



THE LEGAL FRAMEWORK FOR STATES AS  
EMPLOYERS-OF-CHOICE IN WORKPLACE FLEXIBILITY:

A CASE STUDY OF ARIZONA AND MICHIGAN

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## EXECUTIVE SUMMARY

*The Legal Framework for States as Employers-of-Choice in Workplace Flexibility: A Case Study of Arizona and Michigan* examines the legal frameworks Arizona and Michigan utilize for flexible work arrangements, time off, and career flexibility in their state workforce. Specifically, it provides an overview of the statutes, regulations, executive actions, and collective bargaining agreements that authorize workplace flexibility in the state workforce.

After laying out this framework for both states, this paper makes several key observations:

- **Flexibility provides multiple benefits to states as employers, to state employees, and to the community at large.** The business case for workplace flexibility is clear—flexibility helps states as employers with the recruitment and retention of top talent, addresses an aging workforce, reduces absenteeism and real estate costs, and improves disaster and emergency preparedness, among other things. Flexibility also allows employees to better balance work and personal responsibilities, and improves morale, health and wellness. For the community, providing flexibility decreases wait time for state responses and improves customer service. Flexibility also allows more employees to volunteer in the community, improves the environment and offers a range of other societal benefits.
- **Flexibility helps the government respond to problems as they arise.** Arizona and Michigan have created and used new workplace flexibility to address emerging problems like rising gas prices and traffic congestion. In addition, the current economy provides states with opportunities to maintain—and even increase—flexibility through the creation and use of low or no cost innovative strategies for flexibility, which allow states to “do more with less.” Using preexisting authority, Arizona and Michigan have also encouraged the use of flexibility to combat the H1N1 pandemic and address other public health concerns.
- **Successful model flexibility programs exist and can be replicated by others.** Existing programs are useful models for other state agencies and employers to learn from. As other states and employers look for solutions to assist with these and other emerging problems—be it working to improve operations in a difficult economy, responding to an emerging public health concern, or addressing a multi-generational workforce—considering the experiences of Arizona and Michigan with model programs is a useful way to help other state departments, other states, and other employers become employers-of-choice.
- **Leadership is a critical component of successful flexibility options.** Strong leadership and support from governors, agency heads, managers, unions and others is a critical component to full implementation of workplace flexibility. Governors need to promote these policies, oversee their implementation, and continued success and applicability. Managers, in turn, need to educate and train colleagues on the available workplace flexibility. Through such leadership at all levels, state workforces can more effectively implement workplace flexibility and reap all of the benefits it offers.

Assessing, evaluating, and understanding the flexibility frameworks used by Arizona and Michigan as well as the elements that make these states employers-of-choice bolsters support for all states to further develop workplace flexibility options that work for their work. In turn, these workplace flexibility options support the dynamic multi-generational state workforce, resulting in a more productive and diverse workforce that helps states be employers-of-choice.

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## INTRODUCTION

The States as Employers-of-Choice Project (“Project”) is a collaboration between the Twiga Foundation and the Sloan Center on Aging and Work. The Project hopes to “shed light on the dynamics of aging in the state public sector” and support multi-generational programs to provide workplace flexibility in the public sector.<sup>1</sup> Over the last year, the Project has collected data from agencies in 27 states, provided webinars and technical assistance on issues related to the aging workforce, and conducted site visits with human resource professionals in 10 states. This year, the Project continues to provide information and technical assistance to states as well as monitor their efforts to address the aging population in the state workforce.<sup>2</sup>

The Project uses three key concepts to help state agencies use flexibility to address their aging workforce: assessment, awareness, and action.<sup>3</sup> These concepts are intended to “increase *awareness* of the aging public sector workforce as well as provide *assessment* of the readiness of states to be ‘employers-of-choice’ for the public sector”<sup>4</sup> and ultimately to foster *action*, by providing states with assistance to promote workplace flexibility in the public sector.<sup>5</sup> The Project defines an employer-of-choice as “[a]n employer that displays characteristics for recruiting, engaging, and retaining the best available human talent.”<sup>6</sup>

Focusing primarily on the action concept, this report examines the actions state governments take to become employers-of-choice that provide workplace flexibility in their own offices. The report does this by providing a case study of the legal framework of workplace flexibility in two states working with the project: Arizona and Michigan.<sup>7</sup> The case study focuses on the frameworks that support the use of flexibility in the state workforce, which necessarily includes some discussion of laws that apply to all employers in the state (including the state as an employer) and laws that only apply to state civil servants. In addition, states often utilize different definitions of who constitutes a “state employee” and which classifications of “state employees” are included in the “civil service.” Accordingly, the report also highlights a few laws that apply to Arizona and Michigan public employees, even if some of the covered employees fall outside the scope of the respective state’s definition of civil service.

This report focuses on the legal framework that supports Arizona and Michigan as employers-of-choice in three important categories of workplace flexibility: flexible work arrangements, time off, and career flexibility.<sup>8</sup>

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<sup>1</sup> Sloan Center for Aging & Work, States as Employers-of-Choice, <http://bc.edu/research/agingandwork/projects/employersofChoice.html> (last visited Nov. 25, 2009).

<sup>2</sup> See STATES AS EMPLOYERS-OF-CHOICE: FINDINGS FROM THE AGE & GENERATIONS STUDY (Jan. 2009); OFFICE OF THE STATE EMPLOYER, AWS PLANNING STEPS FOR MANAGERS (2008); Patty Gamin, HR Dir., Dep’t of Labor & Economic Growth, Tammy Kirschenbaer, HR Dir., Mich. Dep’t of Transp., Presentation: Alternative Work Schedules (on file with authors).

<sup>3</sup> Press Release, Twiga Foundation, New Survey to Assess States as Employers-of-Choice; Project Seeks State Agencies to Participate (Mar. 10, 2008), available at <http://www.twigafoundation.org/wpcontent/uploads/2008/04/saecnewsrelease.pdf>.

<sup>4</sup> *Id.* (emphasis added).

<sup>5</sup> *Id.*

<sup>6</sup> States as Employers-of-Choice, Presentation: Michigan Site Visit (July 27, 2009), available at <http://www.twigafoundation.org/wp-content/uploads/2009/10/MI.Presentation.09Jul27.pdf>.

<sup>7</sup> This report is not intended to be an all-inclusive guide to work-life laws in each state, but instead a focused look at some of the most relevant laws for the States as Employers-of-Choice Project.

<sup>8</sup> See WORKPLACE FLEXIBILITY 2010, PUBLIC POLICY PLATFORM ON FLEXIBLE WORK ARRANGEMENTS 10 (2009), available at <http://www.law.georgetown.edu/workplaceflexibility2010/definition/documents/PublicPolicyPlatformonFlexibleWorkArrangements.pdf> (defining the types of flexibility).

Flexible work arrangements include flexibility in the scheduling of hours worked, the amount of hours worked, and the location of work. With a few exceptions, the laws allow—but do not require—the states as employers to provide flexible work arrangements. As a result, the implementation and employee usage of flexible work arrangements depends significantly on support from leadership at all levels of the state government *and* the knowledge of managers and employees as to the existence and utility of these arrangements.

Time off provides employees with the ability to take leave from work for a defined period of time to address one’s personal and family needs. Laws in both states *require* the state as an employer to provide employees with time off to address certain enumerated needs and *allow* the states to provide it in other situations at their discretion.

Finally, career flexibility addresses the needs of employees who, out of necessity or personal choice, leave the workforce completely for a period of time, but need or want to reenter the workforce later. These needs may arise when employees leave work for reasons related to child or elder care, or to address a disability, or when a retired individual wants or needs to reenter employment. They also may arise as a result of military service of an employee or a family member. Laws in both states provide career flexibility opportunities, including education, training and retirement options that allow or support employees that want or need to continue in the workforce or reenter after leaving.

As a preliminary matter, both states are required to follow federal laws that provide for options that fall into these three categories of workplace flexibility, such as the Family and Medical Leave Act (“FMLA”),<sup>9</sup> the Fair Labor Standards Act (“FLSA”),<sup>10</sup> and the Uniformed Services Employment and Reemployment Rights Act (“USERRA”).<sup>11</sup> As described below, Arizona and Michigan laws also provide for a variety of flexibility options for public employees through statutes, regulations, executive action, and collective bargaining agreements. Sections I and II of this report discuss the laws that govern public sector workplace flexibility in Arizona and Michigan, respectively. The flexibility permitted in each state differs, and parts of the legal framework were created to address *specific* problems. For instance, Arizona created options to reduce traffic congestion and air pollution, and Michigan implemented additional flexibility to respond to the recent gas and economic crises. Even if created to respond to specific situations, in most cases, the flexibility provided for under these laws can be *used for a far broader number of reasons*. As a result, the options have a much larger impact on the ability of the state to meet its employees’ needs, its own needs as an employer, as well as the needs of the community at large. Finally, Section III provides selected observations relevant to stakeholders working to increase workplace flexibility in the public sector in Arizona, Michigan and for all employers across the country.

By providing a closer look at the legal framework in these states, the Project hopes to further the dialogue on how Arizona and Michigan can use existing authority to address the states’ needs as employers as well as meet the needs of state employees. The Project also aims to impact the dynamics of workplace flexibility beyond the Arizona and Michigan state workforces, and hopes that all states and employers seeking to address changing workplace demographics can learn from understanding the frameworks, models, and lessons learned in Arizona and Michigan.

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<sup>9</sup> Family Medical Leave Act, 29 U.S.C. § 2601 *et seq.* (2006).

<sup>10</sup> Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (2006).

<sup>11</sup> Uniformed Serv. Employment & Reemployment Rights Act, 38 U.S.C. §§ 4301 *et seq.* (2006).

## I. Arizona’s Legal Framework for Workplace Flexibility in the State Workforce

In Arizona, statutes, regulations, and executive orders provide the legal framework for public sector workplace flexibility. Before describing this legal framework, Table 1 provides a snapshot of demographics relevant to understanding the implementation and utilization of workplace flexibility in the state’s workforce.

Arizona’s government is the largest employer in the state.<sup>13</sup> The state workforce consists of four generations of workers and has a large number of employees that are at or near the age of retirement eligibility.<sup>14</sup> In fact, almost 75% of 23 large state agencies “are projected to have at least 25% of their active employees eligible for retirement” by 2014.<sup>15</sup> While the number of state retirements decreased by about 4% in 2009,<sup>16</sup> employees aged 60-64 are most likely to separate.<sup>17</sup> Not surprisingly, the inverse is also true, a higher percentage of new employees are below the age of 50, mostly in the 20-24 age range.<sup>18</sup>

Number of Employees State Workforce	33,236
State Employees Under 25 Years	3.1%
State Employees 25-34 Years	19%
State Employees 35-44 Years	24.4%
State Employees 45-54 Years	28.9%
State Employees 55–64 Years	21.6%
State Employees 65+ Years	3.2%
Female Employees in State Government	55%
Male Employees in State Government	45%
Average Age of State Employee	45.6 years
Mean travel time to work (in minutes)	24.9

Unlike some other states, Arizona has only a small percentage of unionized workers. Arizona is a “right to work” state, which means that an employee cannot be required to join (or not to join) a union.<sup>19</sup> In effect, this restricts the union membership of state employees and the impact of collective bargaining agreements (“CBAs”), which often have provisions for flexibility. While Arizona recognizes the use and validity of CBAs,<sup>20</sup> the small percentage of employees who are covered under CBA provisions means most state employees who utilize flexibility find the authority to support those options in Arizona’s statutes, regulations, and other executive authority.

