

CONTINUING LEGAL EDUCATION

Annual Labor and Employment Law Seminar 2024

March 27, 2024, 9:00AM – 12:45PM

Live at the DSBA (Webcast in Dover)



DSBA WiFi Access



Seminar Materials



Presented by the Labor and Employment Section of the DSBA

**3.0 Hours of CLE credit including 2.0 hours of Enhanced Ethics
for Delaware and Pennsylvania Attorneys**

Visit www.dsba.org/cle or all the DSBA CLE seminar policies. Please note that the attached materials are supplied by the speakers and presenters and are current as of the date of this posting.

Panel 1 (9am – 10am)

Legislative Update

Speakers

Speakers:

Timothy M. Holly, Esquire
Connolly Gallagher LLP

G. Kevin Fasic, Esquire
Offit Kurman P.A.

Panel 2 (10am-10:30am)

Ethical, Fiduciary, and Employment Law Issues in

Law Firm Breakups and Attorney Departures

Speakers:

Matthew F. Boyer, Esquire
Connolly Gallagher LLP

Luke W. Mette, Esquire
Baird Mandalas Brockstedt & Federico, LLC

Panel 3 (10:45am -11:15am)

Restrictive Covenants: Developments in the Caselaw

Speaker:

Jesse L. Noa, Esquire
Potter Anderson & Corroon LLP

Panel 4 (11:15am – 12:45pm)
**Generative AI: Current Issues Related to Labor and
Employment Law**

Moderator:

Ryan P. Newell, Esquire
Young Conaway Stargatt & Taylor, LLP

Speakers:

Gregory Strong, Esquire
DLx Law, LLP

Professor Mary Ellen Maatman, Esquire
Delaware Law School

Lauren Moak Russell, Esquire
Potter Anderson & Corroon LLP

Kenneth Kelemen
Administrative Office of the Courts

Panel 1

Legislative Update

Timothy M. Holly, Esquire
Connolly Gallagher LLP

G. Kevin Fasic, Esquire
Offit Kurman P.A.



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**Delaware State Bar Association
Labor & Employment Section**

March 27, 2024

**Legislative Update
("The Tim and Kevin Show")**

**Timothy M. Holly – Connolly Gallagher LLP
G. Kevin Fasic – Offit Kurman, P.A.**



NEWER DELAWARE LAW

TAB 1	HS 1 for HB 73	SOL Unemployment Overpayment (Signed 9/14/23)
TAB 2	SB 146	Charge Filing Date (Signed 9/11/23)
TAB 3	SB 145	Discrimination Damages Caps Increase (Signed 9/11/23)
TAB 4	SS 1 for SB 182	Contractor Registration Applications (Signed 8/31/23)
TAB 5	SB 178	FMLA Comparable Private Plans Appeals (Signed 8/31/23)
TAB 6	HB 176	Unemployment Deadlines (Signed 8/9/23)
TAB 7	SS1 for SB 102	Prevailing Wage – Custom Fabrication (Signed 7/26/23)
TAB 8	HB 236	Unemployment Assessments (Signed 7/25/23)
TAB 9	HB 184	Domestic Violence Verification (Signed 7/25/23)
TAB 10	HB 144	LLC Members – Workers Comp (Signed 6/30/23)
TAB 11	HA1 for HB 65	Paid State Bereavement Leave (Signed 6/30/23)
TAB 12	SB 27	Wage Payment SOL Enlargement (Signed 4/26/23)



TAB 13	HB 1	Non-Medical Marijuana (Enacted Without Signature 4/23/23)
TAB 14	HB 49	Unemployment Cap Increase (Signed 1/26/23)
TAB 15	HB 205 w/ HA3	Mandatory Retirement Accounts (Signed 8/18/22; Perhaps Effective 12/31/2025)
TAB 16	SS2 for SB1	Paid FMLA (Signed 5/10/22) (Effective 7/1/22) (First Regs Effective: 7/11/23) (Grandfather: Apps Closed; Appeals Pending) (Second Regs Effective: 3/11/24) (Apply Private Plans 9/1-12/1/24) (Payroll Deductions: 1/1/25) (Tax Due: 4/30/25) (Claims Start: 1/1/26)
	SB 35	Bond & Capital Improvements (Signed 1/26/23)
	HB 354	Sanctuary Employers (Signed 10/21/22)
	HB 311w/ HA 2	Disabilities in Public Accommodation (Signed 10/10/22)
TAB 17	SB 35	Criminal Liability for “Wage Theft” (Signed 10/7/22)
	SS1 for SB 208	Wage Payment Defense Removal (Signed 10/7/22)
	SA2 for	Age Inquiry in Applications



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SB 211	(Signed 9/8/22)
HB 277 s/ HA1	Vicarious Liability For Employees (Signed 8/19/22)
SS1 for SB 48	Electrician “Fraud” (Signed 10/5/21)
HB 88	Training Minimum Wage Take Back (Signed 9/30/21)
SB 51	Plumbing & HVAC Sanctions (Signed 9/30/21)
SB 15	Minimum Wage (Signed 7/19/21)
SB 32	Stereotype Discrimination (Signed 4/13/21)
HB 65	Unemployment (Signed 2/8/21)
SB 31	“Equal Rights” Amendment



PENDING NEWER DELAWARE LEGISLATIVE ACTION

TAB 18	HB 327	No “Harassment” Defamation; No Non-Disparagement; One-Sided Fees (Introduced 3/6/24)
TAB 19	SB 233	Don’t Be a Service Worker Employer (Introduced 3/6/24)
TAB 20	HB 17	Mandatory Unpaid Leave (Introduced 2/29/24)
TAB 21	SB 222	Pro Union – Apprentices(1) : Journeypersons(3) (Introduced 2/29/24)
TAB 22	HB 318	Worker’s Comp Proceeds Protection (Introduced 2/29/24)
TAB 23	SB 229	Former Employee Personnel File Inspection (Introduced 2/29/24)
TAB 24	SB 20	School Donated Leave (Introduced 1/18/24)
TAB 25	SS1 for SB 147	Employer Information Protection Limitations (Introduced as SB147 6/1/23) (SS1 introduced 1/18/24) (Passed Senate 3/7/24) (Assigned to Judiciary Committee 3/12/24)
TAB 26	HB 296	School Choice on Prevailing Wage (Introduced 1/24/24)
TAB 27	HB 275	Asexuality/ Pansexuality (Introduced 12/14/23) (Out of Committee in House with 4 on Merits 3/13/24)




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TAB 28	HB 258	Alice from Brady Bunch (Introduced 7/7/23)
TAB 29	SB 181	Contractor Joint or Severally Liable (Introduced 6/15/23)
	HB 331	Lemonade Stands (not joking) (Out of Committee 6/8/22)
	HS1 for HB 288	Paid Time Off to Vote (Amended 5/10/22)
	SB 201	PERB Timing for Decisions (Introduced 12/16/21)
	HS1 for HB 94	Tip Minimum Wage (Introduced 6/30/21)
	DRAFT	Domestic Violence, Sexual Offense, Stalking
	DRAFT	“Silenced No More Act”



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NEW REGULATIONS

TAB 30		Paid FMLA 2 nd Round Regulations (Live 3/11/24)
TAB 31	1400	Paid FMLA 1 st Round Regulations (Live 7/11/23)

TAB 1

Delaware General Assembly (/)



House Substitute 1 for House Bill 73 152nd General Assembly (Present)

Bill Progress

Current Status:

Signed 9/14/23

What happens next?

Becomes effective upon date of signature of the Governor or upon date specified

Bill Details

View Parent Bill:

[HB 73 \(/BillDetail/130043\)](#)

Introduced on:

6/15/23

Primary Sponsor:

[Osienski \(https://housedems.delaware.gov/members/house-district-24\)](https://housedems.delaware.gov/members/house-district-24)

Additional Sponsor(s):

Sen. [Townsend \(https://senatedems.delaware.gov/members/senate-district-11\)](https://senatedems.delaware.gov/members/senate-district-11), [Walsh \(https://senatedems.delaware.gov/members/senate-district-9\)](https://senatedems.delaware.gov/members/senate-district-9)

Rep. [K. Williams \(https://housedems.delaware.gov/members/house-district-19\)](https://housedems.delaware.gov/members/house-district-19)

Co-Sponsor(s):

Sen. [Gay \(https://senatedems.delaware.gov/members/senate-district-5\)](https://senatedems.delaware.gov/members/senate-district-5)

Reps. [Hilovsky \(https://housegop.delaware.gov/members/house-district-4\)](https://housegop.delaware.gov/members/house-district-4), [Michael Smith \(https://housegop.delaware.gov/members/house-district-22\)](https://housegop.delaware.gov/members/house-district-22)

Long Title:

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO CIVIL ACTIONS TO RECOVER OVERPAID UNEMPLOYMENT BENEFITS.

Original Synopsis:

This House Substitute No. 1 for House Bill 73 provides a 5-year statute of limitations for the Department of Labor to bring civil actions to recover nonfraud overpayment debts and no period of limitations to recover fraud overpayment debts. This portion of the Substitute will apply to overpayment debts for which the statute of limitations has not yet run, which includes those that accrued less than 3 years prior to the enactment of this Act. This Substitute expressly codifies the current law that there is no deadline for the Department to collect overpayment debts by offset of future benefits, by state Department of Revenue offset or by federal Treasury offset of tax refunds, the last of which is mandated by federal law. Finally, this Substitute creates an overpayment waiver program, effective retroactively to the start of the COVID-19 pandemic, to give the Department authority to waive non-fraud overpayments of traditional unemployment benefits resulting from either Department error or claimants receiving certain low-income public assistance.

Volume:Chapter: ?

84:212

Advisory Number:

22

Fiscal Note/Fee Impact:

Not Required

Effective Date: ?

9/14/23

Sunset Date:

N/A

Bill Text

Original Text:

[View HTML \(/json/BillDetail/GenerateHtmlDocument?legislationId=140622&legislationTypeId=6&docTypeId=2&legislationName=HS1forHB73\)](#)

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Session Laws

Session Law:

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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details
No Records Available				

Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable	
6/28/23	Labor (/CommitteeDetail?committeeId=614)	7	0	4	0	view()

Roll Calls

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
Senate	Passed	6/29/23 4:53 PM	SM	21	0	0	0	(/json/RollCallController/GenerateRollCallPdf?rollCallId=54994&chamberId=1) view()
House	Passed	6/20/23 4:50 PM	3/4	39	0	0	2	(/json/RollCallController/GenerateRollCallPdf?rollCallId=54725&chamberId=2) view()

Actions History

Date	Action
6/15/23	was introduced and adopted in lieu of HB 73
6/20/23	Passed By House. Votes: 39 YES 2 ABSENT
6/20/23	Assigned to Labor Committee in Senate
6/28/23	Reported Out of Committee (Labor) in Senate with 4 On Its Merits
6/29/23	Passed By Senate. Votes: 21 YES
9/14/23	Signed by Governor

Legislation Detail Feeds


[Roll Calls \(/rss/RssFeeds/RollCallsByLegislation?legislationId=140622\)](#) [\(RSSFeeds/RSSFeedInfo\)](#)


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[View All Senate Legislation \(/Legislation/Senate\)](#)

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LAWS OF DELAWARE
VOLUME 84
CHAPTER 212
152nd GENERAL ASSEMBLY
FORMERLY
HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 73

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO CIVIL ACTIONS TO RECOVER OVERPAID UNEMPLOYMENT BENEFITS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §3325, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3325. Recoupment of overpayments of benefits.

(f) (1) The Department may do any of the following when an individual has an overpayment debt:

a. Write off, in whole or in part, an overpayment debt after a period of 3 years, when it has ascertained after investigation and after reasonable attempts at collection that the overpayment debt is wholly or partly uncollectible. The Department may prescribe the appropriate accounting methods by which the uncollected portion of the debt is written off its accounts instead of being carried indefinitely as an uncollected debt.

b. Collect an overpayment of benefits by bringing a civil action in a court of competent jurisdiction against the claimant.

1. Nonfraud Overpayments. No action shall be taken by the Department to collect a nonfraud overpayment of benefits from an individual after a period of 5 years from the end of the benefit year, as defined in § 3302 of this title, with respect to which such benefits were paid, unless during this 5-year period the Department has brought a civil action in a court of competent jurisdiction against the individual.

2. Fraud Overpayments. Notwithstanding § 8106 of Title 10, or any other law to the contrary, the Department may bring a civil action in a court of competent jurisdiction against a person for purposes of collecting a fraud overpayment of benefits at any time.

3. All Overpayments. Notwithstanding anything in this section, § 8106 of Title 10, or any other law to the contrary, the Department may collect at any time an overpayment of benefits through any of the following means:

a. An offset of future benefits under this section.

b. As provided in § 545 of Title 30.

c. As provided in § 6402 of the Federal Internal Revenue Code (26 U.S.C. § 6402).

d. As provided in § 303(m) of the Social Security Act (42 U.S.C. § 503(m)).

Section 2. Amend § 3325, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3325. Recoupment of overpayments of benefits.

(h)(1) Effective March 15, 2020, the Department may waive the recovery of any overpayment of benefits received under this chapter by any individual for which the individual was not entitled, in accordance with such regulations as the Department prescribes, if the Department finds any of the following:

a. In the judgment of the Department, recovery would be against equity and good conscience.

b. The overpayment was the result of Department error.

written determination setting forth the basis for grant or denial of the request and explaining the overpaid individual's appeal rights. The determination becomes final unless a written appeal is filed to the appeals tribunal within 15 days after the determination is mailed to the individual's last known address or otherwise delivered to the individual, which appeal shall be handled in the same manner as appeals of benefit determinations pursuant to § 3318(c) of this title. The individual and the Department shall be notified of the appeals tribunal's decision, together with the reasons therefor, which shall be final unless within 15 days from the date of mailing or other delivery method of the decision a further appeal is initiated to the Unemployment Insurance Appeal Board, which appeal shall be handled in the same manner as appeals of benefit determinations pursuant to §§ 3320, 3321 and 3323 of this title. The decision of the Unemployment Insurance Appeal Board shall be final and not subject to further review.

Section 3. Amend § 3319, Title 19 of the Delaware Code, by making insertions as shown by underline and deletions as shown by strike through as follows:

§ 3319. Appointment, organization, disqualification and compensation of appeal tribunals.

To hear and decide disputed claims, protests under § 3368(e) of this title, disputed overpayments and overpayment waivers under § 3325 of this title, and hearings under § 3369 of this title, the Department shall appoint 1 or more impartial appeal tribunals consisting in each case of either a salaried examiner, to be known as a referee, or a body consisting of 3 members, 1 of whom shall be a referee who shall serve as chairperson, 1 of whom shall be a representative of employers and the other of whom shall be a representative of employees. Each of the latter 2 members shall serve at the pleasure of the Department and be paid a fee of not more than \$10 per day of active service on such tribunal plus necessary expenses. No person shall participate on behalf of the Department in any case in which that person is an interested party. The Department may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairperson shall act alone in the absence or disqualification of any other member and that member's alternates. In no case shall the hearing proceed unless the chairperson of the appeal tribunal is present.

Section 4. Section 1 of this Act does not apply to overpayment debts that accrued 3 years or more prior to the date of enactment of this Act.

Approved September 14, 2023

TAB 2

Delaware General Assembly (/)



Senate Bill 146

152nd General Assembly (Present)

Bill Progress

Current Status:

Signed 9/11/23

What happens next?

Becomes effective upon date of signature of the Governor or upon date specified

Bill Details

Introduced on:

6/1/23

Primary Sponsor:

Sturgeon (<https://senatedems.delaware.gov/members/senate-district-4>)

Additional Sponsor(s):

Sen. Townsend (<https://senatedems.delaware.gov/members/senate-district-11>), Walsh (<https://senatedems.delaware.gov/members/senate-district-9>)
Reps. Osienski (<https://housedems.delaware.gov/members/house-district-24>), Dorsey Walker (<https://housedems.delaware.gov/members/house-district-3>)

Co-Sponsor(s):

Reps. Morrison (<https://housedems.delaware.gov/members/house-district-27>), K. Williams (<https://housedems.delaware.gov/members/house-district-19>)

Long Title:

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO DISCRIMINATION IN EMPLOYMENT.

Original Synopsis:

Under current law, an individual can file a charge of employment discrimination by sending the verified charge to the Delaware Department of Labor (Department). This Act clarifies that a verified charge of discrimination is deemed to be filed on the date it is sent to the Department. This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Volume:Chapter: ⓘ

84:202

Advisory Number:

22

Fiscal Note/Fee Impact:

Not Required

Effective Date: ⓘ

9/11/23

Sunset Date:

N/A

Bill Text

Original Text:

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Session Laws

Session Law:

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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details
No Records Available				

Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable	
6/7/23	Labor (/CommitteeDetail?committeeId=614)	7	0	5	0	view ()
6/13/23	Labor (/CommitteeDetail?committeeId=594)	12	2	6	0	view ()

Roll Calls

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
House	Passed	6/27/23 7:49 PM	SM	38	0	0	3	(/json/RollCallController/GenerateRollCallPdf?rollCallId=54904&chamberId=2) view ()
Senate	Passed	6/8/23 2:29 PM	2/3	21	0	0	0	(/json/RollCallController/GenerateRollCallPdf?rollCallId=54548&chamberId=1) view ()

Actions History

Date	Action
6/1/23	Introduced and Assigned to Labor Committee in Senate
6/7/23	Reported Out of Committee (Labor) in Senate with 5 On Its Merits
6/8/23	Passed By Senate. Votes: 21 YES
6/8/23	Assigned to Labor Committee in House
6/13/23	Reported Out of Committee (Labor) in House with 2 Favorable, 6 On Its Merits
6/27/23	Passed By House. Votes: 38 YES 3 ABSENT
9/11/23	Signed by Governor

Legislation Detail Feeds

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LAWS OF DELAWARE
VOLUME 84
CHAPTER 202
152nd GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 146

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO DISCRIMINATION IN EMPLOYMENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 712, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 712. Enforcement provisions; powers of the Department; administrative process.

(a) The Department of Labor is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in §§ 711, 711A, 719A, ~~723~~ 723, and 724 of this title. In connection with the performance of its duties, the Department ~~may~~: may do all of the following:

(1) Investigate employment practices by permitting the Department to enter any place of employment at reasonable times; inspect and copy records or documents in the possession of the employer, the employment ~~agency~~ agency, or labor organization; administer oaths, certify to official acts, take and cause to be taken depositions of witnesses; issue subpoenas compelling the attendance and testimony of witnesses and the production of papers, books, accounts, payrolls, documents, and ~~records~~; records.

(2) Make, ~~revise~~ revise, or rescind such rules or regulations necessary or appropriate to administer or enforce this chapter in accordance with the provisions of § 10161(b) of Title ~~29~~; 29.

(3) Commence civil actions in Superior Court for violations of this chapter, any published regulations or for civil penalties provided herein.

(c) The administrative process requires the following:

(1) Statute of limitation and filing procedure. —

a. Any person claiming to be aggrieved by a violation of this chapter shall first file a charge of discrimination within 300 days of the alleged unlawful employment practice or its discovery, setting forth a concise statement of facts, in writing, verified and signed by the charging party. A verified charge of discrimination under this paragraph (c)(1)a. is deemed filed on the date it is sent to the Department by physical or electronic submission.

b. The Department shall serve a copy of the verified charge of discrimination upon the named respondent by certified mail.

c. The respondent may file an answer within 20 days of its receipt, certifying that a copy of the answer was mailed to the charging party at the address provided.

Approved September 11, 2023

TAB 3

Delaware General Assembly (/)



Senate Bill 145

152nd General Assembly (Present)

Bill Progress

Current Status:

Signed 9/11/23

What happens next?

Becomes effective upon date of signature of the Governor or upon date specified

Bill Details

Introduced on:

6/1/23

Primary Sponsor:

Sturgeon (<https://senatedems.delaware.gov/members/senate-district-4>)

Additional Sponsor(s):

Sen. [Townsend \(https://senatedems.delaware.gov/members/senate-district-11\)](https://senatedems.delaware.gov/members/senate-district-11), [Walsh \(https://senatedems.delaware.gov/members/senate-district-9\)](https://senatedems.delaware.gov/members/senate-district-9)
Rep. [Osienski \(https://housedems.delaware.gov/members/house-district-24\)](https://housedems.delaware.gov/members/house-district-24)

Co-Sponsor(s):

Reps. [Morrison \(https://housedems.delaware.gov/members/house-district-27\)](https://housedems.delaware.gov/members/house-district-27), [K. Williams \(https://housedems.delaware.gov/members/house-district-19\)](https://housedems.delaware.gov/members/house-district-19)

Long Title:

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO DAMAGES FOR EMPLOYMENT DISCRIMINATION.

Original Synopsis:

This Act increases the limits on the dollar amount of awards of compensatory or punitive damages, or both, in cases of employment discrimination, establishing specific caps based on the number of the respondent's employees. This Act also clarifies that the Superior Court may order equitable relief available under Title VII of the Civil Rights Act of 1964, as well as back pay and front pay, which is an award made for the period between the date of judgment and the date of reinstatement. This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Volume:Chapter: ⓘ

84:203

Advisory Number:

22

Fiscal Note/Fee Impact:

Not Required

Effective Date: ⓘ

9/11/23

Sunset Date:

N/A

Bill Text

Original Text:

[View HTML \(/json/BillDetail/GenerateHtmlDocument?legislationId=140455&legislationTypeId=1&docTypeId=2&legislationName=SB145\)](#)
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Final/Engrossed:

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Session Law:

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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details
SA 1	Passed	6/13/23	Sturgeon (https://senatedems.delaware.gov/members/senate-district-4)	view amendment details (/BillDetail?legislationId=140588)

Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable	
6/7/23	Labor (/CommitteeDetail?committeeId=614)	7	0	4	0	view ()
6/21/23	Labor (/CommitteeDetail?committeeId=594)	12	1	7	0	view ()

Roll Calls

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
House	Passed	6/29/23 8:43 PM	SM	25	0	0	16	(/json/RollCallController/GenerateRollCallPdf?rollCallId=55024&chamberId=2) view ()
Senate	Passed	6/13/23 3:03 PM	SM	20	1	0	0	(/json/RollCallController/GenerateRollCallPdf?rollCallId=54581&chamberId=1) view ()

Actions History

Date	Action
6/1/23	Introduced and Assigned to Labor Committee in Senate
6/7/23	Reported Out of Committee (Labor) in Senate with 4 On Its Merits
6/13/23	Amendment SA 1 to SB 145 - Introduced and Placed With Bill
6/13/23	Amendment SA 1 to SB 145 - Passed By Senate. Votes: 21 YES
6/13/23	Passed By Senate. Votes: 20 YES 1 NO
6/14/23	Assigned to Labor Committee in House
6/21/23	Reported Out of Committee (Labor) in House with 1 Favorable, 7 On Its Merits
6/29/23	Passed By House. Votes: 25 YES 16 ABSENT
9/11/23	Signed by Governor

Legislation Detail Feeds

[Roll Calls \(/rss/RssFeeds/RollCallsByLegislation?legislationId=140455\)](#) [\(/RssFeeds/RSSFeedInfo\)](#)

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LAWS OF DELAWARE
VOLUME 84
CHAPTER 203
152nd GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 145
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO DAMAGES FOR EMPLOYMENT DISCRIMINATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 715, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 715. Judicial remedies; civil penalties.

(a) Superior Court shall have jurisdiction over all proceedings brought by the charging party ~~pursuant to~~ under § 714 of this title. Superior Court may excuse a charging party who has complied with the compulsory conciliation provisions of this chapter from the compulsory arbitration provisions of Superior Court ~~rule, rules.~~

(1) ~~(b) Superior Court shall have the authority to provide the following relief, including but not limited to:~~
may order any of the following:

a. ~~Order (1) That the respondent to cease and desist or modify its existing employment policies;~~
policies.

b. ~~Order (2) That the respondent to hire, reinstate~~ reinstate, or promote the charging party; ~~party.~~

c. ~~Order the (3) The payment of compensatory damages, including but not limited to general and special damages, punitive damages when appropriate, not to exceed the damage awards allowable under Title VII of the Civil Rights Act of 1964 [42 U.S.C. § 2000e et seq.], as amended, provided that for the purposes of this subchapter, employers with 4-14 employees shall be treated under Title VII's damage award as an employer having under 50 employees; and any of the following:~~

a. Compensatory damages.

b. Punitive damages.

c. Special damages, including back pay and interest on back pay.

d. Front pay.

d. ~~Order the (4) Equitable relief provided under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5.~~

(5) The costs of litigation and reasonable attorney's fees to the prevailing party.

(c) An award of compensatory or punitive damages, or both, under paragraph (b)(3)a. or b. of this section, may not exceed the following:

(1) For a respondent with 4 through 14 employees, \$50,000.

(2) For a respondent with 15 through 100 employees, \$75,000.

(3) For a respondent with 101 through 200 employees, \$175,000.

(4) For a respondent with 201 through 500 employees, \$300,000.

(5) For a respondent with more than 500 employees, \$500,000.

~~(2)~~ (d) In any action brought by the Department for violation of the retaliation provision of § 711(g) of this title, the Court shall fine the employer not less than \$1,000 nor more than \$5,000 for each violation, in addition to any liability ~~for damages.~~ damages under this section.

