



DELAWARE

QUICK AND EASY GUIDE TO LABOR & EMPLOYMENT LAW

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Disclaimer: These materials do not constitute legal advice and should not be substituted for the advice of legal counsel.

At-Will Employment

Delaware is an at-will employment state. This means that employers may generally discharge employees for any reason, or no reason, so long as it is not a reason otherwise prohibited by law (such as discrimination or retaliation protections).

Right-to-Work Laws

Delaware is not a right-to-work state. Delaware employees have the right to organize and join employee organizations, bargain collectively, engage in concerted mutual activities, and be represented without any discrimination. [Del. Code tit. 19, § 1303](#). Employees are not required to participate in collective bargaining in situations of managerial policy. [Del. Code tit. 19 § 1305](#).

Immigration Verification and Discrimination

Verification

The State of Delaware has not enacted any additional employment verification procedures on employers beyond Federal I-9 compliance. There is no requirement to use E-Verify under Delaware state laws.

Discrimination

An employer cannot discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment, including reporting or threatening to report an employee's suspected or actual citizenship or immigration status, or the suspected or actual citizenship or immigration status of a family member of the employee to a federal, state, or local agency. [Del. Code tit. 19 § 1703](#).

Drug Testing

Delaware does not have a drug and alcohol-testing law that applies generally to employers. Delaware employers are thus free to administer drug testing at their discretion.

Jury Duty Leave

Employees serving on jury duty shall be paid a per diem rate of \$20, which shall serve as a daily allowance for reimbursement for travel, parking, and other out-of-pocket expenses. [Del. Code tit. 10, § 4514](#). Jurors whose term of service is one day, or one trial, shall not receive reimbursement for the first day of service. *Id.* It is unlawful for an employer to deprive an employee of employment or to threaten or otherwise coerce the employee with respect thereto because the employee receives a summons, responds to a summons, serves as a juror, or attends court for prospective jury service. [Del. Code tit. 10, § 4515](#).

Voting Leave

Employers cannot bribe or threaten to discharge employees in an effort to influence their right to vote in elections. [Del. Code tit. 15, § 5162](#). Employers cannot bribe, threaten to discharge, or hinder employees appointed as election officers from performing such duties. [Del. Code tit. 15 § 5161](#). Employers must allow eligible employees to take leave to serve as election officers on election day if they have accrued available vacation leave and are not in a critical need position. [Del. Code tit. 15, § 4709](#).

Parental Leave

Delaware does not have a family and medical leave law that applies generally to private employers. Delaware employers with four or more employees must make reasonable accommodations for known limitations related to employees' and applicants' pregnancies, including time off to recover from childbirth, unless employers can show that these accommodations would impose an undue hardship on their business operations. [Del. Code tit. 19, § 711](#).

Other Leave

Crime Victim Leave. Delaware employers cannot discharge or discipline employees who are crime victims or represent crime victims because they: (1) participate, at a prosecutor's request, in preparing for criminal proceedings; (2) attend criminal proceedings where their attendance is reasonably necessary to protect crime victims; or (3) attend criminal proceedings in response to a subpoena. [Del. Code tit. 11, § 9409](#).

Emergency Response Leave. Delaware employers with ten or more employees are covered by the Volunteer Emergency Responders Job Protection Act. [Del. Code tit. 19, § 1802](#). Employers cannot discharge or demote any employee who is a volunteer emergency responder if such employee is absent from his or her place of employment responding to a Governor-declared or President-declared state of emergency lasting up to 14 consecutive days, or is absent from his or her place of employment due to injury from responding to an emergency. [Del. Code tit. 19, § 1803](#). The emergency response leave provisions do not apply to employers who have substantially similar policies or rules that provide the same or substantially similar protections as are afforded in these provisions, and that provide the opportunity to appeal a decision to a court within Delaware. [Del. Code tit. 19, § 1808](#).

Military Leave. If any employer fails to comply with any provisions of federal or state law relating to the employment rights of reservists or National Guard members, the employee may bring an action for damages for such noncompliance or such other relief as is appropriate in the Superior Court of Delaware. [Del. Code tit. 20, § 905](#). Any National Guard member who is called to state active duty shall be entitled to the same rights, privileges, and protections with respect to such member's employment as such member would have had if called for military training under federal law protecting reservists and National Guard members. [Id.](#)

Smoking Laws

Delaware employers must prohibit smoking within indoor work areas. A "work area" is defined by statute as "an area in a place of employment where one or more employees are routinely assigned and perform services for their employer," [Del. Code tit. 16, §§ 2902, 2903](#). The term "work areas" includes areas where one or more employees are routinely assigned to perform work. [Del. Code tit. 16, § 2902](#). Employers also must prohibit smoking in enclosed indoor areas that are open to the public, including elevators and common-use areas such as restrooms, lobbies, reception areas, and hallways. [Del. Code tit. 16, § 2903](#). Smoking includes the use of e-cigarettes and other electronic smoking devices that create an aerosol or vapor. [Del. Code tit. 16, § 2902](#). Employers must prominently post "Warning: Smoking Permitted" signs in their workplaces where smoking is permitted; the letters on the signs must be at least one inch high. [Del. Code tit. 16, § 2905](#).