<sup>12</sup> Data from Table 1 can be located in Ariz. Human Resources, ARIZ. DEP’T. OF ADMIN., STATE OF ARIZ. WORKFORCE REPORT, i, 2, 14, 35 (2009) [hereinafter ARIZ. WORKFORCE REPORT]; U.S. Census Bureau: State & County Quick Facts, Ariz., <http://quickfacts.census.gov/qfd/states/04000.html> (last visited Sept. 20, 2009). See also STATES AS EMPLOYERS-OF-CHOICE, STATE SUMMARY REPORT: ARIZ. 4 (2009) [hereinafter ARIZ. STATE SUMMARY REPORT].

<sup>13</sup> Arizona, Wikipedia, <http://en.wikipedia.org/wiki/Arizona> (last visited Oct. 4, 2009). Nonetheless, Arizona recently dropped to 47th in the nation in the ratio of full time state employees compared to the overall population of the state. See ARIZ. WORKFORCE REPORT, *supra* note 12, at 5.

<sup>14</sup> ARIZ. WORKFORCE REPORT, *supra* note 12, at 5. See also STATES AS EMPLOYERS-OF-CHOICE, STATE GOV’T WORKFORCE BY AGE GROUP 2 (2006).

<sup>15</sup> ARIZ. WORKFORCE REPORT, *supra* note 12, at 28.

<sup>16</sup> *Id.* at 27.

<sup>17</sup> *Id.* at 25.

<sup>18</sup> *Id.*

<sup>19</sup> ARIZ. CONST. art. 25. “No person shall be denied the opportunity to obtain or retain employment because of non-membership in a labor organization nor shall the State. . . exclude[] any person from employment or continuation of employment because of non-membership in a labor organization.” *Id.*

<sup>20</sup> See, e.g., ARIZ. REV. STAT. ANN. § 23-282(C)(3) (2006) (CBAs may authorize extended hours for mining workers subject to statutory limit of twelve hours); § 23-351.E (CBAs exempt covered employees from statute’s wage payment provisions).

These workforce characteristics, as well as many other factors, shape the Arizona state workforce. In addition, as with most large employers, the state has a structure in place to oversee its human resource functions, including those related to workplace flexibility. In Arizona, the Arizona Department of Administration (“ADOA”) is the main agency that performs human resources and personnel support service functions.<sup>21</sup> The ADOA provides support and technical assistance across the state workforce and connects work-life leaders in the various agencies with each other. The ADOA has also issued an employee handbook outlining a number of flexibility arrangements,<sup>22</sup> previously conducted lunch-and-learns about flexibility, and maintains portals that provide employees and the public with information regarding workplace flexibility and implementation tools for supervisors and agency heads.<sup>23</sup>

In addition to the ADOA, each agency, commission, and board may also have its own staff performing personnel functions. In practice, state agencies and managers within each agency and department have discretion to implement a majority of the workplace flexibility programs and policies authorized under state law. This delegation to individual agencies and managers allows different divisions to be flexible with options tailored to its own workforce. As a result, even when laws have been created to authorize flexibility, it may take the actions of a number of people in multiple departments of the state to know about the options, educate employees and managers about them, and, ultimately, allow employees to use them effectively.

## **A. FLEXIBLE WORK ARRANGEMENTS**

In Arizona, the state has the authority to offer flexible work arrangements to state employees by statute, which gives the state as an employer the right “to provide for the implementation of flexible hours of employment as an option for employees.”<sup>24</sup> The law authorizes the director of a state agency to create a flexible workweek in his or her discretion. Under regulations promulgated pursuant to the statute,<sup>25</sup> an agency head may offer a flexible 40-hour workweek option to an employee provided the agency’s objectives can be maintained.<sup>26</sup> Under these provisions, flexible schedules are not guaranteed to individual employees, but rather are allowed with the permission of a supervisor.<sup>27</sup>

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<sup>21</sup> Ariz. Dep’t of Admin., <http://www.azdoa.gov/> (last visited Nov. 18, 2009). The majority of state agencies fall within the ADOA Human Resource System; however, eighteen state agencies have the authority to develop and manage their own employee relations policies and procedures outside of this ADOA system. See ARIZ. REV. STAT. ANN. §§ 41-762, 41-771 (defining “state service” and listing employees “exempted” from “state service” respectively); ARIZ. WORKFORCE REPORT, *supra* note 12, at ii (listing the 18 agencies outside of ADOA’s jurisdiction).

<sup>22</sup> ADOA Employee Handbook, [http://www.hr.state.az.us/homepagelinks/employee\\_handbook.htm#work\\_hours](http://www.hr.state.az.us/homepagelinks/employee_handbook.htm#work_hours) (last visited Nov. 22, 2009) [hereinafter ADOA Guide].

<sup>23</sup> See, e.g., Telework Ariz., <http://www.teleworkarizona.com/> (last visited Nov. 22, 2009); Ariz. Dep’t of Admin., Career Dev., [http://www.hr.az.gov/WorkLife/content\\_030206a.htm](http://www.hr.az.gov/WorkLife/content_030206a.htm) (last visited Oct. 4, 2009).

<sup>24</sup> ARIZ. REV. STAT. ANN. § 41-783(17).

<sup>25</sup> The Arizona Administrative Code contains the government’s interpretation of how to implement the legislative statutes and is legally binding. See *Chevron Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984).

<sup>26</sup> ARIZ. ADMIN. CODE § R2-5-502(C) (1992). Accordingly, the state law that requires state offices to be open Monday to Friday, from 8 am to 5pm, limits flexible scheduling. ARIZ. REV. STAT. ANN. § 38-401 (2006).

<sup>27</sup> One potential exception to this statement exists if the employee requests a flexible work arrangement as an accommodation under federal or state disability or religious discrimination laws. In the case of disability discrimination, an employee with a disability must be given a flexible work arrangement unless it would impose an undue hardship on the state as an employer. 42 U.S.C. § 12101 et seq. (2006); ARIZ. REV. STAT. ANN. § 41-1463; MICH. COMP. LAWS § 37.1102 (2001). With respect to religious discrimination, an employee must be given a flexible work arrangement if a reasonable accommodation is requested to allow the employee to engage in a faith-based practice unless the employer can show that it would cause an undue hardship. 42 U.S.C. § 2000e(j); ARIZ. REV. STAT. ANN. § 41-1463; MICH. COMP. LAWS § 37.2206.

Additionally, federal law allows public employers to provide certain employees with compensatory time off in lieu of monetary payment (“comp time”) at a rate of time and a half.<sup>28</sup> Arizona also authorizes its own version of “comp time” for specific employees.<sup>29</sup> In fact, Arizona goes further by specifying what should happen if “federal law does not mandate overtime compensation.”<sup>30</sup> In this situation, “the person shall receive the regular rate of pay or compensatory leave on an hour to hour basis at the discretion of the board or governing body.”<sup>31</sup> When available and used properly, comp time options may allow employees more flexibility to arrange their work schedules.

In addition to comp time laws, the state legislature created new outcome requirements to support the use of flexible work arrangements. One such outcome requirement relates to the state’s obligations to implement a robust travel reduction program. By statute, all “major employers” in Arizona, including the state itself,<sup>32</sup> must have travel reduction programs that reduce employees commuting by single occupancy vehicles by 5% in the first year (and an additional 5% reduction in the second through fifth years.)<sup>33</sup> The text of the statute notes that these programs may include “full-time or part-time work at home”, telework, “adjusted work hours”, compressed workweeks, staggered work hours, and alternative options to get to work.<sup>34</sup> Employers may also implement emissions reduction plans to comply, which include peak commute trip reductions and travel reduction programs that focus on mileage.<sup>35</sup> These reductions may be important tools for employees who would like to work schedules with transportation at non-peak traveling times or through telework to reduce the miles traveled. These plans help the state satisfy the legislative intent behind the statute as well. Enacted in 1988, this law was passed to cut down on gas consumption and traffic, and meet the Clean Air Act’s air pollution reduction requirement.<sup>36</sup>

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<sup>28</sup> 29 U.S.C. § 207(a)(1), (o).

<sup>29</sup> ARIZ. REV. STAT. ANN. § 23-391(a)(1) (2006). See also ARIZ. ADMIN. CODE § R2-5-305 (1992) (establishing the laws under FLSA that Arizona abides by to determine comp time).

<sup>30</sup> ARIZ. REV. STAT. ANN. § 23-391(a)(2).

<sup>31</sup> *Id.*

<sup>32</sup> ARIZ. REV. STAT. ANN. § 49-588 (2006). A “major employer” is defined as an “employer with one hundred or more employees working at or reporting to a single work site during any twenty-four hour period for at least three days per week during at least six months of the year . . .” § 49-581(11); see also § 49-581(8) (“employer” includes any “agency, department district or other individual or entity, either public or private, that employs workers”).

<sup>33</sup> § 49-588(E)(1)–(2). Compare with ARIZ. REV. STAT. ANN. § 9-500.04 (2006) (an outcome requirement with a directive that 85% of municipal employees in cities of at least 50,000 people must have adjusted work hours, which was enacted to “reduce the level of carbon monoxide, ozone and particulate matter concentrations caused by vehicular travel.”).

<sup>34</sup> § 49-588(c)(i)–(xvii).

<sup>35</sup> § 49-588(F)(7), (8), (9).

<sup>36</sup> See Ex. Order 93-16 (Ariz. 1993); Ex. Order 2002-8 (Ariz. 2002); Ex. Order 2003-11 (Ariz. 2003).

Under the law, the state is also required to inform employees of its travel reduction requirements, implement a state approved travel reduction plan, and commit to taking measures to address problems if the state falls below their travel reduction targets.<sup>42</sup> Further, as an employer with at least 500 employees at a worksite in Arizona, the state is required to implement plans for adjustable work hours to reduce carbon monoxide concentration and vehicular traffic.<sup>43</sup>

These laws and a handful of other statutes and actions by governors have bolstered the public sector's ability to use the flexible work arrangement of telework. In 1989, Arizona partnered with AT&T to develop a telework pilot program that complies with the 1988 Clean Air Bill.<sup>44</sup> In 1993, Governor Symington recognized and built on the success of the pilot program by creating the "State of Arizona Telecommuting Program."<sup>45</sup> The Executive Order that creates the Program justified its establishment with evidence of the pilot program's reduction in air pollution emitted and gas consumption.<sup>46</sup> In addition to environmental protection, the Executive Order mentioned the need to bolster telework to increase "employee productivity and morale."<sup>47</sup> In 1996, Operation Ozone created a goal for state agencies to have 15% of employees actively teleworking.<sup>48</sup> In 2002 and 2003, Governors Hull and Napolitano, respectively, raised the Program's goal to decrease single car occupancy to 20% (up from 5%).<sup>49</sup> By 2007, over 20% of state employees in Maricopa County were participating in a telework program.<sup>50</sup>

### Spotlight on a Safety Measure Provision for Law Enforcement Personnel

Law enforcement personnel are specifically given the right to receive comp time in excess of a 40-hour workweek at the rate of time and a half.<sup>37</sup> At first glance, the state statute does not appear to give more protection to law enforcement personnel than already exists under federal law.<sup>38</sup> However, the Arizona statute allows a 40-hour computation to be used to calculate overtime for these employees.<sup>39</sup> Without the state statute, law enforcement personnel would have to work more hours before incurring overtime under federal law.<sup>40</sup> The Arizona legislature hoped this would incentivize employers to lessen overtime, hire more law enforcement personnel, and cut down on the mental and physical impact long hours were having on law enforcement personnel.<sup>41</sup> The goal was to create a healthier and safer work environment.

