

DELAWARE — State Laws by Topic

➤ AGE ◀

Employers with four or more employees are prohibited from refusing to hire, terminating, or otherwise discriminating against employees or applicants based on age.

For purposes of state law, age discrimination prohibitions apply to those individuals who are between the ages of 40 and 70.

➤ AIDS ◀

Testing: Informed consent must be obtained before an individual is tested for AIDS. Exception to consent exists if the health of a health care worker has been threatened during the course of job duties as a result of exposure to blood or other bodily fluids.

➤ ARRESTS/CONVICTIONS ◀

No general provision prohibiting an employer's collection and use of arrest or conviction records. Employers, however, are prohibited from inquiring into expunged records.

Public employers and state government contractors: Public employers and state government contractors are prohibited from inquiring into or considering the criminal record, criminal history, or credit history or score of a job applicant before they makes a conditional offer to the job applicant. Inquiries and consideration of a job applicant's criminal background are permissible after he/she receives a conditional offer of employment. Once a background check is conducted, an employer can only consider felonies for 10 years from the completion of the sentence and misdemeanors for 5 years from the completion of the sentence.

Police forces, the Department of Corrections, and other positions with a statutory mandate for background checks are excluded from these provisions.

➤ BREAKS ◀

A 30-minute meal break must be provided to employees. Meal breaks must be scheduled after the first two hours and before the last two hours of a 7.5-hour shift. *Exceptions:* Meal breaks set by union contracts override the law. Employers may be excluded from the law if compliance would jeopardize safety; only one employee performs the duties of the position; or fewer than five employees are on duty.

➤ BREAST-FEEDING ◀

A woman is entitled to breast-feed her child in any location of a place of public accommodation where she is permitted to be present.

➤ **CHILD LABOR** ◀

Click on the following link <http://dia.delawareworks.com/labor-law/> to access Delaware's Department of Labor, Office of Labor Law Enforcement home page, which includes information about Delaware's child labor laws.

➤ **CHILD SUPPORT** ◀

Employers served with a child support order must begin withholding with the first pay period after seven days after receipt of the order. Amounts are remitted immediately after payday. Notify the court promptly if employee-obligor terminates employment.

➤ **COURT ATTENDANCE** ◀

See jury duty.

➤ **DISABILITIES** ◀

Delaware's Handicapped Persons Employment Protections Act prohibits employers from discriminating against persons with disabilities. Under the Act, employers are prohibited from refusing to hire or employ, recruit, or promote; denying training opportunities to; terminating; limiting, segregating, or classifying; or discriminating against an individual based on disability.

Employers have a duty to investigate whether reasonable accommodations are available and to make reasonable accommodations if an individual has requested an accommodation or if a potential accommodation is obviously required under the circumstances. The individual making the accommodation request must apprise the employer of the need for an accommodation, submit necessary medical documentation, make suggestions for accommodations, and cooperate in the efforts.

The Act covers employers with 15 or more employees.

➤ **DRUG TESTING** ◀

Delaware has no statutory provisions with respect to private employer drug testing. However, employers covered under the state's Handicapped Persons Employment Protection Act are permitted to adopt reasonable policies, including drug testing, to ensure that applicants and employees are not engaging in the illegal use of drugs.

Employees with serious health conditions are allowed to obtain a prescription for medical marijuana. However, employers aren't obligated to allow employees to be impaired at work or to allow the possession of marijuana at a workplace.

➤ **FAMILIAL/MARITAL STATUS** ◀

Employers are prohibited from refusing to hire, terminating, or otherwise discriminating against employees or applicants based on marital status.

Delaware recognizes same-sex marriage. Individuals currently in civil unions may have their civil unions converted into marriages. On July 1, 2014, all remaining civil unions will automatically be converted into marriages. In addition, individuals in relationships other than marriages that were entered into in other states will have all the same rights and benefits as individuals who marry.

For purposes of state law, an employer is an individual employing four or more persons in Delaware.

➤ **FAMILY/MEDICAL LEAVE** ◀

Coverage applies to state government employers.

➤ **GENETIC TESTING** ◀

It is an unlawful employment practice for employers to refuse to hire, discharge, or otherwise discriminate against an individual with respect to compensation or terms, conditions, or privileges of employment based on genetic information.

