balance for 90 days after termination/separation. If an employee returns to employment within 90 days, s/he is entitled to the accrued balance.
  - If an employee is transferred to another location within Minneapolis, s/he maintains her/his balance and is entitled to use the accrued time;
  - If an employee is transferred out of Minneapolis, accrual stops (unless the employee still hits the 80 hour per year threshold for hours worked in the city), and the employer can either allow the employee to use the accrued balance or must maintain the balance for 3 years in case the employee transfers back into Minneapolis.

Significantly, employers who already provide sick and safe time under a paid time off policy or other paid or unpaid leave policy that meets or exceeds the minimum standards of the new law do not need to provide additional sick and safe leave, but employers must make sure employees can actually take off the same amount of time for the same purposes addressed by the law (i.e., a true PTO system that allows employees to take time off for any reason, or a vacation plan where employees can use "vacation" time for any reason). Additionally, all employers will want to ensure compliance with the remainder of the ordinance.

The city is planning to release a FAQ document at some point that may provide additional clarity about the ordinance. Additionally, we expect the city to adopt rules that would provide additional guidance before the ordinance's effective date. Employers should monitor that process if they are affected by the ordinance.

Finally, the Minneapolis ordinance is currently being challenged by a lawsuit brought by the Minnesota Chamber of Commerce and several employers. The primary argument is that the ordinance is preempted by Minnesota state law and is therefore invalid. If successful, the Saint Paul ordinance would likely fall on the same grounds. Regardless of the pending suit, employers should still prepare to comply with the ordinance, as some of the legwork to do so may be time-consuming.

Saint Paul's Paid Sick and Safe Leave Ordinance

Saint Paul followed in Minneapolis' footsteps and adopted its own sick and safe leave ordinance in 2016. The ordinance is also effective on July 1, 2017, and fairly closely resembles Minneapolis' ordinance. It contains the following provisions:

- Employees, defined as people who perform work within the geographic boundaries of Saint Paul for at least 80 hours per year for an employer, will accrue 1 hour of leave for every 30 hours worked.

    - Unlike Minneapolis, Saint Paul does not address how hours of exempt employees should be calculated, begging the question of whether employers will have to track exempt employees' hours.
- Accrual begins on the first day of employment or the ordinance's effective date.
- The maximum number of sick-leave hours an employee can earn in a calendar or fiscal year is 48 hours, but employees can carry over 80 unused hours from year-to-year.
    - Employers can frontload time in the same way Minneapolis employers may do so to comply with the accrual requirements.
- Accrued hours can be used for multiple purposes, including for absences due to an employee's own mental or physical illness, injury, or health condition, or to take care of a family member suffering from mental or physical illness or who needs a medical diagnosis or preventative care. Employees can also use accrued hours to deal with exigencies arising from domestic abuse, sexual assault, or stalking.
    - Saint Paul defines "family member" more broadly than Minneapolis, meaning employees may be able to take time off in situations where they might not be able to do so in Minneapolis.
- The ordinance provides exemptions for construction employees under certain situations.
- Employers will not be required to pay out unused sick and safe time when an employee leaves the company, but there are specific rules for handling employee transfers and retention of hours for a specific period after an employee separates or transfers. These requirements are the same as those found in Minneapolis' ordinance.
- Employers who already offer enough paid time off to satisfy the ordinance and that can be used for the covered purposes need not provide additional time, but they still must comply with the ordinance's other requirements.
- There are notice requirements which resemble Minneapolis' requirements, meaning employers must post a City-published poster and include notice in any employer handbook.
- There are also recordkeeping requirements that are similar to those found in Minneapolis.

St. Paul's ordinance differs from the Minneapolis law in several additional ways, including that it allows individuals to file a civil action if an employer has violated the ordinance's anti-retaliation measures. Successful plaintiffs may recover not only damages, but also their attorneys' fees. As a result, employers will want to evaluate current policies and procedures to ensure compliance with the ordinance's anti-retaliation measures, as plaintiffs' attorneys will have an extra incentive to take these claims.

The ordinance also does not appear to limit how much time an employee may use in a year, which differs from Minneapolis' ordinance. Thus, an employee who carries over time may be able to use all of that time in the next year as well as any new time accrued that year as well.

The ordinance also differs in that it does not differentiate notice requirements for foreseeable and unforeseeable leave; rather, employers may require employees to comply with the employer's usual and customary notice requirements for leave, as long as those requirements do not interfere with the purposes for which the leave is needed.

Finally, the Department of Human Rights and Equal Economic Opportunity will develop and adopt implementing rules for the ordinance in the near future, as well as a FAQ, so employers should monitor the situation to ensure full compliance.

Mississippi

Tim Peeples
Emily H. Wilkins
Daniel, Coker, Horton & Bell, P.A.
4400 Old Canton Road, Suite 400
Jackson, MS 39211
Telephone: 601-969-7607
Email: tpeeples@danielcoker.com
Email: ewilkins@danielcoker.com

Protecting Freedom of Conscience from Government Discrimination Act (HB 1523)

This law aims "to provide certain protections regarding a sincerely held religious belief or moral conviction for persons, religious organizations and private associations." The Act prohibits the state government of Mississippi from taking any discriminatory action against a religious organization regarding services that accommodate or facilitate marriages "based upon or in a manner consistent with a sincerely held religious belief or moral conviction" and prohibits discrimination against any person who declines to provide treatments and counseling for sex reassignment; any person who declines to provide wedding services based upon a sincerely held religious belief; any person who establishes sex-specific standards concerning employee or student dress or grooming, or concerning access to restrooms and other facilities; and allows state employees to seek recusal from authorizing or licensing marriages based upon a sincerely held religious belief. This bill took effect on April 5, 2016. A Mississippi federal court granted an injunction, and the law is currently on appeal with the United States Court of Appeals for the Fifth Circuit.

Missouri

Kelly Campbell
Brian Peterson
Spencer Fane LLP
1000 Walnut St., Suite 1400
Kansas City, MO 64106
Telephone: 816-292-8885
Email: kcampbell@spencerfane.com
Email: bpeterson@spencerfane.com

Employment Protections for Victims of Domestic Assault (SB 921)

Missouri employers may not discharge or discipline an employee who is a witness of a "dangerous felony," is a victim of a dangerous felony, or is the immediate family member of a victim of a dangerous felony for (1) honoring a subpoena to testify in a criminal proceeding, (2) attending a criminal proceeding, or (3) participating in the preparation of a criminal proceeding. Additionally, Missouri employers may not require a witness of a dangerous felony, a victim of a dangerous felony, or an immediate family member of a victim of a dangerous felony to use vacation time, personal time, or sick leave for honoring a subpoena to testify in a criminal proceeding, to attend a criminal proceeding, or to participate in the preparation of a criminal proceeding.

This bill extends the protections discussed above to victims of domestic assault (which, originally, was not considered a protected dangerous felony). Therefore, Missouri employers are prohibited from discharging or disciplining an employee who is a witness of domestic assault, is a victim of domestic assault, or is the immediate family member of a victim of domestic assault for (1) honoring a subpoena to testify in a criminal proceeding, (2) attend-

ing a criminal proceeding, or (3) participating in the preparation of a criminal proceeding. Similarly, Missouri employers are prohibited from requiring a witness of domestic assault, a victim of domestic assault, or an immediate family member of a victim of domestic assault to use vacation time, personal time, or sick leave for honoring a subpoena to testify in a criminal proceeding, for attending a criminal proceeding, or for participating in the preparation of a criminal proceeding.

The bill was signed into law by Governor Jay Nixon on July 1, 2016 and took effect on August 28, 2016.

Anti-Bullying Policies and Procedures for School Districts (HB 1583)

This bill repealed RSMo §160.775 and enacted three new statutory sections that will govern school anti-bullying policies and procedures.

The bill requires school districts to include an anti-bullying policy in the student handbook and outlines what provisions those policies must include.

The bill imposes reporting requirements on school districts. Among other things, school districts must (1) develop a method to keep track of any correspondence between individuals and the district or any school in the district regarding an incident of bullying and (2) annually report to the department of elementary and secondary education the number of confirmed reported bullying incidents in the district at the school level and the district level and any action taken in response to an incident of bullying, including, but not limited to, expulsions and suspensions for each school in the district. The department of elementary and secondary education must post the reported information on its website within 30 days of receiving the reported information, but it will ensure that no personally identifiable information is posted.

The bill requires school districts to adopt a policy for youth suicide awareness and prevention, including the training and education of district employees. However, by July 1, 2017, the department of elementary and secondary education must adopt a model policy that school districts may in turn adopt.

This bill was signed by Governor Jay Nixon on June 3, 2016 and took effect on August 28, 2016.

Background Checks for Ambulance District Employees, Contractors and Volunteers (SB 988)

This bill gives ambulance districts the right to adopt procedures for conducting fingerprint background checks on current and prospective employees, contractors and volunteers. This bill was signed into law on July 5, 2016 by Governor Jay Nixon and became effectively immediately.

Montana

Jean E. Faure
Faure Holden, P.C.
P.O. Box 2466
Great Falls, MT 49503
Telephone: 406-452-6500
Email: jfaure@faureholden.com

The Montana Legislature was not in session in 2016, and therefore no new employment laws were enacted.

Nebraska

Mark A. Fahleson
Rembolt Ludtke LLP
3 Landmark Centre
1128 Lincoln Mall, Ste. 300
Lincoln, NE 68508
Telephone: 402-475-5100
Email: mfahleson@remboltlawfirm.com

Workplace Privacy Act (L.B. 821)

Effective July 19, 2016, the Workplace Privacy Act (Act) seeks to "restrict employers from requesting or requiring that employees or applicants provide an employer with account information so that the employer can access their private social networking site profile or account."