<sup>37</sup> ARIZ. REV. STAT. ANN. § 23-392(A)(1). Interestingly, the specific legislative intent of this law was to help with the overcrowding of the jails at the time of the enactment in the mid 1970s. ARIZ. SESS. LAWS, ch. 127, §§ 1, 5 (1977).

<sup>38</sup> Fair Labor Standards Act, 29 U.S.C. § 207(k); see *Pijanowski v. Yuma County*, 202 Ariz. 260, 262 (Ariz. Ct. App. 2006).

<sup>39</sup> § 23-392(A).

<sup>40</sup> *Pijanowski*, 202 Ariz. at 260.

<sup>41</sup> *Id.*

<sup>42</sup> ARIZ. REV. STAT. ANN. § 49-588(B); § 49-588(C)(1)-(4)(b). If the state had not met the requirements by the second year, however, a state created travel reduction regional task force could have stepped in to suggest new implementations. § 49-588(D).

<sup>43</sup> See § 49-454(A),(B) (employers with at least 500 employees "shall" propose changes to their employee work hours to reduce carbon monoxide concentrations; employers with at least 100 employees "may" implement an adjustable work schedule to reduce carbon monoxide concentrations).

<sup>44</sup> Telework Ariz. Program History, <http://www.teleworkarizona.com/mainfiles/visitor/voverview.htm> (last visited Sept. 29, 2009) [hereinafter Program History]. The 1988 Air Quality Bill required large employers "to reduce employee work trips in order to decrease air pollution." Ex. Order No. 93-16 (Ariz. 1993).

<sup>45</sup> Ex. Order No. 93-16 (Ariz. 1993).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Ex. Order No. 2003-11 (Ariz. 2003).

<sup>49</sup> Ex. Order No. 2002-8 (Ariz. 2002); Ex. Order No. 2003-11 (Ariz. 2003).

Another statute related to telework and specifically designed for the public sector allows state employees to be reimbursed for costs associated with their telework.<sup>51</sup> Under this statute, employees may be reimbursed for up to 100% of the cost of internet and phone access charges incurred while working remotely.<sup>52</sup>

Beyond telework and flexible scheduling arrangements, the unemployment insurance program administered by the Department of Economic Security provides for employers to participate in a shared work unemployment insurance program. Shared work unemployment compensation programs reduce the number of weekly work hours of some employees and allow those employees to draw limited unemployment benefits.<sup>53</sup> In theory, these programs attempt to protect employees from termination by allowing employees whose workloads have been reduced to receive partial unemployment compensation from the state to supplement their reduced income. In essence, this curbs the need for employers to fire employees by reducing the hours of multiple employees, thus, containing costs for employers, while continuing to support employees. Shared work programs may become a beneficial use for voluntary workplace flexibility if employees prefer to work part-time hours or wish to do so to ensure job protection in the current economic climate.

## **B. TIME OFF**

Arizona provides state employees with time off for a variety of purposes. First, employees are able to utilize all protections afforded to them in federal leave laws. Second, time off is provided pursuant to a number of state statutes. Among other things, these statutes and the state personnel rules implementing them give employees the right to accumulate and use annual and sick leave, take time off for designated holidays, and leave work to vote.<sup>54</sup>

There are also specific time off provisions for state employees who are also members of the military. These laws allow servicemembers to take advantage of time off for military duty<sup>55</sup> and training,<sup>56</sup> and return to the employee's escalator position, meaning the same job and benefits as well as any promotions that would have occurred but for the service.<sup>57</sup> These laws were enacted at times when large numbers of servicemembers were actively training and/or deployed, such as during the Vietnam, Cold, and Iraq wars.

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<sup>50</sup> Program History, *supra* note 44. The state capital and the hub of the state's employees are located in Maricopa County. See Maricopa County, Wikipedia, [http://en.wikipedia.org/wiki/Maricopa\\_County](http://en.wikipedia.org/wiki/Maricopa_County) (last visited Nov.22, 2009).

<sup>51</sup> ARIZ. REV. STAT. ANN. § 41-786(a)(1),(2) (2006).

<sup>52</sup> *Id.*

<sup>53</sup> ARIZ. REV. STAT. ANN. § 23-762 (2006); Shared Work Program for Arizona Employees, <https://egov.azdes.gov/CMSInternet/main.aspx?menu=234&id=2196> (last visited Nov. 22, 2009).

<sup>54</sup> See, e.g., ARIZ. REV. STAT. ANN. § 1-301 (2006) (provides that state employees receive 10 state holidays off); ARIZ. REV. STAT. ANN. § 16-206 (2006) (provides public employees with time off to vote); Ariz. Dep't of Admin., Time Off, [http://www.hr.az.gov/WorkLife/content\\_030206a.htm](http://www.hr.az.gov/WorkLife/content_030206a.htm) (last visited Sept. 20, 2009) [hereinafter Work Life]. "Most state employees accrue sick leave at the rate of eight hours per month. Part-time employees accrue a proportional amount of sick leave. Temporary, emergency, clerical pool, and part-time employees who work less than ¼ time do not accrue annual leave and are not eligible for sick leave. Up to 40 hours (per calendar year) of an employee's sick leave account may be used to care for immediate family members." *Id.* See also ARIZ. ADMIN. CODE § R2-5-401-423 (1992) (contains leave regulations for public employees, including civic duty, bereavement, military, educational, sick, and parental leave).

<sup>55</sup> ARIZ. REV. STAT. ANN. § 26-168 (2006) (defining military duty as "active" duty, current service as a servicemember, or "attend[ance at] camps, maneuvers, formations, or armory drills.").

<sup>56</sup> ARIZ. REV. STAT. ANN. § 38-610 (2006) (stating military training "attend[ing] camps, maneuvers, formations, or drills"); see Op. Atty. Gen. No. 67-29-L (1967) (training is defined as all "practical training of troops for service against an enemy").

<sup>57</sup> ARIZ. REV. STAT. ANN. § 38-610.01.

Arizona also has a leave transfer program that allows state employees to transfer accumulated annual leave from one employee to another employee in the same agency or to a family member that is an employee of another agency.<sup>58</sup> This program allows employees to use up to six months of transferred leave per qualifying event. For instance, an employee may take transferred leave if the employee has exhausted all other available leave and needs additional time off to care for:

a seriously incapacitating and extended illness or injury or a seriously incapacitating and extended disability that is caused by pregnancy or childbirth or a member of the employee's immediate family [that] has a seriously incapacitating and extended illness or injury or a seriously incapacitating and extended disability that is caused by pregnancy or childbirth.<sup>59</sup>

In addition, an employee may be granted flexible time off to mentor in a school or through a faith-based organization.<sup>60</sup> However, flexible time under this law has the following limitations: (1) it cannot exceed one hour a week and five hours a month; (2) it is unpaid; (3) it cannot be carried forward to the next workweek; and (4) it may not count toward overtime.<sup>61</sup>

Additional laws impacting time off may be on the horizon. For example, state legislation has been proposed to provide partial wage replacement to employees who take time off to care for children or ill family members.<sup>62</sup> While not specific to the public sector, the bill includes state workers in their definition of employees eligible for wage replacement.<sup>63</sup> Another bill proposes to make it unlawful for employers to fire or threaten to fire an employee that leaves work to care for a child-related emergency.<sup>64</sup>

### **C. CAREER FLEXIBILITY**

Arizona provides options for state employees to maintain, promote, or reestablish careers after some time away from work. For example, the state offers a tuition cost sharing program which allows the state to reimburse employees for tuition expenses for courses that will help employees perform their job better or qualify them for the next step in their career path.<sup>65</sup> The state also provides training and development programs to its employees through the Arizona Learning Center, the state's professional development and training organization run by the ADOA. These programs include classes in supervisory skills, computer skills, and other professional development skills.<sup>66</sup>

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<sup>58</sup> ARIZ. REV. STAT. ANN. § 41-783(17) (2006). A family member is a "spouse, natural child, adopted child, foster child, stepchild, natural parent, stepparent, adoptive parent, grandparent, grandchild, brother, sister, sister-in-law, brother-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, nephew or niece." § 41-783(17)(a).

<sup>59</sup> § 41-783(17).

<sup>60</sup> § 41-778.

<sup>61</sup> § 41-778.B.2.

<sup>62</sup> H.R. 2598 § 23-1603 (Ariz. 2009); S.1219 § 23-1603 (Ariz. 2009). For information about efforts to obtain paid family leave and paid sick days in jurisdictions across the country see National Partnership for Women & Families, Support Paid Sick Days, [http://paysickdays.nationalpartnership.org/site/PageServer?pagename=psd\\_index](http://paysickdays.nationalpartnership.org/site/PageServer?pagename=psd_index) (last visited Nov. 25, 2009); Family Values @ Work: A Multi-State Consortium, <http://www.familyvaluesatwork.org/> (last visited Nov. 25, 2009). For information about proposals to authorize new, support existing, or encourage additional workplace flexibility in the federal workforce see Partnership for Public Service, <http://www.ourpublicservice.org/OPS/programs/governmentaffairs/legislation.shtml> (last visited Nov. 25, 2009).

<sup>63</sup> H.R. 2598, 49th Leg. 1st Reg. Sess. (Ariz. 2009); S.1219, 49th Leg. 1st Reg. Sess. (Ariz. 2009).

<sup>64</sup> H.R. 2475, 49th Leg. 1st Reg. Sess. (Ariz. 2009). This bill would allow parents to leave work when notified of the emergency by the police, school, or a community worker. *Id.*

<sup>65</sup> Employee requests for tuition reimbursement must be approved and are subject to available funding. Ariz. Dep't of Admin., Career Dev., *supra* note 23. See also, ADOA Guide, *supra* note 22.

<sup>66</sup> Ariz. Dep't. of Admin., Career Dev., *supra* note 23.

Arizona does not provide for phased retirement. Nonetheless, there are state initiatives for employees who are nearing or at retirement age. One such initiative is the Retiree Accumulated Sick Leave Program (RASL).<sup>70</sup> RASL allows public employees to accumulate sick leave balances that will be paid out upon retirement. For example, employees that have accumulated an extra 500 to 750 hours by not taking sick leave will receive 25% of their salary up to \$30,000 upon retirement.<sup>71</sup> This law provides retirees with options for post-retirement compensation only.

However, there are some ways that retirees can reenter the workforce without being penalized by the state retirement system. For instance, a retiree may return to work for less than 20 hours per week and for less than 20 weeks per year and continue to get retirement benefits.<sup>72</sup> A retiree that returns to work in a different position in another state that requires participating in that state's retirement system may also continue to get retirement benefits from Arizona (if additional conditions are met).<sup>73</sup> These provisions allow certain older state workers to reenter the workforce without experiencing a retirement penalty.