Employers are prohibited from intentionally collecting genetic information from any employee, applicant, or any family member of an employee or applicant, unless the employer can show the information is consistent with business necessity or is related to the employer's retirement policy or administration of an employee welfare or benefit plan.

➤ **HEALTH CARE CONTINUATION COVERAGE** ◀

Through January 1, 2014, the state's mini-COBRA law will apply to employers of up to 19 employees. Click on this link to access the law: <https://delcode.delaware.gov/title18/c035/sc03/>.

➤ **JURY DUTY** ◀

Employers must not discharge, threaten to discharge, intimidate, or coerce permanent employees who receive or answer a summons to serve jury duty. *Per diem* payments to employees serving as jurors may not be docked from wages by an employer.

➤ **LIFESTYLE DISCRIMINATION** ◀

No provision.

➤ MASS LAYOFF NOTIFICATION ◀

Employers that have 100 full-time employees who, in the aggregate, work at least 2,000 hours per week, must notify employees, any union representatives, and the state of mass layoffs, plant closings, or plant relocations within 60 days prior to the action or as soon as practicable.

Employers must also give notice if the number of employment losses that occur during a 30-day period fail to meet the threshold requirement of a mass layoff or plant closing, but the number of employment losses of two or more groups of workers, each of which is less than the minimum number needed to trigger notice, reach the threshold level during any 90-day period of a mass layoff, plant closing or relocation. Job losses within any 90-day period will count toward WARN threshold levels unless employers demonstrate that the employment losses during the 90-day period are the result of separate and distinct actions and causes.

A *mass layoff* means a reduction in the workforce at single site during any 30-day period for 50 full-time employees, if they make up 33% of the employer's total workforce or 500 or more employees.

A *relocation* occurs when all or substantially all of an employer's business operations move at least 50 miles away.

Notice must include the same elements as under the federal WARN law and may be mailed to employees' last known addresses or stuffed in with their paychecks. The following information must be disclosed:

- the name, job title, home address, telephone number, and email address of each planned dislocated worker;
- general information regarding any payouts, severance packages, job relocation opportunities and retirement options that will be offered to the dislocated workers; and
- whether the employer is self-insured for workers' compensation purposes.

Notice isn't required if the closing is due to a physical calamity, war, or terrorism. Employers aren't required to provide notice if:

- they are actively seeking capital to continue the business and providing notice would jeopardize that;
- the layoff or closure was occasioned by circumstances beyond their control;
- the facilities that are closing are temporary facilities;
- the layoff or closure was due to a natural disaster; or
- the layoff or closure was due to a strike or lockout.

Employers that fail to provide adequate notice will be liable to employees for the lesser of up to 60 days' of back wages or one-half the number of days employees worked, and benefits. Employers' liability will be reduced by the following payments:

- any wages, except vacation pay, paid to employees that accrued before the violation;

- any voluntary and unconditional payments made to the employees that weren't required to satisfy any legal obligation;
- any payments to a third party or trustee, such as premiums for health benefits or payments to a defined contribution pension plan;
- any liability paid under the federal WARN law; and
- in administrative proceedings by the state secretary of labor, any liability paid prior to the secretary's determination as the result of a civil action.

➤ **MEDICAL DONATION LEAVE** ◀

No general provision.

➤ **MILITARY LEAVE** ◀

National Guard members called to active duty are entitled to the same employment rights, privileges, and protections as if called for military training under the federal law that protects National Guard members and reservists.

➤ **MINIMUM WAGE** ◀

Minimum hourly wage/overtime rate: \$8.75/ \$13.13; \$9.25/\$13.86, eff. October 1, 2019.

Basis for overtime: Over 40 hours/week.

Opportunity wage for under 20-year-olds: \$8.25; \$8.75, eff. October 1, 2019.

Note: The state bases its minimum wage on the federal minimum wage. The state minimum may exceed federal minimum wage by a stated amount or percentage, or be adjusted to reflect cost of living increases.

➤ **NATIONAL ORIGIN** ◀

Employers are prohibited from refusing to hire, terminating, or otherwise discriminating against employees or applicants based on national origin.

For purposes of state law, an employer is an individual employing four or more persons in Delaware.