The specifics of the Act, which is patterned off similar legislation adopted by other states, are as follows:

- Coverage: Covers "employers," which is broadly defined as "a public or nonpublic entity or an individual engaged in a business, an industry, a profession, a trade, or other enterprise in the state, including any agent, representative, or designee acting directly or indirectly in the interest of such an employer." Unlike other employment laws, the definition of a covered "employer" is not limited to those that employ a certain number of employees or have a threshold amount of revenue. Essentially, it's all employers, public and private, regardless of size.
- What it prevents: The Act prohibits "employers" from:
    - Requiring or requesting that an employee or applicant provide or disclose any username or password or any other related account information in order to gain access to the employee's or applicant's personal Internet account by way of an electronic communication device;
    - Requiring or requesting that an employee or applicant log into a personal Internet account by way of an electronic communication device in the presence of the employer in a manner that enables the employer to observe the contents of the employee's or applicant's personal Internet account or provides the employer access to the employee's or applicant's personal Internet account;
    - Requiring an employee or applicant to add anyone, including the employer, to the list of contacts associated with the employee's or applicant's personal Internet account or require or otherwise coerce an employee or applicant to change the settings on the employee's or applicant's personal Internet account which affects the ability of others to view the content of such account; and
    - Taking any adverse action against an employee or applicant for failure to provide or disclose any of the information or to take any of the actions specified above.
- Discrimination/Retaliation: The Act mandates that employers cannot discriminate or retaliate against employees or applicants for filing a complaint under the Act or participating in an investigation, proceeding, or action concerning alleged violations of the Act.
- How it is enforced: The Act provides that an aggrieved employee or applicant may, in addition to any other available remedy, institute a civil action in state district court within one (1) year after the date of the alleged violation or the discovery of the alleged violation, whichever is later. If successful, the employee or applicant shall be entitled to appropriate relief, including temporary or permanent injunctive relief, general and special damages, reasonable attorneys' fees, and costs.

- What employers may still do: The Act makes clear that employers may still maintain workplace policies regarding Internet use and obtain access to devices and accounts provided by the employer. In addition, employers may still, if done properly, monitor employee Internet use on employer-provided devices/services as well as access information that is otherwise publicly available.
- No duty to investigate: The Act expressly provides that it does not create a duty for employers to request, gain access to or investigate information on an employee's or applicant's personnel Internet account.
- Pro-employer provisions: The Act potentially provides a new avenue for relief for employers whose employees pilfer the employer's confidential proprietary information, perhaps to compete with the employer. The Act states that "an employee shall not download or transfer an employer's private proprietary information or private financial data to a personal Internet account without authorization from the employer." However, as drafted, it is unclear whether employers may file a claim under the Act and seek the specified damages and attorneys' fees for such violations.

Nevada

Rebecca Bruch
Charity Felts
Erickson, Thorpe & Swainston, Ltd.
99 West Arroyo Street
P.O. Box 3559
Reno, NV 89505
Telephone: 775-786-3930
Email: rbruch@etsreno.com
Email: cfelts@etsreno.com

The Nevada Legislature meets on a biennial basis on the first Monday in February of odd-numbered years. The 79th (2017) Regular Session of the Nevada Legislature will begin on February 6, 2017. Because the Legislature did not meet in 2016, there is no new legislation to report for 2017.

The 77th Legislature will be considering several bills with a general application to employers. Some of the noteworthy proposed legislation relates to the following topics: (1) employer accommodations for nursing mothers; (2) restrictions on consideration of criminal history of applicants for employment; (3) unemployment compensation; (4) pay equity; (5) restrictive covenants; (6) collective bargaining between local governments and public employees; and (7) providing leave for employee caregiving time.

Of note, Nevada voters approved a ballot initiative in 2016 to legalize the recreational use of a certain amount of marijuana. This is in addition to medical marijuana legislation that was already on the books and is further described in NRS Chapter 453A.

New Hampshire

Christopher A. Callanan
Stevenson McKenna & Callanan LLP
21 Merchants Row, Fifth Floor
Boston, MA 02109
Telephone: 617-330-7575
Email: ccallanan@smcattorneys.com

An Act Regarding Flexible Work Schedule (Chapter 182 of Acts of 2016, SB 416)

This new law prohibits employers from retaliating against an employee who requests a flexible work schedule.

An Act Relative to an Exemption from Certain Employment Laws for Certain Minors (Chapter 219 of the Acts of 2016) and An Act Relative to the Issuance of Youth Employment Certificates (Chapter 314 of the Acts of 2016, HB 1105, HB 1301)

Chapter 219 of the Acts of 2016 exempts 16 and 17 year olds who reside and work at summer camps for minors from New Hampshire youth employment law that precludes youths of that age from working more than 6 consecutive days or 48 hours in one week during summer vacation. Chapter 314 of the Acts of 2016 permits parents or legal guardians to issue youth employment certificates.

New Jersey

Scott A. Ohnegian
Danielle A. Rubin
Riker Danzig Scherer Hyland & Perretti
Headquarters Plaza
One Speedwell Avenue
Morristown, NJ 07962
Telephone: 973-451-8551
Email: sohnegian@riker.com
Email: drubin@riker.com

State Minimum Wage Increase

Pursuant to a constitutional amendment approved by voters in November 2013, the New Jersey state minimum wage increased from $8.38 per hour to $8.44 per hour on January 1, 2017. The increase is based on an increase from August 2015 through August 2016 in the Consumer Price Index for urban wage earners.

On August 30, 2016, Governor Chris Christie vetoed a joint bill of the Senate and Assembly that would have increased the state minimum wage to over $15.00 per hour by 2021. The proposed bill sought to increase the minimum wage to $10.10 in 2017 and $1.25 per hour each year through 2021. Business owners heavily opposed the bill, arguing that the dramatic wage hike would negatively impact small businesses and lead to fewer jobs. The New Jersey legislature continues to push for minimum wage increases despite Governor Christie's veto in August. The New Jersey gubernatorial election will take place on November 7, 2017.

Morristown and Elizabeth Become the 12th and 13th Municipalities to Enact Paid Sick Leave Laws

Joining Newark, Passaic, Jersey City, East Orange, Paterson, Trenton, Montclair, Irvington, Bloomfield, Plainfield, and New Brunswick, Elizabeth and Morristown enacted paid sick leave laws requiring private employers to provide paid leave for employees to use under certain circumstances pertaining to their or a family member's illness. Similar to the other municipalities' ordinances, Morristown's and Elizabeth's paid sick leave laws require private employers to allow employees who work at least 80 hours per year to accrue paid sick leave time at the rate of at least 1 hour of paid sick time for every 30 hours worked, up to a maximum of 40 hours per year. However, if the employer employs fewer than 10 people, the maximum amount of paid sick time an employee may accrue may be limited to 24 hours per year. Government employees and individuals who are members of construction unions covered by collective bargaining agreements are not covered by the law.

Employees are permitted to use paid sick time for the employee's health conditions, diagnosis, or treatment, or to care for a family member who needs medical diagnosis or treatment. "Family member" is broadly defined to include biological, adopted or foster children, stepchildren or legal wards, a child of a domestic partner, a child of a civil union partner, or a child to whom the employee stands in loco parentis, a biological, foster, stepparent or adoptive parent or legal guardian of an employee or of an employee's spouse, domestic partner or civil union partner, a person to whom the employee is legally married under the laws of New Jersey or any other state or with whom the employee has entered into a civil union, a grandparent or spouse, civil union partner or domestic partner of a grandparent, a grandchild, a domestic partner of an employee, or a sibling.

After an employee uses paid sick time, employers are permitted to request that the employee provide written confirmation that the paid sick time was used for a purpose authorized under the ordinance. Employers may also require an employee to provide reasonable documentation from a healthcare provider that the time was used for a covered purpose after an employee uses paid sick time for three consecutive days or three consecutive instances. However, an employer may not request information regarding the illness.

Employers may choose to pay employees for accrued but unused paid sick time at the end of each calendar year. If not, they must permit employees to carry over up to 40 hours of accrued time. However, employers are not required to permit employees to use more than 40 hours of paid sick time in any calendar year, nor are employers required to pay employees for accrued paid sick time at the conclusion of their employment. The law also requires employers to provide written notice of employees' rights under the paid sick leave law at the commencement of their employment and post a notice in a conspicuous location in each workplace. The paid sick leave law prohibits employers from interfering with employees' rights under the law, including retaliating against any employee who attempts to exercise his or her rights. Nothing in either law prohibits an employer from enacting more generous paid sick leave policies.

The Elizabeth paid sick leave law went into effect on March 2, 2016. The Morristown paid sick leave law was scheduled to go into effect on October 4, 2016. However, after Mayor Tim Dougherty entered an executive order delaying implementation to afford employers additional time to implement the changes, the ordinance went into effect on January 11, 2017.

In May 2016, the Senate delayed voting on a similar bill that would that mandate that all private employers across the state provide employees with paid sick leave. Under bill S799, similar to the Morristown and Elizabeth ordinances, employees must accrue paid sick leave at the rate of 1 hour of paid sick time for every 30 hours worked. However, the amount of paid sick time an employee may accrue is capped at 40 or 72 hours per year, depending on the size of the employer, rather than 24 or 40 hours under the municipalities' laws. Therefore, if enacted, under the state-wide bill, employers with 10 or more employees would be required to offer employees up to 9 days of paid sick

time. However, the state bill does not grant employees the right to carry over accrued but unused paid sick time into the following year.

