Approved A W Douville 2-15-88
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry.

The meeting was called to order by Representative Arthur Douville at
Chairperson

9:08 a.m./~~p.m.~~ on January 28, 1988 in room 526-S of the Capitol.

All members were present except:
Representative O'Neal - Excused
Representative Webb - Excused

Committee staff present:

Jim Wilson, Revisor of Statutes' Office
Jerry Ann Donaldson, Kansas Legislative Research Department
Juel Bennewitz, Secretary to the Committee

Conferees appearing before the committee:

Representative Anthony Hensley, Ranking Minority Member
House Committee on Labor and Industry

Representative Arthur Douville, Chairman
House Committee on Labor and Industry

Chairman Douville called the meeting to order at 9:08 a.m.

Representative Empson made a motion to approve the minutes of the January 20, 1988, and January 21, 1988 meeting. Representative Green seconded the motion which carried.

The chairman and Representative Hensley attended the National Conference of State Legislators which was held in New Orleans, Louisiana, January 13-16, 1988. The focus of the meeting was labor issues.

Representative Hensley began with the issue of plant closures sharing the two views that were presented: labor which favored early notice and income maintenance and industry which favored voluntary notice. He shared the approach taken by the State of New York, attachment #1. The central theme of this presentation was a continuing working relationship between labor and management.

Attachment #2 is a presentation that was given on drug testing.

Attachment #3 is material that was presented on prevailing wage. Representative Hensley stated that there are changes regarding the threshold level that will be forthcoming from the federal government and those changes were discussed extensively at the conference.

Attachment #4 is an article from the Wall Street Journal regarding unemployment insurance. Attachment #5, which accompanies the article is an analysis done by a company in Maryland ranking the states.

Minimum wage was also discussed at length. Attachment #6 reflects appropriate statistics on a state by state basis along with some footnotes regarding minimum wage. The representative cited a presentation that was given on the law in Wisconsin which has a differential for minors. It was explained that Maine's minimum wage is higher because at one time one out of five workers in the state earned minimum wage. After Kansas' wage was targeted in the discussion, the chairman suggested making a motion later stating perhaps the committee could author such a bill.

Representative Hensley stated coordination of services between agencies was another area discussed at lenth. He expressed a need for thorough understanding of agency services and legislative oversight. Iowa and Illinois have programs which could be used for models.

MINUTES OF THE House COMMITTEE ON Labor and Industry,

room 526-S, Statehouse, at 9:08 a.m./p.m. on January 28, 1988

Representative Douville presented his testimony, attachment #7. He also emphasized the numbers and types of programs that are available and the need for coordination between agencies.

Representative Green asked if there was indication from the federal government regarding a direction for job training. The response was it appeared as though the responsibility would be the state's. Representative Douville went on to say that though Kansas has done an outstanding job on its job training program, there should be a way to marry it into the social welfare program. The program currently being sponsored by a representative to tie job training into the social program was cited.

Dennis Taylor, Secretary of the Department of Human Resources, was asked his opinion of combining the two above mentioned programs. He cited the grant diversion programs as a current example of SRS/DHR of interagency cooperation. The secretary predicted more will be forthcoming and predicted the government will encourage, and in some cases, mandate it. He cited two versions of current legislation in the U.S. Congress - one would designate the state labor equivalent agency or the state health and human services equivalent to administer the other would allow the governors of each state to designate which agency would administer a program. Secretary Taylor suggested input to the congressional delegation expressing the desires of the committee members.

The meeting was adjourned at 9:46 a.m. Next meeting of the committee will be February 3, 1988, 9:00 a.m.

HOUSE COMMITTEE ON
LABOR AND INDUSTRY

Guest List Date January 28, 1988

Name	City	Representing
Vernon Nikkel	Hesston, KS	Excel and IUE
Wayne Maichel	Topeka	Ks. AFL-CIO
Jim DeHoff	Topeka	Ks AFL-CIO
[illegible] Taylor	Topeka	Dept of Human Resources
[illegible]	"	" " "
Jim Hostetler	Topeka	
Bob Schmidt	Topeka	KTLA

Plant Closures

No. 55

E X E C U T I V E O R D E R

ESTABLISHING THE STATE INDUSTRIAL COOPERATION COUNCIL

WHEREAS, New York's businesses and industries are confronted by a constantly evolving technological environment, and a world marketplace characterized by rapidly changing demand and heightened competition; and

WHEREAS, to compete successfully in the marketplace, the State's businesses and industries must adapt to these changes, finding new ways to enhance productivity, improve management and attract financing; and

WHEREAS, these efforts can be most successful if the full cooperation of business, labor and government is obtained;

NOW, THEREFORE, I, Mario M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and Laws of the State of New York, do hereby establish the State Industrial Cooperation Council.

I. Membership

The Council shall consist of thirteen members appointed by the Governor and serving at his pleasure, including:

- Five members associated with major New York industries;
- Five members associated with labor organizations representing employees in private industry in the State;
- Three other members familiar with the changing needs and problems of industries in the State, one of whom shall be appointed by the Governor to serve as chairperson of the Council.

The members of the Council shall serve without compensation, but shall be entitled to reimbursement for expenses incurred in the fulfillment of their responsibilities.

II. Responsibilities

The Council shall:

1) identify and investigate issues relating to the process of industrial adaptation;

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2) identify and help develop cooperative approaches to financing industrial and economic adaptation and expansion, including prudently channeling pension funds and other institutional investments;

3) provide information and assistance for business, labor and community groups involved in industrial restructuring and reorganization, emphasizing small and mid-sized enterprises;

4) sponsor training and technical assistance programs for local economic development officials, financial institutions, busines groups, labor unions and other interested constituencies regarding new forms of management and financing, including industrial reorganization, employee ownership plans and management buyouts;

5) cooperate with the New York State Science and Technology Foundation, the Center for Industrial Innovation and other entities, to disseminate information and knowledge which will assist New York's industries in improving productivity;

6) propose cooperative programs to assist individuals and communities adversely affected by plant closings, contractions, and other changes in the economy; and

7) recommend the adoption of State policies concerning federal activities which affect the future of New York's industries.

III. Staff

The Council shall appoint an executive director. Other State agenci may provide staff and other resources as needed, subject to the approval the Director of the Budget and will cooperate as necessary.

IV. Reports

The Council shall report to the Governor on its activities no later than June 1, 1985 and annually thereafter; and shall submit such other reports as the Governor may request, or as it may deem appropriate.

G I V E N under my hand and the Privy Seal of the State in the City of Albany this seventeenth day of December in the year one thousand nine hundred eighty-four.

L/S

BY THE GOVERNOR

/s/ Mario M. Cuomo

/s/ Michael J. Del Giudice

Secretary to the Governor

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NEW YORK STATE
INDUSTRIAL COOPERATION COUNCIL

THE NEW YORK COMPACT

PREAMBLE

The NEW YORK COMPACT is a unique and historic agreement between Government, Business, and Labor. The purpose of the COMPACT is to help secure the economic future of the State's citizens. That future is being shaped by rapid economic and technological change which has created new opportunities and new challenges for Business, Labor, and Government. Dynamic strategies for investment, production, and, most importantly for the individual, economic adjustment or transition have become a necessity. It is within this context that the COMPACT was designed.

The COMPACT sets forth a series of economic adjustment measures and an agreement on work stoppages and layoffs which, through the implementation of the COMPACT, will help achieve four specific goals: alleviate the impact of shutdowns and major layoffs, help stabilize jobs and overall employment levels, enhance the climate for Business and Labor and demonstrate the value of Government, Labor, and Business working together to improve economic conditions for the State's citizens.

The COMPACT is the result of research, meetings and negotiations between representatives of Business, Labor, Government, and the Public. The forum for these discussions has been the Industrial Cooperation Council (Appendix 1) but their antecedents can be found in many previous discussions, studies, task forces, and even conflicts among Business, Labor and Government over the difficult issues arising from our changing economic conditions. The factual basis for the COMPACT is found in Appendix 3.

