Highlights of New and Substantially Revised State Labor and Employment Laws

JULY THROUGH SEPTEMBER 2007

The following are selected highlights of new and significant developments in state law from July through September 2007. For significant developments in federal law, please contact us or refer to our recent Management *Alerts* which can be found on our web site at www.ngelaw.com. Click on "Practice Areas," then "Labor & Employment," then "Publications." Visit our blog at www.ngeemploymentlaw.com to view the latest labor and employment law developments, commentary and trends.

Notable Changes In State Law

1. Alabama

No applicable updates.

2. Alaska

No applicable updates.

3. Arizona

A. Fair Employment

Effective January 1, 2008, the Legal Arizona Workers Act will prohibit employers from intentionally or knowingly employing an authorized alien. Employers must verify the employment eligibility of employees through the Basic Pilot Program. (ARIZ. REV. STAT. § 2-2)

4. Arkansas

A. Recordkeeping/Posters

The state has updated it minimum wage poster.

Visit www.ica.state.az.us/docs/ or contact the state agency for updated poster information.

5. California

A. Fair Employment

The final sexual harassment training and education regulations have been approved by the state and became effective August 17, 2007. Employers

must ensure that their training programs are in compliance with the new regulations. (CAL. CODE REGS. tit. 2, § 7288.0(a))

6. Colorado

A. Recordkeeping/Posters

The state has updated its antidiscrimination poster.

Visit www.coworkforce.com or contact the state agency for updated poster information.

7. Connecticut

A. Fair Employment

The sexual orientation discrimination law has been amended to prohibit employment discrimination in terms, conditions or privileges of employment based on an individual's sexual orientation or civil union status. (CONN. GEN. STAT. §46a-814c)

8. Delaware

No applicable updates.

9. District of Columbia

No applicable updates.

10. Florida

A. Leave

Effective July 1, 2007, employers with 50 or more employees are required to permit employees to take up to three days off from work in any 12 month period if the employee, a family member or a household member has been the victim of domestic violence. Employees must have worked a minimum of three months and may take leave with or without pay. Employees may take time off to seek an order of protection, obtain medical or mental health care, obtain services from a victim services organization, secure their home, seek new housing and/or seek legal assistance. Except in cases of imminent danger, an employee seeking leave must provide the employer with notice as required by the employer's policy along with sufficient documentation.

Before seeking leave, employees must exhaust all annual or vacation leave, personal leave and sick leave, unless the employer waives this requirement. (FLA. STAT. §741.313)

11. Georgia

No applicable updates.

12. Hawaii

A. Leave

Effective July 1, 2007, the state FMLA law has been amended to provide employees with the option to use paid leave, including vacation, personal or family leave, for any part of the four week period used for family leave. (HAW. REV. STAT. §398-4(a))

B Plant Closing

The state has amended definitions under its plant closing law and now requires employers to notify employees of 'divestitures.' The statute also includes new penalties for failure to notify employees of a business closing. (HAW. REV. STAT. §394B-2)

13. Idaho

A. Recordkeeping/Posters

The state has updated both the English and Spanish versions of the state's minimum wage poster.

Visit http://labor.idaho.gov or contact the state agency for updated poster information.

14. Illinois

A. Fair Employment

Illinois has enacted legislation (820 ILCS 55/12) to prohibit the use of the Basic Pilot Program, or E-Verify, by Illinois employers. Effective January 1, 2008, employers are banned from enrolling in any Employment Eligibility Verification System until the Social Security Administration and Department of Homeland Security databases meet certain benchmarks. The DHS has sought a court injunction to prevent the law from going into effect.

For more information and for new developments, go to http://www.ngelaw.com/news/publications.aspx

B. Smokefree Workplace

The Smoke Free Illinois Act, which takes effect January 1, 2008, will prohibit smoking in all public places, places of employment and governmental vehicles. Smoking will not be allowed in a public place, in any place of employment or within 15 feet of any entrance to a public place or place of employment. The owner, operator, manager or other person in control of a facility must clearly and conspicuously post notices at every entrance. Notices must consist of "No Smoking" signs or the international "No Smoking" symbol, a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it. The Act prohibits discrimination in any manner because of the exercise of any rights afforded by this Act. (410 ILCS 82 et seq.)

C. Pre-employment Inquiries

The Right to Privacy in the Workplace Act has been amended to prohibit employers from enrolling in any Employment Eligibility Verification System, including the Basic Pilot program, as authorized by federal law, until the Social Security Administration and Department of Homeland Security Databases are able to make a determination on 99% of the tentative non-confirmation notices issues to employers within three days. (820 ILCS 55/12(a))

D. Recordkeeping/Posters

The state has updated its English and Spanish minimum wage poster.