Legislation Proposed In 2017

Prohibition on Releasing Gender Discrimination and Harassment Claims in Severance Agreements

On September 15, 2016, the Senate introduced bill S2535 that would prohibit employers from requiring or requesting employees to enter into severance pay agreements that include a release of any potential gender discrimination or harassment claims the employee may have against the employer. The bill further provides that any provision of a severance agreement entered into in violation of the bill will be void and unenforceable. As proposed, the bill would take effect immediately upon its enactment. However, the bill would not retroactively apply to severance agreements entered into prior to its enactment. The bill was referred to the Senate Labor Committee.

Prohibiting Employers from Asking About Past Compensation History on Employment Applications

On September 15, 2016, the Assembly introduced bill A4119, an amendment to the New Jersey Law Against Discrimination, that would prohibit employers from asking applicants for employment about their wage and/or salary history from prior employment. The bill specifically prohibits employers from requesting or requiring as a condition of employment that the employee disclose information about either the employee's own wages, including benefits or other compensation, or about any other employee's wages. The bill further prohibits employers from requiring that a prospective employee's prior wage or salary history meet any minimum or maximum criteria as a condition of being interviewed, or as a condition of continuing to be considered for an offer of employment. An employer may request that a prospective employee confirm their wage or salary history information only after the employer makes an offer of employment to the prospective employee.

In addition, the bill does not restrict prospective employees from voluntarily disclosing information regarding their own compensation history prior to receiving an offer. However, the disclosure may not be coerced or otherwise encouraged by the employer. The bill further prohibits retaliation against any individual or prospective employee based upon prior wage or salary history or because the employee or prospective employee has opposed any act or practice made unlawful by the bill.

In the statement accompanying the bill, the Assembly explained that the purpose of the bill is to promote equal pay for women by strengthening the protections against employment discrimination.

New Mexico

Jeffrey L. Lowry
Rodey, Dickason, Sloan, Akin & Robb, P.A.
201 Third Street NW, Suite 2200
Albuquerque, NM 87102
Telephone: 505-766-7541
Email: jlowry@rodey.com

No new laws to report at this time.

New York

Noreen DeWire Grimmick
Hodgson Russ LLP
677 Broadway, Suite 301
Albany, NY 12207
Telephone: 518-465-2333
Email: ngrimmic@hodgsonruss.com

Minimum Wage Increase

Earlier this year, Governor Cuomo executed legislation that will phase in an increase the minimum wage to $15.00 per hour and provide employees with paid family leave. As a reminder, as of December 31, 2015, New York State's basic hourly minimum wage is $9.70 per hour for most non-exempt workers, with exceptions for certain classifications of workers and also for employees working in different locations. Large employers in New York City (11 or more employees) now have a minimum wage requirement of $11.00 per hour. Employers in New York City with 10 or fewer employees now have a minimum wage requirement of $10.50 per hour.

New Salary Thresholds for Exemptions

As for exempt executive or administrative employees, on December 28, 2016, the New York State Department of Labor published its final rule increasing minimum salary threshold requirements for these exempt employees. For example, the minimum threshold weekly wage for executive or administrative exempt employees outside of New York City and the counties of Nassau, Westchester, and Suffolk is $727.50 in 2017. For exempt executive and administrative employees inside the confines of New York City, the minimum threshold for large employers (11 or more employees) is now $825.00 per week. For small employers (10 or fewer employees) inside New York City the minimum wage threshold for these employees is $787.50 per week. Increases for minimum threshold wage requirements for these categories of exempt employees are scheduled to be phased in annually through 2021. A helpful chart has been published by NYSDOL as guidance for employers and employees and can be found at: https://labor.ny.gov/formsdocs/wp/Part142.pdf. For more information on these and other wage increases and issues, please check the following link to the NYSDOL website: http://www.labor.ny.gov/workerprotection/laborstandards/workprot/minwage.shtm.

Payroll Card Guidelines

New rules and regulations were issued by the New York State Department of Labor governing payment of wages by any method other than cash or check. These rules and regulations go into effect March 7, 2017. With respect to payment of wages by debit card, employers are required to notify employees at least seven business days before implementing this form of payment, and they must describe all the options available to the employees for payment of wages. Employers may not charge the employees for the costs associated with payment by debit card, nor may the employer accept kickbacks from credit card companies or any third parties for providing the employees with this form of wage payment. These are but a sampling of a few of the new requirements surrounding the payment of wages in New York by debit card or payroll card. There are many other requirements that have also been added. For more information and specific details concerning these new rules governing payment of wages by debit or payroll cards, please consult the New York State Register for September 7, 2016 which may be found at this link: http://www.nylaborandemploymentlawreport.com/wp-content/uploads/sites/37/2016/09/Sept72016NYregister.pdf.

Misclassification Issues

There has been a more comprehensive effort to identify employer violations of employee misclassifications and the exploitation of workers in this state. All New York State employers would be well-advised to be informed of the implications of the Governor's initiative on this issue. Governor Cuomo signed Executive Order 159 in July 2016 which sets up the permanent Joint Task Force on Employee Misclassification and Worker Exploitation. The Joint Task Force is comprised of 13 state agencies including the New Yok State Division of Human Rights, Department of Health, Department of Taxation and Finance, the State Police, the Workers' Compensation Board, and many others. The Joint Task Force is empowered to share information among the agencies concerning misclassification of employees and worker exploitation; establish protocols and procedures for interagency referrals; work cooperatively with community organizations and business groups; improve existing methods of investigation and enforcement – including the development of strategies for the systematic investigation of industries where employee misclassification and exploitation are more common.

Expanded referrals to district attorneys for criminal prosecution of violators, as well as the expansion of "tip lines" are included as integral components of the mission of this newly formed Joint Task Force. The implications to employers are great. Clearly, employers should be aware that one complaint – no matter how well grounded or not – can open an organization to the attention of a number of agencies all at once. A single investigation - or possibly multiple investigations conducted by one of more of these state agencies – will be expensive and time consuming for employers. More information about Executive Order 159 can be found at https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_159.pdf.

Associational Discrimination Protections

On May 18, 2016, the New York State Division of Human Rights adopted a rule (or what really amounts to a "clarification") that, pursuant to the New York State Human Rights Law section 295, (also known as the Executive Law section 295), it is unlawful for an employer to engage in employment discrimination against an employee because of that employee's association or relationship with a person who is a member of a protected class. The formal adoption of this rule was made without public comment; but given the existing prohibitions under the New York State Human Rights Law, the formal adoption of this rule should really not come as a surprise to any knowledgeable New York employer. See page 10 of the Rule Making Activities, NYS Register, May 18, 2016, or visit this link: http://www.nylaborandemploymentlawreport.com/wp-content/uploads/sites/37/2016/06/rulemaking-3.pdf.

Paid Family Leave

An important piece of new legislation was executed by Governor Cuomo in April 2016 providing paid family leave. Paid leave will be phased in over a 4-year period beginning in January 1, 2018. In 2018, to be eligible, employees must work a minimum of 26 consecutive weeks prior to applying for paid leave. Paid leave may be taken to provide care to a family member suffering from a serious health issue; to bond with a child during the first 12 months after birth, adoption, or foster care placement; or to attend to obligations because a spouse, parent, or child is on active duty or has been notified of a pending call into active duty in the U.S. Armed Forces. Beginning in 2018, employees who qualify for paid leave under the act will be entitled to 50% of their pay (with a pay cap equal to 50 percent of the statewide weekly average pay) for a period of 8 weeks. When fully phased in in 2021, eligible employees will be entitled to 12 weeks of paid leave at 67% of their weekly pay (capped at 67% of the statewide average weekly pay).

This legislation will impact more employers in New York State than the FMLA. All employers who fall under the scope of the New York State Workers' Compensation Law will be obligated to provide paid family leave. Obviously there are some similarities with the federal family leave program as to a qualifying event, but there are, of course, some very important distinctions as well. More employers will fall within the scope of the paid family leave program in New York State then under the FMLA. Further, unlike the FMLA, which requires a 12-month period of employment to be eli-

gible for time off for a qualifying event, the time period for paid leave in New York is shorter. Since New York employers have another year to prepare for these changes, it is recommended that they become familiar with the legislation, train their personnel, and modify their procedures and policies to be in compliance when the law goes into effect on January 1, 2018. For more details, please see: New York State Budget, S. 6406-C, A. 9006-C (Apr. 4, 2016) at Part SS.

North Carolina

Michael A. Cannon
Goodman McGuffey, LLP
11006 Rushmore Drive, Suite 270
Charlotte, NC 28277
Telephone: 704-494-7454
Email: mcannon@gmlj.com

North Carolina Enacts Controversial "Ag-Gag" Law Preventing Activists and Whistleblowers From Using Sham Employment as Means to Access the Employer's Private Information (S.L. 2015-50)

North Carolina enacted An Act To Protect Property Owners From Damages Resulting From Individuals Acting In Excess Of The Scope Of Permissible Access And Conduct Granted To Them, which became effective on January 1, 2016. The Act extends broad protections to employers who, by nature of their industry, have been subject to unwanted exposure by persons who have sought employment as an ulterior means to gain access to private and sensitive information. The Act provides for compensatory damages, costs and fees, and exemplary damages of up to $5,000 per day. The Act makes specific reference to the prohibition of the employee using his or her access to make video and/or sound recordings of the employer's business.

North Carolina Allows Right to Sue for Discrimination in its State Courts (S.L. 2016-99)

Effective March 23, 2016, the North Carolina General Assembly passed S.L. 2016-99 declaring the regulation of discriminatory practices an issue of general statewide concern and that that state law on the topic of discriminatory practices preempts and supersedes local ordinances or regulations on the topic. For legal claims of wrongful discharge arising out of discriminatory practices, the General Assembly added a one-year limitations period to N.C. Gen. Stat.§1-54(12).