I. ECONOMIC ADJUSTMENT MEASURES TO STABILIZE EMPLOYMENT AND LESSEN THE IMPACT OF SHUTDOWNS AND MAJOR LAYOFFS

It is the consensus of Business, Labor, representatives of the Public, and State Government that the impact of major layoffs and shutdowns on workers and their communities is a serious economic and social problem which has created the need for innovative economic adjustment programs.

THE COMPACT'S GOALS FOR ECONOMIC ADJUSTMENT

A consensus has been reached in support of the following goals for economic adjustment:

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1. Government's resources for economic development, job training, and economic adjustment must be targeted to guarantee every worker, company, and community involved in shutdowns and major layoffs with the maximum assistance practicable, both to help prevent, when possible, their occurrence, lessen their impact, and help workers return to decent full-time employment.

2. Business should voluntarily give advance notice of shutdowns and major layoffs.

3. Extended health insurance coverage should be provided to workers who would lose their coverage in the event of a shutdown or major layoff.

4. A contractual obligation should exist for companies which, in the future, apply for and receive public investments, that is, government economic development benefits, to give advance notice of either a shutdown or major layoff.

The COMPACT, with its combination of a voluntary agreement to give advance notice, and contractual obligation to give advance notice is a flexible and, we think, effective approach to achieve the goal of providing advance notice of shutdowns and major layoffs. The principle that a company which applies for and receives economic assistance from government should meet certain minimum standards of conduct in the event of a shutdown or major layoff, is sound public policy. However, companies which are too small for their layoffs to have a significant impact, or receive benefits below a certain amount will be exempt from this obligation.

To achieve these goals, the steps described below will be taken.

1. The Governor, through the Director of Economic Development, will:

   a. Target available resources so that every viable business faced with a possible shutdown or major layoff will be able to receive timely and effective financial and technical assistance; guarantee every worker laid off by a shutdown or major layoff will be able to receive assistance to help them return to full-time employment and avoid undue economic hardship; and that communities affected will be provided with the assistance needed to minimize adverse effects on local government's revenues and services.

   b. Establish an early warning system to monitor local economic activity and help provide advance notice of shutdowns and major layoffs. Once alerted, government can assess the situation, identify

possible preventive measures, and organize a response. From that point the company in question is in transition, either implementing a remedial program or making a drastic change such as new ownership, or developing its plan for closing. The last stage is economic adjustment for those laid off, a plan to redeploy available assets, and possible assistance to the local community to overcome immediate hardship. The plans for the early warning system and the targeting of economic development resources are described in Appendix 2.

c. Extend the contractual obligation to give advance notice found in the Opportunity Zone bill to other State economic development programs to which employers apply for assistance such as UDC and JDA.

d. Develop an interim solution to the health insurance problem by identifying and allocating funds, both grants and loans, to be used to provide four months extended health insurance to workers laid off due to plant shutdowns and if necessary, include funds in the 1987 Budget to continue this program.

e. Allocate current State economic development resources to serve as a turnaround fund for companies in distress.

f. Support a $10,000,000 program in the 1987 Budget to serve as a turnaround fund, depending on the fiscal conditions of the State.

2. Business and Labor, in addition to their commitment to the actions designed to implement the COMPACT described in Part Three of the COMPACT, agree to support the plan by the State to achieve proper targeting of job training and economic development resources and the 1987 Budget item for the turnaround fund.

They also agree to work together to attempt to create a more long-term solution to the problem of lack of extended health insurance for dislocated workers.

II. IMPROVING THE CLIMATE FOR BUSINESS AND LABOR: AN AGREEMENT ON WORK STOPPAGES AND LAYOFFS

Today's economy is marked by intense competition between States and Nations. For Business, this pressure has elevated the importance of perceptions about a location and its climate for doing business. For Labor, particularly individual workers, this pressure has caused migration from one part of the country to the other and anxiety about the future of a particular region.

New York has long been known as a State with higher per capita income and education, and a high degree of unionization. Until recently New York was also perceived as a slow growth state with fewer employment opportunities than some other parts of the country. For some businesses and some workers these perceptions mark New York as a less favorable location. The agreements contained in the COMPACT will improve the climate for Business and Labor, demonstrate the positive relationships which exist among Business, Labor and Government, and build on that relationship.

A. For its part Labor agrees that:

1. Work stoppages are an economic weapon of last resort;

2. State, local or federal mediation services should be utilized to the maximum extent possible and when practical before a work stoppage;

3. Mutually agreed upon binding arbitration may be a viable alternative for resolving contract disputes;

4. Agreements on work stoppages in conjunction with appropriate mechanisms to break a negotiation impasse have been productive for unions and employers in many instances and should be carefully considered by unions;

B. For its part, Business agrees that:

1. Except for those industries which have traditionally experienced seasonal or cyclical changes in employment, layoffs are a management action of last resort;

2. Management should be knowledgeable about and pursue whenever possible, alternatives to layoffs such as:

   a. shared work programs
   b. uniform reduction in hours of management and labor to the extent practicable in lieu of layoffs
   c. furlough programs
   d. early retirement incentives
   e. joint committees to identify other ways to improve productivity, reduce costs and create demand for a company's products in order to avoid layoffs

3. Notice and negotiation prior to layoffs is a sound and desirable labor-relations goal;

4. To confer with any governmental services established to help companies design and adopt no layoff policies;

5. In the event of layoffs, Management should consider using inverse-reverse seniority procedures.

C. For its part, the State of New York agrees that:

1. A network of local contacts and consultants including educational institutions with whom Business and Labor can confer prior to layoffs and work stoppages will be put in place;

2. Demonstration projects in which the principles of the above agreement between Business and Labor are applied will be organized;

3. The importance of existing regulatory and statutory protections for Labor and Business will be reiterated.

III. IMPLEMENTATION OF THE COMPACT

Active implementation efforts will be carried out over the next year in order to make the COMPACT effective and have an impact on economic conditions within the state.

The COMPACT commits the Representatives of Business, Labor, and Government to support the goals and principles found in the agreements contained herein, embark upon a one-year campaign to educate unions, employers, and local communities as to the importance of the COMPACT, and seek their endorsement of its principles, goals, and techniques. Business and Labor will provide support for the implementation of the COMPACT. The goal of these efforts will be to get as many employers and unions as possible to endorse the COMPACT.

The parties are also committed to work together on those elements of the COMPACT requiring further discussion, specifically the plans to achieve proper targeting of economic development resources, the plan for a permanent solution to the problem of health insurance for dislocated workers, and the 1987 Budget item for the turnaround fund.

The Industrial Cooperation Council will be responsible for carrying out the implementation of the COMPACT. Reports on the progress of the COMPACT will be issued every six months.

IV. AGREEMENT

Having read the foregoing and being in agreement with it, on behalf of Labor, Business, and Government, we the undersigned do hereby agree to support and implement the NEW YORK COMPACT.

December 10, 1986

FOR LABOR:

_____
Edward J. Cleary, President
New York State AFL-CIO

FOR BUSINESS:

_____
William C. Ferguson, Chairman
The Business Council of New York State, Inc.

FOR GOVERMNENT:

_____
Mario M. Cuomo, Governor
State of New York

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NO-LAYOFF EMPLOYMENT POLICIES

INTRODUCTION

The New York Compact commits Business to become knowledgeable about and try to implement employment security or no-layoff policies. The goal is to stabilize employment levels, reduce the costs of unemployment, and create the conditions for a more productive workforce by strengthening the mutual commitments of companies and workers.

The costs of layoffs to an individual company are significant. Nonetheless, ways to avoid layoffs through no-layoff or employment security strategies have not been widely implemented in this country. Those companies which adopted them have found they make good economic sense, as well as fulfilling many common notions of social responsibility. Employment security can also increase productivity and is very common among our foreign competitors. Workers with a sense of commitment and loyalty to a company are more productive than a workforce in which there is a high turnover rate. Workers value the security which comes from knowing that if they do their job and do it as well as possible, the employer will do everything it can to assure them their income will not be drastically cut by economic conditions beyond their control. A stable employment policy creates a trust of management among the workers, and a willingness to adopt new production technology, new and more productive manufacturing processes. In the long-run, this is essential in keeping a company competitive.