➤ **NEW-HIRE REPORTING** ◀

Data to be reported: Employee's name, address, SSN, first day of work; employer's name, address, federal EIN.

Employers must report as new hires employees who have been off the payroll for at least 60 consecutive days.

Reporting deadline/form: Within 20 days of hire or rehire; on W-4s.

➤ **OVERTIME** ◀

Basis for overtime: Over 40 hours in a workweek.

➤ **PAY STATEMENTS** ◀

Information required: Hours worked; pay period; gross/net pay; deductions. Statements may be furnished electronically.

➤ **PERSONNEL FILES** ◀

Employers are required to permit an employee to inspect the employee's personnel file within a reasonable time upon request by the employee. Employees have the right to inspect the personnel files their employers have used to determine their qualifications for employment, promotion, additional pay, discharge, or disciplinary action.

The term "personnel file" does not include records relating to: the investigation of a possible criminal offense; letters of reference; documents that are being prepared for use in civil, criminal, or grievance procedures; materials that are used by the employer to plan for future operations; or information available to the employee under the Fair Credit Reporting Act.

➤ **POLYGRAPH TESTING** ◀

No employer may require, request, or suggest that any current or future employee take, or cause, directly or indirectly, any current or future employee to take a polygraph, lie detector, or similar test or examination as a condition of employment or continuation of employment.

➤ **POSTING REQUIREMENTS** ◀

Delaware Department of Labor Poster (Includes: Minimum Wage, Payment of Wages, Workers' Compensation, Discrimination, Breaks, and Child Labor) — All employers

"Notice to Employees" (Unemployment Compensation) — All employers

Smoking Prohibited — All employers

Smoking Permitted — All employers

Pregnancy Discrimination — All employers

➤ **PREGNANCY** ◀

Unless there is undue hardship, employers must reasonably accommodate a pregnant employee. *Pregnancy* means pregnancy, childbirth, or a related condition, including, but not limited to, breast feeding. Reasonable accommodations may include acquiring chairs or other equipment that will allow a pregnant employee to sit, more frequent or longer breaks, periodic rest, assisting the employee with manual labor, job restructuring, light-duty assignments, modified work schedules,

temporary transfers to less strenuous or hazardous work, time off to recover from childbirth, or break time and appropriate facilities for expressing breast milk.

It is unlawful for employers to fail or refuse to treat an employee or job applicant who is pregnant as well as they treat other employees or job applicants who are similarly unable to work, to require employees or job applicants to accept an accommodation they choose not to accept, to require employees to take leave if another accommodation can be provided, or take adverse action against employees who request an accommodation in terms of their working conditions or privileges of employment.

See Breast-Feeding.

➤ RACE ◀

Employers are prohibited from refusing to hire, terminating, or otherwise discriminating against employees or applicants based on race or color.

For purposes of state law, an employer is an individual employing four or more persons in Delaware.

➤ REFERENCES ◀

References: Under the “Quality in Hiring Act,” an employer who gives a job reference about a current/former employee will be presumed to be acting in good faith and, therefore, immune from civil liability for disclosures about a current/former employee’s job performance, work-related characteristics, unlawful actions, or ability to comply with job requirements. The presumption of good faith is lost if the information disclosed was knowingly false, deliberately misleading, rendered with malicious purpose, violates a non-disclosure agreement, or was otherwise legally confidential.

Salary history: Employers are prohibited from screening job candidates on the basis of their prior compensation, benefits, and other types of compensation. Employers are also prohibited from seeking candidates’ salary histories from current or former employers. Employers may still negotiate salaries with candidates, provided they don’t request or require candidates to disclose their salary.

Employers will not be liable for a third party’s actions, if they instruct their third parties on these prohibitions.

Employers that violate these provisions will be liable for a civil penalty ranging from \$1,000 to \$5,000 for a first offense, and a civil penalty ranging from \$5,000 to \$10,000 for second and subsequent offenses.

Service letters: An employer that operates a health care facility and/or child care facility, or provides health, nutritional, or personal care in such a facility, may not hire any person seeking employment without obtaining one or more service letters regarding that person. The service letters must include a service letter from the person’s current or most recent previous employer. If the person seeking employment was employed in a health care facility and/or child care facility within the past five years, the employer must also obtain a service letter from such employers. If the person seeking employment has not been previously employed, then the employer must

require the person to provide letters of reference from two adults who are familiar with the person, but who are not relatives of the person.