Approved September 11, 2023

TAB 4

Delaware General Assembly (/)



Senate Substitute 1 for Senate Bill 182 152nd General Assembly (Present)

Bill Progress

Current Status:

Signed 8/31/23

What happens next?

Becomes effective upon date of signature of the Governor or upon date specified

Bill Details

View Parent Bill:

[SB 182 \(/BillDetail/140639\)](#)

Introduced on:

6/20/23

Primary Sponsor:

[Walsh \(https://senatedems.delaware.gov/members/senate-district-9\)](#)

Additional Sponsor(s):

Rep. [Osienski \(https://housedems.delaware.gov/members/house-district-24\)](#)

Co-Sponsor(s):

Sen. [Hoffner \(https://senatedems.delaware.gov/members/senate-district-14\)](#), [Huxtable \(https://senatedems.delaware.gov/members/senate-district-6\)](#)

Long Title:

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO THE DELAWARE CONTRACTOR REGISTRATION ACT.

Original Synopsis:

This Act is a substitute for Senate Bill No. 182. Like Senate Bill No. 182, this act does all of the following: (1) Grants the Department discretion to reject or accept an application that is incomplete or contains inaccurate information. (2) Permits the contractor to submit a new application for registration if the Department rejected the application because it was incomplete or contains inaccurate information. This Act differs from Senate Bill No. 182 in that it makes a technical correction to remove unnecessary language added to § 3607(b)(2) of Title 19 by Senate Bill No. 182.

Volume:Chapter: ⓘ

84:190

Advisory Number:

21

Fiscal Note/Fee Impact:

Not Required

Effective Date: ⓘ

8/31/23

Sunset Date:

N/A

Bill Text

Original Text:

[View HTML \(/json/BillDetail/GenerateHtmlDocument?legislationId=140675&legislationTypeId=6&docTypeId=2&legislationName=SS1forSB182\)](#)
[View PDF \(/json/BillDetail/GeneratePdfDocument?legislationId=140675&legislationTypeId=6&docTypeId=2&legislationName=SS1forSB182\)](#)

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Session Laws

Session Law:

[View HTML \(/json/BillDetail/GenerateHtmlDocumentSessionLaw?sessionLawId=140675&docTypeId=13&sessionLawName=chp190\)](#)
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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details
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No Records Available

Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable	
6/27/23	Labor (/CommitteeDetail?committeeId=594)	12	2	6	0	view ()

Roll Calls

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
House	Passed	6/30/23 3:13 PM	SM	41	0	0	0	(/json/RollCallController/GenerateRollCallPdf?rollCallId=55066&chamberId=2) view ()
Senate	Passed	6/21/23 4:05 PM	SM	19	0	0	2	(/json/RollCallController/GenerateRollCallPdf?rollCallId=54750&chamberId=1) view ()

Actions History

Date	Action
6/20/23	was introduced and adopted in lieu of SB 182
6/21/23	Passed By Senate. Votes: 19 YES 2 ABSENT
6/22/23	Assigned to Labor Committee in House
6/27/23	Reported Out of Committee (Labor) in House with 2 Favorable, 6 On Its Merits
6/30/23	Passed By House. Votes: 41 YES
8/31/23	Signed by Governor

Legislation Detail Feeds

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SPONSOR: Sen. Walsh & Rep. Osienski
Sens. Hoffner, Huxtable

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 182

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO THE DELAWARE CONTRACTOR
REGISTRATION ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 3607, Title 19 of the Delaware Code by making deletions as shown by strike through and
insertions as shown by underline as follows:

§ 3607. Denial, suspension, or revocation of certificate of registration.

(b)(1) ~~The Department shall reject an application that is incomplete or contains inaccurate information.~~

[Repealed.]

(2)a. If a contractor knowingly supplies incomplete or inaccurate information to the Department under this
section, all of the following apply: section, the Department may reject the application.

a. ~~The application for registration must be rejected.~~

b. ~~The contractor may not apply for registration until 1 year from the date of the notice of
disqualification. If an application is rejected under paragraph (b)(2)a. of this section, the contractor may submit a
new application for registration.~~

c. ~~The~~ If a contractor knowingly supplies incomplete or inaccurate information to the Department under
this subsection, the contractor is subject to other applicable penalties, including under Chapter 12 of Title 6.

SYNOPSIS

This Act is a substitute for Senate Bill No. 182. Like Senate Bill No. 182, this act does all of the following:

(1) Grants the Department discretion to reject or accept an application that is incomplete or contains inaccurate
information.

(2) Permits the contractor to submit a new application for registration if the Department rejected the application
because it was incomplete or contains inaccurate information.

This Act differs from Senate Bill No. 182 in that it makes a technical correction to remove unnecessary language
added to § 3607(b)(2) of Title 19 by Senate Bill No. 182.

Author: Senator Walsh

TAB 5

Delaware General Assembly (/)



Senate Bill 178 152nd General Assembly (Present)

Bill Progress

Current Status:

Signed 8/31/23

What happens next?

Becomes effective upon date of signature of the Governor or upon date specified

Bill Details

Introduced on:

6/15/23

Primary Sponsor:

S. McBride (<https://senatedems.delaware.gov/members/senate-district-1>)

Additional Sponsor(s):

Rep. Heffernan (<https://housedems.delaware.gov/members/house-district-6>)

Co-Sponsor(s):

Long Title:

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO COMPARABLE PRIVATE PLANS UNDER THE FAMILY AND MEDICAL LEAVE PROGRAM.

Original Synopsis:

Under § 3716(e) of Title 19, the Family and Medical Leave Program (FMLP) allows the Department of Labor (Department) to approve private benefits in existence on May 10, 2022, as a private plan under the FMLP, for applications submitted by January 1, 2024. This Act revises the appeal process when the Department denies an application under § 3716(e) so that the hearing is conducted by the Secretary of the Department instead of the Family and Medical Leave Insurance Appeal Board (Appeals Board). The primary function of the Appeals Board is to conduct hearings on denials of individual claims for benefits under the FMLP, but individuals will not be eligible for these benefits until January 1, 2026. Thus, the Appeals Board does not otherwise need to be established in 2023, and the expertise members need is in areas other than those needed for appeals of decisions under § 3716(e) of Title 19.

Volume:Chapter: ⓘ

84:195

Advisory Number:

21

Fiscal Note/Fee Impact:

Not Required

Effective Date: ⓘ

8/31/23

Sunset Date:

N/A

Bill Text

Original Text:

[View HTML \(/json/BillDetail/GenerateHtmlDocument?legislationId=140620&legislationTypeId=1&docTypeId=2&legislationName=SB178\)](#)

[View PDF \(/json/BillDetail/GeneratePdfDocument?legislationId=140620&legislationTypeId=1&docTypeId=2&legislationName=SB178\)](#)

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Session Laws

Session Law:

[View HTML \(/json/BillDetail/GenerateHtmlDocumentSessionLaw?sessionLawId=140620&docTypeId=13&sessionLawName=chp195\)](#)

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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details
No Records Available				

Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable	
6/21/23	Health & Social Services (/CommitteeDetail?committeeId=612)	7	3	1	0	view ()

Roll Calls

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
House	Passed	6/30/23 5:40 PM	SM	28	5	8	0	(/json/RollCallController/GenerateRollCallPdf?rollCallId=55102&chamberId=2) view ()
Senate	Passed	6/22/23 2:55 PM	SM	20	0	0	1	(/json/RollCallController/GenerateRollCallPdf?rollCallId=54793&chamberId=1) view ()

Actions History

Date	Action
6/15/23	Introduced and Assigned to Health & Social Services Committee in Senate
6/21/23	Reported Out of Committee (Health & Social Services) in Senate with 3 Favorable, 1 On Its Merits
6/22/23	Passed By Senate. Votes: 20 YES 1 ABSENT
6/23/23	Assigned to Administration Committee in House
6/30/23	Suspension of Rules in House
6/30/23	Suspension of Rules in House
6/30/23	Passed By House. Votes: 28 YES 5 NO 8 NOT VOTING
8/31/23	Signed by Governor

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LAWS OF DELAWARE
VOLUME 84
CHAPTER 195
152nd GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 178

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO COMPARABLE PRIVATE PLANS UNDER THE FAMILY AND MEDICAL LEAVE PROGRAM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 3716, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3716. Private plans.

(e)(1) Private benefits in existence on May 10, 2022, that the Department deems to be comparable to the Family and Medical Leave Program under § 3713 of this title qualify as a private plan under this chapter for a period of 5 years from the start of contribution payments under § 3705 of this title if the Department's approval of private plans under this subsection would not adversely impact the solvency of the Fund.

(4)a. An employer may appeal the denial of an employer's application under this subsection (e) to the Department within 30 days of the issuance of the determination.

b. The Secretary shall conduct hearings of appeals filed under paragraph (e)(4)a. of this section under the Administrative Procedures Act, Chapter 101 of Title 29, except that these hearings are exempt from the public meeting requirements of Chapter 100 of Title 29 to protect confidential health and privacy information.

c. A decision under paragraph (e)(4)b. of this section is final and binding, unless appealed to the Superior Court within 30 days of the date of the decision under Chapter 101 of Title 29.

(f) The Department's denial of an employer's application under subsection (a) of this ~~section~~, section or withdrawal of approval for an employer's use of a private plan under subsection (c) of this ~~section~~, ~~and decision under subsection (e) of this section~~ are ~~is~~ subject to the appeal process under § 3711 of this title.

Approved August 31, 2023

TAB 6

Delaware General Assembly (/)



House Bill 176

152nd General Assembly (Present)

Bill Progress

Current Status:

Signed 8/9/23

What happens next?

Becomes effective upon date of signature of the Governor or upon date specified

Bill Details

Introduced on:

6/1/23

Primary Sponsor:

[Osienski \(https://housedems.delaware.gov/members/house-district-24\)](https://housedems.delaware.gov/members/house-district-24)

Additional Sponsor(s):

Sen. [Walsh \(https://senatedems.delaware.gov/members/senate-district-9\)](https://senatedems.delaware.gov/members/senate-district-9), [Townsend \(https://senatedems.delaware.gov/members/senate-district-11\)](https://senatedems.delaware.gov/members/senate-district-11)
Reps. [K. Williams \(https://housedems.delaware.gov/members/house-district-19\)](https://housedems.delaware.gov/members/house-district-19), [Dorsey Walker \(https://housedems.delaware.gov/members/house-district-3\)](https://housedems.delaware.gov/members/house-district-3)

Co-Sponsor(s):

Sen. [Gay \(https://senatedems.delaware.gov/members/senate-district-5\)](https://senatedems.delaware.gov/members/senate-district-5), [Hoffner \(https://senatedems.delaware.gov/members/senate-district-14\)](https://senatedems.delaware.gov/members/senate-district-14),
[Mantzavinos \(https://senatedems.delaware.gov/members/senate-district-7\)](https://senatedems.delaware.gov/members/senate-district-7), [Wilson \(https://senategop.delaware.gov/members/senate-district-18\)](https://senategop.delaware.gov/members/senate-district-18)
Reps. [Briggs King \(https://housegop.delaware.gov/members/house-district-37\)](https://housegop.delaware.gov/members/house-district-37), [Heffernan \(https://housedems.delaware.gov/members/house-district-6\)](https://housedems.delaware.gov/members/house-district-6),
[Morrison \(https://housedems.delaware.gov/members/house-district-27\)](https://housedems.delaware.gov/members/house-district-27)

Long Title:

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO UNEMPLOYMENT COMPENSATION DEADLINES.

Original Synopsis:

This bill would extend various deadlines in the Unemployment Code. The intent is to provide claimants and employers additional time to receive and prepare a response or appeal of benefit determinations and other important documents that require a response, in an effort to reduce the incidents of late filed appeals and missed deadlines. This would benefit claimants and employers by providing more time, while also reducing the administrative burden to the Division of Unemployment Insurance of responding to late appeals and late filed documents. This bill also makes conforming changes to additional sections of the Unemployment Code that provide for delivery by mail or other delivery methods to provide flexibility to the Division and Board if they decide to send notices and other documents by email or other delivery methods to reduce mailing expenses and increase efficiency. Finally, this bill confirms Superior Court precedent that Code references to "days" mean "calendar days" unless otherwise specified.

Volume:Chapter: ⓘ

84:150

Advisory Number:

18

Fiscal Note/Fee Impact:

Not Required

Effective Date: ⓘ

10/1/23

Sunset Date:

N/A

Bill Text

Original Text:

[View HTML \(/json/BillDetail/GenerateHtmlDocument?legislationId=140485&legislationTypeId=1&docTypeId=2&legislationName=HB176\)](#)
[View PDF \(/json/BillDetail/GeneratePdfDocument?legislationId=140485&legislationTypeId=1&docTypeId=2&legislationName=HB176\)](#)

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Session Laws

Session Law:

[View HTML \(/json/BillDetail/GenerateHtmlDocumentSessionLaw?sessionLawId=140485&docTypeId=13&sessionLawName=chp150\)](#)

[View PDF \(/SessionLaws/Chapter/GetPdfDocument?fileAttachmentId=629053\)](#)

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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details
No Records Available				

Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable	
6/6/23	Labor (/CommitteeDetail?committeeId=594)	12	7	2	0	view ()
6/28/23	Labor (/CommitteeDetail?committeeId=614)	7	0	4	0	view ()


Roll Calls

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
Senate	Passed	6/29/23 4:53 PM	SM	21	0	0	0	(/json/RollCallController/GenerateRollCallPdf?rollCallId=54995&chamberId=1) view ()
House	Passed	6/21/23 4:46 PM	SM	39	0	0	2	(/json/RollCallController/GenerateRollCallPdf?rollCallId=54770&chamberId=2) view ()

Actions History

Date	Action
6/1/23	Introduced and Assigned to Labor Committee in House
6/6/23	Reported Out of Committee (Labor) in House with 7 Favorable, 2 On Its Merits
6/21/23	Passed By House. Votes: 39 YES 2 ABSENT
6/21/23	Assigned to Labor Committee in Senate
6/28/23	Reported Out of Committee (Labor) in Senate with 4 On Its Merits
6/29/23	Passed By Senate. Votes: 21 YES
8/9/23	Signed by Governor

Legislation Detail Feeds


[Roll Calls \(/rss/RssFeeds/RollCallsByLegislation?legislationId=140485\)](#)  [\(/RssFeeds/RSSFeedInfo\)](#)


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FORMERLY
HOUSE BILL NO. 176

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO UNEMPLOYMENT COMPENSATION DEADLINES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 3304, Title 19 of the Delaware Code, by making insertions as shown by underline as follows:

§ 3304. Day of filing; computation of time.

When any notice, report or other document is required to be filed under this chapter and the same is forwarded by mail to the Department, the day of mailing shall be deemed to be the day of filing.

When the day, or the last day, for doing any act required to be done falls on Saturday, Sunday or a holiday, the act may be done on the first ensuing day that is not a Saturday, Sunday or holiday.

Unless otherwise specified, all references to days in this chapter shall mean calendar days.

Section 2. Amend § 3317(b), Title 19 of the Delaware Code, by making insertions as shown by underline as follows:

§ 3317. Filing of claim for benefit; regulations of Department; posting [For application of this section, see 79 Del. Laws, c. 82, § 2].

(b) Whenever an individual files a claim for benefits, the Department shall forward to the employer by whom the claimant was most recently employed, hereafter the "last employer," or to the last employer's agent and to each base period employer or to each base period employer's agent relating to the individual's claim a separation notice. The last and base period employer(s) or agent(s) of the last and base period employer(s) shall return such notices completed, indicating the reason for the claimant's separation from work with them and the individual claimant's last date of work with them, within 7 15 days of the date contained on the separation notice. Any last or base period employer or any last or base period employer's agent who fails to timely return a separation notice or who fails to complete a separation notice or responds inadequately (which, for the purposes of this subsection, shall mean providing the Department insufficient information to make a determination of eligibility for the receipt of unemployment insurance benefits) within the period prescribed above shall be barred from claiming subsequently that the individual claimant to whom such separation notice applied shall be disqualified under any provisions of § 3314 of this title and shall be barred from seeking relief from benefit wage charges to its experience merit rating account under §§ 3349-3356 of this title unless the Department for reasons found to constitute good cause, shall release such employer or the employer's agent from the default. If the last or base period employer or the last or base period employer's agent fails to timely submit a completed separation notice, the Department shall not be required to issue a determination on said claim or to make an examination of said claim or be required to follow the remaining procedures as set forth in §§ 3318-3320 of this title.

Section 3. Amend § 3318, Title 19 of the Delaware Code, by making insertions as shown by underline as follows:

§ 3318. Decision on claim by deputy; notice; appeal.

(a) If the last employer timely files a completed separation notice in accordance with § 3317 of this title and the employer's statement on the separation notice does raise a potentially disqualifying issue as to the reason for the claimant's separation, the claim shall be referred to a representative of the Department, hereinafter referred to as a Claims Deputy, who shall examine the claim and on the basis of the facts found by the Claims Deputy shall initially determine the individual's qualification and nonmonetary eligibility for benefits, and issue a determination in which it is determined whether or not such claim is valid. If valid, the Claims Deputy shall further determine the week with respect to which benefits shall commence. In the event of making a

(b) Unless a claimant or a last employer who has submitted a timely and completed separation notice in accordance with § 3317 of this title files an appeal within ~~10~~ 15 calendar days after such Claims Deputy's determination was mailed to the claimant's and last employer's last known addresses or otherwise delivered by the Department to the claimant and the last employer, the Claims Deputy's determination shall be final and benefits shall be paid or denied in accordance therewith. If a Claims Deputy's determination awards benefits, such benefits shall be paid promptly in accordance with such determination upon its issuance. If an appeal is filed from a Claims Deputy's determination that awards benefits, benefits shall be paid in accordance with such determination notwithstanding such appeal, but if the appeals tribunal's determination or a determination of the Unemployment Insurance Appeal Board under §§ 3320 through 3322 of this title, or judicial review under § 3323 of this title, modifies or reverses the award of the benefits, the claimant shall be paid benefits for the weeks of unemployment following the issuance of such an appeals tribunal, Unemployment Insurance Appeal Board or judicial review decision only in accordance with such decisions.

(c) Unless the appeal is withdrawn, an appeals tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm, modify or reverse the decision of the deputy. The parties shall be duly notified of the tribunal's decision, together with its reason therefor, which shall be deemed to be final unless within ~~10~~ 15 days after such tribunal's decision was mailed to the parties' last known addresses or otherwise delivered by the tribunal to the parties ~~the date of notification or mailing of such decision~~ further appeal is initiated pursuant to § 3320 of this title. If an appeals tribunal decision awards benefits, such benefits shall be paid promptly in accordance with such decision upon its issuance. If an appeal is filed from an appeals tribunal's decision that awards benefits, benefits shall be paid in accordance with such decision notwithstanding such appeal, but if the Unemployment Insurance Appeal Board's decision modifies or reverses the award of benefits, the claimant shall be paid benefits for weeks of unemployment following the issuance of the Unemployment Insurance Appeal Board's decision only in accordance with such decision. Benefits to which the claimant is not entitled under the decision of the appeals tribunal shall not be paid for any week ending after the decision is issued, but any benefits which the claimant is determined to be otherwise entitled to receive shall be paid notwithstanding any further appeal from the decision of the appeals tribunal.

Section 4. Amend § 3320(b), Title 19 of the Delaware Code, by making insertions as shown by underline as follows:

§ 3320. Review.

(b) On, or after, July 7, 2005, the UIAB shall schedule and hear any appeal of an Appeals Referee's decision where such appeal, although timely filed, was not scheduled and heard by the UIAB prior to December 31, 2004. Notwithstanding the ~~10-day~~ appeal period set forth in § 3318(c) of this title, until August 6, 2005, the Unemployment Insurance Appeal Board shall consider as timely, any appeal of an Appeals Referee decision that could not have been accepted after December 31, 2004, and prior to July 7, 2005.

Section 5. Amend § 3322(a), Title 19 of the Delaware Code, by making insertions as shown by underline as follows:

§ 3322. Finality of Board's decision; duty to exhaust administrative remedies; position of Department in judicial review.

(a) Any decision of the Unemployment Insurance Appeal Board shall become final ~~10~~ 15 days after the date of ~~notification or mailing~~ or other delivery thereof, and judicial review thereof as provided in this subchapter shall be permitted only after any party claiming to be aggrieved thereby has exhausted all administrative remedies as provided by this chapter.

Section 6. Amend § 3325(d), Title 19 of the Delaware Code, by making insertions as shown by underline as follows:

§ 3325. Recoupment of Overpayment of Benefits.

(d) The Department shall issue a notice of overpayment that includes the grounds for the overpayment, and an order for recoupment, before initiating action to collect the overpayment. Unless an individual files an appeal to an Unemployment Insurance appeals referee within ~~10~~ 15 days after the order for recoupment was mailed to the individual at the individual's last

Department appeals to the Superior Court for the county in which the complainant resides. The Department may be represented in any such appeal by any qualified attorney employed by the Department and designated by it for that purpose or, at the Department's request, by the Attorney General. In every such appeal the cause shall be decided by the Court from the record, without the aid of a jury, and the Court may affirm, reverse or modify the Unemployment Insurance Appeal Board's decision. The Unemployment Insurance Appeal Board's findings of fact shall not be set aside unless the Court determines that the record contains no substantial evidence that would reasonably support the findings. If the Court finds that additional evidence should be taken, the Court shall remand the case to the Unemployment Insurance Appeal Board for completion of the record. If the Court finds that the Unemployment Insurance Appeal Board has made an error of law, the Court shall reverse or modify the Unemployment Insurance Appeal Board's decision and render an appropriate judgment.

Section 8. This Act shall take effect October 1, 2023.

Approved August 9, 2023

TAB 7

Delaware General Assembly (/)



Senate Substitute 1 for Senate Bill 102 152nd General Assembly (Present)

Bill Progress

Current Status:

Signed 7/26/23

What happens next?

Becomes effective upon date of signature of the Governor or upon date specified

Bill Details

View Parent Bill:[SB 102 \(/BillDetail/130263\)](#)**Introduced on:**

5/12/23

Primary Sponsor:[Townsend \(https://senatedems.delaware.gov/members/senate-district-11\)](https://senatedems.delaware.gov/members/senate-district-11)**Additional Sponsor(s):**Sen. [Walsh \(https://senatedems.delaware.gov/members/senate-district-9\)](https://senatedems.delaware.gov/members/senate-district-9)Reps. [Osienski \(https://housedems.delaware.gov/members/house-district-24\)](https://housedems.delaware.gov/members/house-district-24), [Dorsey Walker \(https://housedems.delaware.gov/members/house-district-3\)](https://housedems.delaware.gov/members/house-district-3), [K. Williams \(https://housedems.delaware.gov/members/house-district-19\)](https://housedems.delaware.gov/members/house-district-19)**Co-Sponsor(s):****Long Title:**

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO PREVAILING WAGE.

Original Synopsis:

This Act closes a loophole in the prevailing wage statute that was being used to pay workers below the prevailing wage by performing work offsite instead of onsite, regardless of whether it was necessary to do so. This bill also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Volume:Chapter: ⓘ

84:124

Advisory Number:

16

Fiscal Note/Fee Impact:F/N (Complete) [View PDF \(/json/BillDetail/GetPdfDocument?fileAttachmentId=607031\)](#)*You may need to disable your browser's pop-up blocker to view linked documents.***Effective Date:** ⓘ

7/26/23

Sunset Date:

N/A

Bill Text

Original Text:[View HTML \(/json/BillDetail/GenerateHtmlDocument?legislationId=140390&legislationTypeId=6&docTypeId=2&legislationName=SS1forSB102\)](#)[View PDF \(/json/BillDetail/GeneratePdfDocument?legislationId=140390&legislationTypeId=6&docTypeId=2&legislationName=SS1forSB102\)](#)*You may need to disable your browser's pop-up blocker to view linked documents.*

Session Laws

Session Law:

[View HTML \(/json/BillDetail/GenerateHtmlDocumentSessionLaw?sessionLawId=140390&docTypeId=13&sessionLawName=chp124\)](#)

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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details
No Records Available				

Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable	
5/17/23	Finance (/CommitteeDetail?committeeId=605)	6	0	4	0	view ()
6/6/23	Labor (/CommitteeDetail?committeeId=594)	12	7	0	0	view ()
6/27/23	Appropriations (/CommitteeDetail?committeeId=583)	6	0	4	0	view ()


Roll Calls

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
House	Passed	6/30/23 4:27 PM	SM	29	12	0	0	(/json/RollCallController/GenerateRollCallPdf?rollCallId=55094&chamberId=2) view ()
Senate	Passed	5/17/23 4:50 PM	SM	15	4	0	2	(/json/RollCallController/GenerateRollCallPdf?rollCallId=54457&chamberId=1) view ()

Actions History

Date	Action
5/12/23	was introduced and adopted in lieu of SB 102
5/16/23	Assigned to Finance Committee in Senate
5/17/23	Reported Out of Committee (Finance) in Senate with 4 On Its Merits
5/17/23	Passed By Senate. Votes: 15 YES 4 NO 2 ABSENT
5/18/23	Assigned to Labor Committee in House
6/6/23	Reported Out of Committee (Labor) in House with 7 Favorable
6/7/23	Assigned to Appropriations Committee in House
6/27/23	Reported Out of Committee (Appropriations) in House with 4 On Its Merits
6/30/23	Passed By House. Votes: 29 YES 12 NO
7/26/23	Signed by Governor

Legislation Detail Feeds


[Roll Calls \(/rss/RssFeeds/RollCallsByLegislation?legislationId=140390\)](/rss/RssFeeds/RollCallsByLegislation?legislationId=140390)  [\(/RssFeeds/RSSFeedInfo\)](/RssFeeds/RSSFeedInfo)


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LAWS OF DELAWARE
VOLUME 84
CHAPTER 124
152nd GENERAL ASSEMBLY
FORMERLY
SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 102

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO PREVAILING WAGE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 69, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 6902. Definitions [For application of this section, see 82 Del. Laws, c. 36, § 3].