COSTS OF LAYOFFS

Most domestic employers consider laying off workers to be the most efficient method of lowering production costs. Both individual company experience and studies have shown this is not always true. A business study of 100 layoffs showed that from strictly a cost savings point-of-view, 30% of them should have been cancelled and another 20% reduced in size.In fact, layoffs often require significant cash outlays for among other things compensation for accrued sick and/or vacation time, increased unemployment insurance taxes, and in many instances, severance pay and extended health insurance. One study estimates the initial cost of laying off one hundred workers to be $741,500. It is estimated that employers often realize less than seventy percent of their anticipated cost savings through layoffs.

After the initial costs outlined above, there are often added long term costs. The loss of skilled workers and low morale within the company may seriously affect a firm's productivity and competitiveness. Rehiring and retraining workers is costly not only in terms of real dollars, but in inefficient production as workers must gain the experience to work up to full speed. Studies also show that absenteeism and work accidents increase while product quality falls shortly after a round of layoffs.

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Traditionally many employers are unwilling to sink extensive training resources into employees who may transfer to another company, taking along all of their training. A "catch 22" has resulted: employers do not want to train workers who may transfer to another company, and workers have a lower sense of loyalty to a company that is unable to offer them job security and training.

SPECIFIC ALTERNATIVES TO LAYOFFS

Employers with no layoff policies or employment security have identified various strategies which will successfully lower payroll costs without resorting to forced unemployment. For them layoffs are the last resort, not the first, used to cut costs.

Though there is an infinite variety of ways to implement employment security, among the common methods are: cutting overtime allowances, worksharing programs, offering early retirement incentives, vacations without pay, uniform reductions in hours and wages, bringing subcontracted work back into the plant.

In large companies reducing or eliminating overtime represents an enormous savings in payroll costs. IBM, a company of 290,000 employees, enforced a cut in overtime for all employees and saved an estimated cost of 1,000 employees. IBM has a long tradition of no layoffs, to which they have remained faithful even after experiencing two years of flat earnings.

Offering early retirement to some employees may also significantly reduce costs. Hewlett-Packard chose to offer 1,800 manufacturer employees early retirement as an attempt to correct "work force imbalances". Employees who accepted early retirement, received full pension benefits as well as one half month's salary for each year of service up to a total of one year's salary. Costs associated with the layoffs had a minimal effect on the company's performance during the second half of the year.

Worksharing programs are now much more feasible in New York State due to reform of the State's unemployment insurance law. It allows more employees to remain on the payoll, earning partial wages rather than being left with no income at all. Worksharing programs also save the company the costs of layoffs as well as the costs of rehiring and retraining workers. In that same light, some companies will enforce mandatory vacation without pay or cut the hours in the workweek. While reducing the take home pay of employees it will keep them on the payroll, and save the company money both in the long and the shortrun.

"Enlightened employers", as one study refers to them, have taken stable employment strategies one step further. Such is the case in a great number of foreign companies and a growing number of domestics. To these employers stable employment involves a long-run mutual commitment. They may restrict hiring during periods of a favorable market environment, or pass up short-run contracts knowing that both will lead to overcapacity and eventual layoffs. Instead, these employers find that training employees enables greater

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flexibility among the workforce. Workers may be shifted to various positions with the company or even to another facility depending upon where they are needed the most. This long-run employment and production strategy is crucial to the survival of a company. A company with flexibility in its workforce is far more able to accommodate fluctuations in the market and demand for its product than one without.

IMPLEMENTATION OF EMPLOYMENT SECURITY STRATEGIES

The New York Compact commits the State to help employers evaluate the role of no-layoff policies and to conduct an education campaign on their value and their implementation. Obviously not every company will find them useful or appropriate. However, if 30% of the layoffs could be avoided and another 20% cut in half, the same percentages found in a cost study of the costs of 100 specific layoffs, we estimate the State's unemployment rate would be cut and thousands of workers would keep their jobs.

During the implementation campaign the State will, in cooperation with Business and Labor, be actively educating employers on the benefit of employment security strategies and providing assistance to help them implement these strategies in their workplace.

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STATE OF NEW YORK
EXECUTIVE CHAMBER
INDUSTRIAL COOPERATION COUNCIL

LEWIS B. KADEN
CHAIRMAN
LEE O. SMITH
EXECUTIVE DIRECTOR

1515 BROADWAY
52ND FLOOR
NEW YORK, N.Y. 10036
(212) 930-0303

SUGGESTED READINGS

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Attachment #1
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Drug Testing

NATIONAL CONFERENCE OF STATE LEGISLATURES

Labor Issues Seminar

January 13-16, 1988

The Fairmont Hotel

New Orleans, Louisiana

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Attachment #2
1/28/88

LAW OFFICES
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A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
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STATE AND LOCAL LAWS REGARDING DRUG TESTING OF PRIVATE SECTOR EMPLOYEES

PRESENTED BY GAREN E. DODGE, ESQ.
AT THE NATIONAL ISSUES SEMINAR
NATIONAL CONFERENCE OF STATE LEGISLATURES

LABOR ISSUES 1988
NEW ORLEANS, LOUISIANA
JANUARY 14-16, 1988

State legislatures have moved rapidly to pass laws regulating drug testing by employers. During 1987, in fact, eleven new laws were enacted in the states of California, Connecticut, Iowa, Louisiana, Minnesota, Montana, North Carolina, Oregon, Rhode Island, Utah and Vermont. San Francisco, the only city to do so, passed a law in 1985.

Because these new laws differ so widely, this memorandum first discusses those laws that address the circumstances under which employers may test. (These include the "probable cause" and "reasonable suspicion" laws in Connecticut, Iowa, Minnesota, Montana, Rhode Island and Vermont, as well as the "employer oriented" Utah law). The memorandum then addresses those laws that are neutral, or that affect drug testing more tangentially. (These include the California law, which requires employers to "reasonably accomodate" employees who wish to enter a drug treatment program, and Louisiana, which permits employers to administer drug tests to disqualify employees for unemployment compensation benefits). Finally, the memorandum addresses the prospects for new legislation in 1988.

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I. LAWS THAT REGULATE DRUG TESTING

Connecticut

Assembly and Senate Bill 5056, passed by the House on May 29 and by the Senate on June 1, was signed into Public Law 87-55 by Governor William A. O'Neill on July 5. The law prohibits the testing of applicants unless specific test procedures are followed. In addition, the law restricts the testing of employees as follows:

> Sec. 6. No employer may require an employee to submit to a urinalysis drug test unless the employer has reasonable suspicion that the employee is under the influence of drugs or alcohol which adversely affects or could adversely affect such employee's job performance.
>
> Sec. 7. Notwithstanding the provisions of section 6 of this act, an employer may require an employee to submit to a urinalysis drug test on a random basis if (1) such test is authorized under federal law, (2) the employee serves in an occupation which has been designated as a high-risk or safety-sensitive occupation pursuant to regulations adopted by the commissioner of labor pursuant to chapter 54 of the general statutes, or (3) the urinalysis is conducted as part of an employee assistance program sponsored or authorized by the employer in which the employee voluntarily participates.
>
> Sec. 8. Nothing in this act shall prevent an employer from conducting medical screenings, with the express written consent of the employees, to monitor exposure to toxic or other unhealthy substances in the workplace or in the performance of their job responsibilities. Any such screenings or tests shall be limited to the specific substances expressly identified in the employee consent form.
>
> Sec. 9. Nothing in this act shall restrict an employer's ability to prohibit the use of intoxicating substances during work hours, or restrict an employer's ability to discipline an employee for being under the influence of intoxicating substances during work hours. (Emphasis supplied).