In addition, Arizona has also taken a number of steps to prepare for its aging state population, including an aging state workforce. One innovative action is the state's *Aging 2020* initiative.<sup>74</sup> Recognizing that one in four Arizonans will be over the age of 60 by the year 2020, *Aging 2020* required 14 state agencies to develop and implement plans to address the aging demographics. A key goal of the initiative is to "[s]trengthen Arizona's economy by capitalizing on an integrated and well-trained . . . workforce."<sup>75</sup> The Plan recommends the state do this by implementing "human resource policies that balance the needs of state employers with the changing needs of an aging workforce."<sup>76</sup>

### Spotlight on the Arizona Mature Workforce Initiative

In 2005, the Arizona Governor's Advisory Council on Aging launched the Arizona Mature Workforce Initiative to "raise visibility, awareness, appreciation of and employment opportunities for mature workers, while addressing labor force shortages in the business sector."<sup>67</sup> Among other things, this Initiative allows employers (including public sector employers) to apply for a "Mature Worker Friendly Employer Certification", which indicates that the employer recognizes the value of mature workers and commits to "take action to provide meaningful employment, professional development opportunities, and competitive pay and benefits."<sup>68</sup> The Initiative also recognizes that the mature workforce means that jobs may need to be retooled to "include workplace flexibility concepts such as job sharing, flex time, use of technology. . . ."<sup>69</sup>

<sup>67</sup> Ariz. Governor's Advisory Council on Aging, *The Arizona Mature Workforce Initiative*, <http://www.azgovernor.gov/gaca/MWI.asp> (last visited Nov. 22, 2009).

<sup>68</sup> Arizona Mature Workers, *Mature Worker Friendly Employer Certification*, <http://www.azmatureworkers.com/default.asp?PageID=10007896> (last visited Nov. 22, 2009).

<sup>69</sup> THE ARIZ. MATURE WORKFORCE INITIATIVE, YEAR ONE OUTCOMES & RECOMMENDATIONS EXEC. SUMMARY 6 (2006), available at <http://www.azgovernor.gov/gaca/Documents/ExecSummaryMWI.pdf>

<sup>70</sup> ARIZ. DEP'T. OF ADMIN., ARIZ. ACCOUNTING MANUAL: RETIREE ACCUMULATED SICK LEAVE PROGRAM 1 (Sept. 28, 2006), available at <http://www.gao.az.gov/publications/SAAM/SAAM-2r00-20060906.pdf>.

<sup>71</sup> ARIZ. REV. STAT. ANN. § 38-615(A)(1) (2006); General Accounting Office, *Retiree Accumulated Sick Leave (RASL) Program*, <http://www.gao.az.gov/rasl/> (last visited Sept. 20, 2009). The percentage amount of benefits offered increases with a larger amount of accumulated sick leave hours. § 38-615(A)(1)-(4).

<sup>72</sup> § 38-766.A.

<sup>73</sup> § 38-766; § 38-766.01.

<sup>74</sup> Exec. Order No. 2004-08 (Ariz. 2008).

<sup>75</sup> ARIZ. GOVERNOR'S OFFICE ON AGING, ARIZ. 'S AGING 2020 PLAN 2 (2007).

<sup>76</sup> *Id.*; see, e.g., *id.* at A-6 ("Objective 2.4.: Prepare the state workforce to better serve and address the needs of an aging population. . . e. Market existing work-life benefits. . . g. Coordinate [work]. to recommend allocations of [WIA] funds, and to

Arizona also established a career flexibility taskforce to help another small category of employees—disabled servicemembers. In 2008, a statute created a taskforce to research, collect, and disseminate information on educational programs available to mentor and retrain disabled servicemembers who can no longer serve in their previous occupations.<sup>77</sup> The taskforce is also charged with locating and reporting on best practices to improve the transition of disabled servicemembers back to work.<sup>78</sup> This allows the state to be an employer-of-choice and support cutting-edge programs to help servicemembers with career flexibility.

## II. MICHIGAN’S LEGAL FRAMEWORK FOR WORKPLACE FLEXIBILITY IN THE STATE WORKFORCE

Michigan supports flexible work arrangements, time off, and career flexibility policies for its public employees. These arrangements are authorized through statutes, regulations, executive action, CBAs and other practices.

Before describing this legal framework, Table 2 provides a snapshot of Michigan’s demographics to contextualize the implementation and utilization of the state’s workplace flexibility laws. As Table 2 demonstrates, Michigan’s state government workforce is very large. With 48.4% of its workforce at or near the age of retirement, Michigan is also experiencing an aging work population.<sup>79</sup> This demographic factor makes workplace flexibility policies, which assist with succession planning, and provide tools to attract and retain workers of all ages, all the more important.

Executive support and leadership have played a major role in implementing new flexibility policies which address Michigan’s aging workforce. The state’s laws and civil service commission rules also contribute significantly to flexibility. The state constitution delegates authority to the Michigan Civil Service Commission (MCSC) to “regulate all conditions of employment” for all state classified civil service employees,<sup>80</sup> including the implementation of rules to regulate workplace flexibility for state employees.<sup>81</sup> MCSC regulations govern state employment conditions unless an employee is covered under an approved CBA.<sup>82</sup> In addition, the state personnel director is authorized to issue regulations that interpret MCSC rules,

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develop and implement short and long-term strategies and programs designed to train and retrain an aging population. . . .”) and A-11 (“Objective 5.1: . . . e. Offer flexible working conditions for employees with child and elder care issues, and better use of succession planning techniques such as mentoring, phased retirement, and employment flexibility.”).

<sup>77</sup> ARIZ. REV. STAT. ANN. § 15-1650.01 (2006).

<sup>78</sup> § 15-1650.01(F)(4).

<sup>79</sup> At age 60, employees with at least ten years of state government service are eligible for retirement. At age 55, employees with at least 30 years of state government service are eligible to retire with full retirement benefits. Mich. Comp. Laws § 38.19 (2001); Office of Retirement Serv., State Employees Retirement Plan, [http://www.michigan.gov/orsstatedb/0,1607,7-208-30580\\_31510--,00.html](http://www.michigan.gov/orsstatedb/0,1607,7-208-30580_31510--,00.html) (last visited Nov. 24, 2009).

<sup>80</sup> MICH. CONST. Art. XI, § 5 (2009); see also MICH. CIV. SERV. R. § 1-4.1(a) (The civil service commission derives its powers from the constitution, which grants the commission plenary authority to perform its duties). Michigan’s constitution defines classified civil service as “all positions in the state service except those filled by popular election, heads of principal departments, members of boards and commissions, the principal executive officer of boards and commissions heading principal departments, employees of courts of record, employees of legislature, employees of the state institutions of higher education, all persons in the armed forces of the state, eight exempted position in the office of the governor.” MICH. CONST. Art. XI, § 5.

<sup>81</sup> See generally MICH. CIV. SERV. R., available at [http://www.michigan.gov/mdcs/0,1607,7-147-6877\\_8155--,00.html](http://www.michigan.gov/mdcs/0,1607,7-147-6877_8155--,00.html), <http://www.bls.gov/news.release/union2.t05.htm>

<sup>82</sup> The specific contractual terms of the CBA prevail if it differs from the MCSC rules. MICH. CIV. SERV. R. § 5-1.1(b).

a number of which relate to workplace flexibility. These MCSC rules and regulations are described below, along with relevant statutory provisions.

The Office of State Employer (OSE) negotiates CBAs with labor organizations, and the MCSC must approve all provisions contained in a CBA.<sup>84</sup> Though some subjects are not open to negotiation,<sup>85</sup> an approved CBA becomes a subset of MCSC rules and is considered binding between the state and covered employees, e.g., those represented by the labor organization that are a party to the CBA.<sup>86</sup> As a result, workplace flexibility provisions in CBAs have the full force of law. Unlike Arizona, a majority of Michigan’s public sector employees are union members. This largely unionized public workforce makes CBAs an important source for workplace flexibility policies.<sup>87</sup> Thus, given the heavily unionized state workforce and the enforceability of provisions contained in CBAs, examples of flexibility included in CBAs are also discussed below.

TABLE 2: MICHIGAN DEMOGRAPHICS <sup>83</sup>	
Number of Employees in State Classified Work Force	54,514
State Employees Under 25 Years	4.2%
State Employees 25-34 Years	14.5%
State Employees 35-44 Years	24.8%
State Employees 45-54 Years	34.2%
State Employees 55-64 Years	20.9%
State Employees 65+ Years	1.4%
Female Employees in State Government	51.8%
Male Employees in State Government	48.2%
Average Age of State Employee	45.8 years
Percent of State Workforce Exclusively Represented by Unions	71.9%
Mean Travel Time to Work (in minutes)	24.1

Taken as a whole, these laws, regulations and CBAs provide Michigan with the framework to be an employer-of-choice and a leader in providing employees with a flexible workplace. However, just as in Arizona, there must be support, leadership, and knowledge at all levels of state management about the workplace flexibility policies and programs that are authorized under CBAs, statutes and executive orders.

<sup>83</sup> Data from Table 2 can be located in MICH. CIV. SERV. COMM’N, ANNUAL WORKFORCE REPORT THIRD QUARTER 2-4 (2008-09), available at [http://www.michigan.gov/documents/mdcs/WF\\_2009\\_3rd\\_Quarter\\_Completed\\_286536\\_7.pdf](http://www.michigan.gov/documents/mdcs/WF_2009_3rd_Quarter_Completed_286536_7.pdf) [hereinafter ANNUAL WORKFORCE REPORT] and U.S. Census Bureau: State & County Quick Facts, Mich., <http://quickfacts.census.gov/qfd/states/26000.html> (last visited Nov. 22, 2009). See also MICHELLE WONG, TAY MCNAMARA, SANDEE SHULKIN, CHELSEA LETTIERE, AND VANESSA CAREIRO, MICHIGAN INDICATORS: AGING AND WORK (Mar. 2008), available at [http://www.twigafoundation.org/wp-content/uploads/2009/09/mistateprofile series.pdf](http://www.twigafoundation.org/wp-content/uploads/2009/09/mistateprofile%20series.pdf).

<sup>84</sup> § 6-3.1. It is the responsibility of the OSE to oversee the labor relations functions; MCSC is a neutral party, and must approve an agreement for it to be implemented. See Mission and Functions, Office of the State Employer, [http://www.michigan.gov/ose/0,1607,7-143-6097\\_6269-12441--,00.html](http://www.michigan.gov/ose/0,1607,7-143-6097_6269-12441--,00.html) (last visited Nov. 22, 2009) for an overview of the OSE’s functions.

<sup>85</sup> MICH. CIV. SERV. R. § 6-3.2.

<sup>86</sup> § 6-3.1(d)-(e).

<sup>87</sup> See ANNUAL WORKFORCE REPORT, *supra* note 79; CHARLES L. BALLARD, THE RETRENCHMENT OF THE STATE EMPLOYEE WORKFORCE IN MICH. 7 (Aug. 17, 2009) (“More than two-thirds of state employees are covered by [CBAs]”).

## A. FLEXIBLE WORK ARRANGEMENTS

All state departments have formal and/or informal policies on flexible work arrangements.<sup>88</sup> The legal authority to provide these arrangements comes from various provisions of the MCSC's rules that allow employers and employees to negotiate flexible schedules and are often included in CBAs covering public sector employees.