For purposes of this chapter:

() "Custom fabrication" means the offsite fabrication, assembly, or other production of non-standard goods or materials, including components, fixtures or parts thereof, specifically for a public works project. Such goods and materials shall include those used in the following trades or systems:

1. Plumbing or pipe fitting systems, including heating, ventilating, air-conditioning, refrigeration systems, sheet metal or other duct systems.
2. Electrical systems.
3. Mechanical insulation work.
4. Ornamental iron work.
5. Commercial signage that does not attempt or appear to direct the movement of traffic on highways or roadways or interfere with, imitate, or resemble any official traffic sign, signal or device.

§ 6960. Prevailing wage requirements.

(b) Every contract based upon these specifications ~~shall~~ must contain a stipulation that the employer ~~shall~~ must pay all mechanics and laborers employed directly upon the site of the work or engaged in any custom fabrication work, regardless of where the work is performed, unconditionally and not less often than once a week and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the specifications, regardless of any contractual relationship which may be alleged to exist between the employer and such laborers and mechanics. The specifications ~~shall~~ must further stipulate that the scale of wages to be paid ~~shall~~ must be posted by the employer in a prominent and easily accessible place at the site of the work, and that there may be withheld from the employer so much of accrued payments as may be considered necessary by the Department of Labor to pay to laborers and mechanics employed by the employer the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and rates of wages received by such laborers and mechanics to be remitted to the Department of Labor for distribution upon resolution of any claims.

Approved July 26, 2023

TAB 8

Delaware General Assembly (/)



House Bill 236

152nd General Assembly (Present)

Bill Progress

Current Status:

Signed 7/25/23

What happens next?

Becomes effective upon date of signature of the Governor or upon date specified

Bill Details

Introduced on:

6/16/23

Primary Sponsor:

[Osienski \(https://housedems.delaware.gov/members/house-district-24\)](https://housedems.delaware.gov/members/house-district-24)

Additional Sponsor(s):

Sen. [Walsh \(https://senatedems.delaware.gov/members/senate-district-9\)](https://senatedems.delaware.gov/members/senate-district-9)

Co-Sponsor(s):**Long Title:**

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO EMPLOYER ASSESSMENTS.

Original Synopsis:

This Act will continue for calendar year 2024 the temporary relief provided in calendar year 2023 to employers who pay unemployment tax assessments. It will continue to reduce new employer tax rates, hold constant overall employer tax rates from last calendar year, and reduce the maximum earned rate. This Act will also continue the temporary simplification of the tax rate schedules that are used to calculate unemployment assessments paid by employers. The Governor's agreement to use federal pandemic funds to restore the pandemic-depleted Unemployment Trust Fund made the Unemployment Trust Fund sufficiently solvent and is allowing the Department to implement unemployment tax relief measures to Delaware employers for an additional one-year period for calendar year 2024. The Department estimates that these unemployment tax assessment changes will reduce the tax obligation of employers an estimated \$50 million compared to the tax rates absent the temporary relief. This Act also restructures the supplemental assessment that is currently collected from all employers, keeping it at the same rate of 0.2%, but depositing it in the Special Administration Fund instead of the UI Trust Fund. This Act expands the uses for the Special Administration Fund to include future technology needs of the Department and makes technical corrections to the administration provisions of the Special Administration Fund to align with current State Treasurer practices.

Volume:Chapter: ⓘ

84:120

Advisory Number:

16

Fiscal Note/Fee Impact:

Not Required

Effective Date: ⓘ

7/25/23

Sunset Date:

N/A

Bill Text

Original Text:

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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details
No Records Available				

Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable	
6/20/23	Labor (/CommitteeDetail?committeeId=594)	12	1	7	0	view ()
6/28/23	Labor (/CommitteeDetail?committeeId=614)	7	0	4	0	view ()

Roll Calls

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
Senate	Passed	6/29/23 4:53 PM	SM	21	0	0	0	(/json/RollCallController/GenerateRollCallPdf?rollCallId=54997&chamberId=1) view ()
House	Passed	6/21/23 4:36 PM	SM	40	0	0	1	(/json/RollCallController/GenerateRollCallPdf?rollCallId=54762&chamberId=2) view ()

Actions History

Date	Action
6/16/23	Introduced and Assigned to Labor Committee in House
6/20/23	Reported Out of Committee (Labor) in House with 1 Favorable, 7 On Its Merits
6/21/23	Passed By House. Votes: 40 YES 1 ABSENT
6/21/23	Assigned to Labor Committee in Senate
6/28/23	Reported Out of Committee (Labor) in Senate with 4 On Its Merits
6/29/23	Passed By Senate. Votes: 21 YES
7/25/23	Signed by Governor

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LAWS OF DELAWARE
VOLUME 84
CHAPTER 120
152nd GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 236

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO EMPLOYER ASSESSMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 3166, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3166. Special Administration Fund.

(a) *Creation.* — There is created in the State Treasury a special fund to be known as The Special Administration Fund of the Department of Labor. This Fund shall consist of:

(5) All moneys collected pursuant to § 3350(9)(n) of this title.

(b) *Administration.* — All moneys collected pursuant to this section shall be deposited in the clearing account of the Unemployment Compensation Fund for clearance only and shall not become part of such Fund. After clearance, the moneys shall be deposited in the Special Administration Fund of the Department of Labor. All moneys in this Fund shall be prudently invested to the credit of this Fund, administered and disbursed in the same manner as is provided by law for other special funds in the State Treasury and such moneys shall be maintained in a separate ledger account on the books of the Secretary of Finance. ~~The State Treasurer shall be the custodian of and shall be liable on the Treasurer's official bond for the faithful performance of the Treasurer's duties in connection with the Fund. Such liability on the official bond shall exist in addition to the liability upon any separate bond which may be given by the State Treasurer. All sums recovered on any such official bond for losses sustained by the Fund shall be deposited in the Fund. The State Treasurer shall invest the Fund consistent with the investment policies established by the Cash Management Policy Board and credit interest to the Fund monthly consistent with the rate established by the Cash Management Policy Board. Money in the Fund at the end of a State fiscal year carries forward and must not revert to the General Fund.~~ Balances to the credit of the Fund shall not lapse at any time but shall be continuously available to the Secretary of Labor for expenditures consistent with this section.

(c) *Use.* — The moneys in the Special Administration Fund may be used by the Department for:

(5) The payment of interest on advances from the federal government for unemployment compensation ~~benefits~~ benefits, which shall be from moneys collected pursuant to § 3391 of this title;

(6) The payment of the costs of programs to counsel, retrain and place dislocated workers, to assist in school-to-work transition activities, to provide industrial training, to provide career-ladder training for state employees, and the payment of the administrative costs of such programs, which shall be from moneys collected pursuant to § 3401 of this ~~title.~~ title; and

(7) The payment of costs of unemployment compensation technology automation and improvement initiatives established by the Department and the payment of the administrative costs of such technology automation and improvement initiatives.

Section 2. Amend § 3348, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3348. Average employer assessment rate; average industry assessment rate; average construction industry assessment rate; new employer rate; standard rate of assessment [Effective Dec. 31, 2023].

preceding calendar year. Variations from the standard rate of assessments shall be determined in accordance with the following requirements:

(9) Supplemental Assessment Rate.

m. ~~Notwithstanding any other provisions in this section, for~~ For any calendar year beginning January 1, 2004, ~~and thereafter, and ending December 31, 2023,~~ each employer's new employer rate or basic assessment rate, whichever shall be applicable to such employer, shall be increased by a "supplemental assessment rate" of 0.2%.

n. ~~Notwithstanding any other provisions in this section, for any calendar year beginning January 1, 2024, and thereafter, in addition to all other payments to the State due under this title, each employer liable for assessments under Chapter 33 of this title shall also be liable for a "supplemental assessment" on all taxable wages, as defined in § 3302(19) of this title, payable by each such employer. The supplemental assessment shall be levied at the rate of 0.2%. The supplemental assessment shall not affect the computation of any other assessments due under this title. Payments of supplemental assessments shall be made at the same time and in the same manner as prescribed for payment of assessments under § 3345 of this title and all regulations prescribed by the Department in support of that section. The restrictions in section § 3345 of this title apply equally to the provisions of this section. Failure to make these payments shall be subject to interest, penalties, and all other collection actions provided for failure to pay assessments under Chapter 33 of this title. The amount of the supplemental assessment due shall be considered part of the total amount of contributions paid or payable by the employing unit for purposes of the penalties assessed in § 3125(c) of this title. All supplemental assessments, interest, and penalties collected under this section shall be deposited in the Special Administration Fund of the Department of Labor and shall be used only for the purposes set forth in paragraphs (c)(1), (c)(3), (c)(5) and (c)(7) of § 3166 of this title. The Department will submit quarterly reports to the Director of the Office of Management and Budget, the Controller General, and the Unemployment Compensation Advisory Council members regarding the status of the supplemental assessments.~~

(15) ~~Notwithstanding any other provisions in this section, for calendar year 2024, effective January 1, 2024, employers shall be assigned a basic assessment rate in accordance with the following table:~~

2024 – Special One Year Schedule of Rates

<u>Benefit Wage Ratio (%) Does Not Exceed:</u>	<u>Basic Assessment Rate:</u>
<u>20</u>	<u>0.1%</u>
<u>30</u>	<u>0.25%</u>
<u>40</u>	<u>0.50%</u>
<u>50</u>	<u>1.00%</u>
<u>55</u>	<u>2.00%</u>
<u>60</u>	<u>2.50%</u>
<u>70</u>	<u>3.50%</u>
<u>80</u>	<u>4.50%</u>
<u>90</u>	<u>5.00%</u>

a. ~~If the employer's benefit wage ratio exceeds the highest percentage in the table set forth in paragraph (15) of this section, the employer's basic assessment rate shall be 5.40%.~~

b. ~~Employers who are determined for calendar year 2024 to have the delinquency rate of assessment pursuant to paragraph (6) of this section shall continue to be assigned the delinquency rate.~~

TAB 9

Delaware General Assembly (/)



House Bill 184

152nd General Assembly (Present)

Bill Progress

Current Status:

Signed 7/25/23

What happens next?

Becomes effective upon date of signature of the Governor or upon date specified

Bill Details

Introduced on:

6/1/23

Primary Sponsor:

Romer (<https://housedems.delaware.gov/members/house-district-25>)

Additional Sponsor(s):

Sen. Townsend (<https://senatedems.delaware.gov/members/senate-district-11>)

Co-Sponsor(s):

Sen. Gay (<https://senatedems.delaware.gov/members/senate-district-5>), Hansen (<https://senatedems.delaware.gov/members/senate-district-10>), Hoffner (<https://senatedems.delaware.gov/members/senate-district-14>), S. McBride (<https://senatedems.delaware.gov/members/senate-district-1>), Walsh (<https://senatedems.delaware.gov/members/senate-district-9>),
Reps. Baumbach (<https://housedems.delaware.gov/members/house-district-23>), Dorsey Walker (<https://housedems.delaware.gov/members/house-district-3>), Griffith (<https://housedems.delaware.gov/members/house-district-12>), Heffernan (<https://housedems.delaware.gov/members/house-district-6>), Hilovsky (<https://housegop.delaware.gov/members/house-district-4>), Longhurst (<https://housedems.delaware.gov/members/house-district-15>), Matthews (<https://housedems.delaware.gov/members/house-district-10>), Neal (<https://housedems.delaware.gov/members/house-district-13>), Phillips (<https://housedems.delaware.gov/members/house-district-18>), K. Williams (<https://housedems.delaware.gov/members/house-district-19>), Wilson-Anton (<https://housedems.delaware.gov/members/house-district-26>).

Long Title:

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO DISCRIMINATION IN EMPLOYMENT.

Original Synopsis:

Delaware law expressly prohibits employment discrimination based upon surviving domestic violence, sexual assault, or stalking. Such discrimination includes: (1) failing or refusing to hire or discharging an employee because the individual was a victim of domestic violence, sexual offense, or stalking; or (2) failing or refusing to make reasonable accommodations to the limitations known to the employer and related to domestic violence, a sexual offense, or stalking. Current statute requires the victim of domestic violence, sexual assault, or stalking to provide verification to their employer. This bill provides employers with the option to require verification in order to receive accommodations.

Volume:Chapter: ⓘ

84:119

Advisory Number:

16

Fiscal Note/Fee Impact:

Not Required

Effective Date: ⓘ

7/25/23

Sunset Date:

N/A

Bill Text

Original Text:

[View HTML \(/json/BillDetail/GenerateHtmlDocument?legislationId=140493&legislationType=1&docType=2&legislationName=HB184\)](#)

[View PDF \(/json/BillDetail/GeneratePdfDocument?legislationId=140493&legislationType=1&docType=2&legislationName=HB184\)](#)

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Session Laws

Session Law:

[View HTML \(/json/BillDetail/GenerateHtmlDocumentSessionLaw?sessionLawId=140493&docType=13&sessionLawName=chp119\)](#)

[View PDF \(/SessionLaws/Chapter/GetPdfDocument?fileAttachmentId=628882\)](#)

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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details
HA 1	Passed	6/21/23	Romer (https://housedems.delaware.gov/members/house-district-25)	view amendment details (/BillDetail?legislationId=140689)

Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable	
6/13/23	Labor (/CommitteeDetail?committeeId=594)	12	2	7	0	view ()
6/28/23	Labor (/CommitteeDetail?committeeId=614)	7	0	4	0	view ()

Roll Calls

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
Senate	Passed	6/29/23 4:53 PM	SM	21	0	0	0	(/json/RollCallController/GenerateRollCallPdf?rollCallId=54996&chamberId=1) view ()
House	Passed	6/21/23 4:50 PM	SM	39	0	0	2	(/json/RollCallController/GenerateRollCallPdf?rollCallId=54772&chamberId=2) view ()

Actions History

Date	Action
6/1/23	Introduced and Assigned to Labor Committee in House
6/13/23	Reported Out of Committee (Labor) in House with 2 Favorable, 7 On Its Merits
6/21/23	Amendment HA 1 to HB 184 - Passed In House by Voice Vote
6/21/23	Passed By House. Votes: 39 YES 2 ABSENT
6/21/23	Assigned to Labor Committee in Senate
6/28/23	Reported Out of Committee (Labor) in Senate with 4 On Its Merits
6/29/23	Passed By Senate. Votes: 21 YES

Date	Action
7/25/23	Signed by Governor

Legislation Detail Feeds


[Roll Calls \(/rss/RssFeeds/RollCallsByLegislation?legislationId=140493\)](/rss/RssFeeds/RollCallsByLegislation?legislationId=140493) [\(/RssFeeds/RSSFeedInfo\)](/RssFeeds/RSSFeedInfo)


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SPONSOR: Rep. Romer & Sen. Townsend
Reps. Baumbach, Dorsey Walker, Griffith, Heffernan,
Hilovsky, Longhurst, Matthews, Neal, Phillips,
K. Williams, Wilson-Anton; Sens. Gay, Hansen, Hoffner,
S. McBride, Walsh

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 184
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO DISCRIMINATION IN
EMPLOYMENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 7, Title 19 of the Delaware Code by making deletions as shown by strike through and
insertions as shown by underline as follows:

§ 710. Definitions.

For the purposes of this subchapter:

(5) "Domestic violence" means ~~the same as defined in~~ any act that would constitute a violation of § 1041 of
Title 10, verified by an official document, such as a court order, or by a reliable third party professional, including a
law enforcement agency or officer, a domestic violence or domestic abuse service provider, or health care provider,
and for which an employer may request verification by an official document from a domestic violence service provider,
medical provider, mental health provider, law enforcement, court order, or family medical leave.

(27) "Sexual offense" means ~~the same as defined in~~ any act that would constitute a violation of § 761 of Title
11, verified by an official document, such as a court order, or by a reliable third party professional, including a law
enforcement agency or officer, a domestic violence or domestic abuse service provider, or health care provider, and for
which an employer may request verification by an official document from a sexual violence service provider, medical
provider, mental health provider, law enforcement, court order, or family medical leave.

(29) "Stalking" means ~~the same as in~~ any act that would constitute a violation of § 1312 of Title 11, verified
by an official document, such as a court order, or by a reliable third party professional, including a law enforcement
agency or officer, a sexual assault service provider, or health care provider. It is the sexual assault or stalking victim's
responsibility to provide the reliable statement from the reliable third party, and for which an employer may request
verification by an official document from a crime victim service provider, medical provider, mental health provider,
law enforcement, court order, or family medical leave.

TAB 10

Delaware General Assembly (/)



House Bill 144

152nd General Assembly (Present)

Bill Progress

Current Status:

Signed 6/30/23

What happens next?

Becomes effective upon date of signature of the Governor or upon date specified

Bill Details

Introduced on:

5/10/23

Primary Sponsor:

Bush (<https://housedems.delaware.gov/members/house-district-29>)

Additional Sponsor(s):

Sen. Mantzavinos (<https://senatedems.delaware.gov/members/senate-district-7>)

Co-Sponsor(s):

Sen. Lawson (<https://senategop.delaware.gov/members/senate-district-15>), Pettyjohn (<https://senategop.delaware.gov/members/senate-district-19>), Poore (<https://senatedems.delaware.gov/members/senate-district-12>), Walsh (<https://senatedems.delaware.gov/members/senate-district-9>), Reps. Briggs King (<https://housegop.delaware.gov/members/house-district-37>), Hilovsky (<https://housegop.delaware.gov/members/house-district-4>), D. Short (<https://housegop.delaware.gov/members/house-district-39>)

Long Title:

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO WORKERS COMPENSATION

Original Synopsis:

This Act increases the number of members of a limited liability corporation who are eligible for exemption from workers compensation reimbursement from four to eight, making the number equal to the number of officers in a traditional corporation who are eligible for exemption.

Volume:Chapter: ⓘ

84:80

Advisory Number:

13

Fiscal Note/Fee Impact:

Not Required

Effective Date: ⓘ

6/30/23

Sunset Date:

N/A

Bill Text

Original Text:

[View HTML \(/json/BillDetail/GenerateHtmlDocument?legislationId=130347&legislationTypeId=1&docTypeId=2&legislationName=HB144\)](#)

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Session Laws

Session Law:

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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details
No Records Available				

Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable	
5/17/23	Economic Development/Banking/Insurance & Commerce (/CommitteeDetail?committeeId=586)	13	0	10	0	view ()
6/14/23	Banking, Business, Insurance & Technology. (/CommitteeDetail?committeeId=607)	8	0	5	0	view ()

Roll Calls

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
Senate	Passed	6/20/23 2:16 PM	3/5	20	0	0	1	(/json/RollCallController/GenerateRollCallPdf?rollCallId=54703&chamberId=1) view ()
House	Passed	6/6/23 4:20 PM	SM	40	0	0	1	(/json/RollCallController/GenerateRollCallPdf?rollCallId=54506&chamberId=2) view ()

Actions History

Date	Action
5/10/23	Introduced and Assigned to Economic Development/Banking/Insurance & Commerce Committee in House
5/17/23	Reported Out of Committee (Economic Development/Banking/Insurance & Commerce) in House with 10 On Its Merits
6/6/23	Passed By House. Votes: 40 YES 1 ABSENT
6/6/23	Assigned to Banking, Business, Insurance & Technology Committee in Senate
6/14/23	Reported Out of Committee (Banking, Business, Insurance & Technology) in Senate with 5 On Its Merits
6/20/23	Passed By Senate. Votes: 20 YES 1 ABSENT
6/30/23	Signed by Governor

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Legislative Council,
General Assembly
State of Delaware

LAWS OF DELAWARE
VOLUME 84
CHAPTER 80
152nd GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 144

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO WORKERS COMPENSATION

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 2308, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2308. Applicability — Executive officers; sole proprietors and partners.

(a) Executive officers of covered employers are included within this chapter; provided, however, that as many as 8 officers who are stockholders of a corporation or as many as ~~4~~8 individuals who are members of a limited liability company may be exempted from this chapter if the corporation and the exempted corporate officers or the limited liability company and the exempted members agree in writing to such an exemption. Anyone or all of the officers who are stockholders of a corporation or anyone or all members of the limited liability company who elect an exemption shall for the purposes of § 2306 of this title be considered employees.

Approved June 30, 2023

TAB 11

Delaware General Assembly (/)



House Bill 65

152nd General Assembly (Present)

Bill Progress

Current Status:

Signed 6/30/23

What happens next?

Becomes effective upon date of signature of the Governor or upon date specified

Bill Details

Introduced on:

1/20/23

Primary Sponsor:

Heffernan (<https://housedems.delaware.gov/members/house-district-6>)

Additional Sponsor(s):

Sen. Poore (<https://senatedems.delaware.gov/members/senate-district-12>)

Reps. Longhurst (<https://housedems.delaware.gov/members/house-district-15>), Minor-Brown (<https://housedems.delaware.gov/members/house-district-17>), Baumbach (<https://housedems.delaware.gov/members/house-district-23>), Dorsey Walker (<https://housedems.delaware.gov/members/house-district-3>)

Co-Sponsor(s):

Sen. Gay (<https://senatedems.delaware.gov/members/senate-district-5>), Hoffner (<https://senatedems.delaware.gov/members/senate-district-14>), S. McBride (<https://senatedems.delaware.gov/members/senate-district-1>), Pinkney (<https://senatedems.delaware.gov/members/senate-district-13>), Sokola (<https://senatedems.delaware.gov/members/senate-district-8>), Townsend (<https://senatedems.delaware.gov/members/senate-district-11>)
Reps. Bolden (<https://housedems.delaware.gov/members/house-district-2>), Carson (<https://housedems.delaware.gov/members/house-district-28>), Griffith (<https://housedems.delaware.gov/members/house-district-12>), K. Johnson (<https://housedems.delaware.gov/members/house-district-5>), Lambert (<https://housedems.delaware.gov/members/house-district-7>), Morrison (<https://housedems.delaware.gov/members/house-district-27>), Romer (<https://housedems.delaware.gov/members/house-district-25>), Michael Smith (<https://housegop.delaware.gov/members/house-district-22>), K. Williams (<https://housedems.delaware.gov/members/house-district-19>)

Long Title:

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO BEREAVEMENT LEAVE.

Original Synopsis:

According to the Mayo Clinic, miscarriages occur in about 20% of all pregnancies, and generally, in the first 12 weeks. According to the Centers for Disease Control, 1 out of every 100 American pregnancies ends in stillbirth. Black women have a significantly higher risk of miscarrying— 43% higher when compared to white women. Black mothers are also more than twice as likely to experience stillbirth compared to Hispanic and white mothers. This bill provides State employees who suffer a miscarriage, stillbirth or other loss, a maximum of 5 days of paid bereavement leave. This Act shall be known as the "Sloane Hajek Act of 2023".

Volume:Chapter: ⓘ

84:76

Advisory Number:

13

Fiscal Note/Fee Impact:

F/N (Complete) [View PDF \(/json/BillDetail/GetPdfDocument?fileAttachmentId=574782\)](#)

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Effective Date: ⓘ

6/30/23

Sunset Date:

N/A

Bill Text

Original Text:

[View HTML \(/json/BillDetail/GenerateHtmlDocument?legislationId=129967&legislationTypeId=1&docTypeId=2&legislationName=HB65\)](#)

[View PDF \(/json/BillDetail/GeneratePdfDocument?legislationId=129967&legislationTypeId=1&docTypeId=2&legislationName=HB65\)](#)

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Session Laws

Session Law:

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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details
HA 1	Defeated	1/26/23	Briggs King (/LegislatorDetail?personId=3058)	view amendment details (/BillDetail?legislationId=129981)
SA 1	Defeated	6/29/23	Buckson (/https://senategop.delaware.gov/members/senate-district-16)	view amendment details (/BillDetail?legislationId=140769)

Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable	
1/25/23	Health & Human Development (/CommitteeDetail?committeeId=590)	16	7	5	0	view ()
6/28/23	Executive (/CommitteeDetail?committeeId=602)	7	1	4	0	view ()

Roll Calls

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
Senate	Passed	6/29/23 4:12 PM	SM	20	1	0	0	(/json/RollCallController/GenerateRollCallPdf?rollCallId=54986&chamberId=1) view ()
House	Passed	6/27/23 7:55 PM	SM	26	9	5	1	(/json/RollCallController/GenerateRollCallPdf?rollCallId=54908&chamberId=2) view ()

Actions History

Date	Action
1/20/23	Introduced and Assigned to Health & Human Development Committee in House
1/25/23	Reported Out of Committee (Health & Human Development) in House with 7 Favorable, 5 On Its Merits
1/25/23	Reported Out of Committee (Health & Human Development) in House with 7 Favorable, 5 On Its Merits
1/26/23	Amendment HA 1 to HB 65 - Introduced and Placed With Bill
6/27/23	Amendment HA 1 to HB 65 - Defeated In House by Voice Vote
6/27/23	Passed By House. Votes: 26 YES 9 NO 5 NOT VOTING 1 ABSENT

Date	Action
6/28/23	Assigned to Executive Committee in Senate
6/28/23	Reported Out of Committee (Executive) in Senate with 1 Favorable, 4 On Its Merits
6/29/23	Amendment SA 1 to HB 65 - Introduced and Placed With Bill
6/29/23	Amendment SA 1 to HB 65 - Defeated By Senate. Votes: 6 YES 15 NO
6/29/23	Passed By Senate. Votes: 20 YES 1 NO
6/30/23	Signed by Governor

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LAWS OF DELAWARE
VOLUME 84
CHAPTER 76
152nd GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 65

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO BEREAVEMENT LEAVE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 51, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5125. Bereavement leave.