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Iowa

H.F. 469 was passed by the Iowa House on March 19 and the Senate on April 30, and was signed into law by Governor Terry E. Branstad on June 5. Adopting a more rigorous standard of proof than the Connecticut law, it provides as follows:

> 3. This section does not prohibit an employer from requiring a specific employee to submit to a drug test if all of the following conditions are met:
>
> A. The employer has probable cause to believe that an employee's faculties are impaired on the job.
>
> B. The employee is in a position where such impairment presents a danger to the safety of the employee, another employee, a member of the public, or the property of the employer, or when impairment due to intoxication is a violation of a known rule of the employer.
>
> C. The test sample withdrawn from the employee is analyzed by a laboratory or testing facility that has been approved under rules adopted by the department of public health.
>
> . . .
>
> An employer shall take no disciplinary action against an employee due to the employee's drug involvement the first time the employee's drug test indicates the presence of alcohol or a controlled substance if the employee undergoes a substance abuse evaluation, and if the employee successfully completes substance abuse treatment if treatment is recommended by the evaluation.... (Emphasis supplied).

Minnesota

Minnesota H.F. No. 42 was signed into law by Governor Rudy Perpich on June 3. Now Chapter No. 388, it provides for five different types of drug testing as follows:

> Subd. 2. [Job Applicant Testing.] An employer may request or require a job applicant to undergo drug and alcohol testing provided a job offer has been made to the applicant and the same test is requested or required of all job applicants conditionally offered employment for

that position. If the job offer is withdrawn, ... the employer shall inform the job applicant of the reason for its action.

Subd. 3. [Routine Physical Examination Testing.] An employer may request or require an employee to undergo drug and alcohol testing as part of a routine physical examination provided the drug or alcohol test is requested or required no more than once annually and the employee has been given at least two weeks' written notice that a drug or alcohol test may be requested or required as part of the physical examination.

Subd. 4. [Random Testing.] An employer may request or require only employees in safety-sensitive positions to undergo drug and alcohol testing on a random selection basis.

Subd. 5. [Reasonable Suspicion Testing.] An employer may request or require an employee to undergo drug and alcohol testing if the employer has a reasonable suspicion that the employee:

(1) is under the influence of drugs or alcohol;

(2) has violated the employer's written work rules prohibiting the use, possession, sale, or transfer of drugs or alcohol while the employee is working or while the employee is on the employer's premises or operating the employer's vehicle, machinery, or equipment, provided the work rules are in writing and contained in the employer's written drug and alcohol testing policy;

(3) has sustained a personal injury, ... or has caused another employee to sustain a personal injury; or

(4) has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident.

Subd. 6. [Treatment Program Testing.] An employer may request or require an employee to undergo drug and alcohol testing if the employee has been referred by the employer for chemical dependency treatment or evaluation or is participating in a chemical dependency treatment program under an employee benefit plan, in which case the employee may be requested or required to undergo drug or alcohol testing without prior notice

during the evaluation or treatment period and for a period of up to two years following completion of any prescribed chemical dependency treatment program. (Emphasis supplied).

Montana

Senate Bill 338, which became law on April 15, treats applicants and employees differently. It prohibits any company from requiring:

> (b) as a condition for employment, any person to submit to a blood or urine test, except for employment in hazardous work environments or in jobs the primary responsibility of which is security, public safety, or fiduciary responsibility; and
>
> (c) as a condition for continuation of employment, any employee to submit to a blood or urine test unless the employer has reason to believe that the employee's faculties are impaired on the job as a result of alcohol consumption or illegal drug use. (Emphasis supplied).

Rhode Island

The new Rhode Island law was signed by Governor Edward DiPrete on July 1. Now Chapter 540, it is silent on the issue of applicant testing, but adopts a "reasonable grounds" standard for employee testing. It states:

> No employer or agent of any employer shall, either orally or in writing, request, require or subject any employee to submit a sample of his urine, blood or other bodily fluid or tissue for testing as a condition of continued employment. Nothing herein shall prohibit an employer from requiring a specific employee to submit to such testing if:
>
> (A) the employer has reasonable grounds to believe based on specific objective facts, that the employee's use of controlled substances is impairing his ability to perform his job; and
>
> (B) the employee provides the test sample in private, outside the presence of any person; and

(C) the testing is conducted in conjunction with a bona fide rehabilitation program; and

(D) positive tests are confirmed by means of gas chromatography mass spectrometry or technology recognized as being at least as scientifically accurate; and

(E) the employer provides the employee, at the employer's expense, the opportunity to have the sample tested or evaluated by an independent testing facility and so advises the employee; and

(F) the employer provides the employee with a reasonable opportunity to rebut or explain the results. (Emphasis supplied).

Employers who violate the law could be subject to a year in jail and a $1000 fine as a misdemeanor penalty, as well as other monetary and injunctive damages in a civil action.

Utah

The "employer oriented" Utah House Bill 145 was signed into law by Governor Norman H. Bangerter on March 17. The law permits employers to test employees and applicants in accordance with procedural safeguards such as sample documentation and verification of positive initial tests. In addition, an employer who wishes to test must establish a written policy. Within the terms of this policy, an employer is not limited to testing for individual, job-related impairment, but instead may test for any of the following purposes:

(a) investigation of possible individual employee impairment;

(b) investigation of accidents in the workplace or incidents of workplace theft;

(c) maintenance of safety for employees or the general public; or

(d) maintenance of productivity, quality of products or services, or security of property or information.

If an employee has a "confirmed positive" result or refuses to submit to testing, the law permits an employer to suspend, terminate or otherwise discipline the employee, or require the employee to enroll in a rehabilitation program.

Significantly, if an employer establishes a policy and initiates a testing program, the law holds an employer blameless if any suit is filed for failure to test or failure to detect a drug or other substance. Similarly, the law prevents many causes of action for defamation, libel, slander, damage to reputation, and "handicap" discrimination.

Vermont

Perhaps the most employer-restrictive of all drug testing laws to date, House Bill 39 was signed by Governor Madeline M. Kunin on May 22. It permits the testing of an applicant if given a 10-day notice and a conditional offer of employment. An employee, however, may not be tested except as follows:

> (c) Exception. Notwithstanding the prohibition in subsection (a) of this section, an employer may require an individual employee to submit to a drug test if all the following conditions are met:
>
> (1) Probable cause. The employer or an agent of the employer has probable cause to believe the employee is using or is under the influence of a drug on the job.
>
> (2) Employee assistance program. The employer has available for the employee tested a bona fide rehabilitation program for alcohol or drug abuse and such program is provided by the employer or is available to the extent provided by a policy of health insurance or under contract by a nonprofit hospital service corporation.
>
> (3) Employee may not be terminated. The employee may not be terminated if the test result is positive and the employee agrees to participate in and then successfully completes the employee assistance program; however, the employee may be suspended only for the period of time necessary to complete the program, but in no event longer than three months. The employee may be terminated if, after completion of an employee assistance program, the employer subsequently administers a drug test in compliance with subdivisions (1) and (4) of this subsection and the test result is positive. (Emphasis supplied).

II. THAT ARE NEUTRAL OR TANGENTIAL

California 1/

California recently enacted a law requiring private employers with 25 or more employees to "reasonably accomodate" any employee who wishes to enter a drug or alcohol rehabilitation program. Now Chapter 506 (originally A.B. 397), the law does not require an accomodation if it would "impose an undue hardship on the employer."

Louisiana

The Louisiana law, Act No. 464, does not address drug testing for all employees, just those that have been fired for drug use, and that file a claim for unemployment compensation. To defend the unemployment compensation claim, employers must first adopt and promulgate a substance abuse policy. Then:

> D. Within the terms of the policy, an employer may require the collection and testing samples for the following purposes:
>
> (1) investigation of possible individual employee impairment;

1/ San Francisco enacted an ordinance in 1985 that prohibits an employer from testing an employee for the presence of chemical substances in the body unless:

> (a) the employer has reasonable grounds to believe that an employee's faculties are impared on the job; and
>
> (b) the employee is in a position where such impairment presents a clear and present danger to the physical safety of the employee, another employee or to a member of the public; and
>
> (c) the employer provides the employee, at the employer's expense, the opportunity to have the sample tested or evaluated by State licensed independent laboratory/testing facility (sic) and provides the employee with a reasonable opportunity to rebut or explain the results. (Emphasis supplied).