In Michigan, state civil servants can use flexible arrangements found in the MCSC's rules and regulations and in the CBAs. These specifically authorize the creation of Voluntary Work Schedule Adjustment Plans for most employees.<sup>93</sup> Under these plans, an employee's supervisor is granted full discretion to approve or later modify (if advanced written notice is provided) participation in a voluntary work schedule.<sup>94</sup> In addition to these options, state employees can request a compressed workweek, modified work schedule, job-sharing arrangement, permanent intermittent or part-time work, or the ability to telework.<sup>95</sup>

Michigan's current governor, Jennifer M. Granholm, has promoted the use of these flexible work arrangements (including four-day workweeks, flexible scheduling and telework) in the state workforce. For example, Governor Granholm used her influence and authority in July 2008 when she wrote a letter to public agencies encouraging them to find ways to incorporate such policies into their employment practices.<sup>96</sup> She "asked the directors of each department to support the spirit of flexibility and innovation." In so doing, she observed, "I know we can find additional opportunities to do our work in different settings and through alternative work schedules while still providing Michigan citizens with the excellence and service they expect and deserve from their state

### Spotlight on a Law that Allows Voluntary Shift Swaps for Certain Public Employees

Michigan statutes authorize police, firefighters and medical employees to use additional flexible work arrangements.<sup>89</sup> For example, a law enforcement or fire protection employee may voluntarily trade time with a co-worker. In these circumstances, the employee trading for more time is eligible for overtime pay on the hours worked in excess of the normal workweek as if the trade never occurred.<sup>90</sup> For this provision to apply, the motive of the trade cannot be for the convenience of the employer or for the employer's operations.<sup>91</sup> State medical employers and employees may also negotiate for a 14-day workweek instead of the seven-day workweek, thus allowing for more scheduling flexibility on a mutually agreed upon basis.<sup>92</sup>

<sup>88</sup> Mich. Parent Res., [http://www.michigan.gov/miparentresources/0,1607,7-107-35979\\_36078-116000--,00.html](http://www.michigan.gov/miparentresources/0,1607,7-107-35979_36078-116000--,00.html) (last visited Oct. 5, 2009).

<sup>89</sup> MICH. COMP. LAWS § 408.384a(2) (2001).

<sup>90</sup> § 408.384a(2)(c).

<sup>91</sup> *Id.*

<sup>92</sup> § 408.384(a)(3)(a),(b). Under such terms, the employee is eligible for overtime pay for time worked over eight hours in a day and 80 hours in a two-week work period. *Id.* Medical employers and employees covered under this statute include those engaged in the "operation of a hospital or an establishment that is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective." *Id.* § 408.384(a)(3).

<sup>93</sup> MICH. CIV. SERV. R. § 5.2 (employees may volunteer for voluntary work schedule adjustment plans and the state personnel director is authorized to issue regulations concerning alternative work periods).

<sup>94</sup> § 5-2.3.

<sup>95</sup> Mich. Parent Res., *supra* note 88.

<sup>96</sup> Letter from Jennifer Granholm, Governor of Mich., to Mich. State Employers (June 16, 2008), *available at* [http://michigan.gov/gov/0,1607,7-168-24295\\_24308-195118--,00.html](http://michigan.gov/gov/0,1607,7-168-24295_24308-195118--,00.html).

government.”<sup>97</sup> Her stated reasons for promoting such policies included rising gas prices, a down economy and efforts to help employees manage busy schedules and long commutes, with the target goal of lowering business and commuting expenses.<sup>98</sup>

In addition, the state is allowed to offer comp time in lieu of overtime pay in certain situations. Under Michigan’s minimum wage law, employees of covered employers (which includes the state) can choose to receive up to 240 hours of comp time instead of overtime pay.<sup>99</sup> However, the employer can only provide comp time if the employee has at least 10 days of paid leave a year and comp time is allowed under a CBA or other written agreement, or if employees are not represented, through an employer-adopted plan that allows employees to voluntarily choose between comp time or overtime pay.<sup>100</sup> In an effort to ensure a voluntary choice, employers cannot require or take adverse actions against employees that elect to use either comp time or pay.<sup>101</sup>

Aside from these statutory and regulatory provisions, provisions relating to flexible work arrangements are often standard in CBAs for unions with members that are state employees. For example, CBAs include provisions for:

- Modified work schedules that provide flexibility with work start and stop times;<sup>102</sup>
- Alternative work schedules that allow employees to temporarily vary the times their shifts begin and end according to the needs of the employer and employee;<sup>103</sup> and
- Implementation of a Voluntary Work Schedule Adjustment Program that allows employees to work part of the year at a full-time schedule or work on a part-time schedule for the entire year on a mutually-agreed-upon basis.<sup>104</sup>

Regardless of the authority from where these flexible work arrangements arise, be it through CBAs, MCSC rules, or executive encouragement, employees often must ask for the flexibility, and supervisors have discretion to decide who may utilize these arrangements. Therefore, as in Arizona, it is important that employees and supervisors are informed about these arrangements and how to utilize them effectively.

## **B. TIME OFF**

State employees are able to take time off for a variety of reasons authorized by statutes, MCSC rules, and CBA provisions. Generally, state employees accrue paid annual, personal and sick leave based on years of service, hours worked and specified events that require time off.<sup>105</sup> MCSC rules and regulations

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<sup>97</sup> *Id.*

<sup>98</sup> *Id.*; Office of State Employer, <http://www.michigan.gov/ose/> (last visited Oct. 6, 2009) (noting Governor Granholm’s rationale for expanding alternative work scheduling).

<sup>99</sup> MICH. COMP. LAWS § 408.384a(8) (2001); see Mich. Wage & Hour Div., [http://www.michigan.gov/documents/cis/MW\\_infosheet\\_CompTimeGuide\\_09\\_25\\_06\\_174046\\_7.pdf](http://www.michigan.gov/documents/cis/MW_infosheet_CompTimeGuide_09_25_06_174046_7.pdf) (last visited Nov. 25, 2009).

<sup>100</sup> MICH. COMP. LAWS. § 408.384a(8)(a).

<sup>101</sup> § 408.384a(8)(c).

<sup>102</sup> See, e.g., Mich. State Employees Ass’n & State of Mich., Jan. 1, 2008 – Dec. 31, 2010, Art. 14(K) (CBA offers modified work schedules to covered employees).

<sup>103</sup> See, e.g., Mich. Public Employees SEIU Local 517M Human Serv. Support Bargaining Unit & State of Mi., Jan. 1, 2008 – Dec. 31, 2010, Art. 15, § 8 (CBA utilizes these alternative schedules).

<sup>104</sup> See, e.g., *id.* at Art. 19(H) (CBA utilizes such schedules).

<sup>105</sup> MICH. CIV. SERV. R. § 5-10; § 5.08 (paid holidays), § 5.09 (Annual, Personal, School, Community Participation Leave); § 5.10 (sick leave).

authorize additional paid time off to attend school or other systematic training to improve the employees' knowledge and skills.<sup>106</sup> They also authorize administrative and disaster response leave with pay, as well as non-medical and medical leave without pay.<sup>107</sup>

Employees are also given job-protected time off for jury duty.<sup>108</sup> The law also prevents employers from requiring an employee to work longer than a normal working day when combining the hours spent performing jury duty and any work for the employer.<sup>109</sup>

Employees serving in the military are given special protection under state law. For example, public employees must be given leave to serve in the military and, upon returning to work within 90 days after their release from duty, must be restored to their previous positions.<sup>110</sup> The state must also allow public employees to take leave if they are inducted into the military.<sup>111</sup> The idea is to give greater flexibility to servicemembers who must leave their jobs on occasion for service-related training and deployment. Enacted directly following the Korean War, these laws are meant to maintain military preparedness by removing obstacles from employees and citizens that would otherwise discourage them from joining the military.<sup>112</sup>

CBA's contain additional time off provisions for represented state employees. For example, the Michigan State Employee's Association's CBA provides administrative leave to attend trainings, preventing employees from being penalized for participating in skills training needed to perform their jobs.<sup>115</sup> It also allows employees to take up to two years of unpaid educational leave, and six months of medical or parental leave.<sup>116</sup> Several other CBA's provide similar leave provisions.

Finally, bills are pending in the Michigan House of Representatives that would extend statutory time off protections. One such bill would require all employers that provide paid maternity/paternity leave to provide the same amount of paid leave to employees who adopt a child under five years of age.<sup>117</sup> Another bill would supplement the FMLA by providing up to 10 days or 80 hours of

### Spotlight on a Time Off Law for School Employees

Public school employees are another group that receives special statutory provisions. In 1979, Michigan passed a law that allows them to seek extended maternity/paternity leave. Under the Public School Employees Retirement Act, public school employees receive service credits for the number of hours they work.<sup>113</sup> Employees who have taken parental leave may purchase service credit toward retirement to cover the period of time on parental leave.<sup>114</sup>

<sup>106</sup> § 2-11.1.

<sup>107</sup> §§ 2-11.2 & 3.

<sup>108</sup> MICH. COMP. LAWS § 600.1348 (2001). The statute imposes criminal penalties on employers that discipline, discharge, or threaten to discharge employees for performing jury duty. § 600.1348(1).

<sup>109</sup> § 600.1348(2).

<sup>110</sup> MICH. COMP. LAWS §§ 35.351-355 (2001); see also MICH. COMP. LAWS §§ 32.271-274 (2001).

<sup>111</sup> § 35.354.

<sup>112</sup> 1987 Op. Att'y 431 (Mich.1987).

<sup>113</sup> MICH. COMP. LAWS § 38.1375-76 (2001).

<sup>114</sup> *Id.*; Parental Leave, [http://www.michigan.gov/orsschools/0,1607,7-206-36451\\_36457\\_36464--,00.html](http://www.michigan.gov/orsschools/0,1607,7-206-36451_36457_36464--,00.html) (last visited Oct. 6, 2009).

<sup>115</sup> Mich. State Employees Ass'n & State of Mich., Jan. 1, 2008 – Dec. 31, 2010, Art. 16(C)(1), (2) & (7).

<sup>116</sup> *Id.*; Mich. Corrections Org. SEIU Local 526M, AFL-CIO & State of Mich., Jan. 1, 2008 – Dec. 31, 2010, Art. 19, §§ D, E & J. Under these CBA's, the leave allowances accrue independent of each other.

<sup>117</sup> H.R. 4312, 95th Leg., 1st Reg. Sess. (Mich. 2009).

family military leave to the spouse or parent of a reservist called into active duty for more than 30 days.<sup>118</sup> This bill, titled “The Family Military Leave Act,” would apply to any employer with at least 15 employees, and specifically includes the state and local governments as covered employers.<sup>119</sup>

### C. CAREER FLEXIBILITY

Michigan engages in diverse efforts to provide the knowledge and skills needed to acquire and maintain employment. For example, Michigan offers its state employees a variety of training, educational and career development tools through the Human Resource Training and Development Division of MCSC.<sup>120</sup> This Division offers courses designed to provide the competency necessary for successful job performance. The MCSC also provides a variety of career planning tools for those interested in careers with the state,<sup>121</sup> and assists employees in retirement planning with its Pre-Retirement Orientation program.<sup>122</sup>

Re-training aging and low-income workers is also part of Michigan’s statutory effort to provide a flexible workplace. In 2003, the Michigan Economic and Social Opportunity Act was amended “to fight the causes and effects of poverty, [which the legislature viewed as] particularly important during the current economic downturn.”<sup>123</sup> The law aims to provide educational opportunities to low-income participants in both the private and public sector through the creation of a community action agency.<sup>124</sup> This agency is authorized to provide activities to mobilize community involvement to help elderly and low-income persons “attain an adequate education” from technical and community colleges, among other institutions, and to “secure and retain meaningful employment”.<sup>125</sup> In addition to reducing poverty, these opportunities allow employees to gain the education and training they need to qualify for jobs and better serve the “complex needs and schedules of families, [including to] provide more time for counseling and other [poverty reduction] supports.”<sup>126</sup> The services also facilitate the state’s (and other employers’) goal to recruit and retain qualified workers.

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<sup>118</sup> H.R. 4751, 95th Leg., 1st Reg. Sess. (Mich. 2009).