(a) Definitions.

(1) "Miscarriage" means a loss of pregnancy prior to 20 weeks gestation.

(2) "Other loss" includes a diagnosis that negatively impacts pregnancy and loss of pregnancy including termination regardless if medically necessary.

(3) "Stillbirth" is a loss of pregnancy from 20 weeks gestation or more.

(4) "State employee" means any full-time or part-time employee of the State.

(b) Any state employee shall be entitled to a maximum of 5 days of paid bereavement leave for the miscarriage, stillbirth, or other loss suffered by the employee.

Section 2. This Act shall be known as the "Sloane Hajek Act of 2023".

Approved June 30, 2023

TAB 12

Delaware General Assembly (/)



Senate Bill 27

152nd General Assembly (Present)

Bill Progress

Current Status:

Signed 4/26/23

What happens next?

Becomes effective upon date of signature of the Governor or upon date specified

Bill Details

Introduced on:

1/10/23

Primary Sponsor:

Sturgeon (<https://senatedems.delaware.gov/members/senate-district-4>)

Additional Sponsor(s):

Sen. Walsh (<https://senatedems.delaware.gov/members/senate-district-9>)

Reps. Osinski (<https://housedems.delaware.gov/members/house-district-24>), Chukwuocha (<https://housedems.delaware.gov/members/house-district-1>), Heffernan (<https://housedems.delaware.gov/members/house-district-6>), Morrison (<https://housedems.delaware.gov/members/house-district-27>), K. Williams (<https://housedems.delaware.gov/members/house-district-19>)

Co-Sponsor(s):

Sen. Hansen (<https://senatedems.delaware.gov/members/senate-district-10>), Hoffner (<https://senatedems.delaware.gov/members/senate-district-14>), Lockman (<https://senatedems.delaware.gov/members/senate-district-3>), S. McBride (<https://senatedems.delaware.gov/members/senate-district-1>), Paradee (<https://senatedems.delaware.gov/members/senate-district-17>), Poore (<https://senatedems.delaware.gov/members/senate-district-12>), Townsend (<https://senatedems.delaware.gov/members/senate-district-11>), Reps. Griffith (<https://housedems.delaware.gov/members/house-district-12>), Lambert (<https://housedems.delaware.gov/members/house-district-7>), Wilson-Anton (<https://housedems.delaware.gov/members/house-district-26>)

Long Title:

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO LIMITATION OF ACTIONS FOR WORK, LABOR, OR PERSONAL SERVICES.

Original Synopsis:

This Act increases the statute of limitations for filing an action for recovery upon a claim for unpaid wages from 1 year to 2 years, making it consistent with the statute of limitations under the federal Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq. Many employees who are terminated spend the first period of unemployment attempting to secure other employment. After this focus on finding employment ends, 1 year may have passed or be about to pass, preventing employees who are owed wages from a previous employer from seeking legal redress. This Act applies to claims when the date of the accruing of the cause of action on which the action is based is on or after the effective date of this Act. This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Volume:Chapter: ②

84:20

Advisory Number:

7

Fiscal Note/Fee Impact:

Not Required

Effective Date: ②

4/26/23

Sunset Date:

N/A

Bill Text

Original Text:

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Session Laws

Session Law:

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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details
No Records Available				

Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable	
1/18/23	Labor (/CommitteeDetail?committeeId=614)	7	4	2	0	view ()
3/14/23	Labor (/CommitteeDetail?committeeId=594)	12	9	1	0	view ()

Roll Calls

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
House	Passed	3/28/23 5:05 PM	SM	41	0	0	0	(/json/RollCallController/GenerateRollCallPdf?rollCallId=54161&chamberId=2) view ()
Senate	Passed	1/26/23 2:28 PM	SM	20	0	0	1	(/json/RollCallController/GenerateRollCallPdf?rollCallId=54027&chamberId=1) view ()

Actions History

Date	Action
1/10/23	Introduced and Assigned to Labor Committee in Senate
1/18/23	Reported Out of Committee (Labor) in Senate with 4 Favorable, 2 On Its Merits
1/26/23	Passed By Senate. Votes: 20 YES 1 ABSENT
3/2/23	Assigned to Labor Committee in House
3/14/23	Reported Out of Committee (Labor) in House with 9 Favorable, 1 On Its Merits
3/28/23	Passed By House. Votes: 41 YES
4/26/23	Signed by Governor

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[View All Senate Legislation \(/Legislation/Senate\)](#)

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[RSS Feeds \(/RssFeed\)](#)

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Other Resources

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Legislative Council,
General Assembly
State of Delaware

LAWS OF DELAWARE
VOLUME 84
CHAPTER 20
152nd GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 27

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO LIMITATION OF ACTIONS FOR WORK, LABOR, OR PERSONAL SERVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 8111, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8111. Work, labor or personal services.

No action for recovery upon a claim for wages, salary, or overtime for work, ~~labor~~ labor, or personal services performed, or for damages (actual, ~~compensatory~~ compensatory, or punitive, liquidated or otherwise), or for interest or penalties resulting from the failure to pay any such claim, or for any other benefits arising from such work, ~~labor~~ labor, or personal services performed or in connection with any such action, shall be brought after the expiration of ~~1 year~~ 2 years from the accruing of the cause of action on which such action is based.

Section 2. This Act applies to claims when the date of the accruing of the cause of action on which the action is based is on or after [the effective date of this Act].

Approved April 26, 2023

TAB 13

Delaware General Assembly (/)



House Bill 1

152nd General Assembly (Present)

Bill Progress

Current Status:

Enact w/o Sign 4/23/23

What happens next?

No action taken by Governor within prescribed time frame

Bill Details

Introduced on:

1/20/23

Primary Sponsor:

Osienski (<https://housedems.delaware.gov/members/house-district-24>)

Additional Sponsor(s):

Sen. [Paradee](https://senatedems.delaware.gov/members/senate-district-17) (<https://senatedems.delaware.gov/members/senate-district-17>), [Hoffner](https://senatedems.delaware.gov/members/senate-district-14) (<https://senatedems.delaware.gov/members/senate-district-14>),
Reps. [Longhurst](https://housedems.delaware.gov/members/house-district-15) (<https://housedems.delaware.gov/members/house-district-15>), [Baumbach](https://housedems.delaware.gov/members/house-district-23) (<https://housedems.delaware.gov/members/house-district-23>), [Morrisson](https://housedems.delaware.gov/members/house-district-27) (<https://housedems.delaware.gov/members/house-district-27>), [Heffernan](https://housedems.delaware.gov/members/house-district-6) (<https://housedems.delaware.gov/members/house-district-6>)

Co-Sponsor(s):

Sen. [Gay](https://senatedems.delaware.gov/members/senate-district-5) (<https://senatedems.delaware.gov/members/senate-district-5>), [Huxtable](https://senatedems.delaware.gov/members/senate-district-6) (<https://senatedems.delaware.gov/members/senate-district-6>),
[Lockman](https://senatedems.delaware.gov/members/senate-district-3) (<https://senatedems.delaware.gov/members/senate-district-3>), [S. McBride](https://senatedems.delaware.gov/members/senate-district-1) (<https://senatedems.delaware.gov/members/senate-district-1>),
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Reps. [Chukwuocha](https://housedems.delaware.gov/members/house-district-1) (<https://housedems.delaware.gov/members/house-district-1>), [Cooke](https://housedems.delaware.gov/members/house-district-16) (<https://housedems.delaware.gov/members/house-district-16>),
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Long Title:

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO MARIJUANA.

Original Synopsis:

This Act removes all penalties for use or possession of a personal use quantity of marijuana and marijuana accessories. It further specifies that the adult sharing of a personal use quantity or less of marijuana is legal activity for those 21 years of age or older and that those 21 or older may possess, use, display, purchase, or transport accessories and personal use quantities of marijuana without penalty. When transporting in a vehicle, those items must be in a closed container or otherwise not readily accessible to anyone inside the vehicle. The statute also specifies certain activities which remain unlawful. Finally, the definition of "personal use quantity" of marijuana is updated to include not only 1 ounce or less of leaf marijuana, but also equivalent amounts of marijuana product in other forms.

Volume:Chapter: ②

84:15

Advisory Number:

6

Fiscal Note/Fee Impact:

Not Required

Effective Date: ②

4/23/23

Sunset Date:

N/A

Bill Text

Original Text:

[View HTML \(/json/BillDetail/GenerateHtmlDocument?legislationId=129970&legislationTypeId=1&docTypeId=2&legislationName=HB1\)](#)

[View PDF \(/json/BillDetail/GeneratePdfDocument?legislationId=129970&legislationTypeId=1&docTypeId=2&legislationName=HB1\)](#)

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Session Laws

Session Law:

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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details
No Records Available				

Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable	
1/25/23	Health & Human Development (/CommitteeDetail?committeeId=590)	16	7	2	0	view ()
3/15/23	Health & Social Services (/CommitteeDetail?committeeId=612)	7	3	4	0	view ()

Roll Calls

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
Senate	Passed	3/28/23 3:13 PM	SM	16	4	0	1	(/json/RollCallController/GenerateRollCallPdf?rollCallId=54150&chamberId=1) view ()
House	Passed	3/7/23 4:11 PM	SM	28	13	0	0	(/json/RollCallController/GenerateRollCallPdf?rollCallId=54059&chamberId=2) view ()

Actions History

Date	Action
1/20/23	Introduced and Assigned to Health & Human Development Committee in House
1/25/23	Reported Out of Committee (Health & Human Development) in House with 7 Favorable, 2 On Its Merits
1/25/23	Reported Out of Committee (Health & Human Development) in House with 7 Favorable, 2 On Its Merits
3/7/23	Passed By House. Votes: 28 YES 13 NO
3/7/23	Assigned to Health & Social Services Committee in Senate
3/15/23	Reported Out of Committee (Health & Social Services) in Senate with 3 Favorable, 4 On Its Merits
3/28/23	Passed By Senate. Votes: 16 YES 4 NO 1 ABSENT

Date	Action
4/23/23	Enact w/o Sign by Governor

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LAWS OF DELAWARE
VOLUME 84
CHAPTER 15
152nd GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 1

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO MARIJUANA.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 47, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4701. Definitions.

As used in this chapter:

(28) a. "Marijuana" means all parts of the plant *Cannabis sativa* L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin.

b. ~~It~~ "Marijuana" does not include any of the following:

1. ~~the~~ The mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, or any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

2. ~~Marijuana does not include products~~ Products approved by the US Food and Drug Administration.

3. Industrial hemp as defined in § 2801 of Title 3.

~~(36)~~ (37) "Personal use quantity" ~~shall mean~~ means 1 ounce or less of marijuana in the form of leaf ~~marijuana, marijuana, 12 grams or less of concentrated cannabis, or cannabis products containing 750 milligrams or less of delta-9-tetrahydrocannabinol.~~ "Leaf marijuana" means the dried leaves and flowering tops of the plant *cannabis sativa* L.

§ 4764. Possession of marijuana; class B misdemeanor, unclassified misdemeanor, or civil violation [For application of this section, see 80 Del. Laws, c. 38, § 6].

(b) Any person who knowingly or intentionally uses, consumes, or possesses other than a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, shall be guilty of an unclassified misdemeanor and be fined not more than \$575, imprisoned not more than 3 months, or both.

~~(c)(1) Any person who knowingly or intentionally possesses a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, must be assessed a civil penalty of \$100 in addition to such routine assessments necessary for the administration of civil violations and the marijuana must be forfeited.~~

~~(2) Private use or consumption by a person of a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title is likewise punishable by a civil penalty under this subsection.~~

~~(c) (3) Notwithstanding paragraph (e)(1) or (e)(2) of this section, any A~~ person under 21 years of age who commits a violation of this subsection knowingly or intentionally possesses, uses, or consumes a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, must be assessed a civil penalty of \$100 for a first violation of this subsection and a civil penalty of not less than \$200 nor more than \$500 for a second violation of this subsection and is guilty of an unclassified misdemeanor and must be fined \$100 for a third or subsequent violation of this subsection. A peace officer having reasonable grounds to believe that a juvenile has committed a violation of ~~paragraph (e)(1) or (e)(2) of this section~~ this subsection may issue the juvenile a civil citation in lieu of a civil penalty.

~~(h) Nothing contained herein shall be construed to repeal or modify any law or procedure regarding search and seizure. [Repealed.]~~

§ 4764A. Legal marijuana-related activity.

(a) For purposes of this section, "adult sharing" means transferring marijuana between persons who are 21 years of age or older without remuneration. "Adult sharing" does not include instances in which (i) marijuana is given away contemporaneously with another reciprocal transaction between the same parties; (ii) a gift of marijuana is offered or advertised in conjunction with an offer for the sale of goods or services; or (iii) a gift of marijuana is contingent upon a separate reciprocal transaction for goods or services.

(b) Notwithstanding any other provision of this chapter, no civil or criminal penalty may be imposed, nor may criminal or civil asset forfeiture be pursued, for any of the following activities by an individual 21 years of age or older:

(1) Adult sharing of a personal use quantity or less of marijuana.

(2) Possessing, using, displaying, purchasing, or transporting marijuana accessories or a personal use quantity or less of marijuana outside of a motor vehicle.

(3) Possessing and transporting marijuana accessories or a personal use quantity or less of marijuana, inside of a motor vehicle as long as the marijuana accessories or marijuana is in a closed container or is not readily accessible to anyone inside the motor vehicle.

(4) Assisting another individual who is 21 years of age or older in any of the acts described in paragraphs (1), (2), and (3) of this subsection.

(b) The following acts remain unlawful and an offense under the law of this State:

(1) Consuming marijuana in an area accessible to the public or in a moving vehicle, as defined and punished under § 4764(d) of Title 16.

(2) Growing, manufacturing, selling, or cultivating marijuana without a license granted under Chapter 49A of Title 16 or other provision of State law, as defined and punished under Chapter 47 of Title 16.

(3) Unlawfully using a license or identification card as defined and punished under § 2751 of Title 21.

§ 4771. Drug paraphernalia [For application of this section, see 80 Del. Laws, c. 38, § 6].

(a) It is unlawful for any person to use, or possess with intent to use, drug paraphernalia. ~~Except that any person charged under § 4764(b) or (d) of this title, or assessed a civil penalty under § 4764(e) of this title, shall not also be charged with this offense if in possession of drug paraphernalia pertaining to the use of marijuana.~~

(b) It is unlawful for any person to deliver, possess with intent to deliver, convert, manufacture, convey, sell, or offer for sale drug paraphernalia, knowing or under circumstances where one should reasonably know that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

(c) ~~[Repealed.]~~ This section does not apply to items that are used, or intended primarily for use, with marijuana.

Became law without the Governor's signature April 23, 2023

TAB 14

Delaware General Assembly (/)



House Bill 49

152nd General Assembly (Present)

Bill Progress

Current Status:

Signed 1/26/23

What happens next?

Becomes effective upon date of signature of the Governor or upon date specified

Bill Details

Introduced on:

1/13/23

Primary Sponsor:

[Osienski \(https://housedems.delaware.gov/members/house-district-24\)](https://housedems.delaware.gov/members/house-district-24)

Additional Sponsor(s):

Sen. [Townsend \(https://senatedems.delaware.gov/members/senate-district-11\)](https://senatedems.delaware.gov/members/senate-district-11), [Walsh \(https://senatedems.delaware.gov/members/senate-district-9\)](https://senatedems.delaware.gov/members/senate-district-9)
Rep. [K. Williams \(https://housedems.delaware.gov/members/house-district-19\)](https://housedems.delaware.gov/members/house-district-19)

Co-Sponsor(s):

Sen. [Hoffner \(https://senatedems.delaware.gov/members/senate-district-14\)](https://senatedems.delaware.gov/members/senate-district-14), [Huxtable \(https://senatedems.delaware.gov/members/senate-district-6\)](https://senatedems.delaware.gov/members/senate-district-6),
[Sturgeon \(https://senatedems.delaware.gov/members/senate-district-4\)](https://senatedems.delaware.gov/members/senate-district-4)
Rep. [Bush \(https://housedems.delaware.gov/members/house-district-29\)](https://housedems.delaware.gov/members/house-district-29)

Long Title:

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO UNEMPLOYMENT BENEFITS AND EMPLOYER ASSESSMENTS.

Original Synopsis:

This Act provides post-pandemic related relief to both claimants receiving unemployment benefits and employers who are assessed unemployment taxes. This bill will increase the maximum weekly benefit amount payable to claimants seeking unemployment compensation benefits from the Delaware Department of Labor, Division of Unemployment Insurance from \$400.00 a week to \$450.00 a week. The funds necessary to pay the increased weekly benefit amounts will be paid from the Unemployment Trust Fund. Delaware currently pays unemployment claimants less per week in benefits than claimants are paid in each neighboring state. The maximum weekly benefit amount has not changed since 2019. The Governor's agreement to allow federal pandemic funds to be used to replace the funds in the Unemployment Trust Fund that were depleted from the surge of pandemic related claims has made the Unemployment Trust Fund sufficiently solvent so as to allow the Department to offer unemployment tax relief measures to Delaware employers for a one-year period during calendar year 2023, at a time when employers continue to face post-pandemic rising economic challenges, supply chain problems, and difficulty in staffing. This Act will provide temporary relief to employers who pay unemployment tax assessments by reducing the new employer tax rates, reducing or holding constant overall employer tax rates, and reducing the maximum earned rate. This Act will also temporarily simplify the tax rate schedules that are used to calculate unemployment assessments paid by employers. The Department estimates that these unemployment tax assessment changes will reduce the tax obligation of employers an estimated \$50 million in 2023. The various tax assessment relief provisions set forth in Sections 2 and 3 of this Act are retroactive to January 1, 2023 and are intended to be in effect for the full calendar year 2023.

Volume:Chapter: ②

84:2

Advisory Number:

2

Fiscal Note/Fee Impact:

Not Required

Effective Dates: ②

1/26/23; 4/2/23

Sunset Date:

N/A

Bill Text

Original Text:

[View HTML \(/json/BillDetail/GenerateHtmlDocument?legislationId=129939&legislationTypeId=1&docTypeId=2&legislationName=HB49\)](#)
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Session Laws

Session Law:

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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details
No Records Available				

Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable	
1/17/23	Labor (/CommitteeDetail?committeeId=594)	12	6	2	0	view ()
1/25/23	Labor (/CommitteeDetail?committeeId=614)	7	5	0	0	view ()

Roll Calls


Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
Senate	Passed	1/26/23 3:30 PM	SM	16	4	0	1	(/json/RollCallController/GenerateRollCallPdf?rollCallId=54036&chamberId=1) view ()
House	Passed	1/18/23 2:33 PM	SM	39	0	0	2	(/json/RollCallController/GenerateRollCallPdf?rollCallId=53992&chamberId=2) view ()

Actions History

Date	Action
1/13/23	Introduced and Assigned to Labor Committee in House
1/17/23	Reported Out of Committee (Labor) in House with 6 Favorable, 2 On Its Merits
1/17/23	Reported Out of Committee (Labor) in House with 6 Favorable, 2 On Its Merits
1/17/23	Reported Out of Committee (Labor) in House with 6 Favorable, 2 On Its Merits
1/18/23	Passed By House. Votes: 39 YES 2 ABSENT
1/18/23	Assigned to Labor Committee in Senate
1/25/23	Reported Out of Committee (Labor) in Senate with 5 Favorable
1/26/23	Laid On Table in Senate
1/26/23	Lifted From Table in Senate

Date	Action
1/26/23	Passed By Senate. Votes: 16 YES 4 NO 1 ABSENT
1/26/23	Signed by Governor

Legislation Detail Feeds


[Roll Calls \(/rss/RssFeeds/RollCallsByLegislation?legislationId=129939\)](#)  [\(/RssFeeds/RSSFeedInfo\)](#)


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[View All House Legislation \(/Legislation/House\)](#)

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LAWS OF DELAWARE
VOLUME 84
CHAPTER 2
152nd GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 49

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO UNEMPLOYMENT BENEFITS AND EMPLOYER ASSESSMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 3313, Title 19 of the Delaware Code, by making deletions as shown by strike through and insertions as shown by underline and by redesignating accordingly:

§ 3313. Wages defined; weekly benefit amount; total annual amount of benefits; child support obligations.

(s) ~~Notwithstanding any other provisions in this section, for~~ For claims establishing a benefit year beginning July 1, 2019 and thereafter, an individual's weekly benefit amount shall be an amount equal to 1/46 of the individual's total wages for employment by employers paid during the 2 quarters of the individual's base period in which such wages were highest. If the weekly benefit amount is not an even dollar amount, it will be rounded down to the next whole dollar. The amount shall not be less than \$20 nor more than \$400.00.

(t) Notwithstanding any other provisions in this section, for claims establishing a benefit year beginning April 2, 2023, and thereafter, an individual's weekly benefit amount shall be an amount equal to 1/46 of the individual's total wages for employment by employers paid during the 2 quarters of the individual's base period in which such wages were highest. If the weekly benefit amount is not an even dollar amount, it will be rounded down to the next whole dollar. The amount shall not be less than \$20 nor more than \$450.00.

Section 2. Amend § 3348, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3348. Average employer assessment rate; average industry assessment rate; average construction industry assessment rate; new employer rate; standard rate of assessment.

(l) Notwithstanding any other provisions in this section, for calendar year 2023, effective January 1, 2023, the average employer assessment rate, the average industry assessment rate, and the average construction industry assessment rate shall each be 1%.

Section 3. Amend § 3350, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3350. Variations from new employer rate.

Prior to the calendar year 1954, each employer's rate for any calendar year shall be determined on the basis of the employer's record as of December 31 of the preceding calendar year. For the year 1954 and each calendar year thereafter each employer's rate for any calendar year shall be determined on the basis of the employer's record as of September 30 of the preceding calendar year. Variations from the standard rate of assessments shall be determined in accordance with the following requirements:

(14) Notwithstanding any other provisions in this section, for calendar year 2023, effective January 1, 2023, employers shall be assigned a basic assessment rate in accordance with the following table:

2023 - Special One Year Schedule of Rates

<u>Benefit Wage Ratio (%) Does Not Exceed:</u>	<u>Basic Assessment Rate:</u>
<u>20</u>	<u>0.1%</u>
<u>30</u>	<u>0.25%</u>
<u>40</u>	<u>0.50%</u>
<u>50</u>	<u>1.00%</u>
<u>55</u>	<u>2.00%</u>
<u>60</u>	<u>2.50%</u>
<u>70</u>	<u>3.50%</u>
<u>80</u>	<u>4.50%</u>
<u>90</u>	<u>5.00%</u>

a. If the employer's benefit wage ratio exceeds the highest percentage in the table set forth in paragraph (14) of this section the employer's basic assessment rate shall be 5.40 %.

b. Employers who are determined for calendar year 2023 to have the delinquency rate of assessment pursuant to paragraph (6) of this section shall continue to be assigned the delinquency rate.

Section 4. Section 1 of this Act will take effect on April 2, 2023.

Section 5. Sections 2 and 3 of this Act expire on December 31, 2023.

Approved January 26, 2023

TAB 15

Delaware General Assembly (/)



House Bill 205

151st General Assembly (2021 - 2022)

Bill Progress

Current Status:

Signed 8/18/22

What happens next?

The General Assembly has ended, the current status is the final status.