North Dakota

Shannon Rogers Mikula
Office of Provost & VPAA
Twamley Hall Room 302
264 Centennial Dr Stop 8176
Grand Forks, ND 58202-8176
Telephone: 701-777-2049
Email: shannon.rogers@UND.edu

With 2016 being an out-of-session year and the only special sessions relating to budget, North Dakota passed no new employment related laws. However, the medical marijuana legislation receiving an affirmative majority vote on the ballot measure summary and currently under consideration by the Legislature has no employee protections for those using medical marijuana.

Ohio

Eric S. Clark
Thompson Hine LLP
312 Walnut Street, Suite 1400
Cincinnati, OH 45202
Telephone: 513-352-6555
Email: Eric.Clark@thompsonhine.com

Ban the Box For Public Employers (ORC §9.73)

The Ohio Fair Hiring Act limits inquiring into and considering the criminal background of applicants during the general application portion of the hiring process. However, the law does not restrict a public employer from conducting a background check after an individual has been identified as the person to receive an offer. Importantly, public employers may still make an individualized determination to not hire employees based on a criminal record, the law only restricts generalized requests and/or rejection of applicants based on criminal convictions. Further, the law does not affect private employers. This law took effect on March 23, 2016.

Oklahoma

C. Scott Jones
Pierce Couch Hendrickson Baysinger & Green, L.L.P.
1109 North Francis
Oklahoma City, OK 73106
Telephone: 405-552-5250
Email: sjones@piercecouch.com

Oklahoma laws typically become effective on November 1 following the end of that year's legislative term in May. Therefore, unless otherwise indicated, the laws below became effective on November 1, 2016.

Franchisors Are Not to Be Considered Joint Employers of Franchisee Employees (SB 1496)

This law creates a new provision (59 O.S. §6005), that provides that franchisors are not joint employers of their franchisees' employees. The section specifically states that a franchisor is not to be considered the employer of a franchisee or a franchisee's employees. 59 O.S. §6005(B).

Changes to Statute Providing Immunity For Officers, Directors and Shareholders (HB 2844)

The Legislature amended 12 O.S. §682 to remove the requirement that claims against officers, directors, or shareholders for liabilities of a corporation must be tried separately from claims of liability with respect to the corporation. The bill also amended §682(B) to provide that the immunity from suit imparted by the section did not apply to claims based upon the individual's own conduct where such conduct is not within the scope of their duties as officer, director, or shareholder.

Limits Imposed on Unemployment Benefits For Seasonal Workers (HB 3164)

This law creates a new statute (40 O.S. §2-422) which provides that unemployment benefits based upon services by a seasonal worker performed in seasonal employment are only payable for weeks of unemployment that occur during the normal seasonal work period.

OESC Directed to Create A Precedent Manual (HB 2253)

This law amends 40 O.S. §2-607 to require the Oklahoma Employment Security Commission (OESC) Board of Review to create a precedent manual containing current statutes, changes in statutory law and current case law applicable to questions of law that may arise during hearings or appeals. The manual is to be updated within 30 days of any statutory changes and is to be made available at the offices of the OESC and on the OESC website.

School Districts to Provide Annual Reports to Teachers and Administrators With Pay and Benefit Information For All Employees (HB 3109)

Beginning with the 2016-2017 school year, HB 3109 amends 70 O.S. §6-101.6 to require school districts to provide every teacher and administrator an annual employee information worksheet prior to their first payroll in September. The worksheet is to include pay and benefit information for each teacher and administrator in the district.

Employer Health Plans Required To Provide Coverage For Children With Autism Spectrum Disorders (HB 2962)

This law requires employer health insurance plans to provide coverage for screening, diagnosis, and treatment of children with autism spectrum disorders. 36 O.S. §6060.21.

State Agencies To Keep Employee And Other Social Security Numbers Confidential (HB 2510)

This law amends 51 O.S. §24A.5 to provide that Social Security numbers in state agency records, including numbers for state employees, may be considered confidential and agencies can redact or delete Social Security Numbers prior to releasing any records.

Oregon

Jean Ohman Back
Schwabe, Williamson & Wyatt
1211 SW 5th Ave., Ste. 1900
Portland, OR 97204
Telephone: 503-796-2960
Email: JBack@schwabe.com

2016 is an off year for the Oregon legislature, which meets every other year. Therefore, Oregon has fairly limited statewide changes to report.

Oregon Minimum Wage (SB 1532)

Oregon's legislature enacted a big change to the minimum wage in 2016. SB 1532 establishes a series of annual minimum wage rate increases beginning on July 1, 2016 through July 1, 2022. On July 1, 2023, the "base" minimum wage rate will be indexed to inflation based on the Consumer Price Index (CPI).

The new Oregon law sets out separate minimum wage rates for employers in different parts of the state. The Portland metro area will have a higher minimum wage rate than other "nonurban" counties. The Portland metro area rate applies to employers located within the urban growth boundary of the metropolitan service district. A base rate will apply to the rest of the state.

- Search by address to determine whether a site is located inside the UGB with Metro's Urban Growth Boundary lookup tool.

- A map of the UGB is also available for download.

The 18 "nonurban" counties that will have the lowest minimum wage rate include: Baker, Coos, Crook, Curry Douglas, Gilliam, Grant, Harney, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, and Wheeler.

The chart below provides the minimum wage rates for the three different districts and the increases through 2022. After June 30, 2023, the base rate will be adjusted based on the CPI with Portland's rate $1.25 higher than the "base rate" and the "nonurban" county rate $1.00 lower than the "base rate."

Date Range	**Column 1** "Base Rate" for areas not in columns (2) or (3)	**Column 2** Rate for urban growth boundary of the Portland Metropolitan Area	**Column 3** Rate for "Nonurban" counties
July 1, 2016 to June 30, 2017	$9.75	$9.75	$9.50
July 1, 2017 to June 30, 2018	$10.25	$11.25	$10.00
July 1, 2018 to June 30, 2019	$10.75	$12.00	$10.50
July 1, 2019 to June 30, 2020	$11.25	$12.50	$11.00
July 1, 2020 to June 30, 2021	$12.00	$13.25	$11.50
July 1, 2021 to June 30, 2022	$12.75	$14.00	$12.00
July 1, 2022 to June 30 2023	$13.50	$14.75	$12.50
After July 1, 2023	Adjusted based on CPI	+$1.25 base rate	–$1 base rate

Employee Pay Statements (SB 1587)

Oregon made several changes regarding the information that must be included on an itemized pay stub. Under SB 1587, which took effect on April 4, 2016, employers must include the following additional information:

- Dates of work covered by the payment;
- Rate of pay;
- Gross and net pay;
- Any allowances or deductions made from the pay.

Pay statements may be provided to employees electronically with their consent. Employers must maintain time and pay records for both current and terminated employees for the period of time required by the FLSA and provide the employee an opportunity to inspect pay records within 45 days of the request.

Oregon OSHA Adoption of Federal OSHA Rules

Oregon is one of 22 states that has an OSHA-Approved State Plan that covers both private and public sector workers. State run plans must be at least as effective as the federal OSHA program.

Oregon conducted a rule-making session and its new proposed rules can be found at the following link: http://osha.oregon.gov/OSHARules/proposed/2016/txt-chngs-div1-0700.pdf.

Pennsylvania

Debbie R. Sandler
Tanya A. Salgado
White and Williams
1800 One Liberty Place
Philadelphia, PA 19103
Telephone: 215-864-6203
Email: sandlerd@whiteandwilliams.com
Email: salgadot@whiteandwilliams.com

Philadelphia Limits "Prior Salary History" Inquiries

Philadelphia has become the first city in the United States to ban salary history inquiries in the hiring process. The Commonwealth of Massachusetts made headlines in August, 2016 when it enacted the country's first salary history inquiry ban. After Massachusetts' trailblazing legislation, several cities and municipalities have proposed similar legislation, with Philadelphia being the first to enact such a prohibition. The Philadelphia City Council passed an Ordinance prohibiting employers from inquiring about prospective employee salary history, which Mayor Kenney has signed. The Ordinance will take effect on May 23, 2017.

The legislation amends Philadelphia's Fair Practices Ordinance and makes it an unlawful employment practice for an employer to do any of the following:

- inquire about, or require disclosure of, a prospective employee's wage history;
- condition employment or consideration for an interview or employment on disclosure of wage history;
- retaliate against a prospective employee for failing to comply with a wage history inquiry, or for otherwise opposing unlawful conduct under the ordinance; or
- rely on the wage history from the prospective employee's current or former employer in making a wage rate determination, at any stage in the employment process, including the negotiation or drafting of an employment contract. The Ordinance provides an exception to this prohibition, in cases where the applicant "knowingly and willingly discloses his or her wage history to the employer."

The Ordinance provides an exception in cases where a federal, state or local law specifically authorizes the disclosure or verification of wage history for employment purposes.

The stated purpose of the new ordinance is to address persistent gender wage discrimination. Since women typically earn less than men, it is believed that basing wages upon an applicant's prior wage rate will perpetuate gender-based wage inequalities. The Ordinance is intended to address the gender wage gap by ensuring that salary offers are based upon job responsibilities, and not on the applicant's salary history.

Individuals aggrieved by an alleged violation will have the opportunity to file a complaint with the Philadelphia Commission on Human Relations, the agency tasked with enforcing the Fair Practices Ordinance. The Fair Practices Ordinance provides for remedies for unlawful employment practices, including equitable relief, compensatory damages, punitive damages, and attorneys' fees and costs.