The ordinance permits an employer to "discipline employees for being under the influence of intoxicating substances during work hours," and does not apply to police, fire or emergency service departments.

(2) investigation of accidents in the workplace or incidents of workplace theft;

(3) Maintenance of safety for employees or the general public; or security of property or information.

(4) Maintenance of productivity, quality of products or services, or security of property or information.

Employers must also use state-licensed laboratories, comply with specifically enumerated testing procedures, and treat as confidential all information, interviews, reports, statements, memoranda, or test results received by the employer through its drug testing program. Then, like the Utah law, employers may be held blameless for many actions as follows:

F. No cause of action for defamation of character, libel, slander, or damage to reputation arises in favor of any person against an employer who has established a program of drug or alcohol testing in accordance with this Chapter, unless:

(1) The results of that test were disclosed to any person other than the employer, an authorized employee or agent of the employer, the tested employee, or the tested prospective employee;

(2) The information disclosed was based on a false test result;

(3) All elements of an action for defamation of character, libel, slander, or damage to reputation as established by statute or common law, are satisfied.

North Carolina

House 1 was "ratified" on August 14. It simply establishes a Workplace Drug Testing Study Commission which must report back to the Assembly by 1989 with recommendations on "procedures or regulations for the administration of drug tests by employers that would protect both employer and employee." The Commission will consist of 14 members, including six legislators, four "representatives of business and industry," and four representing employees. It has a budget of $20,000, and will automatically disband when it files its report.

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Oregon

Oregon opted for legislation that requires the licensing of drug testing laboratories rather than the regulating of employer practices. Oregon Senate Bill 478 was signed into law by Governor Neil Goldschmidt on July 16. It states:

> Section 2. (1) In addition to duties which a clinical laboratory may perform under this chapter, a laboratory is authorized to perform appropriate tests, examinations or analyses on materials derived from the human body for the purpose of detecting substances of abuse in the body. All laboratories performing the tests, examinations or analyses must be licensed under the provisions of this chapter and must employ qualified technical personnel to perform the tests, examination and analyses...
>
> (3) When the specimen of a person tested for substance abuse is submitted to the laboratory and the test result is positive, the laboratory shall perform a confirming test which has been designated by rule of the Health Division as the best available technology for use to determine whether or not the substance of abuse identified by the first test is present in the specimen prior to reporting the test results....
>
> (5) If an initial test shows a result indicating the presence of a substance of abuse in the body, any confirmatory test the results of which are to be used to deprive or deny any person any employment or any benefit must be conducted in a licensed clinical laboratory.
>
> (6) If any test for substances of abuse is performed outside this state the results of which are to be used to deprive or deny any person any employment or any benefit, the person desiring to use the test shall have the burden to show that the testing procedure used meets or exceeds the testing standards of this state. (Emphasis supplied).

III. PROSPECTS FOR 1988

Drug testing proposals have been "carried over," and thus are still alive in several state legislatures. New Jersey's AB

2850 passed the Assembly at the end of 1986, and is still in a Senate committee. Similarly, bills in Alaska, California, Michigan, New York, Pennsylvania, Washington and Wisconsin, while not as far along in the legislative process as the New Jersey bill, still have a chance of passage during 1988.

Conclusion

I will continue to monitor the issue of state drug testing in 1988. Please let me know of any state, county or city developments that come to your attention. My phone number is (202) 789-8600.

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Prevailing Wage

NATIONAL CONFERENCE OF STATE LEGISLATURES

Labor Issues Seminar

January 13-16, 1988

The Fairmont Hotel

New Orleans, Louisiana

HOUSE LABOR & INDUSTRY
Attachment #3
1/28/88

Dollar Threshold Amount for Contract Coverage
Under State Prevailing Wage Laws
January 1, 1988

State 1/	Threshold amount
Alaska	$ 2,000
Arkansas	75,000
California	1,000
Connecticut	200,000 for new construction 50,000 for remodeling
Delaware	5,000
Hawaii	2,000
Illinois	None
Indiana	5,000
Kentucky	296,001 2/
Louisiana	25,000
Maine	10,000
Maryland	500,000
Massachusetts	None
Michigan	None
Minnesota	25,000 where more than one trade is involved 2,500 where a single trade is involved
Missouri	None
Montana	25,000
Nebraska	None, except 40,000 for projects let by public school districts
Nevada	100,000

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Dollar Threshold Amount for Contract Coverage
Under State Prevailing Wage Laws (Continued)
January 1, 1988

State 1/	Threshold amount
New Jersey	$ 2,000
New Mexico	20,000
New York	None
Ohio	4,000
Oklahoma	600,000
Oregon	10,000
Pennsylvania	25,000
Rhode Island	1,000
Tennessee	50,000
Texas	None
Washington	None 3/
West Virginia	None
Wisconsin:	
State and municipal contracts	90,000 where more than one trade is involved
	9,000 where a single trade is involved
State highway contracts	None
Wyoming	25,000

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1/ Seventeen States do not have prevailing wage laws. These States are Alabama, Arizona, Colorado, Florida, Georgia, Idaho, Iowa, Kansas, Mississippi, New Hampshire, North Carolina, North Dakota, South Carolina, South Dakota, Utah, Vermont, and Virginia.

2. Kentucky. Threshold amount is as of July 1, 1987. A 1982 amendment to the prevailing wage law established a $250,000 threshold amount to be adjusted annually on July 1 thereafter according to the change in the Consumer Price Index released by the U.S. Department of Labor.

3/ Washington. A separate law applicable only to State college/ university construction provides for a $17,500 threshold amount.

Division of State Employment Standards Programs
Office of State Liaison and Legislative Analysis
Employment Standards Administration
U.S. Department of Labor

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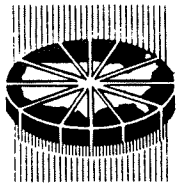
THE WALL STREET JOURNAL
December 29, 1987

Farms' Unemployment Taxes Fell in Most States This Year

By Eugene Carlson
Staff Reporter of The Wall Street Journal

UNEMPLOYMENT INSURANCE is dull stuff, unless you're on the receiving or paying end. Then it's an attention-grabber. For employers who wince at their unemployment tax bills, 1987 was a pretty good year.

In two-thirds of the states, average unemployment taxes paid by employers were lower in 1987 than a year earlier. The decline is partly due to a generally buoyant economy that saw fewer people filing for jobless benefits. It also reflects an increasing sensitivity by state governments that high unemployment insurance taxes can be a black eye on a state's business climate.



The prime example of this downward trend is North Carolina, where employers this year paid an average $142 in federal and state unemployment insurance taxes per employee, down from $222 in 1986. The 36% decline was the largest of any state. North Carolina's robust economy helped bring the tax burden down, as did a drop in the average tax rate that employers pay, to 0.9% from 1.8% on the first $9,600 of a worker's wages.

"We're very cognizant of the rate being attractive to industry," says Betsy Justus, chairman of North Carolina's employment security commission.

Unemployment insurance taxes include employer contributions to federal and state unemployment trust funds. These funds are, in effect, the bank accounts against which unemployment checks are written. When unemployment is high, as it was in the early 1980s, claims on these trust funds increase and taxes go up to keep the funds solvent.

Likewise, when claims are low and the state trust funds are flush with cash, as many are now, taxes tend to decline. The level of benefits a state chooses to pay jobless workers also plays a part in the tax equation.

Maryland, with low unemployment, cut its average tax per worker this year to $175, compared with $266 a year ago, a 34% drop. Other places where the tax dropped 20% or more in 1987: Missouri, Tennessee, Ohio and the District of Columbia.