The required service letter must be a form provided by the Department of Labor. The form must be signed by the current or previous employer and must contain information about the type of work performed by the employee; the duration of employment; the nature of the employee's separation from employment; and any reasonably substantiated incidents involving violence, threat of violence, abuse, or neglect by the person seeking employment toward any other person, including any disciplinary action taken as a result of such conduct.

Any employer that is required to obtain a service letter for the purpose stated above must obtain a statement, signed by the person seeking employment, wherein the person authorizes a full release for the employer to obtain any and all information pertaining to the facts of his/her current or previous employment.

An employer that receives a written request for a service letter from any other employer for the purpose stated above must provide that service letter within 10 business days from the date the request is received. Any employer that fails or refuses to provide such a service letter, or who fails to make a full and complete disclosure of information, as required, will be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation.

Criminal background checks for student teachers: Student teachers must undergo criminal background checks. They will receive a Verification Form of Processing by the State Bureau of Identification, which their colleges or universities must retain for six months after they graduate. District superintendents and charter school directors must request student teachers' verification forms from their colleges or universities.

➤ RELIGION ◀

Employers are prohibited from refusing to hire, terminating, or otherwise discriminating against employees or applicants based on religion.

For purposes of state law, an employer is an individual employing four or more persons in Delaware.

➤ REPORTING PAY ◀

No provision.

➤ SAFETY ◀

No OSHA-monitored state plan. For general information on Delaware's OSHA Consultation Service, click on <https://dia.delawareworks.com/osha-consultation/>.

➤ SCHOOL VISITATION LEAVE ◀

No provision.

➤ **SEX DISCRIMINATION** ◀

Employers are prohibited from refusing to hire, terminating, or otherwise discriminating against employees or applicants based sex.

For purposes of state law, an employer is an individual employing four or more persons in Delaware.

➤ **SEXUAL HARASSMENT** ◀

Employers are responsible for the sexual harassment of an employee by a supervisor or by another employee when they knew or should have known about it and failed to take appropriate corrective action. Sexual harassment is an unlawful employment practice when the employee is subjected to conduct that includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- submission to the conduct is made either explicitly or implicitly a term or condition of an employee's employment;
- submission to or rejection of the conduct is used as the basis for employment decisions affecting an employee; or
- the conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile, or offensive working environment.

In addition, employers are prohibited from retaliating against an employee who files discrimination charges.

The state Department of Labor will create an information sheet pertaining to sexual harassment, which employers must distribute to employees.

Training: Employers with more than 50 or more employees in the state will be required to provide sexual harassment training to all employees and supervisory employees, which must be conducted every two years.

Employees must receive training within one year of hire and every two years after that. Current employees must receive training by August 29, 2019, and every two years after that. Training must cover the following:

- the illegality of sexual harassment;
- the definition of sexual harassment using examples; the legal remedies and complaint process available to the employee;
- directions on how to contact the state Department of Labor; and
- the legal prohibition against retaliation.

Supervisor training must be provided within one year after becoming a supervisor and every two years after that; current supervisors must receive training by August 29, 2019, and then every two years after that. Training must cover the following:

- the specific responsibilities of a supervisor regarding the prevention and correction of sexual harassment; and
- The legal prohibition against retaliation.

Employers that provide training to employees or supervisors prior to January 1, 2019, need not provide additional training until January 1, 2020.

➤ SEXUAL ORIENTATION DISCRIMINATION ◀

Employers are prohibited from refusing to hire, terminating, or otherwise discriminating against employees or applicants based on sexual orientation.

Sexual orientation means heterosexuality, homosexuality, gender identity, or bisexuality. An employer is defined as an individual employing four or more persons in Delaware.

Note: An executive order prohibits state employers from discriminating against employees or applicants based on gender identity or expression.

➤ SMOKING ◀

According to the state's Clean Indoor Air Act, smoking is prohibited in any indoor enclosed area in which the general public is invited or permitted, including all workplaces.