<sup>119</sup> *Id.*

<sup>120</sup> Mich. Civil Serv. Comm’n, Human Resource Training and Dev., Staff and Services, <http://web1mdcs.state.mi.us/MCSCHRTD/Services.aspx> (last visited Nov. 22, 2009).

<sup>121</sup> Mich. Civil Serv. Comm’n, Career Planning Tools, <http://www.michigan.gov/mdcs/0,1607,7-147-43903--,00.html> (last visited Nov. 22, 2009).

<sup>122</sup> Mich. Civil Serv., Comm’n, Human Resource Training and Dev., Pre-Retirement Orientation, <http://web1mdcs.state.mi.us/MCSCHRTD/DisplayCourse.aspx?Course=RETIRCS001> (last visited Nov. 22, 2009).

<sup>123</sup> Mich. Econ. & Social Opportunity Act, S. 501; H.R. 4502: Revised First Analysis, at 4-5 (Mich. 2003).

<sup>124</sup> MICH. COMP. LAWS § 400.1109 (2001).

<sup>125</sup> *Id.* See also §§ 421.151-154 (seeking to provide educational opportunities to the poor, unemployed, underemployed and others with “barriers to employment” through job training plans designed to help individuals secure and retain employment at their maximum capacity, including recruitment, counseling, pre-job training, vocational training, job development and job placement).

<sup>126</sup> The Commission for Community Action & Economic Opportunity, Alleviating Poverty in Mich.: Report & Recommendations to Governor Granholm & Mich. Legislature 27 (2009), available at [http://www.michigan.gov/documents/dhs/Final\\_Commission\\_Report\\_300737\\_7.pdf](http://www.michigan.gov/documents/dhs/Final_Commission_Report_300737_7.pdf).

With the goal of expanding these efforts, Governor Granholm launched a program to provide educational opportunities to employees in both the private and public sectors in 2007. The No Worker Left Behind (“NWLB”) free tuition program aims to accelerate employee transitions in the workforce by providing educational opportunities to workers who are either unemployed or working in low wage jobs.<sup>133</sup> This program provides up to two years of tuition for qualified participants to a Michigan community college, university, or other qualified training program.<sup>134</sup> Through the NWLB program, Michigan hopes to mitigate the effects of structural unemployment on its economy by helping the poor and unemployed qualify for those jobs that are most in demand, including a few within the government itself.<sup>135</sup>

In addition, the Michigan Legislature is considering the Governor’s pension reform, which includes a phased retirement option that would support employees who want to remain in the workforce.<sup>136</sup> The Michigan House of Representatives is considering a bill that provides for an “early out” option, which would allow early retirement and a onetime bonus pay similar to the Arizona law that allows for accrued sick time to be paid out as compensation upon retirement.<sup>137</sup> Unlike phased retirement, this flexibility allows employees the option to exit the public sector early.

### Spotlight on Michigan’s Deferred Retirement Option Plan (DROP) for State Police

DROP is a supplemental benefit program available to members of the state police force retirement system who are eligible for retirement, but agree to continue working and receiving wages for up to six years.<sup>127</sup> Once enrolled in DROP, a percentage of a participant’s pension is calculated based on the length of participation in the program.<sup>128</sup> That amount is then credited to an interest bearing account in the participant’s name.<sup>129</sup> When someone retires after participating in the program, the DROP funds become available to the participant and the participant can begin receiving monthly pension payments.<sup>130</sup>

DROP was launched in 2004 during a time of state budget cuts.<sup>131</sup> The goal was to save 30-40% of the total cost per employee by retaining experienced veterans who were eligible to retire, planning for smooth transitions when new state troopers could be hired, and maintaining safety services for the state.<sup>132</sup>

<sup>127</sup> MICH. COMP. LAWS § 38.1624a(2)-(4) (2009).

<sup>128</sup> § 38.1624a(5).

<sup>129</sup> *Id.*

<sup>130</sup> § 38.1624a(6)-(7).

<sup>131</sup> STAFF OF S. APPROPRIATIONS COMM., COMM. SUMMARY S. 1021, at 3 (Mich. 2004).

<sup>132</sup> *Id.*; see also Mike Martindale, *Deferred Police Retirement Pay to Cost Strapped State Millions*, DETROIT NEWS, May 26, 2009, available at <http://detnews.com/article/20090526/POLITICS02/905260356&template=printart>; Carol V. Calhoun & Arthur H. Tepfer, *Deferred Retirement Options Plans*, Employee Benefits Legal Resource Site, <http://benefitsattorney.com/modules.php?name=Content&pa=showpage&pid=14> (1998) (stating that DROP programs are attractive to states because they help states “retain valued employees who are eligible to retire,” and allow employees to benefit from continuing to work for the government by accruing benefits).

<sup>133</sup> NO WORKER LEFT BEHIND FACT SHEET (Aug. 2009), available at [http://www.michigan.gov/documents/nwlb/NWLB\\_Fact\\_Sheet\\_Final\\_203216\\_7.pdf](http://www.michigan.gov/documents/nwlb/NWLB_Fact_Sheet_Final_203216_7.pdf). The program is funded largely through federal funds, although \$15 million in funding was appropriated by the state. *Id.* But see S.B. 243, 95th Leg., 1st Reg. Sess. (Mich. 2009) (proposing to reduce the state’s funding to \$4.5 million).

<sup>134</sup> NO WORKER LEFT BEHIND FACT SHEET, *supra* note 133. Tuition is capped at \$5,000 per year and \$10,000 per person. *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> H.R. 5953, 5954, 95th Leg., 1st Reg. Sess. (Mich. 2010); S. 1226, 1227 95th Leg., 1st Reg. Sess. (Mich. 2010).

<sup>137</sup> H.R. 5449, 95th Leg., 1st Reg. Sess. (Mich. 2009).

### III. SELECTED OBSERVATIONS ABOUT STATES AS EMPLOYERS-OF-CHOICE: WHAT ALL EMPLOYERS CAN LEARN FROM ARIZONA AND MICHIGAN

The preceding sections detail the legal frameworks that exist in Arizona and Michigan to afford public employees with access to a robust range of workplace flexibility. Four important observations emerge after analyzing these frameworks: (1) workplace flexibility provides multiple benefits to states as employers; (2) workplace flexibility helps states as employers respond to problems as they arise; (3) successful model programs exist and can be replicated by others; and (4) leadership is a critical component of successful workplace flexibility for states as employers.

#### A. STATES AS EMPLOYERS AND STATE EMPLOYEES BENEFIT FROM FLEXIBILITY

There is a strong—and well-documented—business case for workplace flexibility in state workforces. Research has demonstrated that workplace flexibility results in positive outcomes for the state, employees, and the community at large.<sup>138</sup> Workplace flexibility allows a state to customize the way work gets done so that the state achieves its goals as an employer and employees are able to fulfill both work and personal responsibilities.

To begin with, workplace flexibility provides state employers with another way to attract top talent.<sup>139</sup> As Dr. Marcie Pitt-Cattsouphe, Director of the State Perspectives Institute, explained, employers “that see themselves as employers-of-choice can successfully recruit workers at all life stages who have found that workplace flexibility is an important component of an effective workplace.”<sup>140</sup> Other positive outcomes for states as employers include lower turnover, absenteeism, and real estate costs, as well as improved disaster and emergency preparedness, organizational effectiveness, robust wellness programs,<sup>141</sup> “positive attention,” and better retention rates.<sup>142</sup> In fact, workplace flexibility is one of the largest contributors to a business’ bottom line.<sup>143</sup>

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<sup>138</sup> The findings from the States as Employers-of-Choice Survey offer valuable insights into perceived motivators and barriers to offering workplace flexibility in state agencies. See generally STATES AS EMPLOYERS-OF-CHOICE, RESEARCH HIGHLIGHT 22 (Mar. 2009); STATES AS EMPLOYERS-OF-CHOICE, FLEXIBLE WORK OPTIONS IN STATE AGENCIES (June 2009); STATES AS EMPLOYERS-OF-CHOICE, COMPARING THE PRIORITIES OF STATE AGENCIES & THE PRIVATE SECTOR (June 2009); WORKPLACE FLEXIBILITY 2010, A SAMPLING OF ADDITIONAL RESOURCES ON FLEXIBLE WORK ARRANGEMENTS, available at <http://www.law.georgetown.edu/workplaceflexibility2010/definition/documents/FinalWF2010ResourcesSampling.pdf> (listing data and other resources about the intersection of flexibility and a range of policy issues) [hereinafter WORKPLACE FLEXIBILITY 2010, SAMPLING]; MARIA SHRIVER & THE CENTER FOR AMERICAN PROGRESS, THE SHRIVER REPORT: A WOMAN’S NATION CHANGES EVERYTHING, available at <http://www.awomansnation.com/>; WORKPLACE FLEXIBILITY 2010, *supra* note 8 at 41 (listing relevant selected resources).

<sup>139</sup> See generally WORLD AT WORK, ATTRACTION AND RETENTION: THE IMPACT AND PREVALENCE OF WORK-LIFE & BENEFIT PROGRAMS (2007) (reporting on flexibility programs that lead to the attraction and retention of top talent).

<sup>140</sup> Betsy Z. Russell, *Eye on Boise: How States Could Become Top Workplaces*, SPOKESMAN REVIEW, Mar. 10, 2008.

<sup>141</sup> See, e.g., Benefit Options, Ariz. Wellness Program, <http://www.benefitoptions.az.gov/wellness/default.asp> (last visited Nov. 23, 2009); My Ariz. Health & Wellness, <http://www.myazhealthandwellness.com/> (last visited Nov. 23, 2009); Mich. Civ. Serv. Commission, Employee Health & Wellness, [http://www.michigan.gov/mdcs/0,1607,7-147-22854\\_24290--,00.html](http://www.michigan.gov/mdcs/0,1607,7-147-22854_24290--,00.html) (last visited Nov. 24, 2009).

<sup>142</sup> See sources cited *supra* note 141; see also *Telework as a Business Strategy*, [http://teleworkarizona.com/mainfiles/supervisor/sbusiness\\_strategy.htm](http://teleworkarizona.com/mainfiles/supervisor/sbusiness_strategy.htm) (last visited Nov. 24, 2009); *Top Ten Reasons Why Businesses Should Offer Wellness Programs to Their Employee*, TWIGA NEWS, available at <http://archive.constantcontact.com/fs034/1102583984035/archive/1102612007932.html> (July 2009).

<sup>143</sup> Sloan Work and Family Research Network, *Conversations with the Experts*, The Network News at 3 (July 2005) Vol. 7(7) (interview with Kathie Lingle, Director, Alliance for Work-Life Progress at World at Work).