Rhode Island

Timothy M. Bliss
Attorney at Law
Center Place
50 Park Row West, Suite 101
Providence, RI 02903
Telephone: 401-274-2100
Email: tblisslaw@gmail.com

Employees Under Subpoena (2016 R.I. Pub. Laws ch. 48, §1, ch. 51, §1)

Effective June 6, 2016, an employer is prohibited from taking any adverse action against an employee based on a duly-served subpoena requiring him or her to provide evidence or testimony. The law does not require the employer to compensate the employee for work time missed due to compliance with the subpoena, but it does create a cause of action for actual damages, compensatory damages and attorneys' fees against an employer that violates the statute.

Payment of Wages (2016 R.I. Pub. Laws ch. 435, §§1, 2, ch. 436, §2)

Effective July 12, 2016, the definition of "employee" contained in the Payment of Wages Act was amended to include any individual "suffered or permitted to work" by an employer.

In addition, the amended statute requires any employer found guilty of a violation of the Act to pay all wages and fines assessed within thirty (30) days of the final judgment or its business license will be subject to revocation. Finally, the amendment creates a private right of action for double damages, plus attorneys' fees and other litigation expenses on the part of any person aggrieved under the statute.

Payment of Wages (2016 R.I. Pub. Laws ch. 501, §1)

Effective July 20, 2016, an employer is prohibited from deducting any amounts not required by federal or state law or court order from wages paid to any employee without written or electronic authorization. Furthermore, an employer that violates the statute is liable to the employee for treble damages of the amount unlawfully deducted.

South Carolina

Franklin G. Shuler, Jr.
Turner, Padget, Graham & Laney, P.A.
1901 Main Street, Suite 1700
Columbia, SC 29201
Telephone: 830-227-4242
Email: fshuler@turnerpadget.com

Purchase of Service Credit by State Employees (SC Code Ann. §8-11-620)

This amendment relates to the leave and lump-sum payments upon termination of employment, to provide that certain active members of the S.C. Retirement System (SCRS) or the S.C. Police Officers Retirement System (SCPORS) who are terminated within one year of retirement eligibility shall have five days after termination to purchase service credit. The Act was ratified on June 2, 2016, and approved by the Governor on June 3, 2016, at which time it became effective.

Teacher Retention and Dismissal (SC Code Ann. §§59-25-410, 420, 460)

SC Code Ann. §59-25-410 establishes the annual deadline by which public school districts must notify teachers of their employment status for the ensuing year. The deadline was extended to May 1. The Act also amended §59-25-420 to establish May 11 as the day by which a teacher must notify the school district of the acceptance of the teaching contract. Finally, the Act amended §59-25-460, which establishes the procedure for terminating a teacher, to provide that the hearings are evidentiary hearings and that the hearings may be conducted by school boards or their designees; establishes required qualifications for board designees; provides for preliminary meetings at which parties and their representatives may discuss alternative resolution; revises the process for districts to adopt certain policies concerning their dismissal procedures; and provides miscellaneous requirements concerning the conduct of hearings and related matters. The Act was ratified on June 2, 2016, and became law without the signature of the Governor on June 8, 2016.

South Dakota

Lisa K. Marso
Boyce Law Firm, L.L.P.
300 S Main Avenue
P.O. Box 5015
Sioux Falls, SD 57117-5015
Telephone: 605-336-2424 or 605-731-0209
Email: lkmarso@boycelaw.com

Veteran's Preference

Effective July of 2016, SDCL 3-3-1 to 3-3-8 now requires interviews for any job applicant who is a veteran (as defined in law) and who meets the minimum requirements of the position opening in a public employment position.

Minimum Wage

Effective January 1, 2017, the state minimum wage increased from $8.55 per hour to $8.65 per hour. (For tipped employees, it increased from $4.275 per hour to $4.325 per hour.) The South Dakota Department of Labor may yearly increase the state minimum wage, with changes to go into effect the following January.

Garnishment

Effective July 2016, pursuant to SDCL 21-18-51, the maximum amount that may be garnished from an employee's wages for any workweek is limited to the lesser of:

- 20% of disposable earnings for that week; or
- The amount by which disposable earnings for that week exceed 40 times the federal minimum wage, or the applicable state minimum wage if that amount is greater or, in the case of earnings for any pay period other than a week, any equivalent multiple thereof under South Dakota regulations, in effect at the time the earnings are payable, less $25 a week for each dependent family member residing with the employee who is subject to the garnishment.

The new law also changed the definition of "earnings" to exclude payments made as a part of "a pension or retirement program." This change does not apply to a court-ordered support or to any order of any court of bankruptcy under Title 11 of the United States Code.

Tennessee

Dale Conder, Jr.
Rainey Kizer Reviere & Bell PLC
Jackson Office
209 East Main Street
Jackson, TN 38301
Telephone: 731-426-8130
Email: dconder@raineykizer.com

Mandatory E-Verify Usage for Larger Employers (2016 Tenn. Pub. Acts 828)

Tennessee employers have had the option of using E-Verify or requesting and retaining certain documents to prove eligibility. Tennessee amended the Tennessee Lawful Employment Act to compel employers with 50 or more employees to use E-Verify. This change became effective on January 1, 2017, and applies only to employees hired on or after January 1, 2017. 2016 Tenn. Pub. Acts 828; Tenn. Code Ann. §50-1-703.

Criminal Background Checks (2016 Tennessee Laws Pub. Ch. 813)

In Tennessee, the state and any agency, authority, branch, bureau, commission, corporation, department, or instrumentality of the state can ask about the applicant's criminal history only for covered positions and only if the announcement includes a notice informing the applicant of the necessity of a criminal-background check. Covered positions are those positions for which a criminal-background check is required by federal law or for which the commission of an offense is a disqualifying event under federal or state law. For non-covered positions, a background check is allowed only after the initial screening of applicants, and the employer must give the applicant an opportunity to explain the criminal history. Tenn. Code Ann. §8-50-112.

Employees Must Give Notice of Work-Related Accident Within 15 Days of Its Occurrence (2016 Tenn. Laws Pub. Ch. 1056)

Effective July 1, 2016, an amendment decreases the period in which an employee must give notice of a work-related accident to his or her employer from 30 days after the accident to 15 days after the accident. An employee who fails to provide timely notice is barred from receiving compensation. Tenn. Code Ann. §50-6-201(a)(1).

Garnishment (2016 Tenn. Laws Pub. Ch. 851)

Effective September 2016, the legislature amended Tenn. Code Ann. §26-2-214 to expand employment relationships subject to garnishment. The change from "employer garnishee" to "garnishee" now covers independent contractors and was in response to a court of appeals opinion that held "employer garnishee" did not include the independent contractor relationship. And the amendment changed references to "salaries, wages or other compensation" to "earnings." Tenn. Code Ann. §26-2-214.

Texas

James W. Henges
Hicks Thomas LLP
Houston – Beaumont – Austin – Amarillo – Sacramento
Beaumont Office
2615 Calder Avenue, Suite 720
Beaumont, TX 77702
Telephone: 409-241-7252
Email: jhenges@hicks-thomas.com

Texas has a biennial legislature, which does not meet in years ending with even numbers – like 2016. Notwithstanding the lack of activity from the Texas Legislature, two federal district courts located within Texas issued significant injunction orders having a nationwide impact by barring the implementation of two different sets of regulations promulgated by the United States Department of Labor. Additionally, the "Ban the Box" movement took hold in Austin as the Austin City Council enacted an ordinance restricting questions about prior convictions in hiring and promotions. Both opponents and proponents of using criminal histories in the hiring and promotion process will take this fight to 85th Session of the Texas Legislature set to begin on January 10, 2017.

Injunction Barring Implementation of Overtime Rules

Throughout 2016, employers across the country had been preparing for the implementation of regulations promulgated by the Department of Labor affecting exemptions to the overtime pay requirements of the Fair Labor Standards Act. These regulations would have increased the "salary basis" that must be paid to an employee as part of his salary before an employer could declare the employee as exempt under the Fair Labor Standard Act (those exemptions being primarily for highly compensated employees, professionals, executives, administrative employees, those in outside sales, and computer professionals). On November 22, 2016, the United States District Court for the Southern District of Texas issued a temporary injunction in the case of *State of Nevada, et al v. United States Department of Labor, et al*, case 4:16-CV-00731, in which the Court enjoined the implementation of the revised regulations issued by the Department of Labor governing overtime.

Injunction Barring Implementation to Changes of the LMRA Reporting Requirements

Earlier in 2016, employers had been preparing for the implementation of regulations expanding the reporting requirements of the Labor Management Relations Act for so-called "Persuader Activities." The revised regulations would have narrowed the scope of advice deemed as "exempt" from the reporting requirements. In the case of *National Federation of Independent Businesses, et. al., v. Perez*, case 5:16-CV-0066-C, the Federal District Court for the Northern District of Texas issued a nationwide temporary injunction barring the implementation of the regulation on June 27, 2016, and a nationwide permanent injunction on November 16, 2016.

"Ban the Box" Gains a Foothold in Texas

The "Ban the Box" movement also took hold in one major Texas city. On March 24, 2016, the Austin City Council passed its version of a "Ban the Box" ordinance entitled "The Fair Chance Hiring Ordinance." The Ordinance prohibits covered employers from asking questions about or considering an applicant's criminal history until after making a conditional offer of employment. The Ordinance applies to any "person, company, corporation, firm, labor organization, or association that employs at least fifteen individuals whose primary work location is in the City [of Austin] for each working day in each of 20 or more calendar weeks in the current or preceding calendar

year." It also applies to "an agency acting on behalf of an employer." However, the ordinance excludes state and federal employees from coverage and Section 501(c) nonprofit organizations.