Altogether, 31 states had lower average unemployment insurance tax liabilities per worker this year. Laurdan Associates Inc., a consulting firm in Potomac, Md., compiled the state figures from Labor Department data. The actual tax paid by employers may vary from the state average since states assign differing tax rates to companies based on their unemployment claim history.

By contrast, there was North Dakota, where employers paid an average 32% more in unemployment tax per worker this year than in 1986. The tax leap, to an average $488 per worker, reflects the need to replenish the state's unemployment trust fund after "four or five very difficult years," says Mike Deisz, executive director of Job Service North Dakota, a state agency.

The farm and oil recessions chewed up jobless benefits in North Dakota, as did a jump in unemployment when work ended on a coal gasification plant and several power plants.

Highest Unemployment Tax...

STATE	1987 TAX*	CHANGE FROM 1986
Alaska	$680	+ 3%
Washington	584	+13
Michigan	550	- 3
Idaho	542	+ 3
Pennsylvania	513	- 2
Oregon	490	0
Rhode Island	489	+ 3
North Dakota	488	+32
Wisconsin	487	-10
West Virginia	416	-16

...And the Lowest

STATE	1987 TAX*	CHANGE FROM 1986
New Hampshire	$112	-16%
Florida	126	- 5
Virginia	133	-10
North Carolina	142	-36
Tennessee	154	-21
South Dakota	154	0
Arizona	154	- 4
Mississippi	161	-12
Indiana	161	0
Nebraska	175	- 7

*Average tax per worker paid by employers includes federal and state unemployment taxes

Sources: Laurdan Associates Inc. and U.S. Labor Department

Other states with big increases in 1987 were Texas, 14%; Washington, 13%; and Arkansas and Colorado, 9%.

Finally, there's Pennsylvania, with a dubious distinction all its own. While state unemployment taxes vary widely from state to state, the federal tax that an employer pays is the same everywhere, $56 per worker. Except in Pennsylvania, where it's $161.

Why the disparity? Pennsylvania and other states that have suffered high unemployment borrowed from the federal government when their own jobless trust funds ran low.

Michigan, Pennsylvania and Texas are the only states with loans outstanding (a combined $2.15 billion), but only Pennsylvania is in arrears. The extra $105 per worker that Pennsylvania employers pay ($161 minus the standard $56 federal unemployment tax) represents penalty charges on the delinquent federal loan.

If the entire loan isn't retired by next November, Pennsylvania's employer tax bite goes higher still, to $182. Larry Hochendoner, the state's deputy secretary for employment security, says a task force is weighing repayment options. One idea: a one-time assessment on Pennsylvania employers.

"It certainly doesn't help the general business climate to have these conditions persist," Mr. Hochendoner says.

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LAURDAN ASSOCIATES, INC.

1987

UNEMPLOYMENT INSURANCE

COMPARATIVE ANALYSIS

TABLE I
COMPARISON OF AVERAGE PER EMPLOYEE
UNEMPLOYMENT INSURANCE TAX LIABILITY
1987, 1986, 1985, 1984, 1983

STATE	1987 RANK	1987 TOTAL TAX*	1986 TOTAL TAX*	1985 TOTAL TAX	1984 TOTAL TAX	1983 TOTAL TAX
Alaska	1	$679.50	$660.80	$666.40	$599.56	$529.00
Washington	2	584.00	516.00	460.00	452.00	398.00
Michigan	3	550.00	569.00	569.90	565.70	469.00
Idaho	4	542.00	524.00	507.50	552.80	462.00
Pennsylvania	5	513.00	524.00	519.00	536.80	475.00
Oregon	6	490.00	490.00	462.90	460.30	426.00
Rhode Island	7	489.20	474.00	487.42	466.00	475.00
North Dakota	8	488.00	369.20	397.33	430.40	421.00
Wisconsin	9	486.50	539.00	471.15	495.85	292.00
West Virginia	10	416.00	493.00	473.60	466.60	447.00
Iowa	11	412.70	452.00	428.96	428.52	330.00
Illinois	12	396.00	480.00	479.40	480.00	425.00
Wyoming	13	385.60	392.60	384.70	442.88	389.00
Vermont	14	384.00	384.00	441.20	370.00	346.00
Louisiana	15	350.00	406.00	371.00	371.00	301.00
New Jersey	16	338.50	387.70	395.36	402.32	371.00
Hawaii	17	336.50	321.20	299.11	334.86	375.00
Minnesota	18	336.00	344.90	412.13	379.54	323.00
Ohio	18	336.00	421.00	424.80	441.00	342.00

LAURDAN ASSOCIATES, INC.

HOUSE LABOR AND INDUSTRY
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TABLE I
COMPARISON OF AVERAGE PER EMPLOYEE
UNEMPLOYMENT INSURANCE TAX LIABILITY
1987, 1986, 1985, 1984, 1983

STATE	1987 RANK	1987 TOTAL TAX*	1986 TOTAL TAX*	1985 TOTAL TAX	1984 TOTAL TAX	1983 TOTAL TAX
Delaware	20	$311.00	$336.50	$313.60	$312.00	$350.00
Montana	21	304.00	336.60	329.70	308.84	310.00
Oklahoma	22	292.60	287.40	231.00	210.00	182.00
Kentucky	23	280.00	312.00	336.00	368.00	373.00
Utah	24	275.30	282.80	360.92	465.50	428.00
New York	25	273.00	287.00	285.60	283.50	274.00
New Mexico	26	270.00	262.00	264.00	258.86	213.00
Arkansas	27	266.00	243.50	258.50	341.00	346.00
Kansas	28	256.00	256.00	271.20	259.20	302.00
Colorado	29	254.00	232.00	283.20	277.60	169.00
Nevada	30	243.20	261.20	319.07	355.60	327.00
U.S.		231.00	245.00	270.20	278.60	247.00
California	31	231.00	224.00	280.00	273.00	238.00
Maine	31	231.00	245.00	275.10	315.00	315.00
D.C.	33	224.00	296.00	312.00	373.00	357.00
Texas	33	224.00	196.00	196.00	231.00	119.00
Connecticut	35	198.00	226.40	291.73	291.73	278.00
Massachusetts	36	196.00	203.00	227.50	262.50	274.00
South Carolina	36	196.00	196.00	203.00	203.70	195.00
Alabama	38	192.00	232.00	276.00	247.20	247.00

TABLE I
COMPARISON OF AVERAGE PER EMPLOYEE
UNEMPLOYMENT INSURANCE TAX LIABILITY
1987, 1986, 1985, 1984, 1983

STATE	1987 RANK	1987 TOTAL TAX*	1986 TOTAL TAX*	1985 TOTAL TAX	1984 TOTAL TAX	1983 TOTAL TAX
Georgia	39	$176.00	$176.00	$173.60	$172.20	$161.00
Missouri	39	176.00	240.00	248.00	238.00	247.00
Maryland	41	175.00	266.00	284.20	282.80	174.00
Nebraska	41	175.00	189.00	163.80	189.00	172.00
Indiana	43	161.00	161.00	229.60	249.90	277.00
Mississippi	43	161.00	182.00	272.30	256.90	196.00
Arizona	45	154.00	161.00	183.40	184.80	130.00
South Dakota	45	154.00	154.00	154.00	175.00	182.00
Tennessee	45	154.00	175.00	204.40	282.10	271.00
North Carolina	48	142.00	221.60	263.93	265.10	175.00
Virginia	49	133.00	147.00	189.00	231.00	210.00
Florida	50	126.00	133.00	149.80	149.80	139.00
New Hampshire	51	112.00	133.00	149.10	165.90	174.00

* "TOTAL TAX" based on estimated tax rates.