Visit http://www.state.il.us/agency/idol/Posters/poster.htm or contact the state agency for updated poster information.

15. Indiana

A. Leave

Effective July 1, 2007, employers with 50 or more employees must grant leave to employees who are the spouse, parent, grandparent or sibling of a person who is ordered to active duty if the employee has worked at least 1,500 hours during the 12 months immediately preceding the day the leave begins. The employee may take a leave of absence during the 30 days before active duty orders are in effect, during a period in which the serviceperson is on leave while active duty orders are in effect or during the 30 days after the active duty orders are terminated. The leave of absence each year may not exceed a total of 10 working days. Employees may substitute any earned paid leave, except for paid medical or sick leave for Military Family leave. Employees are required to provide at least 30 days written notice unless the orders are issued less than 30 days before the requested leave. (IND. CODE 22-2-13)

B. Recordkeeping/Posters

The state has updated its minimum wage poster.

Visit http://www.in.gov/dwd/required_posters or contact the state agency for updated poster information.

16. Iowa

No applicable updates.

17. Kansas

A. Workplace Violence

The Personal and Family Protection Act allows employers to restrict or prohibit, by personnel policies, persons licensed under this act from carrying a concealed weapon while on the employer's premises or engaged in the duties of the employer. Employers may not prohibit possession of a firearm in a private means of conveyance, even if parked on the employer's property. Employers may also prohibit persons from carrying a concealed weapon into their place of business by posting a notice that carrying a concealed weapon is prohibited. (KAN. STAT. ANN. §75-7c11)

18. Kentucky

No applicable updates.

19. Louisiana

No applicable updates.

20. Maine

A. Leave

The state Family Medical Leave has been amended with three changes effective September 20, 2007:

i. Employees are now eligible for Family Medical Leave under Maine law to care for a domestic partner or the child of the employee's domestic partner.

ii. The amendment provides Family Medical Leave for spouses of an Armed Forces member who has been killed or injured while on active duty.

iii. The state's leave policy also now allows for intermittent leave as is provided under the federal FMLA.
(ME. REV. STAT. tit. 26, §§ 843 -848)

The Military and Emergency Services Leave Law, effective September 20, 2007, provides that employers with 15 or more employees must provide eligible employees up to 15 days of family military leave per deployment, if requested, either during the deployment, if the military member is granted leave, or during the 15 days immediately prior to or immediately following deployment. (ME. REV. STAT. tit. 26, §843(4))

B. Plant Closing

Effective September 20, 2007, the state has amended the plant closing law to include required notice for the closing of a business. Required notice is the same as notice previously required when a business relocated out of state. Employers who fail to comply with the severance pay requirement may receive a civil penalty of $1,000 per violation, with each affected employee considered a separate violation. (ME. REV. STAT. tit. 26, §625-B(6-A)

C. Wage Payment

Effective September 20, 2007, employers cannot require employees to pay for the cost of purchasing or laundering work-required uniforms, for the cost of any construction by and for the employer, the cost of tools of the trade and other materials and services incidental to carrying on the employer's business and other costs of furnishing facilities that are primarily for the benefit or convenience of the employer. Employers may also not deduct for items incurred by the employee in the course of the employee's work or dealing with the customers on the employer's behalf, such as cash shortages, inventory shortages, dishonored checks, dishonored credit cards, damages to the employer's property in any form or any merchandise purchased by a customer. Such items cannot be considered a 'debt' to be repaid by the employee. (ME. REV. STAT. tit. 26, § 629(2))

21. Maryland

No applicable updates.

22. Massachusetts

No applicable updates.

23. Michigan

No applicable updates.

24. Minnesota

No applicable updates.

25. Mississippi

No applicable updates.

26. Missouri

A. Posters/Recordkeeping

The state has updated its minimum wage poster.

Visit http://www.dolir.mo.gov/posters2.htm or contact the state agency for updated employment information.

27. Montana

No applicable updates.