The research is also clear that workplace flexibility benefits employees.<sup>148</sup> Among other benefits, state personnel that responded to the States as Employers-of-Choice Survey reported that flexibility improves employee morale, helps employees manage work and family responsibilities, increases job engagement and commitment.<sup>149</sup> Flexibility also improves employee health<sup>150</sup> and supports both child development and employees with caregiving responsibilities, disabilities, faith-based practices, or needs to address domestic violence.<sup>151</sup> Indeed, governors in both Arizona and Michigan have recognized the positive impact of workplace flexibility, and have supported programs like telework and alternative work scheduling because they increase morale and support employees' abilities to attend to responsibilities at work and home (while also increasing productivity levels).<sup>152</sup>

**The Michigan Occupational Safety and Health Administration (MIOSHA) is a 2009 winner of the Alfred P. Sloan Awards for Business Excellence in Workplace Flexibility.**<sup>144</sup> Initiated by concerns from employees over long commutes, child care needs and higher gas prices, MIOSHA broke away from rigid scheduling requirements to allow greater scheduling flexibility and more employees to telework.<sup>145</sup> These adjustments not only met the needs of the employees surveyed, they also resulted in increased productivity and enhanced service for the agency.<sup>146</sup>

The First Gentleman of Michigan, Daniel G. Mulhern, has encouraged Michigan employers to apply for these awards. He believes that “workplace flexibility policies are low-cost or often free, and they are fundamental strategies for becoming an employer-of-choice.”<sup>147</sup>

The state and the community as a whole also profit further from flexibility. Findings from a Corporate Voices for Working Families' report note that “organizations find that flexibility [has] positive impacts on cycle time and client service.”<sup>153</sup> In the public sector context, this finding implies that states could use flexibility to support state services for the public, including decreased waiting time for state

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<sup>144</sup> This national award program recognizes employers for “innovative and effective workplace practices [that use] workplace flexibility as a strategy to make work work better – for both the employer and the employee.” SHANNY L. PEER & SHEILA EBY, 2009 GUIDE TO BOLD NEW IDEAS FOR MAKING WORK WORK 10 (Ellen Galinsky, Shanny L. Peer, & Sheila Eby, eds., Families and Work Institute, 2009), available at <http://familiesandwork.org/site/research/reports/2009boldideas.pdf>. The Michigan Civil Service Commission, Michigan Department of Education and Michigan Department of Environmental Quality have also won this award. The Michigan Department of Management and Budget and Michigan Office of the State Employer have received honorable mentions.

<sup>145</sup> *Id.* at 105–106.

<sup>146</sup> *Id.*

<sup>147</sup> First Gentleman Encourages Companies to Apply for When Work Works Flexibility Awards, <http://www.michigan.gov/firstgentleman/0,1607,7-178-24380-190619--,00.html> (last visited Oct. 5, 2009).

<sup>148</sup> See sources cited *supra* note 138 and accompanying text.

<sup>149</sup> Sloan Center for Aging & Work, States as Employers-of-Choice, *supra* note 1.

<sup>150</sup> See Annie Toro, *A Flexible Workplace is a Happier, Healthier Workplace*, HUFFINGTON POST (Nov. 2, 2009) available at [http://www.huffingtonpost.com/annie-toro/a-flexible-workplace-is-a\\_b\\_342260.html](http://www.huffingtonpost.com/annie-toro/a-flexible-workplace-is-a_b_342260.html); Congressional Briefing, Supporting A Healthier Workplace: Workplace Flexibility and Mental Health and Wellness (May 20, 2009), materials available at <http://www.law.georgetown.edu/workplaceflexibility2010/news.cfm> (last visited Nov. 24, 2009).

<sup>151</sup> See WORKPLACE FLEXIBILITY 2010, SAMPLING, *supra* note 138.

<sup>152</sup> See sources cited *supra* note 138 and accompanying text; *infra* note 160.

<sup>153</sup> CORPORATE VOICES FOR WORKING FAMILIES, BUSINESS IMPACTS OF FLEXIBILITY: AN IMPERATIVE FOR EXPANSION 4 (2005).

responses and better customer service.<sup>154</sup> Flexibility also allows more employees to volunteer in the community, improves the environment, and offers a range of other societal benefits.<sup>155</sup>

## **B. FLEXIBILITY HELPS STATES AS EMPLOYERS RESPOND TO PROBLEMS AS THEY ARISE**

Workplace flexibility is often a successful tool for states as employers to address current problems. Indeed, legislatures and executives in both Arizona and Michigan have recognized that flexibility may be needed to respond to problems as they arise. They have also recognized that states can often work within their existing legal framework to use flexibility to address new problems.

As described above, Arizona and Michigan created additional flexibility options to respond to specific problems the states were facing at the time. Many of Arizona's telework and other flexibility laws were created at a time when the state needed to bolster its environmental protection policies. In Michigan, the heavy union presence (and interest in ensuring CBAs contain favorable terms for flexibility) combined with Governor Granholm's efforts to address rising gas prices and focus on workforce development and the overall sustainability of Michigan's workforce in a down economy.

In fact, the current economy provides states with opportunities to maintain—and even increase—flexibility through the creation and use of innovative strategies for workplace flexibility. Budget constraints in both Arizona and Michigan have required state employees to take unpaid furloughs in response to reductions in appropriations for personnel.<sup>156</sup> The availability of flexibility programs, however, may reduce the need for furloughs by providing low cost or no cost alternatives. For instance, the unemployment rate in Arizona has reached 9.1%.<sup>157</sup> Arizona could utilize its shared work program to allow state employees to remain employed and receive benefits to supplement income lost due to reduced hours. Similarly, Michigan could use its Voluntary Work Schedule Adjustment Program, which allows employees to work part of the year on a full-time schedule or work the entire year on a part-time schedule, to provide more flexibility at a time when the state unemployment rate has reached 15.3%.<sup>158</sup> While participation in these programs is at the employer's discretion, both programs may increase voluntary use of flexibility in hard economic times as well.

Combating challenges like absenteeism, turnover during hiring freezes, and low compensation in hard economic times can be a challenge.<sup>159</sup> Budget shortfalls and hiring freezes are further compounding

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<sup>154</sup> See WORKING 4 UTAH, FINAL INITIATIVE PERFORMANCE REPORT 9-15 (2009), available at [http://www.dhrm.utah.gov/Working4Utah\\_FinalReport\\_Dec2009.pdf](http://www.dhrm.utah.gov/Working4Utah_FinalReport_Dec2009.pdf) (discusses the effects of flexibility on customer service relations and productivity).

<sup>155</sup> See sources cited *supra* note 138 and accompanying text; VIRTUAL OFFICE TOOLKIT: VIRTUAL OFFICE POLICY ANALYSIS FOR THE STATE OF ARIZONA 8 (2007).

<sup>156</sup> See, e.g., Exec. Order No. 2009-22 (Mich. 2009) (reducing expenditures necessitating the implementation of furloughs from some state employees); Press Release, Mich. Office of State Employer, Michigan Office of State Employer Announces Furlough Dates for State Government (May 15, 2009) (announcing plans to implement furloughs for state employees as required under Exec. Order 2009-22). See also S. 1003, 49th Leg., 1st Spec. Sess. (Ariz. 2009) (authorizing agencies to reduce employee hours to comply with reductions in appropriations); Ariz. Dep't of Admin., Furlough Procedures (May 11, 2009) (outlining procedures to be utilized by all state agencies for employee furloughs).

<sup>157</sup> Bureau of Labor Statistics, Ariz. Economy at a Glance, <http://www.bls.gov/EAG/eag.az.htm> (last visited Nov. 7, 2009).

<sup>158</sup> Bureau of Labor Statistics, Mich. Economy at a Glance, <http://www.bls.gov/EAG/eag.mi.htm> (last visited Nov. 7, 2009). See *supra* note 104 and accompanying text.

<sup>159</sup> OFFICE OF EFFICIENCY REVIEW, VIRTUAL OFFICE IMPLEMENTATION TOOLKIT: A SOLUTION FOR STATE GOVERNMENT 3 (2007). See Telework Ariz., Virtual Office Overview, <http://www.teleworkarizona.com/vo/overview.htm> (last visited Nov. 24, 2009); see also FAMILIES AND WORK INSTITUTE, THE IMPACT OF THE RECESSION ON EMPLOYERS 1 (May 2009), available at

the problem for the state sector, which requires states to “do more with less” and think innovatively about ways to employ, train, and rehire workers.<sup>160</sup> Using this philosophy, Arizona established the “Virtual Office” allowing employees to do “conventional” jobs in “unconventional” ways and locations.<sup>161</sup> This provides a more flexible work environment while combating difficult issues in state operations impacted by the economy.<sup>162</sup> States can also effectuate a positive outcome as an employer during these hard economic times through training and educating employees who are currently out of the state workforce.<sup>163</sup> Existing career flexibility programs allow states as employers to plan for the end of hiring freezes and prepare citizens to reenter the workforce, which helps states train potential future employees.

While many flexibility options are created to respond to a particular need, once established they often have the added bonus of providing additional benefits at low or no cost to the state. States can—and do—use options authorized in existing laws to address other or new workforce needs. For example, as discussed above, a number of the laws on flexible work arrangements in Arizona were created to respond to environmental concerns. Nonetheless, Arizona has used them to address its aging workforce. Data from the Project’s work with Arizona demonstrates that state employees at all career stages, including older workers, want access to flexible work arrangements.<sup>164</sup> Allowing older workers to use flexible work arrangements, even though state law created them to respond to a different need, is a clear advantage for the state as an employer.

Another example of the use of existing legal authority to address other needs or respond to a new problem relates to the current H1N1 pandemic.<sup>165</sup> On June 19, 2009, Arizona issued a guide that recognizes the key role that employers play “in protecting employees’ health and safety” by preventing (or at least trying to limit) the spread of H1N1.<sup>166</sup> Arizona’s guidance recommends that employers “provide flexible leave policies”, and “[e]stablish policies for flexible worksite (e.g., tele[work]) and flexible work hours.”<sup>167</sup> The ADOA has also worked closely with the Arizona Department of Health Services to provide guidance and protection for state agencies specifically, including suggestions to establish return to work policies that prevent the spread of H1N1, and “[r]eviewing and revising leave policies.”<sup>168</sup> Similarly, Michigan issued

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<http://familiesandwork.org/site/research/reports/Recession2009.pdf> (recent study that found companies were maintaining workplace flexibility and, in fact, 13% of companies studied increased workplace flexibility during this recession).

<sup>160</sup> OFFICE OF EFFICIENCY REVIEW, *supra* note 159; Telework Ariz, *supra* note 159.

<sup>161</sup> OFFICE OF EFFICIENCY REVIEW, *supra* note 159; Telework Ariz, *supra* note 159.

<sup>162</sup> See Telework Ariz., Benefits, <http://www.teleworkarizona.com/vo/benefits.htm> (last visited Nov. 24, 2009) (determining that the benefits of virtual offices include better productivity and employee morale, as well as lower turnover, absenteeism, and costs).

<sup>163</sup> See *supra* Section I(C), II(C).

<sup>164</sup> ARIZ. STATE SUMMARY REPORT, *supra* note 12 at 18–19, 22–23.

<sup>165</sup> ARIZ. DEP’T OF HEALTH SERV., ADHS GUIDANCE FOR BUSINESS & EMPLOYEES TO PLAN FOR 2009-2010 INFLUENZA SEASON (2009), available at <http://www.azdhs.gov/flu/h1n1/pdfs/county/Business%20Planning%20Guidance.pdf>; ARIZ. DEP’T OF HEALTH SERV., ADHS RECOMMENDED EMPLOYER RESPONSES (2009), available at <http://www.azdhs.gov/flu/h1n1/pdfs/county/Business%20Response%20Guidance.pdf> [hereinafter ADHS RECOMMENDED EMPLOYER RESPONSES].

<sup>166</sup> ARIZ. DEP’T OF HEALTH SERV., GENERAL BUSINESS & WORKPLACE GUIDANCE FOR THE PREVENTION OF NOVEL INFLUENZA A (H1N1) FLU IN WORKERS 3 (June 19, 2009), available at <http://www.azdhs.gov/flu/h1n1/pdfs/ADHS%20Business%20and%20Workplace%20Guidance%20for%20H1N1.pdf>.