Break Time to Express Milk

Employers in the State of Delaware must not discriminate based on pregnancy, which includes lactation. [Del. Code tit. 19, § 711](#); *see also* [Del. Code tit. 19 § 710](#). Employers also cannot fail or refuse to make reasonable accommodations for known limitations related to employees' and applicants' pregnancy, including lactation, unless employers can show that these accommodations would impose undue hardship on their business operations. [Del. Code tit. 19, § 711](#). Reasonable accommodations for pregnancy, including lactation, may include break time and appropriate facilities for expressing breast milk. [Del. Code tit. 19 § 710](#).

Meal and Rest Breaks

Delaware employers must provide all covered employees scheduled to work at least seven and a half hours a meal period of at least 30 minutes. [Del. Code tit. 19, § 707](#). Employers must provide the meal period after the first two hours and before the last two hours of scheduled work. [Id.](#)

Delaware wage and hour law has no specific provisions requiring private employers to provide rest breaks.

Minimum Wage, Overtime, and Wage Recordkeeping

Effective January 1, 2023, the State of Delaware set the minimum wage at not less than \$11.75 per hour. [Del. Code tit. 19, § 902](#). This is set to change beginning January 1, 2024, at which time Delaware's minimum wage will increase to \$13.25 per hour. Gratuities in occupations where gratuities are customary may be considered wages in an amount equal to the tip credit percentage set by the federal government. [Id.](#) Employers must still comply with federal wage laws and regulations. [Id.](#)

Delaware follows the federal provisions regarding overtime pay, which state that generally if an employee works more than 40 hours, he or she must be compensated at a rate of one and a half times the regular rate of pay at which he or she is employed. *See* [29 U.S.C. § 207](#).

Employers must maintain the following records for at least three years: (1) the name, address, and occupation of each employee; (2) each employee's rate of pay and the amount paid each pay period; and (3) the hours worked each day and each workweek by every employee. [Del. Code tit. 19 § 907](#).

Employment Discrimination (DDEA)

Delaware's Discrimination in Employment Act (DDEA) prohibits employers with four or more employees from discriminating against employees based on race (including traits historically associated with race, see Crown Act below), marital status, genetic information, color, age, religion, sex (including pregnancy), sexual orientation, gender identity, national origin, volunteer emergency responder status, status as a victim of domestic violence, sexual offenses, or stalking, reproductive health decisions, and family responsibilities. [Del. Code tit. 19, § 710 et seq.](#)

Delaware's Persons with Disabilities Employment Protections Act (PDEPA) prohibits disability discrimination.

Delaware also prohibits employers from requiring, as a condition of employment, that an employee refrain from inquiring about, discussing, or disclosing his/her wages or the wages of another employee; requiring an employee to sign a waiver or other document which purports to deny an employee the right to disclose or discuss his/her wages; and discharging, formally disciplining, or otherwise discriminating against an employee for inquiring about, discussing, or disclosing his/her wages or the wages of another employee. [Del. Code tit. 19, § 711\(j\)](#).

Race-Based Hair Discrimination

In April 2021, Delaware passed the Crown Act, which prohibited race-based hair discrimination. This legislation amended the definition of "race" to include traits historically associated with race, including hair texture and the protective hairstyles of braids, locks, and twists. [Del. Code tit. 19 § 710](#). Consequently, employers may not discharge, refuse to hire, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment based on any of the hairstyles mentioned above. [Del. Code tit. 19 § 711](#).

Employment of Persons with Disabilities

Jamie Wolfe Employment Act. Beginning January 31, 2024, employers who are authorized to employ an individual with a disability at a subminimum wage (pursuant to a certificate under [29 U.S.C. § 214\(c\)](#) or pursuant to regulations under [Del. Code tit. 19, § 905](#)) may not employ or compensate disabled individuals at an hourly rate lower than the effective rate payable under [Del. Code tit. 19 § 902](#). [Del. Code tit. 19 § 752](#).