Source: U.S. Department of Labor, Unemployment Insurance Service, Division of Actuarial Services

Minimum Wage and Overtime Premium Pay Standards Applicable to Nonsupervisory NONFARM Private Sector Employment Under State and Federal Laws
January 1, 1988

State or other jurisdiction*	Future effective date	Basic minimum rate (per hour)	Premium pay after designated hours 1/	
			Daily	Weekly
FEDERAL:				
Fair Labor Standards Act (FLSA)		$3.35		40
STATE:				
Alabama		...		...
Alaska		3.85	8 2/	40 2/
Arizona		...		...
Arkansas (Applicable to employers of 5 or more)	1/1/89	3.25 3.30		40 3/
California	7/1/88	3.35 4.25	8 4/ Over 12 (double time)	40 4/ 7th day 4/: First 8 (time and half) Over 8 (double time)
Colorado		3.00	12	40
Connecticut	10/1/88	3.75 4.25		40 5/
Delaware		3.35		...

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See footnotes at end of table

Minimum Wage and Overtime Premium Pay Standards Applicable to Nonsupervisory NONFARM Private Sector Employment Under State and Federal Laws--Continued
January 1, 1988

State or other jurisdiction*	Future effective date	Basic minimum rate (per hour)	Premium pay after designated hours 1/	
			Daily	Weekly
District of Columbia 6/				40
Manufacturing, wholesale trade, printing and publishing		$3.95		
Clerical and semi-technical occupations		3.90		
Private household workers		3.90		
Hotel, restaurant and allied occupations		3.80		
Beauty culture		4.50		
Laundry and dry cleaning		3.70		
Building service		4.75		
Retail trade		3.50		
Occupations not covered by above wage orders		4.85		
Florida		...		...
Georgia (Applicable to employers of 6 or more)		3.25		...
Guam		3.35		40
Hawaii 7/		3.85		40
Idaho		2.30		...
Illinois (Applicable to employers of 4 or more)		3.35		40
Indiana (Applicable to employers of 4 or more)		2.00		...

See footnotes at end of table

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Minimum Wage and Overtime Premium Pay Standards Applicable to Nonsupervisory NONFARM Private Sector Employment Under State and Federal Laws--Continued
January 1, 1988

State or other jurisdiction*	Future effective date	Basic minimum rate (per hour)	Premium pay after designated hours 1/	
			Daily	Weekly
Iowa		...		...
Kansas		$1.60		46
Kentucky		3.35		40 7th day 8/
Louisiana		...		...
Maine		3.65		40
Maryland		3.35		40 9/
Baltimore City Ordinance (Applicable to employers of 2 or more)		3.35		40
Massachusetts		3.65		40
	7/1/88	3.75		
Michigan (Applicable to employers of 2 or more)		3.35		40
Minnesota				48
Employer covered by FLSA		3.55		
	1/1/89	3.85		
	1/1/90	3.95		
Employer not covered by FLSA		3.50		
	1/1/89	3.65		
	1/1/90	3.80		
Mississippi		...		...

See footnotes at end of table

Minimum Wage and Overtime Premium Pay Standards Applicable to Nonsupervisory NONFARM Private Sector Employment Under State and Federal Laws
January 1, 1988

State or other jurisdiction*	Future effective date	Basic minimum rate (per hour)	Premium pay after designated hours 1/	
			Daily	Weekly
Missouri		...		...
Montana		3.35		40
Nebraska (Applicable to employers of 4 or more)		$3.35		...
Nevada		3.35	8 10/	40
New Hampshire	1/1/89	3.55 3.65		40
New Jersey		3.35		40
New Mexico		3.35		48 11/
New York		3.35		40
North Carolina (Applicable to enterprises employing 3 or more)		3.35 12/		45
North Dakota				40
Professional, technical, clerical occupations 13/		3.10		
Mercantile		3.10		
Manufacturing		2.95		
Public housekeeping occupations		2.80		

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See footnotes at end of table

Minimum Wage and Overtime Premium Pay Standards Applicable to Nonsupervisory NONFARM Private Sector Employment Under State and Federal Laws
January 1, 1988

State or other jurisdiction*	Future effective date	Basic minimum rate (per hour)	Premium pay after designated hours 1/	
			Daily	Weekly
Ohio		2.30		40
except, employers with gross annual sales of less than $150,000		1.50		40
Oklahoma				...
Employers of 10 or more full-time employees at any one location and employers with annual gross sales over $100,000 irrespective of number of full-time employees		$3.35		
All other employers		2.00		
Oregon		3.35	14/	40
Pennsylvania		3.35		40
Puerto Rico		1.20 to 3.35 15/	8, and on statutory rest day (double time)	40 (double time)
Rhode Island		3.65		40
South Carolina		...		...
South Dakota		2.80		...
Tennessee		...		...
Texas		3.35		...

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See footnotes at end of table

Minimum Wage and Overtime Premium Pay Standards Applicable to Nonsupervisory NONFARM Private Sector Employment Under State and Federal Laws--Continued
January 1, 1988

State or other jurisdiction*	Future effective date	Basic minimum rate (per hour)	Premium pay after designated hours 1/	
			Daily	Weekly
Utah (Applicable to women and minors only)				...
Zone 1: Salt Lake, Weber, Utah, and Davis counties and all cities with population of 5,000 or more and outside of above counties		$2.75		
Zone 2: All other areas		2.50		
Vermont (Applicable to employers of 2 or more)	7/1/88	3.55 16/ 3.65		40
Virginia (Applicable to employers of 4 or more)		2.65		...
Virgin Islands		3.35 17/	8	40 On 6th and 7th consecutive days
Washington		2.30		40 18/
West Virginia (Applicable to employers of 6 or more at one location)		3.35		40
Wisconsin		3.35		40
Wyoming		1.60	8 19/	48 19/

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See footnotes at end of table

FOOTNOTES

*In 11 States, the State law excludes from coverage nonfarm employment that is subject to the Federal Fair Labor Standards Act (Arkansas, Georgia, Indiana, Kansas, North Carolina, Oklahoma, Oregon, Pennsylvania, Texas, Virginia and West Virginia). Four other States (Hawaii, Michigan, Montana and New Hampshire), have a contingent exclusion i.e. Federally-covered employment is excluded except when a State standard is higher than the Federal. For example, at the present time in New Hampshire, this exclusion is inoperative with respect to the basic minimum wage rate, due to the higher State rate, but the State overtime pay standard, which is the same as the Federal, is specifically not applicable to Federally-covered employment.

1/ The overtime premium rate is one and one-half times the employee's regular rate, unless otherwise specified.

2/ Alaska: Under a voluntary flexible work hour plan, with a written, signed employee/employer agreement filed with and approved by the Department of Labor, a 10-hour day, 40-hour week may be instituted with premium pay after 10 hours a day instead of after 8 hours.

The premium overtime pay requirement on either a daily or weekly basis is not applicable to employers of fewer than 4 employees.

3/ Arkansas: Premium pay required after 48 hours a week in hotels, motels, and restaurants, and in tourist attractions with annual sales volume of less than $362,500.

4/ California: Under very specific rules, a 10-hour day, 4-day week may be instituted without premium pay after 8 hours; in certain continuous-operation manufacturing facilities, a 12-hour day may be instituted; employees of licensed hospitals may work at straight time pay up to 12 hours a day for 3 days up to 36 hours a week, or up to 9 hours a day within a 5-day, 40-hour workweek, but must receive overtime pay at applicable premium rates after 40 hours a week and for hours or days in excess of scheduled hours or days. A prior voluntary writtten agreement, after secret ballot, must be executed by at least two-thirds of the affected employees and the employer.

Premium pay required: after 56 hours a week in ski establishments; after 54 hours a week for organized camp counselors and certain other care-provider occupations; and after 14 hours a day in motion picture industry under specified circumstances.

Premium pay on 7th day not required for employee whose total weekly work-hours do not exceed 30 and whose total hours in any one work day thereof do not exceed 6.

5/ Connecticut: In restaurants and hotel restaurants, for the 7th consecutive day of work, premium pay is required at time and one-half the minimum rate.

FOOTNOTES (CONT'D)

6/ District of Columbia: Rates are established by separate industry wage orders. Under some of these orders, minimum rates lower than the listed basic rate are set for a few occupations.

7/ Hawaii: An employee earning a guaranteed monthly compensation of $1,000 or more is exempt from the law.