Bill Details

Introduced on:

5/20/21

Primary Sponsor:

Lambert (<https://housedems.delaware.gov/members/house-district-7/>)

Additional Sponsor(s):

Sen. Poore (<https://senatedems.delaware.gov/members/senate-district-12/>), S. McBride (<https://senatedems.delaware.gov/members/senate-district-1/>), Pinkney (<https://senatedems.delaware.gov/members/senate-district-13/>), Reps. Baumbach (<https://housedems.delaware.gov/members/house-district-23/>), Bennett ([/LegislatorDetail?personId=55](https://legislatorDetail?personId=55)), Bentz ([/LegislatorDetail?personId=42](https://legislatorDetail?personId=42)), Bolden (<https://housedems.delaware.gov/members/house-district-2/>), Heffernan (<https://housedems.delaware.gov/members/house-district-6/>), Longhurst (<https://housedems.delaware.gov/members/house-district-15/>), Minor-Brown (<https://housedems.delaware.gov/members/house-district-17/>), K. Williams (<https://housedems.delaware.gov/members/house-district-19/>)

Co-Sponsor(s):

Sen. Bonini ([/LegislatorDetail?personId=39](https://legislatorDetail?personId=39)), Ennis ([/LegislatorDetail?personId=5](https://legislatorDetail?personId=5)), Gay (<https://senatedems.delaware.gov/members/senate-district-5/>), Hansen (<https://senatedems.delaware.gov/members/senate-district-10/>), Hocker (<https://senategop.delaware.gov/members/senate-district-20/>), Lawson (<https://senategop.delaware.gov/members/senate-district-15/>), Lockman (<https://senatedems.delaware.gov/members/senate-district-3/>), Lopez ([/LegislatorDetail?personId=117](https://legislatorDetail?personId=117)), Mantzavinos (<https://senatedems.delaware.gov/members/senate-district-7/>), Pettyjohn (<https://senategop.delaware.gov/members/senate-district-19/>), Richardson (<https://senategop.delaware.gov/members/senate-district-21/>), Sokola (<https://senatedems.delaware.gov/members/senate-district-8/>), Sturgeon (<https://senatedems.delaware.gov/members/senate-district-4/>), Townsend (<https://senatedems.delaware.gov/members/senate-district-11/>), Walsh (<https://senatedems.delaware.gov/members/senate-district-9/>), Reps. Brady ([/LegislatorDetail?personId=124](https://legislatorDetail?personId=124)), Briggs King (<https://housegop.delaware.gov/members/house-district-1/>), Dorsey Walker (<https://housedems.delaware.gov/members/house-district-28/>), Chukwuocha (<https://housedems.delaware.gov/members/house-district-1/>), Gray (<https://housegop.delaware.gov/members/house-district-38/>), Griffith (<https://housedems.delaware.gov/members/house-district-3/>), Hensley (<https://housegop.delaware.gov/members/house-district-9/>), Kowalko ([/LegislatorDetail?personId=176](https://legislatorDetail?personId=176)), Matthews (<https://housedems.delaware.gov/members/house-district-10/>), S. Moore (<https://housedems.delaware.gov/members/house-district-8/>), Morrison (<https://housedems.delaware.gov/members/house-district-27/>), Osienski (<https://housedems.delaware.gov/members/house-district-24/>), Ramone (<https://housegop.delaware.gov/members/house-district-21/>), Schwartzkopf (<https://housedems.delaware.gov/members/house-district-14/>), Shupe (<https://housegop.delaware.gov/members/house-district-36/>), Wilson-Anton (<https://housedems.delaware.gov/members/house-district-26/>)

Long Title:

AN ACT TO AMEND TITLES 19 AND 29 OF THE DELAWARE CODE RELATING TO ESTABLISHMENT AND MANAGEMENT OF THE EXPANDING ACCESS FOR RETIREMENT AND NECESSARY SAVING PROGRAM.

Original Synopsis:

This Act establishes the Delaware Expanding Access for Retirement and Necessary Saving ("EARNs") program to serve as a vehicle through which eligible employees may, on a voluntary basis, provide for additional retirement security through a State-facilitated retirement savings program in a convenient, cost effective, and portable manner. The EARNs program will be designed to serve small businesses who are unable to offer retirement plans to employees due to the cost and administrative burden. Because there are documented wealth gaps in Delaware, disproportionately impacting women and people of color, a state-facilitated savings plan aims to alleviate barriers small employers face in offering options, close the wealth gap among low to modest wage earners and keep Delaware competitive with neighboring states by attracting talented workers to Delaware. A state-sponsored savings plan, funded by employees, facilitated by employers, and overseen by the State, will offer one solution to the quickly emerging crises stemming from generations of workers without adequate savings. The Act creates the Delaware EARNs Program Board to oversee initial design and implementation of the program. The board will be disbanded no later than December 31, 2025, at which point all duties and functions of the board will be transferred to and assumed by the Plans Management Board. The effective date of the Act is contingent upon an appropriation by the General Assembly necessary to implement the Program. This Act also makes technical changes to the existing law to make it conform to the standards of the Legislative Drafting Manual.

Volume:Chapter: ③

83:405

Advisory Number:

44

Fiscal Note/Fee Impact:F/N (Complete) [View PDF \(/json/BillDetail/GetPdfDocument?fileAttachmentId=401037\)](#).

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Effective Date: ⓘ

8/18/22

Sunset Date:

N/A

Bill Text**Original Text:**[View HTML \(/json/BillDetail/GenerateHtmlDocument?legislationId=78751&legislationTypeId=1&docTypeId=2&legislationName=HB205\)](#)[View PDF \(/json/BillDetail/GeneratePdfDocument?legislationId=78751&legislationTypeId=1&docTypeId=2&legislationName=HB205\)](#)

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Final/Engrossed:[View HTML \(/json/BillDetail/GenerateHtmlDocumentEngrossment?engrossmentId=24712&docTypeId=6\)](#)[View PDF \(/json/BillDetail/GeneratePdfEngrossment?engrossmentId=24712&docTypeId=6\)](#)

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Session Laws**Session Law:**[View HTML \(/json/BillDetail/GenerateHtmlDocumentSessionLaw?sessionLawId=78751&docTypeId=13&sessionLawName=chp405\)](#)[View PDF \(/SessionLaws/Chapter/GetPdfDocument?fileAttachmentId=573498\)](#)

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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details
HA 1	Stricken	6/11/21	Lambert (https://housedems.delaware.gov/members/house-district-7)	view amendment details (/BillDetail?legislationId=78896)
HA 2	Stricken	6/21/21	Briggs King (/LegislatorDetail?personId=3058)	view amendment details (/BillDetail?legislationId=78940)
HA 3	Passed	3/22/22	Lambert (https://housedems.delaware.gov/members/house-district-7)	view amendment details (/BillDetail?legislationId=79265)

Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable	
6/9/21	Labor (/CommitteeDetail?committeeId=551)	11	8	1	0	view ()
3/17/22	Appropriations (/CommitteeDetail?committeeId=539)	6	1	4	0	view ()
6/14/22	Labor (/CommitteeDetail?committeeId=571)	6	1	4	0	view ()
6/16/22	Finance (/CommitteeDetail?committeeId=562)	6	2	2	0	view ()

Roll Calls

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
Senate	Passed	6/21/22 3:48 PM	SM	20	0	1	0	(/json/RollCallController/GenerateRollCallPdf?rollCallId=53565&chamberId=1) view()
House	Passed	5/17/22 4:52 PM	SM	35	5	0	1	(/json/RollCallController/GenerateRollCallPdf?rollCallId=53229&chamberId=2) view()

Actions History

Date	Action
5/20/21	Introduced and Assigned to Labor Committee in House
6/9/21	Reported Out of Committee (Labor) in House with 8 Favorable, 1 On Its Merits
6/10/21	Assigned to Appropriations Committee in House
6/11/21	Amendment HA 1 to HB 205 - Introduced and Placed With Bill
6/21/21	Amendment HA 2 to HB 205 - Introduced and Placed With Bill
3/17/22	Reported Out of Committee (Appropriations) in House with 1 Favorable, 4 On Its Merits
3/22/22	Amendment HA 3 to HB 205 - Introduced and Placed With Bill
5/17/22	Amendment HA 1 to HB 205 - Stricken in House
5/17/22	Amendment HA 2 to HB 205 - Stricken in House
5/17/22	Amendment HA 3 to HB 205 - Passed In House by Voice Vote
5/17/22	Passed By House. Votes: 35 YES 5 NO 1 ABSENT
5/17/22	Assigned to Labor Committee in Senate
6/14/22	Reported Out of Committee (Labor) in Senate with 1 Favorable, 4 On Its Merits
6/14/22	Assigned to Finance Committee in Senate
6/16/22	Reported Out of Committee (Finance) in Senate with 2 Favorable, 2 On Its Merits
6/21/22	Passed By Senate. Votes: 20 YES 1 NOT VOTING
8/18/22	Signed by Governor

Legislation Detail Feeds

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Reps. Brady, Briggs King, Carson, Chukwuocha, Dorsey Walker, Gray, Griffith, Hensley, Kowalko, Matthews, S. Moore, Morrison, Osienski, Ramone, Schwartzkopf, Shupe, Wilson-Anton; Sens. Bonini, Ennis, Gay, Hansen, Hocker, Lawson, Lockman, Lopez, Mantzavinos, Pettyjohn, Richardson, Sokola, Sturgeon, Townsend, Walsh

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 205
AS AMENDED BY
HOUSE AMENDMENT NO. 3

AN ACT TO AMEND TITLES 19 AND 29 OF THE DELAWARE CODE RELATING TO ESTABLISHMENT AND MANAGEMENT OF THE EXPANDING ACCESS FOR RETIREMENT AND NECESSARY SAVING PROGRAM.

WHEREAS, workplace retirement saving plans provide millions of U.S. workers with an effective and convenient way to save for retirement, yet one third of U.S. workers lack access to such plans; and

WHEREAS, according to research from the National Institute on Retirement Security, 75% of U.S. residents agree that the country is facing a retirement crisis; and

WHEREAS, an increasing number of states are offering or planning to offer workers whose employers do not sponsor a retirement plan an option to be automatically enrolled in private-sector payroll deduction IRAs, and many other states are considering such programs; and

WHEREAS, according to the National Compensation and Benefits Survey, which surveyed Delaware workplaces and their employees, 54% of employers within the State do not offer retirement plans; and

WHEREAS, according to research from the Georgetown University Center for Retirement Initiatives, approximately 38% of the State's workforce – more than 145,000 workers, many of whom are lower- to moderate-income women and minority workers – do not have access to employer-sponsored retirement plans; and

WHEREAS, despite the economic downturn caused by the COVID-19 pandemic, state-sponsored retirement plans that support small business employees have remained resilient with employee contributions holding steady, withdrawals under control, and employer registrations increasing; and

WHEREAS, in the three states with the longest-running state-sponsored retirement programs, employee contributions held steady or increased during the COVID-19 pandemic; and

WHEREAS, according to a March 2020 survey by MoneyRates, 36% of employees who are within 20 years of retirement expect the COVID-19 pandemic to delay their retirement; and

WHEREAS, according to an April 2021 Congressional Research Service report, the number of citizens over the age of 65 living in poverty in the State is projected to increase substantially over the next 20 years, with a commensurate increase in demand for public assistance benefits; and

WHEREAS, through the Delaware EARNs Program, the State will facilitate increased retirement saving among the State's working population and reduce the need for additional taxes or fees to fund public assistance programs; and

WHEREAS, the Delaware EARNs Program will provide a convenient, low-cost, portable, and tax-favored means of saving for workers whose employers do not offer a private-sector 401(k) or other employer-sponsored retirement plan.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 19 of the Delaware Code by inserting a new "Part V" as Chapter 37 by making insertions as shown by underline as follows:

Chapter 37. Delaware Expanding Access for Retirement and Necessary Saving Program.

§ 3701. Establishment; purposes.

There is hereby established the Expanding Access for Retirement and Necessary Saving ("EARNs") Program to serve as a vehicle through which covered employees may, on a voluntary basis, provide for additional retirement security through a State-facilitated retirement saving program in a convenient, cost effective, and portable manner. The Program is designed as a public-private partnership that will encourage, not replace or compete with, employer-sponsored retirement plans.

§ 3702. Definitions.

For purposes of this chapter:

(1) "Board" means the Delaware EARNs Program Board established under § 3703 of this title.

(2) "Covered employee" means an individual who is employed by a covered employer, and who has wages or other compensation allocable to the State. The Board may limit through regulation eligibility for specific categories of employees in order to avoid creating accounts that could increase administrative or management fees associated with available investment options. Covered employee does not include:

a. Any individual who is an employee of the federal government, the State or any other state, any county or municipal corporation, or any of the State's or any other state's agencies or instrumentalities.

b. Any employee covered under the federal Railway Labor Act.

c. Any employee on whose behalf an employer makes contributions to a Taft-Hartley multiemployer pension plan.

d. Any employee who is ineligible for covered employee status under regulations promulgated by the Board.

e. Any employee under the age of 18.

(3) "Covered employer" means any person, partnership, limited liability company, corporation, or other entity engaged in a business, industry, profession, trade, or other enterprise in the State, including a nonprofit entity, that employs, and during the previous calendar year employed, at least 5 covered employees, and that has been in business in this State for at least 6 months in the immediately preceding calendar year. Covered employer does not include:

a. The federal government, the State, any other state, any county, any municipal corporation, or any of the State's or another state's agencies or instrumentalities.

b. Any employer that maintains a specified tax-favored retirement plan.

(4) "ERISA" means the federal Employee Retirement Income Security Act of 1974, as amended.

(5) "Internal Revenue Code" means the federal Internal Revenue Code of 1986, as amended, or any successor law, in effect for the calendar year.

(6) "IRA" means a traditional or Roth individual retirement account or individual retirement annuity described in §408(a), 408(b), or 408A of the Internal Revenue Code.

(7) "Participant" means any individual who is contributing to, or has a balance credited to, an IRA under the Program.

(8) "Participating employer" means a covered employer that makes the Program available to its employees through payroll deduction IRA arrangements under this chapter.

(9) "Payroll deduction IRA arrangement" means an arrangement by which a participating employer makes payroll deductions authorized by this chapter and remits the amounts deducted as contributions to IRAs on behalf of participants.

(10) "Plans Management Board" means the Board established by § 2722 of Title 29 to manage specified plans and programs created under the laws of this State.

(11) "Program" means the EARNs Program established by this chapter. Except as otherwise specified, references to the Program throughout this chapter also means the trust, including trust assets, facilities, costs and expenses, receipts, expenditures, activities, operations, administration, and management.

(12) "Program expenses" means all fees, costs, and expenses of the State related to the Program, including administrative expenses, investment expenses, consulting fees, accounting costs, auditing costs, legal fees and costs, marketing expenses, education expenses, and other miscellaneous costs incurred in the implementation and continuation of the Program.

(13) "Roth IRA" means an IRA described in §408A of the Internal Revenue Code.

(14) "Specified tax-favored retirement plan" means a retirement plan that is an automatic enrollment payroll deduction IRA applicable to all covered employees and meeting all other qualifications that may be established by the Board, or a retirement plan qualified under, or described in, and in compliance with §§ 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code.

(15) "Traditional IRA" means an IRA described in §408(a) or (b) of the Internal Revenue Code.

(16) "Trust" means the trust in which assets of the Program are to be held, including contributions and investment earnings.

(17) "Wages" means any commission, compensation, salary or other remuneration, as defined by §219(f)(1) of the Internal Revenue Code received by a participant from a participating employer.

§ 3703. The Delaware EARNS Program Board; establishment; purpose.

(a) The Delaware EARNS Program Board is hereby established. The Board shall oversee the design, implementation and initial administration of the Program in accordance with this chapter.

(b) The Board shall consist of 7 members comprised of the following:

(1) 4 members shall serve by virtue of their office, each of whom may designate a person to serve in their stead and at their pleasure:

a. The State Treasurer.

b. The Secretary of Finance.

c. The Insurance Commissioner.

d. The Secretary of Labor.

(2) 1 member who is the chairperson of the Plans Management Board, who may designate a member of the Plans Management Board or one of its committees to serve in the chairperson's stead and at the pleasure of the chairperson.

(3) 2 public members appointed by the Governor who, by reason of education or experience, are qualified to serve. One public member must be an owner of a small business in the State. The other public member must have experience in providing financial advice or assistance to lower- to moderate-income workers or retirees. Public members' initial term shall be for 2 years, subject to earlier termination upon dissolution of the Board as provided in this chapter.

(c) Board voting, governance and meetings.

(1) Each Board member shall have 1 vote. The powers of the Board shall be exercised by a majority of all members present at a meeting of the Board, whether in person or remotely. Four members shall constitute the necessary quorum to convene a meeting of the Board and to act on any measure before it.

(2) The Governor shall appoint a Board chairperson from between the public members. The chairperson as such shall serve at the pleasure of the Governor.

(3) The Board shall meet at a minimum of 4 times annually. The Board Chairperson and the State Treasurer are authorized to call and set the agenda for special meetings of the Board.

(4) The Board and its committees may conduct meetings remotely by teleconference or videoconference, including in order to obtain a quorum and to take votes on any measure.

(5) Meetings and documents relating to investment strategy or negotiations concerning investment of Program money shall be exempt from Chapter 100 of Title 29.

(d) Standard of care.

(1) The Board, its committees, and each of their members shall discharge their duties with respect to the Program solely in the interest of the participants and beneficiaries of the Program and for the exclusive purpose of providing Program benefits to participants and their beneficiaries, including defraying reasonable expenses in administering the Program and in accordance with the trust and other program documents and applicable law.

(2) When investing, managing, or using trust assets, the Board, its committees, and each of the members shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain the purposes of the Program.

(e) Powers and duties.

(1) The Board shall establish, design, develop, implement, maintain, and oversee the Program in accordance with best practices for retirement saving vehicles.

(2) The Board shall, through employer and employee outreach, marketing or education initiatives, or publication of online resources, encourage participation, retirement saving and sound investment practices. The Board shall provide or make available information regarding the Program, including its applicability and registration requirements, with special emphasis on participation eligibility and the ability of employers at any time to sponsor a specified tax-favored retirement plan that would exempt them from covered employer status.

(3) The Board shall adopt rules or regulations to govern the Program, including rules or regulations governing the following:

a. Employee eligibility and covered employer status.

b. Enrollment and re-enrollment processes.

c. The methods by which covered employees or participants may make and change elections.

d. The means by which covered employees or participants may opt out of participation.

e. Contribution limits, the initial automatic default contribution rate, the automatic annual default escalation rate and the maximum default contribution rate.

The Board may adopt rules or regulations allowing employers that are exempt under this chapter to voluntarily participate in the Program and extending eligibility to participate in the Program to individuals who are not employees, including unemployed individuals, self-employed individuals and other independent contractors.

(4) The Board is authorized to charge and collect reasonable administrative fees from participants and use such fees, as well as appropriations and other funds dedicated to supporting the Program, to defray reasonable program expenses.

(5) The Board may establish committees. Committee membership may include persons who are not members of the full board.

(6) Subject to applicable procurement requirements, the Board may enter into contracts, agreements, or arrangements for goods and services necessary or desirable for carrying out the purposes of this chapter, including recordkeeping, administrative, consulting, accounting, legal, asset management, and investment advisory services to assist in establishing, maintaining, administering, operating, and implementing the Program. The Board may discuss the opportunity for qualified minority-, woman-, veteran-, and disabled-owned financial firms, or firms with a record of equity, diversity and inclusion within the firm, as a provider of investment advisory services.

(7) The Board may effect this chapter's purpose by creating or entering into, on behalf of the Program, a consortium, alliance, joint venture, partnership, compact, or contract with another state or states or their programs or boards, which may modify the Board's duties under this chapter.

(8) The Board shall establish the trust. The trust shall include a participant fund that shall hold all participant IRA asserts and earnings and an administrative fund that shall hold all fees collected from participants, all administrative penalties recovered under this chapter, and other amounts received from other funding sources, other than appropriations and earnings thereon. Participant contributions shall be allocated to the participant fund and combined solely for investment purposes. Each participant shall own the contributions to and earnings on the participant's account. Program expenses shall be paid from the administrative fund or appropriations. Trust assets shall not be transferred or used by the Board for any purpose not expressly authorized by this chapter and shall not be commingled with State or non-program funds.

(9) The Board shall adopt an investment policy statement and select investment options, including default investment options, consistent with the objectives of the Program. The menu of investment options may encompass a range of risk and return opportunities and shall be determined taking into account the following:

- a. The nature and objectives of the Program.
- b. The diverse needs of participants.
- c. The desirability of limiting investment choices under the Program to a reasonable number.
- d. The extensive investment choices available to participants if program accounts roll over to an IRA outside of the Program.

(10) The Board shall ensure that the Program is designed and operated in a manner that will not cause it to be subject to or preempted by ERISA.

(11) The Board shall ensure that the Program is designed and operated to:

- a. Minimize costs to participants, employers and the Program.
- b. Minimize the risk that covered employees will exceed applicable annual contribution limits.

- c. Minimize any need for employers that are not covered employers to register with the Program.
- d. Facilitate and encourage employer and employee participation in the Program and participant saving.
- e. Provide resources to any employer that, as an alternative to the Program, may be interested in adopting a privately offered tax-favored retirement plan for its employees.
- f. Maximize simplicity, including ease of administration for participating employers and ease of use for participants.
- g. Maximize portability of participant accounts.
- h. Maximize financial security in retirement.

(12) The Board may arrange for collective, common, and pooled investment of assets of the Program, including investments in conjunction with other funds with which Program assets are permitted to be collectively invested, with a view to saving costs through efficiencies and economies of scale.

(13) The Board shall arrange for and facilitate compliance with all requirements applicable to the Program under the Internal Revenue Code, including requirements for favorable tax treatment of IRAs, and any other applicable law or regulation.

(14) The Board may accept on behalf of the Program any grants, gifts, appropriation, and other money from any person, governmental, or other entity to defray the costs of administering and operating the Program.

(15) The Board may implement the Program in stages, which may include phasing in the Program based on the size of employers, or other factors. To the extent practicable, the Board shall implement the Program so that covered employees can begin to participate and make contributions by January 1, 2025.

(16) The Board shall approve the annual administrative budget for the Program and oversee the collection and disbursement of money in the administrative fund.

(17) The Board, in the exercise of its sole discretion, and without liability, may remove program funds from any financial institution or investment vehicle at any time, provided that such funds shall at all times remain in the trust and be transferred promptly to an alternative financial institution or investment vehicle under the Program.

(18) The Board shall arrange for an annual financial audit of the Program by an outside auditor which shall be provided to the General Assembly. Notwithstanding § 2906(c) of Title 29, the Board shall have exclusive authority to select and contract with a certified public accounting firm to conduct the audits. Payment for any audit must be approved by the Board.

(19) The Board may enter into intergovernmental agreements or memoranda of understanding with the State and any agency or instrumentality of the State in order to further the successful implementation and operation of the Program through the provision, receipt, or other sharing of data, technical assistance, enforcement, compliance,

collection, and other services or assistance to the Program, and all such agencies and instrumentalities shall cooperate with the Board in achieving those ends.

(20) The Board may establish a needs-based small business support grant program for covered employers who require payroll software or similar products or support to implement the Program. The grant program may be funded by appropriations or administrative fees. The grant program shall be subject to the annual administrative budget process. The Board shall prescribe rules and promulgate regulations governing eligibility for grant recipients, the grant application process, and terms and conditions for any award. The Board shall be responsible for providing oversight for the grant program. The Office of the State Treasurer shall administer the grant program and shall report to the Board regarding grant program operations when requested to do so by the Board.

(f) Compensation; exculpation; indemnification.

(1) Members may not receive compensation for serving on the board or its committees. Except for ex officio members, all members are entitled to reimbursement by the State for travel and other expenses incurred in attending meetings of the Board or a committee. A State employee appointed to the Board is permitted to count the time spent attending or traveling to and from Board meetings or Board committees, as part of the employee's regular work day and shall not be required to use leave time.

(2) Each Board and committee member is entitled to immunity under the provisions of Chapter 40 of Title 10 for civil liability resulting from acts or omissions arising out of and in connection with discretionary actions undertaken as a function of a member's responsibilities under this chapter if that member acted in good faith and in a manner the member reasonably believed to be in the best interest of the State, and without gross or wanton negligence.

a. A Board or a committee member is not personally liable for any act or omission made during the member's tenure, or for any loss incurred by any person as a result of participation in the Program.

b. The State shall indemnify each Board or committee member who is a party to or is threatened to be made a party to any potential, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, arising by reason of such member's participation on the Board or a committee, for any expenses, judgments, fines, costs, and amounts paid in settlement if actually and reasonably incurred in defending against the action, suit or proceeding. Indemnification is conditioned on the member having acted in good faith and in a manner the member reasonably believed to be in the best interest of the State. With respect to indemnification for a criminal matter, the member must also have had no reasonable cause to believe the member's conduct was unlawful.

c. In the event that the Attorney General is precluded from providing legal representation to a member under § 2504(3) of Title 29, the State shall indemnify a member for reasonable and actual attorney fees and disbursements a member incurs in defending against the action, suit or proceeding.

d. Any expenses incurred by a Board or committee member in defending a civil, administrative, or investigative action, suit, or proceeding arising as a result of the member's activities as a member of the Board may be paid by the State in advance of the final disposition of the action, suit, or proceeding on authorization by a majority of the members of the Board and by the Governor.

(g) The Board and its committees shall receive administrative support from the Office of the State Treasurer. The Office of the State Treasurer is authorized to and shall initiate and manage all procurement and regulatory processes related to the Program and carry out such other program-related functions as may be delegated by the Board.

