

# Delaware State Labor Law Postings

## Whistleblower Protection

Fox Valley Offices  
4425 North Market Street- 3rd Floor  
Wilmington, DE 19802  
(302) 761-8200

Georgetown American Job Center  
8 Georgetown Plaza, Suite 2  
Georgetown, DE 19947  
(302) 856-5230

Blue Hen Corporate Center  
655 S Bay Road, Ste. 2H  
Dover, DE 19901  
(302) 422-1134

**Delaware Department of Labor  
Division of Industrial Affairs**

## Delaware Whistleblowers' Protection Act

### § 1702 Definitions.

- As used in this chapter:
- (1) "Employee" means a person employed full or part-time by any employer, and shall include, but not be limited to, at-will employees, contract employees, independent contractors, and volunteer firefighters as defined in § 6651(c) of Title 16.
  - (2) "Employer" means any person, partnership, association, sole proprietorship, corporation or other business entity, including any department, agency, commission, committee, board, council, bureau, or authority or any subdivision of them in state, county or municipal government. One shall employ another if services are performed for wages or under any contract of hire, written or oral, express or implied.
  - (3) "Person" means an individual, sole proprietorship, partnership, corporation, association, or any other legal entity.
  - (4) "Public body" means all of the following:
    - a. A state-wide elected official, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of state government or employee of them;
    - b. A legislator or employee of the legislative branch of state government;
    - c. An elected official of a county, city, or school district or employee of them;
    - d. A law-enforcement agency or employee of that law-enforcement agency; and
    - e. A federal agency or employee of that federal agency.
  - (5) "Supervisor" means any individual to whom an employer has given the authority to direct and control the work performance of the affected employee or any individual who has the authority to take corrective action regarding the violation of a law, rule or regulation about which the employee complains.
  - (6) "Violation" means an act or omission by an employer, or an agent thereof, that is:
    - a. Materially inconsistent with, and a serious deviation from, standards implemented pursuant to a law, rule, or regulation promulgated under the laws of this State, a political subdivision of this State, or the United States, to protect employees or other persons from health, safety, or environmental hazards while on the employer's premises or elsewhere; or
    - b. Materially inconsistent with, and a serious deviation from, financial management or accounting standards implemented pursuant to a rule or regulation promulgated by the employer or a law, rule, or regulation promulgated under the laws of this State, a political subdivision of this State, or the United States, to protect any person from fraud, deceit, or misappropriation of public or private funds or assets under the control of the employer.

74 Del. Laws, c. 361, § 1.;

### § 1703 Protection.

- An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment:
- (1) Because the employee, or a person acting on behalf of the employer, reports or is about to report to a public body, verbally or in writing, a violation which the employee knows or reasonably believes has occurred or is about to occur, unless the employee knows or has reason to know that the report is false; or
  - (2) Because an employee participates or is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action, in connection with a violation as defined in this chapter; or
  - (3) Because an employee refuses to commit or assist in the commission of a violation, as defined in this chapter; or
  - (4) Because the employee reports verbally or in writing to the employer or to the employer's supervisor a violation, which the employee knows or reasonably believes has occurred or is about to occur, unless the employee knows or has reason to know that the report is false. Provided, however that if the report is verbally made, the employee must establish by clear and convincing evidence that such report was made; or
  - (5) Because an employee reports or is about to report to a public body, to the employer or the employer's supervisor, verbally or in writing any noncompliance or an infraction which the employee knows or reasonably believes has occurred or is about to occur, of Chapter 80 of Title 15 unless the employee knows or has reason to believe the report is false; or participates or is requested to participate in an investigation, hearing, trial or inquiry, of a person or entity other than employee, regarding noncompliance or an infraction of Chapter 80 of Title 15; or refuses to participate or assist in the noncompliance or an infraction of Chapter 80 of Title 15.

74 Del. Laws, c. 361, § 1.; 79 Del. Laws, c. 344, § 1.;

### § 1704 Relief and damages.

- (a) A person who alleges a violation of this chapter may bring a civil action for appropriate declaratory relief, or actual damages, or both within 3 years after the occurrence of the alleged violation of this chapter.
- (b) An action commenced pursuant to subsection (a) of this section may be brought in Superior Court in the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against whom the civil complaint is filed resides or has their principal place of business.
- (c) As used in subsection (a) of this section, "damages" means damages for injury or loss caused by each violation of this chapter.
- (d) A court, in rendering a judgment in an action brought under this chapter, shall order, as the court considers appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, expungement of records relating to the disciplinary action or discharge, actual damages, or any combination of these remedies. A court may also award, as part of a judgment in an action brought under this chapter, all or a portion of the costs of litigation, including attorneys' fees, if the court determines that such an award is appropriate.