The Ordinance makes it unlawful for any covered employer to solicit criminal history information about an applicant or consider an applicant's criminal history unless the employer has first made a conditional employment offer to the applicant, which is "conditioned solely on the employer's evaluation of the individual's criminal history." Additionally, employers are prohibited from the following:

- Publishing information about a job stating or suggesting that an applicant's criminal history automatically disqualifies the applicant from consideration for the job.
- Soliciting or otherwise inquiring about the criminal history of an applicant in an application for a job covered by the Ordinance.
- Refusing to consider an applicant who submits an application in a covered job because the applicant did not respond to inquiries over criminal history that were made before the applicant received a conditional employment offer.

The Ordinance also prohibits an employer from taking adverse action against an applicant based on their criminal history unless the employer has a "good faith belief that the applicant is unsuitable for the job based on an individualized assessment conducted by the employer." In conducting this assessment, employers must consider, at a minimum, the nature and gravity of any offenses in the applicant's criminal history; the length of time since the offense and completion of the sentence; and, the nature and duties of the job for which the applicant has applied.

An employer who takes adverse action against an applicant because of criminal history must inform the applicant in writing that the adverse action was based on the applicant's criminal history. The term "adverse action" includes the refusal to promote.

The Ordinance does not provide a private right of action for a rejected applicant against a covered employer. An aggrieved applicant may file a complaint with the Equal Employment/Fair Housing Office no later than 90 days after the date on which the applicant receives knowledge of the alleged violation, but in no event later than one year from the date of the alleged violation. Violations that occur during the first year will result in a written notice. After the first anniversary, an employer that fails to cure a violation of the ordinance by the end of the tenth business day after the day the employer receives written notice of the violation is liable for a civil penalty of $500. For first-time violations, the Office may instead issue a warning if the employer attends an appropriate training session about compliance with the ordinance.

"Ban the Box" will likely be a hot topic at the upcoming session of the Texas Legislature. There is already discussion of legislation that would prohibit cities such as Austin from enacting ordinances of this type. Bills have also been submitted for consideration in the upcoming legislative session that will prohibit certain inquiries into a job applicant's criminal history.

Utah

Christina M. Jepson
Parsons Behle & Latimer
201 South Main Street, Suite 1800
Salt Lake City, UT 84111
Telephone: 801-536-6820
Email: cjepson@parsonsbehle.com

Non-Compete Legislation (HB 251)

Entitled the Post-Employment Restrictions Act, this law applies to any non-compete agreements entered into starting May 10, 2016. Utah Code Ann. 34-51-101 to 301. After this date, non-compete agreements cannot exceed one year. If an agreement is over the one-year limitation, the agreement is "void" suggesting that a court cannot fix the agreement by limiting it to one year.

Also, if an employer tries to enforce a non-compete which is invalid, the employer is liable to the employee for arbitration costs, court costs, and/or attorneys' fees.

Besides including non-competes in agreements with employees, companies often include strong non-competes in two other situations: (1) when a company is paying severance to a departing employee; and (2) when a company buys a business and wants to make sure the prior owners do not compete. The new law is muddy when it comes to the issue of non-competes in the sale of a business or in a severance agreement. The statute says that it does not "prohibit a reasonable severance agreement … that includes a post-employment restrictive covenant." Similarly, the statute provides that it "does not prohibit a post-employment restrictive covenant related to or arising out of the sale of a business…" But the statute does not say whether the one-year limitation applies to severance agreements or in the sale of a business (which involves ongoing employment).

The legislature may address these ambiguities and other issues with the non-compete law in the 2017 legislative session.

Pregnancy Accommodation Legislation (SB 59)

In 2016, the Utah Legislature also passed a law requiring accommodation of pregnant or breastfeeding employees, effective May 10, 2016. Utah Code Ann. 34A-5-106. It amends the Utah Antidiscrimination Act to also require any employer of 15 or more employees to accommodate pregnancy, childbirth, breastfeeding, and related conditions if it is "medically advisable."

Employers are also required to provide written notice concerning an employee's rights to reasonable accommodations (a) in an employee handbook or (b) posted in a conspicuous place in the employer's place of business.

An employer may require certification from an employee's healthcare provider of the "medical advisability" of the requested accommodation. The certification only needs to provide the date the accommodation becomes medically advisable, the probable duration of the accommodation, and an "explanatory statement" as to the medical advisability.

An employer cannot refuse a request for a reasonable accommodation unless it can show undue hardship, which is defined as significant difficulty or expense in relation to the size, financial resources, nature, and structure of the operation.

An employee who is denied a reasonable accommodation may file a charge of discrimination with the Utah Labor Commission and seek damages available under the Utah Antidiscrimination Act, which include reinstatement, back pay and benefits, attorneys' fees, and costs.

Vermont

Brian P. Monaghan
Monaghan Safar Ducham PLLC
156 Battery Street
Burlington, VT 05401
Telephone: 802-660-4735
Email: bmonaghan@msdvt.com

The Vermont Legislature passed the following acts related to employment law in the 2016 Legislative Session.

Criminal Record Inquiries by an Employer (H.261)

Vermont has joined a number of other states in enacting so-called "Ban the Box" legislation. This act prohibits employers from inquiring about criminal convictions on an initial employment application. However, employers remain able to make such inquiries at an interview or at a later time once a prospective applicant has been deemed otherwise qualified for the position. An exception to the prohibition against initial inquiry exists for any employer that is hiring for a position for which federal or state law places restrictions on the hiring of individuals with criminal convictions. Penalties for violation of the law include a civil penalty of up to $100.00 per violation. In addition, an aggrieved person has the right under Vermont's Fair Employment Practices Act to file a private right of action and to seek compensatory and punitive damages, costs, reasonable attorney's fees, and other appropriate relief. The statute, 21 V.S.A. §495j, takes effect on July 1, 2017.

Absences From Work for Health Care and Safety (H.187)

This act provides "earned sick time" (EST) guarantees to certain employees. Under the Act, an employee qualifies for EST if he or she works at least 18 hours per week on average, and works at least 21 weeks per year. An employer must provide qualifying employees with at least 24 hours per year of EST from January 1, 2017 to December 31, 2018, and at least 40 hours of EST per year thereafter. The Act allows the employer to maintain an earned time off (ETO) system and to count any ETO hours granted to employees for the purpose of the EST minimum requirements. The Act also allows employers to impose a waiting period whereby qualifying part-time employees accrue EST, but may only use the EST after December 31, 2017. The Act is codified at 21 V.S.A. §§481 *et seq*.

Safety Policies for Employees Delivering Direct Social or Mental Health Services (H.74)

This act calls for the Secretary of Human Services to establish and maintain a written workplace violence prevention and crisis response policy for employees delivering direct social or mental health service, and sets forth minimum requirements for the policy. The Agency of Human Services will require that all providers under contract with the Agency enact their own written workplace violence prevention and crisis response policies that adhere to the requirements under the chapter. The policy requirements set forth under the chapter include: (1) notice by a provider of response measures that it will take in the event of workplace violence; (2) a system for centrally recording all incidents or credible threats of workplace violence; (3) a training program to educate employees on workplace violence; (4) the establishment of a violence prevention and crisis response committee to monitor compliance with policy; and (5) annual reevaluation of the policy. The Act is the legislative response to employee requests for greater legal protections following the shooting death of a state social worker by a supervisee.

Removal of Grievance Decisions From the Vermont Labor Relations Board's Website (H.111)

This act requires the Vermont Labor Relations Board to redact the name of any grievant the Board exonerates in any issued grievance decision. Further, the Act requires the Board to adopt rules on or before January 1, 2017, that allow a grievant, who was disciplined for misconduct, grieved to the Board, and eventually exonerated by the Board, to petition the Board to redact his or her name from the version of the Board's decision that is posted on the Board's website. The grievant can only do this if the decision was issued after December 31, 1994.

Virginia

Elaine I. Hogan
Crenshaw, Ware & Martin, PLC
150 West Main Street, Suite 1500
Norfolk, VA 23508
Telephone: 757-623-3000
Email: ehogan@cwm-law.com

Wage Penalty Amendments (HB 11501/Va. Code §40.1-29)

Virginia amended this law related to the penalty to be imposed upon employers for failure to pay wages to clarify that wages owed to more than one employee may be aggregated in determining whether an employer's willful failure to pay wages is a misdemeanor or felony (less than $10,000 in unpaid wages is a misdemeanor; over $10,000 in unpaid wages is a Class 6 felony).

Amendments Related to Criminal History Background Checks in Certain Places of Employment (SB 278/Va. Code §63.2-1720)

Virginia amended its law related to criminal history background checks of employees at assisted living facilities, adult day care centers, child welfare agencies, or family day homes to address continued employment of individuals convicted of an offense. The law now states that an assisted living facility, adult day care center, or child welfare agency licensed or registered in accordance with the chapter, or family day home approved by family day systems shall not hire for compensated employment or continue to employ persons who have committed certain offenses as defined under the law.

Amendments Related to Workplace Safety and Reporting Requirements (HB 691/ Va. Code §40.1-51.1)

Virginia amended its law related to workplace safety to extend from 8 to 24 hours the time period within which an employer is required to notify the Virginia Department of Labor and Industry of any work-related incident resulting in hospitalization, amputation, or loss of an eye.

Amendments Related to Overtime Compensation for Fire Protection Employees (SB 704/Va. Code §9.1-700)

Virginia amended its law to expand the definition of "fire protection employee" for purposes of determining eligibility for overtime compensation.

Health Benefit Plans Amendments (HB 58/Va. Code §§38.2-3406.1, 38.2-3431, and 38.2-3551)

Virginia amended its laws related to health benefit plans to delete provisions that changed the definition of "large employer" as of January 1, 2016 for the purposes of a group health plan or health insurance coverage, from an employer who employed an average of more than 50 employees to an employer who employed more than 100 employees during the preceding calendar year. The definition of "small employer" was also revised to include employers who employ an average of 50 or fewer employees, which was the threshold for delineating large from small employers prior to January 1, 2016.