(h) Unless terminated earlier as provided in this subsection, the Board shall disband and cease to exist, effective as of December 31, 2025, at which point all duties and functions of the Board under this chapter shall be transferred to and assumed by the Plans Management Board. At any time after full implementation of the Program, the Board, by majority vote, may disband and transfer no less than all of its duties and authority under this chapter to the Plans Management Board provided that the Plans Management Board, by majority vote, agrees to assume all such duties and authority prior to December 31, 2025.

§ 3704. The Program.

The Program shall have such features as the Board in its discretion may adopt, subject to applicable federal law, and the following mandatory provisions:

(1) Each participant may have only 1 account with the Program, and all participating employers shall promptly remit the participant's contributions under the Program to that account.

(2) Employers and non-participants may not contribute funds to Program accounts.

(3) Employers shall not be fiduciaries with respect to, or be liable for, program design, program-related information, educational materials, or forms or disclosures approved by the Board, or the selection or performance of vendors selected by the Board. No employer, the State or any agency or instrumentality of the State, the Program, its administrator or personnel, shall be responsible for, or obligated to monitor a covered employee's or participant's decision to participate in or opt out of the Program, or for contribution decisions, investment decisions, or failure to comply with the statutory eligibility conditions or limits on IRA contributions. No employer shall guarantee any investment, rate of return, or interest on assets in any participant account or the administrative fund or be liable for any market losses, failure to realize gains, or any other adverse consequences, including the loss of favorable tax treatment or public assistance benefits, incurred by any person as a result of participating in the Program. Nothing in this subsection shall relieve an employer from liability for criminal, fraudulent, tortious or otherwise actionable conduct, including liability related to the failure to remit employee contributions.

(4) When and as required by the Board, covered employers shall:

a. Register with the Program and provide the Program administrator relevant information about the employer's employees.

b. Offer or assist the Program in offering all covered employees the choice to either participate in the Program by voluntarily contributing to an IRA under the Program or opt out of the Program.

c. Provide or assist the Program administrator in providing program-related information, educational materials, and disclosures to covered employees and participants.

d. Timely remit participant contributions.

e. Perform any other duties or functions the Board may require to facilitate enrollment and administration of the Program.

(5) Covered employees who do not opt out shall be automatically enrolled in the Program at the default rate specified by the Board or at the rate or amount expressly specified by an employee in connection with the payroll deduction IRA arrangements. Participants shall have the right to modify their contribution rates or amounts, or terminate their participation in the Program at any time, subject to such rules as may be adopted by the Board.

(6) The initial automatic default contribution rate shall be established by the Board in its discretion.

a. The automatic default contribution rate may be changed by the Board from time to time. It shall not be less than 3% or more than 6% of compensation.

b. The Board may determine in its discretion to increase the automatic default contribution rate for all participants based on their years of participation, provided that such increases shall be either 1% or 2% of compensation and shall not occur more frequently than annually.

c. The maximum default contribution rate established by the Board shall not exceed 15%.

d. The initial or subsequent default contribution rates shall apply to all participants who do not affirmatively select a different initial or subsequent contribution rate, or who do not affirmatively opt out of automatic contribution rate increases.

e. All contribution rates are subject to the dollar limits on contributions provided by law.

(7) Except as otherwise provided in this chapter, all IRAs established under the Program shall be Roth IRAs. The Board may authorize participants to utilize traditional IRAs in connection with the Program and allocate contributions between Roth and traditional IRAs, subject in all cases to the IRA contribution and income eligibility limits applicable under the Internal Revenue Code. If the Board authorizes participants to maintain both Roth and traditional IRAs, each shall be deemed to be a sub-account of the participant's single account under the Program consistent with § 3704(1) of this title.

(8) Contributions shall be invested in the default investment option unless the participant affirmatively elects to invest some or all balances in one or more approved investment options offered by the Program. A participant shall

have the opportunity to change investments for future contributions or existing balances or both, subject to rules adopted by the Board.

(9) A participant's total annual contributions under the Program shall be subject to the limits established under federal law.

(10) A participant's contributions and earnings thereon shall be held in the trust and combined for investment purposes only. Separate records and accounting shall be required for each account. Reports on the status of each participant's account must be provided to each participant at least annually. Participants must have online access to their accounts.

(11) A participant's account shall be portable with respect to any covered or participating employer. A former participant who is either unemployed, or who is employed by a non-covered employer, shall be permitted to contribute to accounts outside of the Program. A participant shall be entitled to maintain an account within the Program regardless of place of employment or to roll over or transfer balances into other IRAs or other retirement plans or accounts that accept such rollovers or transfers.

(12) A participant's and former participant's ability to withdraw or roll over or transfer account balances is subject to all fees, penalties, and taxes under applicable law.

(13) A participant's and former participant's ability to receive distributions of contributions and earnings is subject to applicable law.

(14) Information relating to accounts under the Program, including personally identifiable information, is confidential and shall be maintained as confidential except to the extent disclosure is necessary to administer the Program, authorized by the participant in writing, or permissible or required under other applicable law, regulation, or order.

§ 3705. Compliance.

(a) The Board shall have exclusive authority to ensure compliance with and enforce this chapter or any regulation promulgated under this chapter.

(b) The Board shall establish a process for the submission of employee complaints concerning a covered employer's alleged failure to comply with this chapter. All complaints concerning a covered employer's compliance with this chapter received by any other State agency shall be referred to the Board. The Board may, with or without a complaint, monitor the status of covered employers' compliance with this chapter, including through review of available data and documents.

(c) If the Board determines that a covered employer is not in compliance with this chapter or regulations issued hereunder, the Board shall issue a notice to the employer outlining the nature and extent of the alleged noncompliance, providing instructions for compliance, and specifying the potential administrative penalties for noncompliance.

(d) If the employer does not come into compliance within 90 days of the date the notice was issued, the Board, in its discretion, may initiate enforcement proceedings under Subchapter III, Chapter 101 of Title 29. The Board shall not initiate enforcement proceedings against a covered employer until one year after the date on which the employer is required to comply with this chapter for the first time.

(e) The Board may, in a final order, impose administrative penalties against a covered employer who fails to comply with this chapter or any regulation promulgated under this chapter, which penalties shall not exceed \$250 per employee per year, up to a maximum total penalty of \$5,000 per year.

Section 2. Amend § 2722 of Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2722. Plans Management Board.

(a) Establishment; purposes. — ~~There is hereby established the Plans Management Board (the "Board").~~ The Plans Management Board is established. The Board's purpose ~~shall be~~ is to administer the Delaware College Investment Plan established pursuant to subchapter XII, Chapter 34 of Title 14, the Delaware Achieving a Better Life Experience Program established pursuant to Chapter 96A of Title 16, ~~and~~ the Deferred Compensation Program established pursuant to Chapter 60A of this ~~title~~ title, ~~and the Expanding Access for Retirement and Necessary Saving Program (EARNs) established pursuant to Chapter 37 of Title 19~~ (collectively, "the Plans"), in each case, in accordance with the individual purposes of each of the Plans.

(d) Standard of care. — (1) With respect to the Deferred Compensation Program, and the EARNs Program, ~~(Program) (Programs)~~ the Board, its subcommittees, and each of their members shall discharge their duties with respect to the ~~Program Programs~~ solely in the interest of the participants and beneficiaries of the ~~Program Programs~~ and for the exclusive purpose of providing ~~Program Programs~~ benefits to the participants and their beneficiaries, including defraying reasonable expenses of administering the ~~Program, Programs,~~ with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain the purposes of the ~~Program Programs~~.

(e) Powers and Duties of Board. —

(9) Assume the powers and duties of the Delaware EARNs Program Board established under Chapter 37 of Title 19.

Section 3. Section 1 of this Act takes effect following the date of publication in the Register of Regulations of a notice submitted by the State Treasurer that funding necessary to implement the Program, as reflected in the fiscal note, has been received from the General Assembly or other sources.

Section 4. Sections 2 of this Act takes effect on December 31, 2025 or upon the date the EARNs Program Board disbands and transfers all of its duties and authorities to the Plans Management Board, whichever is first to occur. In the

event that the Plans Management Board, by majority vote, agrees to assume all the duties and authority granted to the EARNs Program Board, it shall publish notice to that effect in the Register of Regulations.

TAB 16



SPONSOR: Sen. S. McBride & Sen. Townsend & Sen. Brown & Sen. Gay & Sen. Mantzavinos & Sen. Pinkney & Rep. Heffernan & Rep. Longhurst & Rep. Baumbach & Rep. Dorsey Walker & Rep. Morrison & Rep. Osienksi Sens. Ennis, Hansen, Lockman, Paradee, Poore, Sokola, Sturgeon, Walsh; Reps. Bentz, Bolden, Chukwuocha, Cooke, Freel, Griffith, K. Johnson, Kowalko, Lambert, Lynn, Matthews, Minor-Brown, Mitchell, S. Moore, K. Williams, Wilson-Anton

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 2
FOR
SENATE BILL NO. 1
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO THE FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Part V. Family and Medical Leave Insurance Program.

Chapter 37. Family and Medical Leave Insurance Program.

§ 3701. Definitions.

For purposes of this chapter:

(1) "Application year" means the 12-month period as defined in the FMLA.

(2) "Child" means "son or daughter" as defined in the FMLA.

(3) "Covered individual" means an individual who meets all of the following:

a. Has been employed for at least 12 months by the employer with respect to whom leave is requested.

b. Has been employed for at least 1,250 hours of service with the employer during the previous 12-month period. For purposes of determining whether an individual meets the service hours requirement under this paragraph (3)b., the legal standards established under the FMLA apply.

c. The administrative requirements under this chapter.

d. Has submitted an application under this chapter.

(4) "Covered leave" means leave provided under this chapter.

(5) "Department" means the Department of Labor.

(6)a. "Employee" means an individual employed by an employer. For the purposes of this chapter, individuals primarily reporting for work at a worksite in this State are employees unless otherwise excluded. Individuals primarily reporting for work at a worksite outside of this State are not considered employees under this chapter unless the employer elects to classify them as such. Employers may reclassify an employee as primarily reporting for work at a worksite in another state for the purposes of this chapter through the duration of that individual's tenure at the out-of-state worksite.

b. "Employee" does not include an individual covered under § 5903(17)a. of Title 29, an individual employed by entities in Title 14 in a position that would be covered under § 5903(17)a. of Title 29, or an individual in an equivalent position with an entity covered by State employee benefits.

(7)a. "Employer" means all those who employ employees working anywhere in this State.

1. Employers with 10 to 24 employees during the previous 12 months shall be subject to only the parental leave provisions of this chapter. For purposes of this paragraph (7)a.1., "employees" includes those who meet the requirements of a covered individual under § 3701(3)a. and (3)b. of this title or are reasonably expected to meet the requirements of a covered individual under § 3701(3)a. and b. of this title during the previous 12 months.

2. Employers with 25 or more employees during the previous 12 months shall be subject to all parental, family caregiving, and medical leave provisions of this chapter. For purposes of this paragraph (7)a.2., "employees" includes those who meet the requirements of a covered individual under § 3701(3)a. and (3)b. of this title or are reasonably expected to meet the requirements of a covered individual under § 3701(3)a. and b. of this title during the previous 12 months.

b. "Employer" does not include any of the following:

1. Anyone who employs less than 10 employees in this State during the previous 12 months.

2. The federal government.

3. Any business that is closed in its entirety for 30 consecutive days or more per year.

(8) "Family and medical leave benefits" means benefits provided under this chapter.

(9) "Family caregiving leave" includes leave under § 3702(a)(2) and (a)(4) of this title.

(10) "Family caregiving leave benefits" means benefits paid under § 3704 of this title and provided under § 3702(a) of this title to a covered individual while the covered individual is on family leave.

(11) "Family member" means all of the following:

a. A parent, as defined under the FMLA.

b. A child.

c. A spouse, as defined under the FMLA.

(12) "FMLA" means the Family and Medical Leave Act, 29 U.S.C. Chapter 28.

(13) "Fund" means the Family and Medical Leave Insurance Account Fund created under this chapter.

(14) "Health care provider" means as defined under the FMLA.

(15) "Medical leave" includes leave under § 3702(a)(3) of this title.

(16) "Medical leave benefits" means benefits paid under § 3704 of this title and provided under § 3702(a) of this title to a covered individual while the covered individual is on medical leave.

(17) "Parental leave" includes leave under § 3702(a)(1) of this title.

(18) "Parental leave benefits" means benefits paid under § 3704 of this title and provided under § 3702(a) of this title to a covered individual while the covered individual is on parental leave.

(19) "Qualifying exigency" means as defined under the FMLA.

(20)a. "Retaliatory personnel action" means an adverse action against an employee for the exercise of, or good faith attempt to exercise, a right guaranteed under this chapter, including any threat, discharge, suspension, demotion, or reduction of hours, or report or threat to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of a family member of the employee to a federal, state, or local agency.

b. "Retaliatory personnel action" includes interference with or punishment for participating or assisting, in any manner, in an investigation, proceeding, or hearing under this chapter.

(21) "Secretary" means the Secretary of the Department.

(22) "Serious health condition" means as defined under the FMLA.

(23) "Small business" means all of the following:

a. For purposes of parental leave, all those that employ 9 or less employees working anywhere in this State.

b. For purposes of family caregiving leave and medical leave, all those that employ 24 or less employees working anywhere in this State.

(24) "Wages" means remuneration for employment as determined for purposes of old-age, survivors, and disability insurance for employees and employers under the Federal Insurance Contribution Act, 26 U.S.C. Chapter 21.

§ 3702. Eligibility for benefits; serious health condition; certification or documentation of leave.

(a) Beginning 1 year after the start of contributions under § 3705 of this title, and subject to subsection (c) of this section, family and medical leave benefits are payable to a covered individual who meets one of the following:

(1) Because of a birth, adoption, or placement through foster care of a child, is caring for the child during the first year after the birth, adoption, or placement of the child.

(2) Is caring for a family member with a serious health condition.

(3) Has a serious health condition that makes the covered individual unable to perform the functions of the covered individual's position.

(4) Has a qualifying exigency.

(b) In applying and construing serious health condition, consideration must be given to the application and construction given to serious health condition under the FMLA.

(c)(1) An employer or an approved private plan under § 3716 of this title shall collect and retain information from covered individuals verifying parental leave status, serious health condition, or qualifying exigency when a covered individual submits an application under this chapter. An employer shall require that a request for leave based on a serious health condition under paragraph (a)(2) or (a)(3) of this section be supported by a certification issued by the health care provider of the covered individual or of the family member of the covered individual, as appropriate. The covered individual shall provide, in a timely manner, a copy of the certification to the employer or an approved private plan under § 3716 of this title.

(2) A certification required under paragraph (c)(1) of this section is sufficient if it includes all of the following:

a. The date on which the serious health condition commenced.

b. The probable duration of the condition.

c. The appropriate medical facts within the knowledge of the health care provider regarding the condition.

d. A statement of the following, as appropriate:

1. For purposes of leave under paragraph (a)(2) of this section, a statement that the covered individual is needed to care for the family member who has a serious health condition and an estimate of the time that the covered individual needs to care for the family member.

2. For purposes of leave under paragraph (a)(3) of this section, a statement that the covered individual is unable to perform the functions of the covered individual's position.

e. If the leave is to be taken intermittently or on a reduced leave schedule under § 3706 of this title for planned medical treatment, the dates on which the medical treatment is expected to be given and the duration of the medical treatment.

f. If the leave is to be taken intermittently or on a reduced leave schedule under § 3706 of this title for purposes of leave under paragraph (a)(2) of this section, a statement that the covered individual's intermittent leave or leave on a reduced leave schedule is necessary for the care of the family member who has the serious health condition, or will assist in the family member's recovery, and the expected duration and schedule of the intermittent leave or reduced leave schedule.

g. If the leave is to be taken intermittently or on a reduced leave schedule under § 3706 of this title for purposes of leave under paragraph (a)(3) of this section, a statement of the medical necessity of the intermittent leave or leave on a reduced leave schedule and the expected duration of the intermittent leave or reduced leave schedule.

(3)a. If the employer or an approved private plan under § 3716 of this title has reason to doubt the validity of a certification provided under this subsection, the employer or private plan may require, at the expense of the employer or private plan, that the covered individual obtain the opinion of a second health care provider designated or approved by the employer or private plan concerning any information certified under this subsection. A health care provider designated under this paragraph (c)(3)a. may not be employed on a regular basis by the employer, Department or private plan.

b. If the second opinion under paragraph (c)(3)a. of this section differs from the opinion in the original certification provided by the covered individual under this subsection, the employer or private plan may require, at the expense of the employer or private plan, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer or private plan and the covered individual concerning any information certified under this subsection. The third opinion is final and binding on the employer or private plan and the covered individual.

(4)a. The employer or an approved private plan under § 3716 of this title may require that the covered individual obtain subsequent recertifications on a reasonable basis.

b. The standards for determining what constitutes a reasonable basis for recertification may be governed by a collective bargaining agreement between the employer or private plan and a labor organization which is the collective bargaining representative of the unit of which the covered individual is a part if such a collective bargaining agreement is in effect.

c. Unless otherwise required by the covered individual's health care provider, the employer or private plan may not require recertification more than once during a 30-day period and, in any case, may not unreasonably require recertification.

d. The employer or an approved private plan under § 3716 of this title shall pay for any recertification that is not covered by the covered individual's health insurance.

(d) The employer or an approved private plan under § 3716 of this title shall require that a request for leave based on a serious health condition under paragraph (a)(2) of this section of a family member be supported by documentation demonstrating the nature and extent of the relationship.

§ 3703. Duration of benefits.

(a) A covered individual is eligible for a maximum of 12 weeks of family and medical leave benefits in an application year.

(1) The maximum number of weeks during which parental leave benefits are payable under § 3702(a)(1) of this title in an application year is 12 weeks.

(2) The maximum aggregate number of weeks during which medical leave and family caregiving leave benefits are payable under § 3702(a)(2), (a)(3), and (a)(4) of this title in an application year is 6 weeks in any 24-month period.

(b) If 2 parents are entitled to leave under § 3702(a)(1), (a)(2), or (a)(4) of this title and are employed by the same employer, the aggregate number of weeks of leave to which both may be entitled may be limited by the employer to 12 weeks during any 12-month period. The Department may adopt regulations limiting aggregate family caregiving leave claimed by multiple family members for the same qualifying event under § 3702(a) of this title.

(c) Except for parental leave benefits, and as permitted under § 3706 of this title, a covered individual is eligible for benefits under this chapter not more than once in a 24-month period.

(d) An employer must approve or deny an application for benefits under this section within 5 business days of receipt of a completed application that includes documentation necessary to review the claim. If the claim is denied, the employer shall notify the covered individual of the reason for the denial.

(e) The employer must notify the Department, in a manner determined by the Department, within 3 business days of a claim being approved under this chapter. The first payment of benefits to a covered individual must be made within 30 days after the employer has notified the Department of the approved claim. Subsequent payments must be made every 2 weeks.

(f) An employer with less than 25 employees may elect, with notice to the Department and employees, for each employee to exercise not less than half of the employee's parental leave for 5 years from the start of benefits under § 3702 of this title.

§ 3704. Amount of benefits.

(a) The amount of family and medical leave benefits is to be determined as follows:

(1) The weekly benefit must be 80% of the covered individual's average weekly wages rounded up to the nearest even \$1.00 increment during the 12 months preceding submission of the application.

(2) The minimum weekly benefit may not be less than \$100 a week, except that if the covered individual's average weekly wage is less than \$100 a week, the weekly benefit must be the covered individual's full wage.

(3) The maximum weekly benefit in 2026 and 2027 must be \$900. In each year after 2027, the maximum weekly benefit must increase in proportion to the annual average increase, if any, in the Consumer Price Index for All Urban Consumers, Philadelphia-Camden-Wilmington Metropolitan area that is published by the Bureau of Labor Statistics of the United States Department of Labor. In each year after 2027, the period of change must be calculated from October 2026 to the October before the start of the calendar year. When the Department determines a maximum weekly benefit amount using the Consumer Price Index under this paragraph (a)(3), the amount must be rounded to the nearest even \$5.00 increment as determined in the discretion of the Secretary.

(b) Family and medical leave benefits are not payable for less than 1 work day of covered leave taken in 1 work week.

(c) The Department shall determine, by regulation, how benefits are to be calculated for covered individuals with more than 1 source of wages and when 12 months of wages preceding the submission of application for benefits are not available to the Department.

§ 3705. Contributions.

(a) Payroll contributions are authorized to finance the payment of benefits under this chapter. The Department shall regulate the deduction, withholding, and payment of the contribution.

(b) Beginning on January 1, 2025, for each employee, an employer shall quarterly, or more frequently as regulated by the Department, remit to the Fund contributions in the form and manner determined by the Department.

(1) The contribution rate for medical leave benefits is as follows:

a. For 2025 and 2026, the contribution rate for medical leave benefits as a percentage of wages is 0.4%.

b. For 2027, and each calendar year after 2027, the Department shall set the contribution rate for medical leave benefits as a percentage of wages based on sound actuarial principles. The Department may not set the

contribution rate higher than the rate necessary to obtain a total amount of contributions equal to 125% of the medical leave benefits paid during the immediately preceding calendar year plus an amount equal to 125% of the cost of administration of the payment of those benefits during the immediately preceding calendar year, less the amount of net assets remaining in the Fund as of December 31 of the immediately preceding calendar year.

(2) The contribution rate for family caregiving leave benefits is as follows:

a. For 2025 and 2026, the contribution rate for family caregiving leave benefits as a percentage of wages is 0.08%.

b. For 2027, and each calendar year after 2027, the Department shall set the contribution rate for family caregiving leave benefits based as a percentage of wages on sound actuarial principles. The Department may not set the contribution rate higher than the rate necessary to obtain a total amount of contributions equal to 125% of the family caregiving leave benefits paid during the immediately preceding calendar year plus an amount equal to 125% of the cost of administration of the payment of those benefits during the immediately preceding calendar year, less the amount of net assets remaining in the Fund as of December 31 of the immediately preceding calendar year.

(3) The contribution rate for parental leave benefits is as follows:

a. For 2025 and 2026, the contribution rate for parental leave benefits as a percentage of wages is 0.32%.

b. For 2027, and each calendar year after 2027, the Department shall set the contribution rate for parental leave benefits as a percentage of wages based on sound actuarial principles. The Department may not set the contribution rate higher than the rate necessary to obtain a total amount of contributions equal to 125% of the parental leave benefits paid during the immediately preceding calendar year plus an amount equal to 125% of the cost of administration of the payment of those benefits during the immediately preceding calendar year, less the amount of net assets remaining in the Fund as of December 31 of the immediately preceding calendar year.

(c) Limitation on benefits and contribution rates; evidentiary standard.

(1) General. Notwithstanding a provision of this chapter to the contrary, this subsection controls with respect to benefits available under, and contributions required by, this chapter.

(2) Contribution rate; limitation.

a. For purposes of this subsection, "contribution rate" means the sum of the contribution rate for medical, family caregiving, and parental leave benefits.

b. If, after using the actuarial principles under § 3705(b) of this title, the Department determines that the contribution rate would exceed 1.00%, paragraph (c)(3) of this section applies.

(3) Contribution redetermination; benefits reduction. If, under paragraph (c)(2)b. of this section, the Department determines that the contribution rate effective as of the first day beginning on the next calendar year would exceed 1.00%, effective as of and for such calendar year the Department shall reduce the percentage of average weekly wages for employees from 80% to the lowest percentage of average weekly wages for employees as necessary to compute a contribution rate that does not exceed 1.00%.

(4) Preservation of Fund balance. Notwithstanding anything in this chapter to the contrary, after using the actuarial principles under § 3705(b) of this title and considering other information deemed appropriate under the circumstances by the Secretary, the Secretary may at any time reduce the percentage of average weekly wages for employees to the lowest percentage of average weekly wages for employees as necessary to attempt to prevent the projected balance of the Fund during the ensuing 12 month period from falling below a specific balance or other actuarially sound measure adopted by the Department.

(5) Evidentiary standard. An allegation of abuse in the exercise of the discretion authorized by this section must be established by clear and convincing evidence of actual abuse of discretion in the court then having primary jurisdiction.

(d) From the wages of an employee for whom a contribution is required under subsection (b)(1) of this section, an employer shall deduct not greater than 50% of the contribution required for the employee. However, an employer may elect to pay all or any portion of the employee's share of the contribution listed in subsection (b)(1) of this section.

(e) From the wages of an employee for whom a contribution is required under subsection (b)(2) of this section, an employer shall deduct not greater than 50% of the contribution required for the employee. However, an employer may elect to pay all or any portion of the employee's share of the contribution listed in subsection (b)(2) of this section.

(f) From the wages of an employee for whom a contribution is required under subsection (b)(3) of this section, an employer shall deduct not greater than 50% of the contribution required for the employee. However, an employer may elect to pay all or any portion of the employee's share of the contribution listed in subsection (b)(3) of this section.

(g) An employer's deduction from an employee's wages under this section may only be made concurrent with, and proportionate to, the liability incurred by the employer and the payment of wages to the employee. The employer is liable for the contribution at the time that wages are paid and shall remit the total contribution required under subsection (b) of this section to the Fund. If the employer fails to deduct wages of an employee when the wages are paid, the employer remains liable for the full amount of the contribution, including that amount not deducted from an employee's wages.