74 Del. Laws, c. 361, § 1.;

### § 1705 Collective bargaining.

This chapter shall not be construed to diminish or impair the rights of a person under any collective bargaining agreement.  
74 Del. Laws, c. 361, § 1.;

### § 1706 Exemption.

This chapter shall not be construed to require an employer to compensate an employee for participation in an investigation, hearing or inquiry held by a public body in accordance with § 1703 of this title.  
74 Del. Laws, c. 361, § 1.;

### § 1707 Notices requirement.

An employer shall post notices and use other appropriate means to keep the employer's employees informed of their protections and obligations under this chapter.  
74 Del. Laws, c. 361, § 1.; 70 Del. Laws, c. 186, § 1.;

### § 1708 Burden of proof.

The burden of proof in any action brought under this chapter shall be upon the employee to show that the primary basis for the discharge, threats, or discrimination alleged to be in violation of this chapter was that the employee undertook an act protected pursuant to § 1703 of this title.  
74 Del. Laws, c. 361, § 1.;

*It is unlawful to retaliate against an employee because (s)he has made a complaint or given information to the Department of Labor about possible labor law violations.*  
Violations of Delaware Labor Laws could result in fines of up to \$10,000 per violation.  
**EMPLOYERS ARE REQUIRED BY LAW TO DISPLAY THIS OFFICIAL POSTER IN A PLACE ACCESSIBLE TO EMPLOYEES AND WHERE THEY REGULARLY PASS.**

## Workers' Compensation

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## WORKERS' COMPENSATION

### IMPORTANT THINGS TO DO IN CASE OF INJURY

#### THE EMPLOYER SHOULD:

Carry Workers' Compensation insurance coverage. Provide all necessary medical, surgical, and hospital treatment from the accident date. Every employer shall keep a record of all injuries received by employees and make a report within ten (10) days thereof in writing to the Office of Workers' Compensation. Ascertain the average weekly wages of the employee and provide compensation in accordance with the provisions of the law, for disability beyond the third day after the accident. All agreements as to compensation must be submitted to the Office of Workers' Compensation for approval.

#### THE EMPLOYEE SHOULD:

Immediately notify the employer in writing of accidental injury or occupational disease and request medical services. Failure to give notice or to accept medical services may deprive the employee of the right to compensation. Give promptly to the employer, directly or through a supervisor, notice of any claim for compensation for the period of disability beyond the third day after the accident. In case of fatal injuries, notice must be given by one or more dependents of the deceased or by a person on their behalf. In case of failure to reach an agreement with the employer in regard to compensation under the law, file an application with the Industrial Accident Board for a hearing on the matters at issue within two (2) years of the date of accidental injury or one (1) year of knowledge of a diagnosis of an occupational disease or an ionizing radiation injury. All forms can be obtained from the Office of Workers' Compensation.

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## Child Labor

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## CHILD LABOR

### General Provisions:

- The minimum age for employment is 14.
- Work Permits are required for all employed minors under the age of 18.
- Employers are required to keep Work Permits on file for each employed minor.
- A new Work Permit is required when a minor changes employers.

#### Provision for Individuals 14 and 15 Years of Age:

### MINORS 14–15 YEARS OF AGE SHALL NOT WORK:

- Before 7:00 A.m. Or After 7:00 P.m. – Except From June 1St Through Labor Day, when the evening hour shall be extended to 9:00 p.m.
- More than four (4) hours per day on school days
- More than eight (8) hours per day on non-school days
- More than eighteen (18) hours in any week when school is in session for five (5) days
- More than six (6) days in any week
- More than forty (40) hours per week, and
- More than five (5) hours continuously without a non-work period of at least thirty (30) consecutive minutes.

### Specific Provisions for Individuals 16 and 17 Years of Age:

- Not more than twelve (12) hours in a combination of school and work hours per day
- Must have at least eight (8) consecutive hours of non-work, non-school time in each twenty-four (24) hour period
- May not work more than five (5) hours continuously without a non-work period of at least thirty (30) consecutive minutes.

For a list of Prohibited Occupations, contact:

**The Delaware Department of Labor, Division of Industrial Affairs, Office of Labor Law Enforcement at any of the addresses listed.**

This poster provides only general information regarding the provisions of Delaware's Child Labor Law. The requirements of state law do not affect an employer's obligation to comply with any provisions of federal law.

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## Breaks

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## BREAKS

**All employees must receive a meal break of at least 30 consecutive minutes if the employee is scheduled to work 7.5 or more hours per day.**

Must be after the first 2 hours of work and before the last 2 hours of work.

### This rule does not apply when:

- The employee is a professional employee certified by the State Board of Education and employed by a local school board to work directly with children.
- There is a collective bargaining agreement or other employer-employee written agreement which provides otherwise.