Washington

Brian Keeley
Schlemlein Goetz Fick & Scruggs, PLLC
66 South Hanford Street, Suite 300
Seattle, WA 98134
Telephone: 206-268-8100
Email: bkk@soslaw.com

State-Wide Minimum Wage Increase, and City Minimum Wage Increases

In November 2016, the voters of the State of Washington approved Initiative 1433, raising Washington's state-wide minimum wage. The minimum wage in the state increased to $11.00 per hour effective January 1, 2017, $11.50 per hour effective January 1, 2018, $12.00 per hour effective January 1, 2019, $13.50 per hour effective January 1, 2020, and adjusted for inflation after that. Tips, gratuities, and automatic service charges are all excluded from the minimum wage owed.

Under previously passed city ordinances, three Washington cities have minimum wages that differ from the new state minimum wage. In Seattle, the four-tiered minimum wage effective January 1, 2017, is as follows: For Large Employers (with more than 500 employees): $13.50 per hour if the employer pays toward medical benefits and $15.00 per hour if the employer does not pay towards medical benefits. For Small Employers (with 500 or fewer employees): $11.00 per hour if the employer pays at least $2.00 per hour toward medical benefits or the employee earns at least $2.00 per hour in tips, and $13.00 per hour if the employer does not sufficiently pay toward medical benefits or the employee does not earn sufficient tips.

In the City of SeaTac, in an annual adjustment for inflation, the minimum wage increased to $15.34 effective January 1, 2017. This minimum wage applies to hospitality and transportation employees within the city. This city minimum wage first went into effect on January 1, 2014, after voters in the City of SeaTac approved it in the November 2013 election.

In Tacoma, voters in November 2015 approved a city minimum wage. The minimum wage increases to $11.15 per hour effective January 1, 2017, and will increase to $12.00 per hour effective January 1, 2018, and adjust by inflation after that.

The state-wide minimum wage does not preempt city minimum wages, so employers with employees in these three cities should evaluate employee pay to ensure compliance with both city and state minimum wage laws.

State-Wide Paid Sick and Safe Leave

Initiative 1433 also included requirements for providing paid sick and safe leave on a state-wide basis. These requirements will not become effective until January 1, 2018, giving employers time to adjust leave policies to

ensure compliance with the state law. The requirement applies to all employers, regardless of size. Employees accrue paid sick leave at the rate of 1 hour for every 40 hours worked, with no cap on accrual. Employees may use leave for medical reasons for themselves or a family member, for certain business or school closures, or for domestic-violence-related issues. There is no cap on usage. Employees may carry over 40 hours of leave from one year to the next. Employers may require medical verification for certain uses of leave.

Some of the provisions of the new state-wide sick leave law conflict with, or are at least inconsistent with, city requirements for paid sick or safe leave of cities such as Seattle, SeaTac, Tacoma, and Spokane. The Washington State Department of Labor and Industries, which will be responsible for enforcing the new law, has not yet published proposed regulations, but is expected to do so during 2017.

Paid Sick and Safe Leave—Spokane

In early January 2016, the City of Spokane passed an ordinance requiring employers to provide paid sick and safe leave to employees who work within the city. The ordinance became effective January 1, 2017. It applies to all employers, regardless of size. Employees accrue paid sick leave at the rate of 1 hour for every 30 hours worked, with no cap on accrual. Employers may cap use of leave: employers with 10 or more employees may cap use at 40 hours per year, and employers with fewer than 10 employees may cap use at 24 hours per year. Employees may carry over up to 24 hours of leave from year to year.

Employers with employees in Spokane will want to review leave policies now to ensure compliance with the city requirements, but also to ensure compliance with the state requirements that will go into effect January 1, 2018, as some of those state requirements conflict with city requirements.

Gender Identity Regulations, Including Restroom Use (WAC 162-32-060)

At the very end of December 2015, the Washington State Human Rights Commission (HRC) (the state agency that enforces employment-discrimination and other laws) issued new regulations regarding gender identity as a protected status. The HRC had already long treated gender identity as a protected characteristic, and the state legislature had amended the Washington Law Against Discrimination in 2006 to include gender identity as a protected characteristic, so this does not represent a change in Washington law on this issue. It does, however, elevate the HRC's treatment of gender identity as a protected characteristic to the regulation level. These new regulations reflect that clarity and may telegraph the HRC's intent to focus on this area in the future for enforcement purposes.

The new regulations require employers to allow employees to use available medical leave to address medical or healthcare needs related to the employee's gender expression or gender identity, and must treat such medical or health-related issues in the same way as it treats other medical or health-related issues (such as allowing employees to utilize disability leave to address such issues). Employers are required to provide reasonable accommodations for disabilities related to an employee's gender expression or gender identity, such as allowing leave for gender reassignment surgery. The new regulations codify commonly understood standards of harassment and articulate certain conduct that will be construed as harassment, including deliberately misusing a person's preferred name or gender-related pronoun.

The new regulations include a "restroom" provision. WAC 162-32-060. This regulation applies to employers and all public facilities, and governs restrooms, locker rooms, dressing rooms, and other similar areas. Entities (including employers) that provide such gender-segregated facilities must allow all persons to use the facility consistent with that person's gender identity or gender expression, and cannot ask or require the individual to use a facility inconsistent with their gender identity or gender expression, or to use a gender-neutral facility.

These new regulations became effective in late December 2015. Though some state legislators discussed proposing state statutes that would unwind these regulations, no such legislation was passed in the 2016 legislative session. Proponents of a proposed voter initiative to unwind these regulations did not obtain enough signatures for it to appear on the state-wide ballot, so it was not presented to the state voters during the November 2016 election. In late 2016, some state legislators prefiled a bill to allow public and private entities to prohibit individuals from using a restroom or similar facility inconsistent with that person's genitalia (similar to the proposed legislation that did not pass in the 2016 session). As of the end of 2016, however, the regulations remain in effect.

Secure Scheduling Ordinance—Seattle

The City of Seattle passed a "Secure Scheduling Ordinance" in 2016 that takes effect July 1, 2017. The scheduling ordinance applies only to retail or fast-food businesses with 500 or more employees worldwide (regardless of how many employees the business employs in Seattle) and to full-service restaurants with 500 or more employees worldwide and 40 or more full-service restaurant locations worldwide (regardless of how many employees or restaurant locations the business has in Seattle).

The scheduling ordinance requires employers to provide a good-faith estimate of average hours, including on-call shifts, to employees when they are hired. If employees request a schedule preference to address caring for a family member, working another job, or attending school, the employer must engage in an interactive process to discuss the request, and must grant any request related to a major life event unless it has a bona fide business reason to deny the request.

Employers must post schedules 14 days in advance. If an employer adds hours to the schedule after it is posted, it must pay the employee one additional hour of pay. If an employee is scheduled for a shift and sent home early, the employer must pay for half of the hours not worked. Employers must pay employees for one half of any shift for which the employee is on call but not called into work. If there are fewer than 10 hours between the end of an employee's closing shift and the start of the employee's next opening shift, the employer must pay the employee on a time-and-a-half basis for the difference.

And employers must offer additional hours of work to qualified existing employees before hiring new employees, contractors, or temporary employees (unless doing so would require the employer to pay overtime rates).

Hotel Employees Health and Safety—Seattle

In November 2016, voters in the City of Seattle passed an ordinance adding requirements designed to increase safety for hotel employees within the city. Those requirements went into effect on November 30, 2016.

Safety requirements: Employees who work alone in guest rooms must be provided a panic button. Hotel employers must record all accusations that a guest has committed an act of violence or sexual harassment against an employee, and must keep a list of such guests and records about the accusations for at least 5 years. Hotel employers must decline service for three years to any such guest when an accusation is supported by a statement made under penalty of perjury or other evidence. Hotel employers must notify employees who work alone in guest rooms if any such guest is staying in the hotel.

Health requirements: Hotel employers must provide safety precautions to ensure a safe workplace, must control chemical agents to reduce employee hazards, and must provide employees with information about hazardous chemicals (though it is unclear whether or how this differs from existing federal or state health requirements). Hotel employers with 100 or more guest rooms or suites may not require a housekeeping employee to clean more than 5,000 square feet of floor space in an 8-hour workday. For 10 or more strenuous room cleanings in an 8-hour

workday, this maximum floor space is reduced by 500 square feet for each strenuous room cleaning. For work days of less than 8 hours, this maximum floor space is prorated based on actual hours worked cleaning guest rooms. If an employee performs cleaning above this maximum floor space, the hotel employer must pay the employee one and one-half times the employee's regular rate of pay for all time worked cleaning guest rooms that day.

In addition, hotel employers with 100 or more guest rooms or suites must either provide full-time employees with a specified level of health and hospital coverage or additional compensation calculated based on the cost of the employee obtaining that health and hospitalization coverage on the Washington State Health Benefit Exchange.

Finally, the ordinance includes protections for employees who work at hotels when the ownership of the hotel changes hands. Hotel employers must provide employees with advance notice of a change in control (ownership) of the hotel, must provide preferential hiring to existing employees of a change of control, must provide a 90-day transition period to former employees hired by a new owner, and must provide a written performance evaluation after 90 days to former employees hired by a new owner.