8/ Kentucky: The 7th day overtime law, which is separate from the minimum wage law, differs in coverage from that in the minimum wage law and requires premium pay to those employees who have worked 40 hours on the six previous days.

9/ Maryland: Premium pay required after 48 hours in bowling alleys and for residential employees of institutions (other than a hospital) primarily engaged in care of sick, aged, or mentally ill.

10/ Nevada: By mutual employer/employee agreement, a scheduled 10-hour day for 4 days a week may be worked without premium pay after 8 hours.

11/ New Mexico: By mutual employer/employee agreement, a written waiver may be executed to permit work up to 54 hours in a 7-day period with premium pay after 54 hours.

12/ North Carolina: Although the Labor Commissioner is authorized to establish, by regulation, a rate for seasonal amusement or recreation and seasonal food service establishments at 85% of the basic rate otherwise applicable, such lower rate has not been issued.

13/ North Dakota: The wage order for professional, technical, clerical occupations exempts employees who earn $250 a week or more.

14/ Oregon: Premium pay required after 10 hours a day in nonfarm canneries, driers, or packing plants and in mills, factories or manufacturing establishments (excluding sawmills, planing mills, shingle mills, and logging camps).

15/ Puerto Rico: Separate rates are in effect for almost 350 nonfarm occupations.

16/ Vermont: The rates of $3.55 and above are required only after an employee has worked for an employer for 90 calendar days. For the first 90 days, the rate for the previous year is required. The rate prior to July 1, 1987, was $3.45 an hour.

The State overtime pay provision has very limited application because it exempts numerous types of establishments, such as retail and service; seasonal amusement/recreational; hotels, motels, restaurants; and transportation employees to whom the Federal (FLSA) overtime provision does not apply.

FOOTNOTES (CONT'D)

17/ Virgin Islands: A wage order consolidated individual occupational rates into the rate listed but it does not apply to occupations with higher rates established under the prior wage order. Rates for restaurant and tourist service industries are prescribed separately.

18/ Washington: Premium pay not applicable to employees who request compensating time off in lieu of premium pay.

19/ Wyoming: Premium pay applies to females employed in a manufacturing, mechanical, mercantile establishment, laundry, hotel, public lodging house, apartment house, place of amusement or restaurant.

On the basis of the State Fair Employment Act, which bans discrimination based on sex, the State recommends that an employer who is paying the State overtime rate to the female employees should also compensate the male employees at the same rate.

Prepared by:
Division of State Employment Standards Programs
Office of State Liaison and Legislative Analysis
Employment Standards Administration
U.S. Department of Labor
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LABOR ISSUES SEMINAR
JANUARY 13-16, 1988
THE FAIRMONT HOTEL
NEW ORLEANS, LOUISIANA

Representative Arthur Douville
Chairman House Committee on Labor and Industry
State of Kansas
Statehouse 115-S
Topeka, Kansas 66612

HOUSE LABOR & INDUSTRY
Attachment #7
1/28/88

The National Conference of State Legislators (NCSL) held January 13-16, 1988, in New Orleans, Louisiana, involved a number of labor issues that we are facing today and will continue to face in the near future. Involved were various governmental officials from Washington, D.C., particularly the Department of Labor, representatives from research groups, attorneys, labor union leaders and state legislators who serve on labor committees.

Problems discussed involved the following:

1. Integration of economic development and job training and placement activities.

2. Containment of medical costs in workers compensation.

3. Implications of demographic and technological changes in the American work force.

4. Plant closures - alternatives to statutory requirements.

5. Privacy rights of employees vs. employment testing for:
   a. drugs
   b. AIDS
   c. genetics

6. Minimum wage.

7. Legislative oversight of state agencies.

The central theme: We are in the midst of changing times. We have to recognize that in many respects life will never be the same. Sounds like, "I have heard that song before." What are the changes this time and what can we do about them?

1. We are in competition with all of the other states as well as the rest of the world.

   The backward nations of the world are awakening. Their populations are expanding. Our old enemies are expanding producers. They are underselling us. They represent not only competition but markets. Can we compete and yet sell? Can we find a balance?

2. The work force of tomorrow will be dominated by minority groups, particularly women, immigrants, Blacks, Hispanics and other non-white groups.

   White males will comprise only 15% of the net additions to the labor force between 1985 and 2000. Women will comprise 54% of the work force and are the fastest growing population of 65 years and older. More women will mean

changing work patterns. Day care centers will need to be expanded. Who is to bear the cost? The state? The employer? The employee? Shared costs? Attitudes of employers and employees are changing. It is not "I need a job" rather it is "What do I want to do with my life?" One career is not enough. Takeovers and plant closings create uncertainty. Training programs will change. The emphasis will be on:

Thinking
Learning
Creating

3. Labor and industry must learn to cooperate.
Too much friction between labor and management. Industry says, "Labor is not going to tellme what I can do. I know best." Both have to realize the competition that is to be most feared is not competition between them but outside competition. The two need to cooperate more on the following:
   a. layoffs
   b. re-employment
   c. work sharing
   d. health insurance costs
   e. rehabilitation
   f. plant closings
   g. new jobs
   h. safety programs
   i. drug and alcohol programs
   j. child care

4. Job training must be coordinated.
We have a tremendous number of programs for training. There is a federal Job Training Partership Act (JTPA), private industry, programs for individuals on relief, job service and community college vocational programs. Somehow we have to marry these programs together to get the most for our money. There are certain basic problems that need to be recognized such as:
   a. There are jobs that are disappearing and will never return. Witness the service station attendant. The bank teller is slowly disappearing and the automobile facotry worker is being replaced by robots.

   b. New jobs will require more skills.

   c. More advanced training will be required and with this will be more demand for assistance to the poor in the form of day care centers, transportation and maintenance.

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5. There must be recognition by the rederal government and state that all social programs, training and job placement must be coordinated.

   Not all the poor will benefit from the training so as to allow them to be completely independent. For example, a young mother with two children might be trained to get a low paying job but she will still need medical care for her children. Again, social services, job training and job placement must work together. Who is to be in charge?
   Department of Education?
   Department of Human Resources?
   Social and Rehabilitation Services?
   Community Colleges?

6. We all know that medical costs have been soaring. The last bastion of medical cost freedom is workers compensation.

   Under present law there is really little control, if any. Suggested remedies are:
   a. fee schedules
   b. reimbursement by related diagnostic groups
   c. health maintenance
   d. hospital audit
   e. active claim management with the authority to act.
   The litigation process to determine medical costs is not satisfactory. Perhaps one answer is to require a plan.

7. Should physical examinations include testing for AIDS and/or drug or alcohol abuse.

   The theme is "Go slow". AIDS testing is not accurate. Many results are false-positive. The emphasis should be on cooperative programs between employers and employees. Both should sponsor an educational program.

   What kind of law should we have with respect to testing? Should it be -
   a. probable cause?
   b. legal grounds?
   c. clear and present danger?
   d. reasonable suspicion?
   e. indiscriminate?

   What about control of laboratories? Should they be licensed? We currently have physical examinations but how far should they go? What information should be revealed to the employer? Should testing be limited to high risk occupations such as airplane pilots or security guards? How about contracts requiring subcontractors to test their employees?

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Voluminous material has been furnished including:

Work Force 2000
Hudson Institute 1987
Indianapolis, IN

Drug and Alcohol Abuse in the Work Place
Michael Walsh & Stephen Yohay

New York Executive Plan

Minimum Wage and Premium Pay Standards for All States

AIDS Action Council
729 Eighth Street
Washington, D.C.

We felt this meeting was of tremendous value to all of us. What we need to do is to furnish each other copies of the various state acts so we can determine what has been legislated. Additionally, there should be follow-up with the various states to determine how their legislation is working. For example: Colorado has apparently modified their rehabilitation program because of poor experience with the vendors. Washington and Oregon have had similar problems. What does that mean to the State of Kansas who just passed a very comprehensive rehabilitation program? What can we learn from the other states and what information can we pass on to them based on our experience?

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