### Rules have been issued granting exemptions when:

- Compliance would adversely affect public safety.
- Only one (1) employee may perform the duties of a position.
- An employer has fewer than five (5) employees on a shift at one location (the exception would only apply to that shift).
- The continuous nature of an employer's operations, such as chemical production or research experiments, requires employees to respond to urgent or unusual conditions at all times, and the employees are compensated for their meal breaks.

**Where exemptions are allowed, employees must be allowed to eat meals at their work stations or other authorized locations and use restroom facilities as reasonably necessary.**

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## Fair Employment

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## DISCRIMINATION

**Employers are prohibited by state law from discriminating against employees because of their RACE; COLOR; NATIONAL ORIGIN; SEX (INCLUDING PREGNANCY); RELIGION; DISABILITY; AGE (40+); GENETIC INFORMATION; SEXUAL ORIENTATION; GENDER IDENTITY; MARITAL STATUS; MEMBERSHIP IN VOLUNTEER EMERGENCY RESPONDER ORGANIZATION (VOLUNTEER FIREFIGHTERS, AMBULANCE PERSONNEL, LADIES AUXILIARY); VICTIM OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING; FAMILY CARE RESPONSIBILITIES; REPRODUCTIVE HEALTH DECISIONS; and RETALIATION FOR INITIATING A COMPLAINT OF EMPLOYMENT DISCRIMINATION, OR OPPOSING OR PARTICIPATING IN THE INVESTIGATION OF A DISCRIMINATORY EMPLOYMENT PRACTICE. Employers of four (4) or more employees, labor organizations, employment agencies and joint labor-management committees for apprenticeship or training are covered by this law.**

**SEXUAL HARASSMENT:** Sexual harassment of employees, applicants, apprentices, staffing agency workers, unpaid interns, and independent contractors is unlawful. Sexual harassment can be unwelcome sexual advances, requests for sexual favor, or other verbal or physical conduct of a sexual nature when (1) the employee is expected to submit to such conduct; or (2) the employee's submission to or rejection of such conduct is used as the basis for employment decisions; or (3) such conduct has the effect of unreasonably interfering with the employee's work performance or creating an intimidating, hostile, or offensive working environment. If the harassment is by a supervisor, the employer may be responsible even if the employee has not complained. If the harassment is by a fellow worker or non-employee, employers are responsible if the employee complained to the employer and the employer has taken no action to stop or correct the sexual harassment. Effective January 1, 2019, employers must distribute the Department of Labor Sexual Harassment Informational worksheet to all employees. Employers with 50 or more employees must provide interactive sexual harassment training to all new employees, and every two years after.

**DISABILITY:** Employers are prohibited by state law from discrimination against any employee because of disability. State law requires the employment and advancement of qualified Individuals with a disability who, with or without reasonable accommodation, can perform the essential functions of a job.

**PREGNANCY:** Employers must provide reasonable accommodations to employees with respect to pregnancy, childbirth, lactation and related conditions. Employers may not deny job applicants a position based on the need for a pregnancy-related workplace accommodation, make unnecessary changes to a pregnant employee's job functions or require a pregnant employee to take paid or unpaid leave when a reasonable accommodation would permit the employee to continue working.

**ANY PERSON:** who believes he or she has been discriminated against should contact the Delaware Department of Labor, Office of Anti-Discrimination at (302) 761-8200.

**A Charge of Discrimination must be filed within 300 days of the alleged unlawful employment practice.**

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## Minimum Wage

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## MINIMUM WAGE

**Regular Rate:**  
effective: 06-01-15 - \$8.25/hour  
effective: 01-01-19 - \$8.75/hour  
effective: 10-01-19 - \$9.25/hour

**Youth Rate: (Ages 14-17) and Training Rate: (adults, 1st 90 days on the job)**  
effective: 01-01-19 - \$8.25/hour  
effective: 10-01-19 - \$8.75/hour

### EMPLOYEES WHO RECEIVE TIPS:

The minimum cash wage payable to employees who receive tips is \$2.23 per hour, effective 10/1/96. The employer must be able to prove that the employee received the balance of the full minimum rate in tips.

**NOTE:** Delaware's minimum cash wage for tipped employees is greater than the cash wage required by federal law. Employers must pay Delaware's higher rate.

Tips may not be taken or retained by an employer except as required by law. Tip-pooling is permitted (under certain conditions) in an amount not to exceed 15% of the actual tips received by the employee.

### MINIMUM WAGE EXEMPTIONS:

- Employees in agriculture.
- Employees in domestic service in or about private homes.
- Employees of the United States Government.
- Outside commission paid salespeople.
- Bona fide executives, administrators and professionals.
- Employees engaged in fishing and fish processing at sea.
- Volunteer workers (for educational, religious or non-profit organizations).
- Junior camp counselors employed by non-profit summer camp programs.

### RECORD KEEPING REQUIREMENTS:

**Employers must keep records (including rate of pay, hours worked and amount paid for each employee for three (3) years).**

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