<sup>167</sup> *Id.* at 3. The Guidance suggests employers “[e]ncourage sick workers to stay home and away from the workplace . . . .” *Id.* at 1. In November 2009, Arizona reinforced and expanded its suggestions that employees stay home to care for ill family members, and further recommended that employers engage in business continuity planning, so workplaces are able to function during an emergency, natural disaster, or large numbers of absenteeism due to flu. ADHS RECOMMENDED EMPLOYER RESPONSES, *supra* note 165, at 1, 3.

<sup>168</sup> Ariz. Dep’t. of Health Serv., Report to Governor on H1N1 Flu Preparedness & Response Activities 25 (2009).

guidelines to mitigate the risk of an H1N1 outbreak (e.g., staggering shifts and telework).<sup>169</sup> The OSE also required all state departments to develop and implement their own pandemic influenza safe work practice to protect state employees.<sup>170</sup> The model plan created to assist departments included recommendations to reduce contact time with people who may be ill, “apply previously department approved flexible work schedules [and] tele-commuting”, and revise shift schedules.<sup>171</sup> Both states allow departments to manage policies to protect their employees and public health.

### C. SUCCESSFUL MODEL PROGRAMS EXIST AND CAN BE REPLICATED BY OTHERS

Stakeholders in both states have recognized the potential of the state workforce to be a model for other employers in both the public and private sectors. For example, Governors Symington and Hull recognized the importance of bolstering telework as a model for state agencies.<sup>174</sup> Governor Napolitano further observed the need for Arizona to be “a model and resource for other employers by demonstrating that telework reduces air pollution . . . and increases employee productivity and morale.”<sup>175</sup> In fact, the state’s telework program has been recognized as a model program for other employers.<sup>176</sup> Similarly, President Obama recently selected Michigan’s No Worker Left Behind program as the model for a new community college initiative.<sup>177</sup> Successful programs can and should be analyzed, shared, duplicated, and integrated into other divisions of the state, other states, and other employers to help leaders spread flexibility to additional workers and workplaces.

**In 2009, the City of Glendale, AZ was included in AARP’s List of 50 Best Employers for Workers Over 50.**<sup>172</sup> AARP recognized the City of Glendale’s “2 Young 2 Retire” Program, which encourages aging workers to explore other career opportunities for “the next phase of life.” The Program provides retirees and aging workers a place in the workforce through full, part time, consulting, contracting, and temporary work opportunities. As a result of this program, 29% of Glendale’s employees are “50+, with an average tenure of 12.4 years,” which improves the culture and diversity of the workforce.<sup>173</sup>

Glendale’s “2 Young 2 Retire” Program serves as a model for other public and private employers across the nation that wish to address a multi-generational workforce and support aging workers.

In reality, understanding the legal framework for flexibility in these states, as well as continuing the dialogue on how to implement existing authority and what additional authority may be needed, impacts the dynamic of workplace flexibility not only for the Arizona and Michigan state workforces but for all states and employers seeking to address the changing workplace demographics. While this paper focused

<sup>169</sup> STATE OF MICH. MODEL PANDEMIC INFLUENZA SAFE WORK PRACTICE (June 30, 2009), available at [http://www.michigan.gov/documents/ose/PISWP\\_07-13-09\\_287087\\_7.pdf](http://www.michigan.gov/documents/ose/PISWP_07-13-09_287087_7.pdf).

<sup>170</sup> Pandemic Influenza Safe Work Practices, [http://www.michigan.gov/documents/ose/PanFluWebsiteDocuments\\_1\\_287216\\_7.pdf](http://www.michigan.gov/documents/ose/PanFluWebsiteDocuments_1_287216_7.pdf) (last visited Nov. 24, 2009).

<sup>171</sup> *Id.*; STATE OF MICH. MODEL PANDEMIC INFLUENZA SAFE WORK PRACTICE 11 (June 30, 2009), [http://www.michigan.gov/documents/ose/Pandemic\\_Influenza\\_Safe\\_Work\\_Practice\\_287248\\_7.pdf](http://www.michigan.gov/documents/ose/Pandemic_Influenza_Safe_Work_Practice_287248_7.pdf).

<sup>172</sup> City of Glendale, Ariz, 2009 Best Employers for Workers Over 50, AARP.ORG, Sept. 2009, available at [http://www.aarp.org/money/work/best\\_employers/articles/glendale\\_arizona\\_2009.html](http://www.aarp.org/money/work/best_employers/articles/glendale_arizona_2009.html).

<sup>173</sup> *Id.*

<sup>174</sup> Program History, *supra* note 44.

<sup>175</sup> Ex. Order No. 2003-11 (Ariz. 2003).

<sup>176</sup> Telework Ariz. Awards, <http://www.teleworkarizona.com/mainfiles/visitor/vawards.htm> (last visited Sept. 29, 2009) (Best Overall Travel Reduction Program).

<sup>177</sup> NO WORKER LEFT BEHIND FUNDING (Aug. 27, 2009), available at [http://www.michigan.gov/documents/nwlb/NWLB\\_Web\\_Message\\_Approved\\_3.14\\_265822\\_7.pdf](http://www.michigan.gov/documents/nwlb/NWLB_Web_Message_Approved_3.14_265822_7.pdf).

on Arizona and Michigan laws, the reality is that all states have laws that impact their state workforce, often in similar ways. As other states look for solutions to assist with some of the same problems that Arizona and Michigan have used workplace flexibility to address—be it working to improve operations in a difficult economy, responding to an emerging public health concern like the H1N1 virus, or addressing a multi-generational workforce—they should consider these employers’ experiences with workplace flexibility.

#### **D. LEADERSHIP IS A CRITICAL COMPONENT OF SUCCESSFUL WORKPLACE FLEXIBILITY OPTIONS**

Strong leadership and support from governors, agency heads, managers, unions, legislatures, and other stakeholders is a critical component to full, effective implementation of workplace flexibility. Strong leadership allows employees to utilize these options and benefits the entire workplace. The strength and dedication of executive leadership is instrumental to the implementation of these laws and utilization of their flexibility provisions.

Governors were instrumental in the development of some of the major flexibility changes in Arizona and Michigan. As described above, Governor Granholm has done a lot for workplace flexibility in the state workforce as part of her workforce development planning. She also uses the bully pulpit to gain support for flexibility programs. For example, she’s talked about the need to take “strong measures to get Michigan back on track” by supporting initiatives like No Worker Left Behind that create a stronger, more educated workforce.<sup>178</sup> First Gentleman Daniel G. Mulhern, who is also the Founder of Michigan’s “Next Great Companies” Program, supports companies with “great workplace cultures” and speaks about the importance of workplace flexibility.<sup>179</sup>

These state experiences also demonstrate that initiatives that work well do not need to disappear when leadership changes. Arizona’s telework program provides a good example of this. As the sidebar illustrates, flexibility programs that are working do not have to be eliminated or even reinvented after leadership changes. Rather, governors, agency heads, and others can successfully build on their predecessors’ work to meet the state’s needs. This program also demonstrates how leadership is needed at multiple levels in the employment structure. Governors have supported the program, but the support has also trickled down to agency heads, managers, and individual employees, all of which are necessary for telework to be fully integrated into workforce operations.

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<sup>178</sup> Governor Granholm Radio Address Labor Day Sept. 2009, *available at* <http://blog.jennifergranholm.com/?p=1001>.

<sup>179</sup> See, e.g., Mich.’s Next Great Companies, <http://www.michigan.gov/firstgentleman/0,1607,7-178-24351-188358--,00.html> (last visited Oct. 5, 2009).

Indeed, managers are an important layer of support needed for successful flexibility. Education of employees and managers about flexibility laws and benefits is a key factor to effective programs. In fact, formal and informal education and training has been an instrumental factor in the process of both Arizona and Michigan.<sup>181</sup> The reality is that workplace flexibility laws are only effective if implemented well and utilized by employees. Employee and manager education and support have a large role in this process and should continue to be supported by any state that hopes to be an employer-of-choice on these issues.

Managers make a real difference when they rally for more education, support, and flexibility for their employees. In essence, managers must be the mouthpieces for flexibility, providing information to employees about the options, to executives about what employees need and want, and making sure to implement the policies that will maximize benefits for the state as employer and employees. Individual managers, many of whom are baby boomers, may need to be trained and incentivized to move past the traditional 9-to-5, 40-hour week work structure. As a result, management training on how to work with and supervise employees using flexibility is an important aspect of successful state flexibility programs.

#### SPOTLIGHT ON ARIZONA'S TELEWORK PROGRAM<sup>180</sup>

- 1989 State partners with AT&T to develop and evaluate a pilot project that demonstrates that telework is a viable travel reduction strategy
- 1993 Executive Order establishes Telework Program
- 1996 ADOA evaluates Telework Program. Governor Fife Symington requires every agency to implement the Telework Program. Created goal of having 15% of employees in Maricopa County teleworking.
- 2002 Governor Jane Hull increases the goal of the Telework Program to have 20% of Maricopa County employees actively teleworking
- 2003 Governor Janet Napolitano reaffirms support for the program and the 20% goal
- 2005 Arizona Health Care Cost Containment System (AHCCCS) Virtual Office Pilot Project
- 2007 More than 20% of State employees in Maricopa County participate in the Telework Program

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In conclusion, both Arizona and Michigan have the potential to bolster their status as states as employers-of-choice. Both states have achieved a flexible workplace with strong executive leadership throughout the state workforce's management levels, and the support and use of flexible work arrangements, time off, and career flexibility to address emerging problems and changing demographics. Supported by the states' existing legal frameworks, Arizona and Michigan have become models for creating and implementing flexibility for a dynamic and aging workforce. Indeed, Arizona and Michigan demonstrate that developing and continuing workplace flexibility programs requires a coordinated plan of awareness, assessment, and action. It involves a thoughtful response to societal problems, such as a down economy in Michigan and environmental crises in Arizona and strong voices like Governor

<sup>180</sup> See sources cited *supra* notes 44–52,176 and accompanying text. Materials about the AHCCS Virtual Office Pilot Program, including a description of the business case for and final evaluation of the pilot, are available online. See, e.g., Telework Ariz., Alex Dirks, Policy 828 - Virtual Office (2007), available at [http://teleworkarizona.com/vo/MasterVOPolicy\\_Attachments/Policy%20828.htm](http://teleworkarizona.com/vo/MasterVOPolicy_Attachments/Policy%20828.htm); Telework Ariz., AHCCCS Human Resources and Development, Virtual Office Evaluation Project Final Report (May 2007), available at <http://teleworkarizona.com/pdf/AHCCCS%20Virtual%20Office%20Evaluation%20Project%20Final%20Report.V3.pdf>.

<sup>181</sup> See, e.g., Program History, *supra* note 44; ADOA Guide, *supra* note 22; Work Life, *supra* note 54; Mich. Parent Res., *supra* note 88.

Granholm's in Michigan and Governors Symington's, Hull's, Napolitano's and Brewer's in Arizona. It requires "buy in" from managers who need to support, educate, implement, and know how to use new and creative ways to utilize existing laws for the benefit of the state as an employer and employees.

This report demonstrates that Arizona and Michigan have certainly come a long way in offering workplace flexibility to address the aging workforce and support all generations of state workers at their various life cycle stages. Nonetheless, as employers-of-choice, Arizona and Michigan must remain committed to a continued awareness of the existence and impact of changing demographics, continued assessments of the state responses to these changing factors, and take further action when necessary. By operating within existing legal frameworks and following this States as Employers-of-Choice model, these states can create a win-win-win situation for workplace flexibility that benefits employees, the state as an employer, and communities at large.