Stepped-Up Enforcement Employee Protection Ordinances—Seattle

Finally, in December 2015, the City of Seattle passed a "harmonization" ordinance with the intention of eliminating phrasing and other minor inconsistencies in the various employment ordinances that have taken effect in Seattle over the past few years (paid sick leave, background checks, minimum wage, and wage theft). In addition to such harmonization, this ordinance increased penalties for employers for violations of these ordinances and added a private right of action for employees for alleged violations of them. This ordinance also makes it easier for employees to prove certain violations by creating rebuttable presumptions of retaliation whenever an adverse employment action is taken within 90 days of an employee's protected activity and requiring the employer to provide "clear and convincing" evidence to rebut the presumption. Separately, the Seattle Office of Labor Standards, which enforces these ordinances, publicly stated that it would not impose penalties for many violations of these ordinances through September 30, 2016, and would instead address violations through employer education. Starting October 1, 2016, however, the OLS began imposing penalties for violations.

West Virginia

Robert J. Kent
Bowles Rice LLP
501 Avery Street, 5th Floor
Parkersburg, WV 26101
Telephone: 304-420-5504
Email: rkent@bowlesrice.com

Repeal of Prevailing Wage Rate (HB 4005)

This Act repealed the prevailing wage rate provisions (particularly WV Code §21-5a-1 through §21-5a-12) previously applicable to the construction industry regarding state projects. It was passed on February 4, 2016, and became effective on May 4, 2016.

West Virginia Workplace Freedom Act (SB 1)

This Act amended and added various sections to Chapter 21 of the WV Code, most significantly adding WV Code §21-5g-1 through §21-5g-7. It eliminates the statutory provisions that allowed an employment agreement to require membership in a labor organization as a condition of employment. The Act grants employees the right to refrain from paying any dues, fees, assessments, or other similar charges to a labor organization as a condition or

continuation of employment, and prohibits any requirement that an employee do so. It eliminates statutory provisions that allowed, as an exception to the prohibitions against unfair labor practices by an employer, an employment agreement to require membership in a labor organization as a condition of employment. It eliminates statutory provisions that allowed an employer to justify discrimination against an employee for non-membership in a labor organization in certain circumstances. It creates a criminal offense for any person who knowingly requires another person, as a condition or continuation of employment, to perform any conduct prohibited by the West Virginia Workplace Freedom Act; and provides criminal penalties as well as civil relief. It establishes a civil cause of action for recovering damages, including compensatory and punitive damages, costs and attorneys' fees, injunctive relief, or other appropriate equitable relief against any person or persons violating or threatening to violate the West Virginia Workplace Freedom Act.

This bill passed on February 5, 2016, and went into effect on May 5, 2016. However, on August 10, 2016, as a result of a lawsuit filed by 11 labor unions, the Circuit Court of Kanawha County, West Virginia, issued a preliminary injunction halting the further enforcement of the Act. That injunction is still in effect. A hearing on a permanent injunction was held on December 2, 2016, and a decision by the Circuit Court is expected in 2017. Due to the significance of the issue, it is likely that the losing party will then file a notice of appeal with the West Virginia Supreme Court of Appeals.

Military Re-Employment (SB 484)

This Act amended and reenacted WV Code §15-1F-8, relating to reemployment rights of military personnel. It extended reemployment rights protection to members of the organized militia in the active duty of another state. It was enacted on March 9, 2016, and went into effect on June 7, 2016.

Veterans Priorities and Preferences (HB 4507)

This Act amended and reenacted WV Code §5-11-9 of the WV Human Rights Act, and added a new section, designated §5–11–9a, relating to the voluntary granting of preference in hiring to veterans and disabled veterans by employers, providing that the veteran, or disabled veteran, meets the knowledge, skill and eligibility requirements of the job. It also defined the term "veteran" and clarified the fact that the preference does not violate state equal employment opportunity law. It was enacted on March 12, 2016, and became effective on June 10, 2016.

Internet Privacy Protection (HB 4364)

This Act added a new article, designated §21–5H–1, relating to employee personal social media. It prohibits an employer from requesting or requiring that an employee or potential employee disclose any user name, password, or other authentication information for accessing a personal account. It also prohibits an employer from requesting or requiring that an employee or potential employee access his or her personal account in the employer's presence. It also sets forth permissible actions for an employer to take, and specifies required action when an employer inadvertently receives an employee's or potential employee's username, password, or other authentication information. It also sets forth circumstances under which an employer is liable for having that information, sets forth authority and obligation of an employer to investigate complaints, allegations, or the occurrence of sexual, racial, or other harassment, and defines the term "personal account." It was enacted on March 12, 2016, and became effective on June 10, 2016.

Concealed Carry/Firearms (HB 4145)

While this bill does not directly address employers, it is clearly of interest to many employers. Most importantly, the bill amended and reenacted §61-7-7, which permitted any person to carry a concealed deadly weapon

without a license therefor who is: (1) at least 21 years of age; (2) a United States citizen or legal resident thereof; (3) not prohibited from possessing a firearm under the provisions of this section; and (4) not prohibited from possessing a firearm under the provisions of 18 U. S. C. §922(g) or (n). In addition to having amended and reenacted §61-7-7, it also repealed WV Code §20-2-6a and amended and reenacted §61-7-3, §61-7-4, §61-7-6, and §61-7-11a; and amended, by adding three new sections, designated §61-7-4a and §61-7-15a and §61-7-17. It did not disturb §61-7-14, which allowed, and still allows, "any owner, lessee or other person charged with the care, custody and control of real property" to prohibit the "carrying openly or concealing of any firearm or deadly weapon on property under his or her domain…" It was enacted on February 24, 2016, and became effective on May 24, 2016.

Wisconsin

Laurie E. Meyer
Davis & Kuelthau, S.C.
111 E. Kilbourn Avenue, Suite 1400
Milwaukee, WI 53202
Telephone: 414-225-1419
Email: laurie.meyer@dkattorneys.com

Leave From Employment for Bone Marrow or Organ Donation (2015 Wis. Act 345)

Wisconsin law requires employers to permit certain employees to take a period of leave for certain family health-related issues, including to care for the birth of a new child or to care for a child, parent, spouse, or domestic partner who has a serious health condition. Similarly, Wisconsin employers are required to permit certain employees to take a period of leave for certain individual health-related issues that cause the employee to be unable to perform his or her duties of employment. This law expands the circumstances under which an employer is required to permit an employee to take family or medical leave.

Under this new law, an employee who donates bone marrow or an organ may take up to 6 weeks of unpaid leave in a 12-month period. If the employee decides to take medical leave, the employee must provide advanced written verification of the purpose for the employee's leave and make reasonable effort to schedule his or her medical procedures so that the employee's absence will not unduly affect the business of the employer. The employer may then request the employee to provide certification that the employee is donating bone marrow or an organ to a recipient who has a serious health condition that necessitates the donation and that the employee has agreed to serve as the donor. The amount of leave is limited to the amount of time necessary to undergo the procedure and the time it will take the employee to recover. Upon the employee-donor's return to work, the employer must place the employee in the same or an equivalent position.

Franchisors Not Considered Employers Under State Law (2015 Wis. Act 203)

Effective as of March 3, 2016, this Act makes clear that a franchisor is not the employer of a franchisee or employee of a franchisee unless: (1) the franchisor has agreed in writing to assume the role of employer, or (2) the Wisconsin Department of Workforce Development has determined the franchisor has exercised a degree of control that is not common to franchisors.

Wyoming

Donald F. Carey
Carey Perkins, LLP.
P.O. Box 51388
980 Pier View Drive, Suite B
Idaho Falls, ID 83405-1388
Telephone: 208-529-0000
Email: dfcarey@careyperkins.com
[Licensed in Idaho and Wyoming]

Permissive Preference for Veterans in Private Employment (SF0003)

Under current Wyoming law, public employers are authorized to grant employment preference to veterans, subject to conditions specified by statute. SF0003 specifies that private employers may grant employment preference to a veteran or to the spouse of a disabled or deceased veteran. The bill specifies granting an employment preference does not violate local or state equal employment opportunity laws.

Deferred Compensation Automatic Enrollment Amendments-2 (SF0059)

Under current law, new state employees are automatically enrolled in the state deferred compensation retirement plan, but may withdraw from the plan within 90 days. An employee opting out of the plan may only withdraw the amounts the employee actually contributed, not amounts contributed by the state.

SF0059 authorizes a new state employee who opts out of the state deferred compensation retirement plan within 90 days to withdraw the employee's entire account balance, including amounts contributed by the state.

Occupational Health and Safety Act-Civil Penalties (SF0061)

Currently, Wyoming statutes specify the amount of civil penalties the Occupational Health and Safety Commission (Commission) may impose for certain violations of the Occupational Health and Safety Act. These civil penalties are based on the corresponding penalties for like violations under the federal Occupational Safety and Health Act.

SF0061 allows the Commission to set the civil penalty amounts through rule and regulation, up to the amount of the corresponding federal penalty.

Section 2 of this bill relating to the Occupational Health and Safety Commission's rulemaking authority, is effective immediately. This allows the Commission to promulgate rules prior to July 1, 2016, when the remainder of the act goes into effect.

Workers' Compensation Time for Requesting Hearing (SF0089)

This bill clarifies when a request for a hearing on a denial of worker's compensation benefits is filed. The bill clarifies that the Wyoming statutes' general provision concerning when a document is filed is applicable. The general provision is located at W.S. 16-4-301(a) and provides, among other things, that a filing by mail is considered filed on the date of the postmark.

At-Will Employment Contracts (SF0103)

In addition to full-time and part-time state employees, state agencies may utilize at-will contract employees to meet programmatic needs. On occasion, the Governor may create an at-will employee contract position when the Legislature is not in session. This bill applies to these occasions.

The bill specifies that no at-will employee contract position shall be created unless specifically authorized by legislation or approved by the Governor. The bill requires legislative review and approval for continuance of an at-will employee contract position created by the Governor. The bill specifies an at-will employee contract position shall terminate if not specifically approved by the Legislature and shall not be reauthorized in the future without prior legislative approval.