

# PUBLICATION

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## State Law Headlines: Changes You Need to Know About

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We have all seen the headlines. One of President Obama's first acts after taking office was to sign into law the Lily Ledbetter Act, which effectively reversed a United States Supreme Court decision involving the timing of lawsuits under the Equal Pay Act. Employers also know that unions are flexing their muscle after years of support of Democratic candidates and unprecedented support of President Obama's campaign for President. The unions' goal is the passage of the Employee Free Choice Act, otherwise characterized as the "card check" legislation, because it eliminates secret ballot elections now required to unionize an employer.

However, many states have made significant changes in legislation at the state level as well.

### Health Insurance

Health care and health insurance legislation is not only a hot topic at the federal level. Five states – Delaware, Illinois, Missouri, New York and North Carolina – all adopted changes which impact employer sponsored employee benefit plans. Delaware now requires insurers to cover screenings for developmental delays in infants and toddlers. Illinois provides discounts and premium reductions for health insurance plans that offer wellness coverage, which provides employers an incentive to offer wellness programs as part of their benefits package. This legislation also affects coverage for prescription drugs used to treat cancer, allowing coverage even if a particular drug, although FDA-approved for the treatment of cancer, is not FDA-approved for treatment of some specific forms of cancer. Illinois also now limits the substitution of certain immunosuppressant medications by health insurance providers unless specifically approved by the physician and the patient. In Missouri, health insurance providers and plans were also given directives on coverage for prosthetic devices, chiropractic services and mental health coverage. New York's health insurance providers are now required to provide coverage for both the seasonal flu and the H1N1 vaccinations for all covered children 19 years or younger, and the costs for the vaccines are not subject to co-payments or deductibles. And in North Carolina, the legislature authorized an insurance pilot project to pool costs for both large and small employers, aiming to reduce the number of uninsured North Carolinians and decrease health insurance costs.

### Nondiscrimination Laws

Illinois, Iowa and New York all recently expanded their fair employment practices laws, with Illinois' changes being the most comprehensive. Illinois now makes it easier for an employee to bring claims for perceived violations of the Equal Pay Act by significantly expanding the time for filing such claims and adopting a *Ledbetter* "paycheck standard" for calculating the statute of limitations. In Iowa, the Iowa Supreme Court found that a marketing director was entitled to a new trial on her pregnancy discrimination claim after she was discharged because she "could not catch up fast enough" after she returned from maternity leave. In so doing, the Court ruled that the Iowa Civil Rights Act now protects women returning from maternity leave. New York formally amended its fair employment practices law to enhance penalties for employers found to have paid an employee less than the wage to which he or she was entitled: Employers can be assessed 25% liquidated damages unless the employer proves a good faith basis for believing that its underpayment of wages complied with the law.

## Leave Laws

Illinois and Washington both made changes to their respective Family, Medical and Parental Leave laws. Illinois now provides victims of domestic or sexual violence up to eight work weeks of unpaid leave during any 12 month period to address domestic or sexual violence issues. The legislation also addresses reasonable accommodations by employers, as well as undue hardship defenses. Washington's family leave law now allows leave to be taken for the care of an employee's registered domestic partner with a serious health condition. The statute also addressed the calculation of such leave under the statute, and whether the leave runs concurrently or not.

## Still More

Six states – Hawaii, Iowa, Maine, Montana, Nebraska and Vermont – recently adopted legislation that made changes to existing laws on smoking in the workplace and public places. Arizona, Arkansas, Connecticut, Illinois and Oregon all adopted changes for recordkeeping and requirements for posters and employee notices to be displayed in the workplace. Florida, Illinois, Indiana, Iowa, Kentucky, North Carolina, Rhode Island, South Carolina, Tennessee, West Virginia and Wyoming all adopted changes to their respective state's unemployment insurance laws, primarily addressing benefit changes and/or increases in benefits. At the same time, California, Delaware, Montana, Oregon and Washington all adopted changes to their current minimum wage laws. In particular, Delaware adopted changes which prohibit an employer from mis-classifying employees as independent contractors and subjecting employers who do so and work on public works projects to potential debarment.

Baker Donelson stands ready to assist you with these and other labor and employment-related challenges. Contact any one of our nearly 70 Labor & Employment attorneys located in *Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; and Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee.*

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