(h) A contribution that remains unpaid on the date it is due and payable, as determined by the Department, accrues interest, at a rate determined by the Department by regulation, from and after the due date until payment plus the accrued interest is received by the Fund. Interest collected under this section must be paid into the Fund.

(i)(1) An employer with an approved private plan under § 3716 of this title for medical leave benefits may not be required to remit the contributions required under subsection (b)(1) of this section.

(2) An employer with an approved private plan under § 3716 of this title for family caregiving leave benefits may not be required to remit the contributions required under subsection (b)(2) of this section.

(3) An employer with an approved private plan under § 3716 of this title for parental leave benefits may not be required to remit the contributions required under subsection (b)(3) of this section.

(j) The Department may require from an employer a sworn or unsworn report with respect to employees of the employer which the Department deems necessary for the effective administration of this chapter. Information provided to the Department in the report must be held confidential and must not be published or be open to public inspection, other than to employees of the Department, in a manner that reveals an employee's or employer's identity. However, an employer or employer's legal representative must be supplied with information from the report for purposes related to this chapter, and an employee or employee's legal representative must be supplied with information from the report that relates only to the employee for purposes related to this chapter.

(k) An employee and employer may opt to file a waiver of the payroll contributions required under this section when an employee's work schedule or length of employment with the employer is not expected to meet the requirements for eligibility for family and medical leave benefits.

(1) The employer shall provide notice to the employee that employee's work schedule or length of employment with the employer is not expected to meet the requirements for eligibility for family and medical leave benefits.

(2) The employee shall sign, and the employer shall submit to the Department, a form waiving the payroll contributions required under this section because employee's work schedule or length of employment with the employer is not expected to meet the requirements for eligibility for family and medical leave benefits.

(3) If, after an employee signs a waiver under paragraph (k)(2) of this section, the employee becomes eligible for family and medical leave benefits, the employee shall sign, and the employer shall submit to the Department, a form revoking the waiver under paragraph (k)(2) of this section. Deductions from wages may not begin until a waiver is revoked.

(4) The Department shall adopt a form for the waiver under paragraph (k)(2) of this section and the revocation of the waiver under paragraph (k)(3) of this section.

§ 3706. Reduced leave schedule.

(a) A covered individual may take covered leave on an intermittent or reduced leave schedule in which all of the leave authorized under this chapter is not taken sequentially. Intermittent or reduced leave may be taken only when medically necessary and supported by documentation as required by the certification requirements under § 3702 of this title. Family and medical leave benefits for intermittent or reduced leave schedules must be prorated.

(b) The covered individual shall provide the employer with prior notice of the schedule on which the covered individual will take the covered leave, to the extent practicable. Covered leave taken under this section may not result in a reduction of the total amount of leave to which an employee is entitled beyond the amount of leave actually taken.

(c) Nothing in this section is to be construed to entitle a covered individual to more leave than required under § 3703 of this title.

§ 3707. Leave and employment protection.

(a) A covered individual who exercises the covered individual's right to family and medical leave benefits shall, on the expiration of the covered leave, be entitled to be restored by the employer to the position held by the covered individual when the covered leave commenced, or to a position with equivalent seniority, status, employment benefits, pay, and other terms and conditions of employment, including fringe benefits and service credits, which the covered individual had been entitled to at the commencement of the covered leave.

(b) During covered leave, the employer shall maintain any health care benefits the covered individual had before taking the leave for the duration of the leave as if the covered individual had continued in employment continuously from the date the covered individual commenced the leave until the date the family and medical leave benefits terminate. The covered individual shall continue to pay the covered individual's share of the cost of health care benefits as required before the commencement of the leave.

(c) An employer who violates this section or § 3708 of this title is liable to an employee affected for all of the following:

(1) Damages equal to all of the following:

a. The amount of any of the following:

1. Any wages or employment benefits denied or lost to the employee by reason of the violation.

2. In an action in which wages or employment benefits have not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to 12 weeks of wages or employment benefits for the employee.

b. Interest on the amount under paragraph (c)(1)a. of this section, calculated at the legal rate.

c. An additional amount as liquidated damages equal to the sum of the amount described in paragraph (c)(1)a. of this section and the interest under paragraph (c)(1)b. of this section. If an employer who has violated this section or § 3708 of this title proves to the satisfaction of the court that the act or omission that violated this section or § 3708 of this title was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this section or § 3708 of this title, the court may reduce the amount of the liability to the amount and interest determined under paragraph(c)(1)a. and (c)(1)b. of this section, respectively.

(2) For equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(d) An action under subsection (c) of this section may be maintained against an employer in a court of competent jurisdiction in this State by any 1 or more employees for and on behalf of the employees or the employees and other employees similarly situated.

(e)(1) The court in an action under subsection (c) of this section may, in addition to any judgment awarded to the plaintiff, award reasonable attorney fees, reasonable expert witness fees, and other costs of the action to be paid by the defendant.

(2) The court in an action under subsection (c) of this section shall award reasonable attorney fees to a defendant if the court finds the action was brought in bad faith.

(f) Except as provided under subsection (g) of this section, an action may be brought for a violation of this section or § 3708 of this title not later than 2 years after the date of the last event constituting the alleged violation for which the action is brought.

(g) In an action brought for a wilful violation of this section or § 3708 of this title, the action may be brought not later than 3 years after the date of the last event constituting the alleged violation for which the action is brought.

§ 3708. Retaliatory personnel actions prohibited.

(a) It is unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this chapter.

(b) An employer, temporary help company, employment agency, employee organization, or other person may not take a retaliatory personnel action or otherwise discriminate against an individual because the individual exercised rights protected under this chapter.

(c) Rights protected under this chapter include the following:

(1) The right to request, file for, apply for, or use family and medical leave benefits or covered leave.

(2) The right to communicate to the employer or any other person or entity an intent to file a claim, a complaint with the Department or courts, or an appeal, or testify or prepare to testify or assist in any investigation, hearing, or proceeding under this chapter, at any time, including during the period in which the individual receives family and medical leave benefits under this chapter.

(3) The right to inform a person about an employer's alleged violation of this chapter.

(4) The right to inform an individual of the individual's rights under this chapter.

(d) It is unlawful for an employer's absence control policy to count covered leave taken under this chapter as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

(e) Protections of this section apply to an individual who mistakenly but in good faith alleges violations of this chapter.

(f) This section is to be enforced as provided in § 3707(c) through (g) of this title.

(g) This section applies only to an employee who has been employed by the employer for at least 90 days.

§ 3709. Coordination of benefits.

(a)(1) Covered leave that also qualifies as leave under the FMLA runs concurrently with leave taken under the FMLA and may not be taken in addition to leave under the FMLA.

(2) An employer may require that payment made under this chapter be made concurrently or otherwise coordinated with payment made or leave allowed under the terms of disability or family care leave under a collective bargaining agreement or employer policy. The employer shall give employees written notice of this requirement.

(3) An employer may require the use of unused accrued paid time off before accessing family and medical leave benefits, and the use of accrued paid time off may count toward the total length of leave provided under this chapter, if the employee is not required to exhaust all paid time off. For purposes of this paragraph (a)(3) of this section, "paid time off" includes an employer's provision of vacation and sick leave.

(4) A covered individual may not access family and medical leave benefits if the use of family and medical leave benefits results in the covered individual receiving more than 100% of the covered individual's weekly wages.

(b)(1) This chapter does not diminish an employer's obligation to comply with any of the following that provide more generous leave:

a. A collective bargaining agreement.

b. An employer policy.

c. Any other law.

(2) An individual's right to covered leave may not be diminished by a collective bargaining agreement entered into or renewed, or an employer policy adopted or retained, after [the effective date of this Act].

(3) An agreement by an individual to waive the individual's rights under this chapter is void as against public policy.

§ 3710. Notice.

(a) An employer shall provide written notice to each employee that includes all of the following:

(1) The employee's right to family and medical leave benefits under this chapter and the terms under which it may be used.

(2) The amount of family and medical leave benefits.

(3) The procedure for filing a claim for family and medical leave benefits.

(4) The right to job protection and benefits continuation under § 3707 of this title.

(5) That discrimination and retaliatory personnel actions against the employee for requesting, applying for, or using family and medical leave benefits is prohibited under § 3708 of this title.

(6) That the employee has a right to file a complaint for violations of this chapter.

(7) Whether family and medical leave benefits are available to the employee through the State or an approved private plan under § 3716 of this title.

(b) An employer shall provide the notice required under subsection (a) of this section as follows:

(1) On hiring of the employee.

(2) When the employee requests covered leave or when the employer acquires knowledge that an employee's leave may be for a qualifying event under § 3702(a) of this title.

(c) An employer shall display and maintain a poster in a conspicuous place accessible to employees at the employer's place of business that contains the information required under subsection (a) of this section in English, Spanish, and any language that is the first language spoken by at least 5% of the employer's workforce, if the poster has been provided by the Department.

(d) The Department may adopt regulations to establish additional requirements concerning the means by which employers shall provide notice of this chapter.

(e) An employee shall provide notice of the employee's intention to take covered leave to the employee's employer 30 days in advance, if known, or as soon as practicable.

§ 3711. Appeal.

(a) The process for review of a denial of family and medical leave benefits is as follows:

(1) On a determination of an individual's claim for family and medical leave benefits under this chapter by the employer, the individual may request review of the determination by the Department within 60 days of the issuance of the determination. The Department shall review the denial and issue a determination to the individual in a time and manner determined by the Department.

(2) On determination by the Department under paragraph (a)(1) of this subsection or final determination by a private plan under § 3716 of this title, an individual may appeal the determination to the Family and Medical Leave Insurance Appeal Board established under subsection (b) of this section within 30 days of the issuance of the determination.

(b)(1) There is established a Family and Medical Leave Insurance Appeal Board ("Board").

(2) The Board consists of 3 members, appointed by the Governor for a term of 6 years.

(3) The Governor shall fill a vacancy on the Board during a member's term for the unexpired portion of the term.

(4) The Governor may, at any time, after notice and hearing, remove any Board member for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office. For purposes of this section, a member who is absent without adequate reason for 3 consecutive meetings or fails to attend at least half of all regular meetings during any calendar year is deemed to be in neglect of duty.

(5) Two members of the Board constitute a quorum. A vacancy does not impair the right of the remaining Board members to exercise all of the powers of the Board.

(6) The Governor shall designate 1 member of the Board as the Chair. If the term of the Chair expires or if the Chair becomes vacant for any cause, the Governor shall designate another member as Chair.

(7)a. The Chair of the Board must be paid \$225 for each meeting attended, not to exceed 80 meetings each year.

b. Each of the other members of the Board is to be paid \$175 for each meeting attended, not to exceed 80 meetings each year.

c. The members of the Board shall devote to the duties of the members' office the time necessary for the satisfactory execution of the office.

(c) The decision of the Board with respect to an individual's claim for family and medical leave benefits is final and binding on the parties.

(d) The Department shall implement procedures to ensure confidentiality of all information related to a claim filed or an appeal taken, to the maximum extent permitted by applicable laws.

(e) The Board shall conduct hearings under the Administrative Procedures Act, Chapter 101 of Title 29, except that the Board's hearings are exempt from the public meeting requirements of Chapter 100 of Title 29 to protect confidential health and privacy information.

(f) The Board may adopt regulations to implement this section.

§ 3712. Erroneous payments; disqualification for benefits.

(a) A covered individual is disqualified from family and medical leave benefits for 3 years if the covered individual is determined by the Department to have wilfully made a false statement or misrepresentation regarding a material fact, or wilfully failed to report a material fact, to obtain benefits under this chapter.

(b) If family and medical leave benefits are paid erroneously or as a result of wilful misrepresentation, or if a claim for family and medical leave benefits is rejected after benefits are paid, the Department may seek repayment from the recipient of benefits, with interest in an amount to be determined by the Department, consistent with § 3718 of this title. If benefits are paid due to wilful misrepresentation, the Department may seek an additional penalty of up to 50% of the overpayment and a penalty as permitted by § 3719 of this title.

(c) When the Department determines that an individual obtained an overpayment by fraud, in addition to any disqualification under subsection (a) of this section, the individual is disqualified from receiving family and medical leave benefits until the Department determines that all of the following have occurred:

(1) The total amount of the fraud overpayment, with interest, has been repaid in full.

(2) Any monetary penalty under this section has been paid in full.

§ 3713. Family and Medical Leave Insurance Program.

(a)(1) By January 1, 2025, the Department shall establish and administer a family and medical leave insurance program.

(2) By not later than the date specified in § 3702(a) of this title, the Department shall pay family and medical leave benefits as specified under this chapter.

(b) The Department shall establish, and make available to employers, reasonable procedures and forms for filing claims for benefits under this chapter and shall specify the supporting documentation necessary to support a claim for benefits, including any documentation required from a health care provider for proof of a serious health condition.

(c) The Department shall use information sharing and integration technology to facilitate the disclosure of relevant information or records so long as a covered individual consents to the disclosure as required under state law.

(d) Information contained in the files and records pertaining to a covered individual under this chapter is confidential and not open to public inspection, other than to public employees in the performance of their official duties. However, the covered individual, or an authorized representative of the covered individual, may review the records or receive specific information from the records on the presentation of the covered individual's signed authorization.

§ 3714. Federal and state income tax.

The employer or an approved private plan under § 3716 of this title shall advise a covered individual filing a new claim for family and medical leave benefits, at the time of filing the claim, of all of the following:

(1) Family and medical leave benefits may be subject to federal and state income taxes.

(2) Requirements exist pertaining to federal and state estimated tax payments on family and medical leave benefits.

(3) Under regulations established by the Secretary, applicable taxes will be deducted and withheld from the covered individual's payment of family and medical leave benefits.

§ 3715. Family and Medical Leave Insurance Account Fund; establishment and investment.

(a) A special fund designated as the Family and Medical Leave Insurance Fund is created. The Fund holds all revenues collected under this chapter. All moneys credited to the Fund are continuously available for expenditure in accordance with this chapter.

(b) The State Treasurer shall invest the Fund consistent with the investment policies established by the Cash Management Policy Board. The State Treasurer shall credit interest to the Fund on a monthly basis consistent with the rate established by the Cash Management Policy Board. Expenditures from the Fund may be used only for the purposes of the family and medical leave benefits program under this chapter. Only the Secretary or the Secretary's designee may authorize expenditures from the Fund.

(c) The Department may use expenditures from the Fund to pay for the costs associated with administering the provisions of this chapter.

§ 3716. Private plans.

(a)(1) Except as provided under subsection (e) of this section, an employer may apply to the Department for approval to meet the employer's obligations under this chapter through a private plan. To be approved as meeting an employer's obligations under this chapter, a private plan must do all of the following:

a. Provide one or more of the following:

1. Family caregiving leave to a covered individual for the reasons under § 3702(a)(2) and (a)(4) of this title for the maximum number of weeks in a benefit year required under § 3703(a)(2) of this title.

2. Medical leave to a covered individual for the reasons under § 3702(a)(3) of this title for the maximum number of weeks in a benefit year required under § 3703(a)(2) of this title.

3. Parental leave to a covered individual for the reasons under § 3702(a)(1) of this title for the maximum number of weeks in a benefit year required under § 3703(a)(1) of this title.

b. Allow a covered individual to take, in the aggregate, the maximum number of weeks of covered leave in a benefit year or 24-month period as required under § 3703(a) and (d) of this title.

c. If family caregiving leave is provided, allow family caregiving leave to be taken for all purposes specified under § 3702(a)(2) and (a)(4) of this title.

d. If family caregiving leave is provided, allow family caregiving leave under § 3702(a)(2) and (a)(4) of this title to be taken to care for any family member.

e. If medical leave is provided, allow medical leave under § 3702(a)(3) of this title to be taken by a covered individual with any serious health condition.

f. Provide a wage replacement rate during all covered leave of at least the amount required under § 3704(a)(1) of this title.

g. Provide a maximum weekly benefit during all covered leave of at least the amount specified under § 3704(a)(3) of this title.

h. Provide a minimum weekly benefit during all covered leave of at least the amount specified under § 3704(a)(2) of this title.

i. Allow covered leave to be taken intermittently or on a reduced schedule as authorized under § 3706 of this title.

j. Impose no additional conditions or restrictions on the use of covered leave beyond those explicitly authorized by this chapter or regulations issued under this chapter.

k. Allow an employee covered under the private plan who is eligible to take covered leave under this chapter to take covered leave under the private plan.

l. Providing that the cost to employees covered by a private plan is not greater than the cost charged to employees under the State program.

m. Provide an internal administrative review process and notice to employees of the option to appeal a final determination of the private plan to the Family and Medical Leave Insurance Appeal, consistent with § 3711 of this title.

(2) For a private plan to be approved as meeting an employer's obligations under this chapter, the private plan must also comply with all of the following:

a. If the private plan is in the form of self-insurance, the employer must furnish a bond running to the State, with a surety company authorized to transact business in this State as surety, in a form as may be approved by the Department and in an amount as may be required by the Department. This paragraph (a)(2)a. does not apply to public employers.

b. Provide for all eligible employees throughout their period of employment.

c. If the private plan provides for insurance, the policy must be issued by an admitted insurer, as defined under § 1904 of Title 18.

d. Submit a certification to the Department, in a form regulated by the Department, certifying that the plan meets the obligations of this chapter

(b) An employer may provide all family and medical leave coverage through an approved private plan or may provide 1 or more of medical leave coverage, family caregiving leave coverage, or parental leave coverage using an approved private plan and provide the remaining coverage not provided through an approved private plan using the State program.

(c) The Department may withdraw approval for an employer's use of a private plan granted under subsection (a) of this section when terms or conditions of the plan have been violated. The Department may withdraw approval for an employer's use of a private plan for any of the following:

(1) Failure to pay approved benefits.

(2) Failure to pay benefits timely and in a manner consistent with the State program.

(3) Failure to maintain an adequate security deposit.

(4) Misuse of private plan trust funds.

(5) Failure to submit reports to the Department as required by regulations adopted by the Department.

(6) Failure to comply with this chapter or the regulations adopted under this chapter.

(d) An employee covered by a private plan approved under this section retains all applicable rights under §§ 3707 and 3708 of this title.

(e)(1) Private benefits in existence on [the enactment date of this Act] that the Department deems to be comparable to the Family and Medical Leave Program under § 3713 of this title qualify as a private plan under this chapter for a period of 5 years from the start of contribution payments under § 3705 of this title if the Department's approval of private plans under this subsection would not adversely impact the solvency of the Fund.

(2) The Department may determine comparable value through consideration of factors including wage replacement, length of leave, interrelated benefits, eligibility criteria, or frequency of allowed leave.

(3) An employer seeking to qualify as a private plan under this subsection must notify the Department before January 1, 2024.

(f) The Department's denial of an employer's application under subsection (a) of this section, withdrawal of approval for an employer's use of a private plan under subsection (c) of this section, and decision under subsection (e) of this section are subject to the appeal process under § 3711 of this title.

(g) An employer that meets the employer's obligations under this chapter through a private plan may provide benefits greater than those required under paragraph (a)(1) of this section.

§ 3717. Small business opt-in.

(a) A small business may opt-in to provide parental leave benefits to its employees who are covered individuals. The small business may opt-in by providing notice to the Department in a manner determined by the Department. After the small business opts-in, the small business must remain opted-in for a period of at least 3 years and may opt-out of coverage for parental leave benefits with 12 months' notice to its employees and the Department, to take effect not sooner than the end of the 3-year period.

(b) A small business may opt-in to provide medical leave benefits to its employees who are covered individuals. The small business may opt-in by providing notice to the Department in a manner determined by the Department. After the small business opts-in, the small business must remain opted-in for a period of at least 3 years and may opt-out of coverage for medical leave benefits with 12 months' notice to its employees and the Department, to take effect not sooner than the end of the 3-year period.

(c) A small business may opt-in to provide family caregiving leave benefits to its employees who are covered individuals. The small business may opt-in by providing notice to the Department in a manner determined by the Department. After the small business opts-in, the small business must remain opted-in for a period of at least 3 years and may opt-out of coverage for family caregiving leave benefits with 12 months' notice to its employees and the Department, to take effect not sooner than the end of the 3-year period.

§ 3718. Powers of the Department.

(a) The Department shall administer and enforce this chapter.

(b) A complaint, on a form created by the Department, may be filed with the Department for noncompliance with this chapter.

(c)(1) The Department may audit employers for compliance with this chapter, as determined by the Department.

(2) Nothing in this chapter limits the Department of Insurance's jurisdiction over an insurer issuing an approved private plan.

(d) The Department may do all of the following under the Department's audit and investigative authority to determine noncompliance with this chapter:

(1) Enter and inspect, after 1 day's notice to the employer, the premises or place of business or employment and, on demand, examine and copy, wholly or partly, any or all books, registers, payrolls, and other records, including those required to be made, kept, and preserved under this chapter.

(2) Question any employer, employee, or other person in the premises or place of business or employment.

(3) Require from an employer full and correct statements in writing, including sworn statements, on forms prescribed or approved by the Department, with respect to the compliance with this chapter, as the Department may deem necessary or appropriate.

(4) Investigate such facts, conditions, or matters as the Department may deem necessary or appropriate to determine whether this chapter has been or is being violated.

(5) Hold hearings, administer oaths, and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents, and testimony, and take depositions and affidavits in any proceeding before the Department. If a person fails to comply with a subpoena lawfully issued or a witness refuses to testify to a matter that the witness may be lawfully interrogated, the Superior Court, on application by the Department, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued from the Court or a refusal to testify to the Court.

(e)(1) Following an investigation in which the Department makes an initial determination that an employer has violated 1 or more provisions of this chapter, or an initial determination that a covered individual received an overpayment or violated § 3712 of this title, the Department shall notify the employer or covered individual of the initial determination and of any amounts owed and shall provide the employer or covered individual with an opportunity to appeal the Department's determination to the Family and Medical Leave Insurance Appeal Board ("Board"). If the Department finds a violation of this chapter, the Department may issue civil penalties under § 3719 of this title.

(2) An initial determination that is not appealed within 15 days of the date of the notice is deemed a final determination, and the employer or covered individual shall pay any payments or penalties included in the initial determination to the Fund.

(3) If the initial determination is appealed within 15 days from the date of the notice, the Board shall hear the appeal within a reasonable time.

(4) The Board shall conduct a hearing on appeal under the Administrative Procedures Act, Chapter 101 of Title 29, and the regulations adopted by the Board. The decision of the Board is final unless appealed to the Superior Court within 30 days.

(f) The Department may institute an action in a court of competent jurisdiction for overpayments, penalties, unpaid contributions, or violations of this chapter. In an action brought by the Department under this subsection where judgment is entered for the Department, a court may award costs and, when so awarded, the same amount of costs must be allowed, taxed, and collected as are allowed, taxed, and collected for like services in the court.

(g) The Department has exclusive authority to settle any claim related to noncompliance with this.

(h) Nothing in this chapter limits the Department's power or authority under other law of this State which may be otherwise applicable to administer or enforce this chapter.

(i) The Department may not be required to pay the filing fee or other costs of the action or fees of any nature or to file bond or other security of any nature in connection with an action under this chapter or with supplementary proceedings as a condition precedent to the availability of any process in aid of the action or proceedings. The Department may join various claimants in 1 cause of action.

(j) Nothing in this chapter prevents a person from pursuing an action at law or in equity against an employer arising under other applicable law.

(k) In addition to the methods of collection authorized by this chapter, the Department may collect a final determination of liability of an employer or covered individual to the Fund by any manner available under other law of this State, including by any manner that unemployment tax assessments may be collected under Chapter 33 of this title, including §§ 3358, 3360, 3361, 3363, 3368, and 3369 of this title.

§ 3719. Penalties.

(a) An employer who violates or fails to comply with any requirement of this chapter, including failing to file reports as prescribed by the Department, failing to make contributions as required by this chapter, and failing to properly handle and remit wage deductions from employees to the Department, is deemed in violation of this chapter and is subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation.

(b) An employer who discharges or in any manner discriminates against an employee because that employee has made a complaint or has given information to the Department under this chapter, or because the employee has caused to be instituted or is about to cause to be instituted any proceedings under this chapter, or has testified or is about to testify in any proceedings is deemed in violation of this chapter and is subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation.

(c) A civil penalty claim may be filed in any court of competent jurisdiction.

(d) Funds from any civil penalty under this chapter, including an overpayment penalty as authorized by § 3712 of this title, must be deposited in the Fund.

§ 3720. Regulations.

(a) The Department may adopt regulations as the Department deems necessary or appropriate to administer or enforce this chapter. Except as may be otherwise provided by the Department, a regulation adopted under this section takes effect on publication.

(b) The Department of Insurance may adopt regulations with respect to private plans under § 3716 of this title.

§ 3721. Reports.

Beginning in 2027, the Department shall report to the General Assembly by April 1 of each year on projected and actual program participation by purpose under § 3702(a) of this title, gender of beneficiary, Fund balances, outreach efforts, and total utilization and amounts paid out of the Fund by category.

§ 3722. Public education.

(a) The Department shall conduct a public education campaign to inform employees and employers regarding the availability of family and medical leave benefits.