28. Nebraska

A. Minimum Wage

The minimum wage increased from $5.15 per hour to $5.85 per hour on July 24, 2007. The minimum wage will increase again to $6.55 per hour on July 24, 2008 and to $7.25 per hour on July 24, 2009. For employees under the age of 20, employers may pay a training wage of at least 75% of the federal minimum hourly wage for 90 days from the date the employee is hired. (NEB. REV. STAT. §48-1203)

B. Recordkeeping/Posters

Effective September 1, 2008, employers are prohibited from publicly posting, displaying or otherwise making available more than the last four digits of an employee's social security number. The law specifically prohibits employers from requiring employees to use more than the last four digits of their Social Security number 1) over the Internet, unless the connection is secure or the information is encrypted, 2) to access an

Internet website, unless a password, unique personal identification number or other authentication device is also required to access the website or 3) as an employee number for any type of employment related activity. More than the last four digits of an employee's SSN may be used in the administration of personnel benefit provisions for the employer and employment screening and staffing, but not as an identification number.

The state has updated its English and Spanish versions of the minimum wage poster.

Visit http://www.dol.state.ne.us/nwd/center or contact the state agency for more information.

29. Nevada

A. Leave

Employers are now prohibited from requiring employees to use sick leave or vacation time for jury duty. Employers are also prohibited from requiring employees on jury duty to work certain hours. (NEV. REV. STAT. §6.190(1))

B. Fair Employment Practices

Effective October 1, 2007, the definition of 'disability' under the Fair Employment Practices Act will specifically include the human immunodeficiency virus (HIV). (NEV. REV. STAT. §613.310)

30. New Hampshire

A. Wage Payment

Employers are now permitted to pay employees by means of a payroll card. The employee must be able to withdraw up to and including the full amount with charge each pay period at a financial institution or other location convenient to the place of employment. Costs associated with a payroll card or payroll card account must be paid by the employer and cannot be passed on to the employee.

Effective September 11, 2007, with the written authorization of the employee, an employer may deduct from the employee's wages the cost of the following: union dues, health, welfare pension and apprenticeship fund contributions; charitable contributions; housing and utilities; savings fund payments; rental fee for non-required clothing; cleaning of uniforms; company vehicle use; medical, surgical, hospital and other group insurance benefits and required clothing not covered by the definition of 'uniform.' (N.H. Rev. Stat. §275:43)

B. Recordkeeping/Posters

The state has updated its minimum wage poster and added a new poster regarding criteria to establish an employee or independent contractor.

Visit http://www.labor.state.nh.us/mandatory_posters.asp or contact the state agency for more information**.**

31. New Jersey

No applicable updates.

32. New Mexico

No applicable updates.

33. New York

A. Leave

Effective December 13, 2007, an employer with 20 or more employees must grant three hours leave of absence in any 12 month period to an employee who seeks to donate blood. (N. Y. LAB. § 202-j)

34. North Carolina

No applicable updates.

35. North Dakota

A. Recordkeeping/Posters

The state has updated its wage and work conditions summary, and 'workforce safety and insurance important notice to employees' posters.

Visit http://www.workforcesafety.com/library/documents/posters/ImportantNoticetoWorkersPoster.pdf or contact the state agency for more information.

36. Ohio

No applicable updates.

37. Oklahoma

A. Recordkeeping/Posters

The state has updated its statutory and plain language minimum wage posters and added a Spanish version of the minimum wage poster.

Visit http://www.okdol.state.ok.us/wh/mwposternotice.htm or contact the state agency for more information.

38. Oregon

A. Leave

Effective January 1, 2008, the Oregon Family Leave Act has been amended to 1) allow employees to use paid sick leave for family leave taken under the Oregon Family Leave Act, 2) expand the term 'eligible dependents' to include care for a grandparent or grandchild and 3) exclude leave taken by an employee due to a workers' compensation injury. (OR. REV. STAT. § 659A.150(4))

39. Pennsylvania

A. Recordkeeping/Posters

The state had updated its minimum wage poster.

Visit http://www.dli.state.pa.us/landi/cwp/view.asp?a=354&q=63528 or contact the state agency for more information.

40. Rhode Island

A. Disability Law

The state has removed the June 30, 2007 repeal date for the Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act. The act prohibits employers from refusing to employ or otherwise penalize an individual solely for his or her status as a registered qualifying medical marijuana patient or registered primary caregiver. (R.I. GEN. LAWS §§21-28.6-4, 21-28.6-7)

41. South Carolina

No applicable updates.

42. South Dakota

No applicable updates.

43. Tennessee

No applicable updates.

44. Texas

No applicable updates.

45. Utah

No applicable updates.

46. Vermont

A. Recordkeeping/Posters

The state now has available the workplace smoking poster.

Visit http://www.state.vt.us/labind/Wagehour/posters.htm or contact the state agency for more information**.**

47. Virginia

No applicable updates.

48. Washington

No applicable updates.

49. West Virginia

No applicable updates.

50. Wisconsin

No applicable updates.

51. Wyoming

No applicable updates.

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