Delaware Worker Adjustment and Retraining Notification Act

The Delaware Worker Adjustment and Retraining Notification Act (DE WARN Act) requires employers to provide at least 60 days' written notice prior to a mass layoff, plant closing, or relocation. Employers must send such a notice to employees (and, if applicable, their representatives); the Delaware Department of Labor Division of Employment Training, WARN Act Administrator; and the Delaware Workforce Development Board for the locality of the triggering event. The DE WARN Act applies to employers with 100 or more employees, excluding part-time employees, or 100 or more employees that work, in the aggregate, at least 2,000 hours per week. [Del. Code tit. 19 § 1901 et seq.](#)

Final Payments

If an employee quits, resigns, is discharged, suspended, or laid off, Delaware employers must pay wages on the later of either; (1) what would have been the employee's next regular payday, or (2) three business days after the last day worked. [Del. Code tit. 19, § 1103](#).

Unemployment Insurance

Unemployment insurance benefits provide income to individuals who have lost work through no fault of their own. The benefits are intended to partially offset the loss of wages while an unemployed worker searches for suitable work or until an employer can recall the employee to work. Nothing is deducted from the employee's wages to pay for this coverage. Unemployment benefits are administered by the Delaware Department of

Labor and additional information regarding the benefits may be accessed at labor.delaware.gov/divisions/unemployment-insurance. See also [Del. Code tit. 19 § 3301 et seq.](#)

Workers' Compensation

The Delaware Workers' Compensation Act (DWCA), [Del. Code tit. 19, § 2301, et seq.](#), generally applies to every employer in Delaware. [Del. Code tit. 19 § 2306](#). Employees who suffer injuries and/or occupational diseases arising out of and in the course of their employment may be eligible to receive several types of benefits. [Del. Code tit. 19 § 2304](#). A workplace injury must be immediately reported to the employer; failing to timely report an injury may result in a denial of benefits.

The DWCA is administered by the Delaware Department of Labor. Additional information regarding the DWCA, as well as other state laws, rules, and regulations regarding worker's compensation, may be accessed at labor.delaware.gov/divisions/industrial-affairs/workers-comp. Finally, Delaware recognizes a private cause of action for discrimination and retaliation under the DWCA. [Del. Code tit. 19, § 2365](#).

Child Labor

Minors under the age of 14 cannot be employed. [Del. Code tit. 19 § 505](#). Minors ages 14 – 17 are prohibited from employment during certain hours and periods and from certain types of work. [Del. Code tit. 19, §§ 505, 506, 507](#). Additional school-based learning program exceptions may apply. [Del. Code tit. 19 §§ 506, 507](#). Employers must obtain work permits from all minor employees. [Del. Code tit. 19, § 504](#). See [Del. Code tit. 19, § 501, et seq.](#)

Gun Laws

Delaware has no laws governing whether an employer can prohibit weapons in the workplace. Employers are therefore free to place restrictions on the right of employees to possess firearms at work, including in company parking lots.

Medical Marijuana

Delaware allows for the medical use of marijuana to treat or alleviate certain debilitating medical conditions or related symptoms. [Del. Code tit. 16, § 4901a, et seq.](#) Thus, an employer may not terminate or refuse to hire an employee based upon either; (1) the employee's status as a medical marijuana cardholder, or (2) a medical marijuana cardholder's positive drug test for marijuana, unless the employee used, possessed, or was impaired by marijuana on the premises of the place of employment, or during the hours of employment. [Del. Code tit. 16 § 4905A](#). Employers are not prohibited from disciplining an employee for ingesting marijuana on-site. [Del. Code tit. 16 § 4907A](#).

Assignment of Employee Inventions

An "assignment of inventions" agreement shall not apply to an invention the employee developed entirely on his or her own time without using the employer's equipment, supplies, facility, or trade secret information, except for those inventions that relate to the employer's business or actual or demonstrably anticipated research or development or result from any work performed by the employee for the employer. Any agreement to the contrary is against public policy and, therefore, is unenforceable. [Del. Code tit. 19 § 805](#).

Inspection of Personnel Files

Employers must, upon the request of an employee, permit the employee to inspect that employee's own personnel files used to determine that employee's own qualifications for employment, promotion, additional compensation, termination, or disciplinary action. Employers must make the records available during the employer's regular business hours in the office where these files are regularly maintained, when sufficient time is available during the course of a regular business day to inspect the files in question. The employer may require the requesting employee to inspect such records in the free time of the employee and may require the employee to file a written request for such access. [Del. Code tit. 19 § 732](#). Employees need not be permitted to remove the file from the premises, but the employee may take notes. Finally, the employer may require the inspection of the file in the presence of a designated official and may limit inspection to once every calendar year. [Id. at § 733](#).