➤ SOCIAL SECURITY NUMBER PRIVACY ◀

Employers that maintain computerized data that includes personal information (e.g., Social Security numbers) shall, following discovery of a breach in the security of the system containing such data, notify "in the most expedient time possible and without unreasonable delay" anyone whose personal information might have been compromised.

Prior to discarding personnel records, employers must shred or destroy employees' records with personal identifying information. Personal identifying information means an employee's first name or first initial and last name in combination with any one of the following data element[s] that relate to the employee, when either the name or the data elements are not encrypted: his or her signature, full date of birth, Social Security number, passport number, drivers' license or state identification card number, insurance policy number, financial services account number, bank account number, credit card number, debit card number, and any other financial information or confidential health care information.

Data security: Employers must implement and maintain reasonable procedures and practices to prevent the unauthorized acquisition, use, modification, disclosure or destruction of unencrypted personal information regarding employees. Not later than 60 days after discovering a breach, employers are required to inform employees, unless a shorter time is required under federal law or some law enforcement agency requests a delay. If notice can't be provided within 60 days, employers must provide notice as soon as practicable. If more than 500 employees are affected, employers must also notify the state attorney general. Encrypted information that is breached is included under this law if the encryption key is also stolen.

Employees' personal information is expanded to include the following:

- passport numbers;
- usernames or email addresses, in combination with passwords or security questions and answers that would permit access to online accounts;
- medical history, medical treatment by a healthcare professional, diagnosis of mental or physical condition by a health care professional or DNA profile;
- health insurance policy number, subscriber identification number or any other unique identifier used by a health insurer to identify the person;
- unique biometric data generated from measurements or analysis of human body characteristics for authentication purposes; and
- individual taxpayer identification numbers.

Unless it's determined that a breach is unlikely to result in harm to employees' credit, employers must offer employees one year's worth of free credit monitoring services, and provide all the necessary enrollment information, if the breach involved their Social Security numbers. Information on how employees can place credit freezes on their files must also be included.

Employers can't provide notice to employees' email addresses if their login credentials have been compromised.

➤ UNEMPLOYMENT INSURANCE ◀

Click on the following link <http://ui.delawareworks.com/> to access the Delaware Department of Labor, Division of Unemployment Insurance home page. To view an unemployment insurance handbook for employers in PDF format, click on <http://ui.delawareworks.com/documents/UI%20Employer%20Handbook.pdf>.

➤ VACATION PAY UPON TERMINATION ◀

Final wages include accrued vacation pay, when an employer agrees to provide vacation pay under a company policy, employment contract, or collective bargaining agreement. All benefits and wage supplements must be paid within 30 days of the date they become due.

➤ VIOLENCE ◀

No general workplace violence provision.

➤ VOTING ◀

No time-off-to-vote provision.

➤ **WAGE DEDUCTIONS** ◀

No deductions from wages are permitted unless the employer is required to make a deduction by state or federal law, the deduction is for the employee's medical care as openly recorded in the employer's records, or the employee has authorized the deduction for a lawful purpose in writing.

➤ **WAGE GARNISHMENT** ◀

Withholding under creditor garnishments is limited to 15% of an employee's disposable weekly pay. Employers may not terminate an employee because his/her disposable pay is subject to a creditor garnishment.

➤ **WAGE PAYMENT ON TERMINATION** ◀

Employee who quits: Next payday.

Employee who's fired: Next payday.

➤ **WAGE PAYMENTS** ◀

Payday requirements: At least monthly on regular, predesignated paydays.

Direct deposit: Employers may not require employees to be paid electronically. Employee consents in writing, chooses bank.

➤ **WHISTLEBLOWING** ◀

It is unlawful for an employer to discharge, refuse to hire, or otherwise discriminate against any person or applicant because he/she has opposed any action prohibited by Delaware anti-discrimination laws, or because he/she has testified, assisted, or participated in any manner in proceedings.

➤ **WORK AUTHORIZATION** ◀

No general provision.

➤ **WORKERS' COMPENSATION** ◀

Click on the following link <http://dia.delawareworks.com/workers-comp/> to access the Delaware Department of Labor, Division of Industrial Affairs, Office of Workers' Compensation home page, which provides links to commonly-asked employer questions on WC.