(b) The Department may use a portion of the funds collected for the family and medical leave benefits program in a given year to pay for the public education program.

(c) Outreach information provided under this section must be available in English, Spanish, and other languages spoken by more than 5% of the state's population.

§ 3723. Sharing technology.

The Department is encouraged to use State data collection and technology to the extent possible and to integrate the family and medical leave benefits program with existing state policies.

§ 3724. Departmental Report.

The Department shall, before July 1, 2029, submit a report to the General Assembly and the Governor on the family and medical leave insurance program. The report shall include information and data on program usage, program efficiency, finances, employee and employer program experience and feedback, program impact on recruitment, retention, cost, operations, worker morale, and productivity, and recommendations for program improvements.

Section 2. If any provision of this Act or the application of this Act to any person or circumstance is held invalid, the remainder of this Act or the application of the provision to other persons or circumstances is not affected.

Section 3. This Act takes effect on July 1, 2022.

Section 4. This Act is known as the "Healthy Delaware Families Act".

TAB 17

Delaware General Assembly (/)



Senate Bill 35

151st General Assembly (2021 - 2022)

Bill Progress

Current Status:

Lieu/Substituted 6/9/22

What happens next?

The General Assembly has ended, the current status is the final status.

Bill Details

View Substitute:

[SS 1 for SB 35 w/ SA 1 \(/BillDetail/129666\)](#)

Introduced on:

5/11/22

Primary Sponsor:

[Walsh \(https://senatedems.delaware.gov/members/senate-district-9\)](#)

Additional Sponsor(s):

Rep. [Osienski \(https://housedems.delaware.gov/members/house-district-24\)](#)

Co-Sponsor(s):

Sen. [Ennis \(/LegislatorDetail?personId=5\)](#), [Mantzavinos \(https://senatedems.delaware.gov/members/senate-district-7\)](#), [Sokola \(https://senatedems.delaware.gov/members/senate-district-8\)](#), [Townsend \(https://senatedems.delaware.gov/members/senate-district-11\)](#)
Reps. [Griffith \(https://housedems.delaware.gov/members/house-district-12\)](#), [Longhurst \(https://housedems.delaware.gov/members/house-district-15\)](#), [Matthews \(https://housedems.delaware.gov/members/house-district-10\)](#), [Mitchell \(/LegislatorDetail?personId=178\)](#), [Morrison \(https://housedems.delaware.gov/members/house-district-27\)](#), [K. Williams \(https://housedems.delaware.gov/members/house-district-19\)](#)

Long Title:

AN ACT TO AMEND TITLE 11 AND TITLE 19 OF THE DELAWARE CODE RELATING TO LABOR.

Original Synopsis:

This Act defines specific violations of wage payment and collection laws under Chapter 11 of Title 19, as wage theft and provides specific penalties for these violations, including a new criminal offense of wage theft, with a mechanism for the Department of Labor to refer completed investigations to the Department of Justice for prosecution. Clearly defining wage theft protects Delaware workers and Delaware taxpayers from employers who pay their employees "under the table" because this practice results in lost tax revenue to this State and exposes employees to personal risk in the areas of unemployment compensation and workplace injuries. The civil penalties collected for violations that are wage theft must be used for the enforcement of wage payment and collection laws under Chapter 11 of Title 19 and prosecution of the offense of wage theft under § 841D of Title 11. This Act also adds a definition of the term "independent contractor" to Chapter 11 of Title 19 to clarify when an individual is not an employee. In addition, this Act makes non-substantive changes to the definitions sections of several chapters in Title 19, so that terms that are used consistently with the same meaning are not repeatedly defined in multiple chapters and makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual. This Act requires a greater than majority vote for passage because § 28 of Article IV

of the Delaware Constitution requires the affirmative vote of two-thirds of the members elected to each house of the General Assembly to give criminal jurisdiction to inferior courts.

Volume:Chapter: ?

N/A

Advisory Number:

N/A

Fiscal Note/Fee Impact:F/N (Complete) [View PDF \(/json/BillDetail/GetPdfDocument?fileAttachmentId=541377\)](/json/BillDetail/GetPdfDocument?fileAttachmentId=541377)

You may need to disable your browser's pop-up blocker to view linked documents.

Effective Date:

Takes effect upon being signed into law

Sunset Date:

N/A

Bill Text

Original Text:[View HTML \(/json/BillDetail/GenerateHtmlDocument?legislationId=109494&legislationTypeId=1&docTypeId=2&legislationName=SB35\)](/json/BillDetail/GenerateHtmlDocument?legislationId=109494&legislationTypeId=1&docTypeId=2&legislationName=SB35)[View PDF \(/json/BillDetail/GeneratePdfDocument?legislationId=109494&legislationTypeId=1&docTypeId=2&legislationName=SB35\)](/json/BillDetail/GeneratePdfDocument?legislationId=109494&legislationTypeId=1&docTypeId=2&legislationName=SB35)

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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details
No Records Available				

Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable	
5/18/22	Labor (/CommitteeDetail?committeeId=571)	6	1	3	0	view ()
6/7/22	Finance (/CommitteeDetail?committeeId=562)	6	1	3	0	view ()

Roll Calls

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
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No Records Available

Actions History

Date	Action
5/11/22	Introduced and Assigned to Labor Committee in Senate
5/18/22	Reported Out of Committee (Labor) in Senate with 1 Favorable, 3 On Its Merits
5/18/22	Assigned to Finance Committee in Senate
6/7/22	Reported Out of Committee (Finance) in Senate with 1 Favorable, 3 On Its Merits
6/7/22	Laid On Table in Senate
6/9/22	Substituted in Senate by SS 1 for SB 35
6/9/22	Substituted in Senate by SS 1 for SB 35
6/9/22	SS 1 for SB 35 - - Passed By Senate. Votes: 20 YES 1 ABSENT
6/9/22	SS 1 for SB 35 - Passed By Senate. Votes: 17 YES 3 NO 1 ABSENT
6/10/22	SS 1 for SB 35 - Assigned to Labor Committee in House
6/21/22	SS 1 for SB 35 - Reported Out of Committee (Labor) in House with 4 Favorable, 4 On Its Merits
6/21/22	SS 1 for SB 35 - Assigned to Appropriations Committee in House
6/23/22	SS 1 for SB 35 - Reported Out of Committee (Appropriations) in House with 4 Favorable, 1 On Its Merits
6/30/22	SS 1 for SB 35 - Passed By House. Votes: 32 YES 9 NO
10/11/22	SS 1 for SB 35 - Signed by Governor

Legislation Detail Feeds


[Roll Calls \(/rss/RssFeeds/RollCallsByLegislation?legislationId=109494\)](/rss/RssFeeds/RollCallsByLegislation?legislationId=109494) ⓘ [\(/RssFeeds/RSSFeedInfo\)](/RssFeeds/RSSFeedInfo)


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Other Resources

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SPONSOR: Sen. Walsh & Rep. Osienski
Sens. Ennis, Mantzavinos, Sokola, Townsend; Reps.
Griffith, Longhurst, Matthews, Mitchell, Morrison,
K. Williams

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 35

AN ACT TO AMEND TITLE 11 AND TITLE 19 OF THE DELAWARE CODE RELATING TO LABOR.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Part D, Subchapter III, Chapter 5, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 841D. Wage theft.

(a) A person is guilty of wage theft when the person violates paragraphs (a)(1), (a)(4), (a)(5), or (a)(6) of § 1102A of Title 19.

(b) For purposes of this section, a series of wage thefts committed by a person or group of persons may be aggregated into 1 count or charge, with the sum of the aggregate loss to employees and this State being the value considered in determining the degree of wage theft.

(c) In addition to the provisions under subsections (c) and (d) of § 841 of this title, if the person has twice before been convicted of wage theft, wage theft is a class E felony.

Section 2. Amend § 1101, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 1101. Definition of terms.

(a) ~~As used in~~ For purposes of this chapter:

(1) ~~“Check” means a draft drawn on a bank and payable on demand.~~

(2) ~~“Department” means the Department of Labor or its authorized representatives.~~

(3) (1) ~~“Employee” means any a person suffered or permitted to work by an employer under a contract of employment either made in Delaware or to be performed wholly or partly therein. in this State.~~ This chapter does not apply to employees of the United States government, the State of Delaware or any political subdivision thereof. of this State.

(4) (2) "Employer" means any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased ~~individual~~ individual, or the receiver, ~~trustee~~ trustee, or successor of any of the same employing ~~any~~ a person. This chapter does not apply to employees of the United States government, the State of Delaware or any political subdivision ~~thereof~~ of this State.

(5) "Wages" means ~~compensation for labor or services rendered by an employee, whether the amount is fixed or determined on a time, task, piece, commission or other basis of calculation.~~

(3) "Independent Contractor" means an individual who meets all of the following:

- a. Performs work in a personal capacity.
- b. Does not employ anyone other than the individual's spouse, child, parent, or sibling.
- c. Performs the work necessary to provide the desired result, without another person's direction and control over the means and manner of performing the work.
- d. Furnishes the tools and equipment necessary to do the work.
- e. Exercises complete control over the management and operations of the individual's business, including all of the following:
 1. Owns all of the business' assets and profits.
 2. Reports business income on the individual's personal income tax return and does not separately pay taxes for the business.
 3. Either of the following apply:
 - A. Has sole, unlimited, personal liability for all debts and liabilities of the business.
 - B. If the business is organized as a single-person corporate entity, the individual must be the sole member of the single-person corporate entity.

(b) For ~~the purpose~~ purposes of this ~~chapter~~ chapter, the officers of a corporation and any agents having the management ~~thereof~~ thereof, who knowingly ~~permit the~~ permit a corporation to violate this chapter ~~shall be~~ are deemed to be the ~~employers~~ employer of the employees of the corporation.

Section 3. Amend Chapter 11, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1102A. Wage theft.

(a) An employer may not do any of the following:

- (1) Employ an individual without reporting the individual's employment to all appropriate government agencies and paying all applicable taxes and fees for the individual.

51 (2) Fail to properly withhold state and federal taxes from an employee.
52 (3) Fail to forward money withheld from an employee's wages to the appropriate state or federal agency
53 within 7 days of the applicable pay period.
54 (4) Pay an employee wages that are less than the minimum wage established under state and federal law for
55 the work performed.
56 (5) Misclassify a worker as an independent contractor for purposes of avoiding wage, tax, or workers'
57 compensation obligations under this title.
58 (6) Knowingly conspire to assist, advise, or facilitate a violation of this section.
59 (b) Following an investigation in which the Department makes an initial determination that an employer has
60 violated 1 or more provisions of subsection (a) of this section, the Department may make a decision to impose a civil
61 penalty.
62 (c) The Department shall notify the employer, in writing, of a decision to impose a civil penalty under subsection
63 (b) of this section which must comply with § 10122 of Title 29 and include all of the following:
64 (1) The action to be taken.
65 (2) The grounds upon which the determination was made to take the action.
66 (3) Instructions to request a hearing.
67 (d)(1) A request for a hearing must be made in writing, addressed to the Director of Industrial Affairs or the
68 Secretary, and made within 10 business days from the date of receipt of the notice under subsection (c) of this section.
69 (2) If a hearing is not requested under paragraph (d)(1) of this section, the determination made by the
70 Department under subsection (b) of this section is final.
71 (e) The Director of Industrial Affairs shall review a request for a hearing under paragraph (d)(1) of this section and
72 may schedule an informal settlement conference. The Director of Industrial Affairs shall forward the hearing request to the
73 Secretary to schedule a hearing if no settlement is reached at the informal settlement conference or an informal settlement
74 conference is not held.
75 (f) The Secretary shall issue a final case decision at the conclusion of a hearing held under this section as required
76 under Chapter 101 of Title 29.
77 (g) An employer may seek judicial review of the Secretary's final case decision by commencing an action in
78 Superior Court, within 30 days of the date of the final decision under subsection (f) of this section.
79 (h) Any decision by a court or administrative agency that contains a finding of fact or conclusion of law that a
80 violation of this section occurred, is conclusive on all parties to an action under this section. For purposes of this

subsection, a decision is final if it has been fully determined on appeal to the appropriate court, if all time for filing an appeal of the decision has expired, or if the decision is not subject to judicial review.

(i) An employer who violates subsection (a) of this section shall do all of the following within 30 days of a decision under subsection (h) of this section:

(1) Pay restitution to or on behalf of the employee.

(2) Come into compliance with all applicable labor laws, including laws governing income tax withholding, unemployment insurance, wage laws, and workers' compensation.

(j) The following penalties apply in addition to restitution required under paragraph (i)(1) of this section:

(1)a. An employer who violates subsection (a) of this section is subject to a civil penalty of not less than \$2,000 and not more than \$20,000 for each violation.

b. Each instance of a violation of subsection (a) of this section per employee is a separate violation.

(2) An employer is subject to a civil penalty of not less than \$20,000 and not more than \$50,000 for each violation if the employer discharges or in any manner retaliates or discriminates against an individual because that individual does any of the following under this section:

a. Made a complaint or provided information to the Department.

b. Caused, or is going to cause, an investigation to be instituted.

c. Testified, or is going to testify, in a hearing.

(k) All civil penalties collected under this section are payable to the Department of Labor and must be used for the administration and enforcement of this chapter, which may include expenses incurred by the Department of Justice in connection with activities under this chapter, including prosecutions under § 841D of Title 11.

(l) In addition to pursuing penalties under this section, the Department may provide findings, and supporting evidence, from a completed investigation under this section to the Department of Justice for consideration of prosecution under § 841D of Title 11.

(m) Nothing in this section precludes any of the following:

(1) A state or federal agency from pursuing a remedy against an employer for a violation of a different law.

(2) An employee or the Department from pursuing a remedy against an employer under § 1113 of this title.

Section 4. Amend § 101, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 101. Definitions; exclusions.

(a) ~~As used in this chapter:~~ For purposes of this title, unless otherwise defined in a chapter:

(1) ~~"Board" means the Industrial Accident Board.~~ "Check" means a draft drawn on a bank and payable on demand.

(2) "Department" means the Department of Labor.

(3) "Emergency" means an unpredictable or unavoidable occurrence at unscheduled intervals requiring immediate action.

(4) "Employ" means to suffer or permit to work.

~~(3) (5) "Employer" includes any person, excepting those provided for in subsection (b) of this section, acting directly or indirectly in the interest of any an employer in relation to any an employee except as otherwise provided. "Employer" does but shall not include the United States or the this State or any political subdivision thereof.~~
of this State.

(6) "Occupation" means any job, service, trade, business, industry, or branch or group of industries, or employment or class of employment in which employees are gainfully employed.

~~(4) (7) "Person" means an individual, partnership, association, corporation, statutory trust, business trust, legal representative representative, or any an organized group of persons.~~

~~(5) (8) "Secretary" or "Secretary of Labor" shall mean means the Secretary of the Department of Labor or the Secretary's authorized designee, provided, that any such delegation of authority is consistent with under Chapter 85 of Title 29.~~

(9) "Wage" means compensation due to an employee by reason of the employee's employment, payable in legal tender of the United States or check or bank draft convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by the regulations of the Department under this title.

(b) ~~Persons A person in any of the following occupations, and employers of persons occupations and an employer of a person engaged in these occupations to the extent thereof, shall not be is not within the scope of this chapter and are is specifically excepted from all the provisions of this chapter: Baby-sitting, domestic help, agriculture, fishing and hunting.~~

(1) Baby-sitting.

(2) Domestic help.

(3) Agriculture.

(4) Fishing.

(5) Hunting.

Section 5. Amend § 502, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 502. Definitions.

~~As used in this chapter, the following words have the meanings indicated:~~ For purposes of this chapter:

~~(1) "Department" or "Department of Labor" means the Department of Labor of the State.~~

~~(5) "Secretary" means the Secretary of Labor for the State or the Secretary's authorized representative.~~

Section 6. Amend § 710, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 710. Definitions.

For the purposes of this subchapter:

~~(26) "Secretary" means the Secretary of the Department of Labor or the Secretary's designee.~~

Section 7. Amend § 722, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 722. Definitions.

~~As used in~~ For purposes of this subchapter, unless the context otherwise requires:

~~(1) The terms "person," "employee," "employment agency," "labor organizations," "Secretary" and "review board" are~~ The following terms mean as defined in § 710 of this title title:

a. "Person".

b. "Employee".

c. "Employment agency".

d. "Labor organizations".

Section 8. Amend § 1903, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 1903. Definitions.

(a) For purposes of this chapter:

~~(3) "Department" means the Delaware Department of Labor.~~

Section 9. Amend § 2301, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 2301. Definitions.

~~As used in~~ For purposes of this chapter:

~~(8) "Department" means the Department of Labor.~~

Section 10. Amend § 3302, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3302. Definitions.

~~As used in~~ For purposes of this chapter, unless the context clearly requires ~~otherwise, the following terms~~ shall have the meanings designated in this section: otherwise:

(7) ~~"Department" means the Department of Labor.~~

Section 11. Amend § 3501, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 3501. Definitions [Effective upon fulfillment of 82 Del. Laws, c. 168, § 6, as amended by 82 Del. Laws, c. 291, § 2].

(a) ~~As used in~~ For purposes of this chapter:

~~(4) "Department" shall have the meaning set forth in § 101(a)(2) of this title.~~

~~(15) "Secretary" or "Secretary of Labor" shall have the meaning set forth in § 101(a)(5) of this title.~~

Section 12. Amend § 3602, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 3602. Definitions.

For purposes of this chapter:

~~(4) "Department" means the Department of Labor.~~

~~(8) "Secretary" means the Secretary of Labor, or the Secretary's authorized designee.~~

SYNOPSIS

This Act defines specific violations of wage payment and collection laws under Chapter 11 of Title 19, as wage theft and provides specific penalties for these violations, including a new a new criminal offense of wage theft, with a mechanism for the Department of Labor to refer completed investigations to the Department of Justice for prosecution. Clearly defining wage theft protects Delaware workers and Delaware taxpayers from employers who pay their employees "under the table" because this practice results in lost tax revenue to this State and exposes employees to personal risk in the areas of unemployment compensation and workplace injuries. The civil penalties collected for violations that are wage theft must be used for the enforcement of wage payment and collection laws under Chapter 11 of Title 19 and prosecution of the offense of wage theft under § 841D of Title 11.

This Act also adds a definition of the term "independent contractor" to Chapter 11 of Title 19 to clarify when an individual is not an employee. In addition, this Act makes non-substantive changes to the definitions sections of several chapters in Title 19, so that terms that are used consistently with the same meaning are not repeatedly defined in multiple chapters and makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

This Act requires a greater than majority vote for passage because § 28 of Article IV of the Delaware Constitution requires the affirmative vote of two-thirds of the members elected to each house of the General Assembly to give criminal jurisdiction to inferior courts.

Author: Senator Walsh

TAB 18

Delaware General Assembly (/)



House Bill 327

152nd General Assembly (Present)

Bill Progress

Current Status:

House Judiciary 3/6/24

What happens next?

Committee Hearing takes place within twelve legislative days.

Bill Details

Introduced on:

3/6/24

Primary Sponsor:

Morrison (<https://housedems.delaware.gov/members/house-district-27>)

Additional Sponsor(s):

Sen. Sturgeon (<https://senatedems.delaware.gov/members/senate-district-4>)

Rep. Dorsey Walker (<https://housedems.delaware.gov/members/house-district-3>)

Co-Sponsor(s):

Sen. Gay (<https://senatedems.delaware.gov/members/senate-district-5>), Hansen

(<https://senatedems.delaware.gov/members/senate-district-10>), Lockman

(<https://senatedems.delaware.gov/members/senate-district-3>), Pinkney (<https://senatedems.delaware.gov/members/senate-district-13>)

Reps. Neal (<https://housedems.delaware.gov/members/house-district-13>), Phillips

(<https://housedems.delaware.gov/members/house-district-18>), K. Williams

(<https://housedems.delaware.gov/members/house-district-19>), Wilson-Anton

(<https://housedems.delaware.gov/members/house-district-26>)

Long Title:

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO SEXUAL ASSAULT, HARASSMENT, AND DISCRIMINATION.

Original Synopsis:

The purpose of this Act is to protect victims of sexual assault, discrimination, or harassment from retaliatory lawsuits that arise when a victim of sexual assault discloses information regarding an act of sexual assault, discrimination, or harassment. The first part of this Act protects assault victims from defamation lawsuits by: 1. Placing a higher burden of proof on the complainant, even if the complainant is a private figure; and 2. Entitling a prevailing defendant to attorneys' fees and costs, treble the amount of actual damages, and punitive damages. The second part of this Act prohibits any provision in a settlement agreement that prevents the disclosure of information related to a claim of sexual assault, harassment, or discrimination.

Volume:Chapter: ⓘ

N/A

Advisory Number:

N/A

Fiscal Note/Fee Impact:

Not Required

Effective Date:

Takes effect upon being signed into law

Sunset Date:

N/A

Bill Text

Original Text:

[View HTML \(/json/BillDetail/GenerateHtmlDocument?legislationId=140984&legislationTypeId=1&docTypeId=2&legislationName=HB327\)](#)

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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details
No Records Available				

Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable
No Records Available					


Roll Calls

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
No Records Available								

Actions History

Date	Action
3/6/24	Introduced and Assigned to Judiciary Committee in House

Legislation Detail Feeds


[Roll Calls \(/rss/RssFeeds/RollCallsByLegislation?legislationId=140984\)](/rss/RssFeeds/RollCallsByLegislation?legislationId=140984)  [\(/RssFeeds/RSSFeedInfo\)](/RssFeeds/RSSFeedInfo)


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SPONSOR: Rep. Morrison & Rep. Dorsey Walker & Sen. Sturgeon
Reps. Neal, Phillips, K. Williams, Wilson-Anton; Sens.
Gay, Hansen, Lockman, Pinkney

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 327

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO SEXUAL ASSAULT, HARASSMENT,
AND DISCRIMINATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 81, Title 10 of the Delaware Code by making deletions as shown by strike through and
insertions as shown by underline as follows:

§ 8146. Limitation on civil actions; sexual assault, harassment, and discrimination.

(a) For purposes of this section, "communication" means information related to an incident of sexual assault,
harassment, or discrimination experienced by the individual making the communication and includes any of the following:

(1) A sexual offense as defined in § 761 of Title 11.

(2) An act of sexual harassment in the workplace as defined under § 711A of Title 19.

(3) A discriminatory housing practice as defined by § 4602 of Title 6 that involves sexual assault, harassment,
or discrimination.

(b) No cause of action may exist and no civil liability may be imposed on a person for a communication made
without malice regarding a complaint of sexual assault, harassment, or discrimination. For purposes of this subsection,
"malice" means that the communication is made with knowledge that it is false or with reckless disregard for the truth.

(c) This section applies to any communication by a person who has a reasonable basis to file a complaint of sexual
assault, harassment, or discrimination, whether the person files a complaint or not.

(d) This section applies to any communication by a person who is a witness to sexual assault, harassment, or
discrimination, whether the person who has a reasonable basis to file a complaint of sexual assault, harassment, or
discrimination, files a complaint or not.

(e) A prevailing defendant in a civil lawsuit for libel, slander, or any other relevant tort arising out of a
communication under this section shall be entitled to the following damages:

(1) Attorneys' fees and costs.

(2) Treble the amount of actual damages.

(3) Punitive damages.

23 (4) Other relief permitted by law.

24 § 8147. Settlement agreements; nondisclosure provisions; sexual assault, harassment, and discrimination.

25 (a) A provision within a settlement agreement that prevents or restricts the disclosure of information related to a
26 claim filed in a civil action or a complaint filed in an administrative action, regarding any of the following, is prohibited:

27 (1) A sexual offense as defined in § 761 of Title 11.

28 (2) An act of sexual harassment in the workplace as defined under § 711A of Title 19.

29 (3) A discriminatory housing practice as defined by § 4602 of Title 6 that involves sexual assault, harassment,
30 or discrimination.

31 (b) In a civil matter concerning an act listed in subsection (a) of this section, a court must not enter, by stipulation
32 or otherwise, an order that restricts the disclosure of information in a manner that conflicts with subsection (a).

33 (c) Notwithstanding subsections (a) and (b) of this section, a provision that shields the identity of the claimant and
34 all facts that would lead to the discovery of the claimant's identity, including pleadings filed in court, may be included
35 within a settlement agreement at the request of the claimant.

36 (d) Except as provided by subsection (c) of this section, a provision within a settlement agreement that prevents or
37 restricts the disclosure of information related to a claim listed in subsection (a) of this section that is entered into on or after
38 July 1, 2024, is void as a matter of law and against public policy.

39 (e) This section does not prohibit the enforcement of a provision in any agreement that prohibits the disclosure of
40 the amount paid in settlement of a claim.

41 Section 2. This Act is known as "Speak Your Truth Act".

SYNOPSIS

The purpose of this Act is to protect victims of sexual assault, discrimination, or harassment from retaliatory lawsuits that arise when a victim of sexual assault discloses information regarding an act of sexual assault, discrimination, or harassment.

The first part of this Act protects assault victims from defamation lawsuits by:

1. Placing a higher burden of proof on the complainant, even if the complainant is a private figure; and
2. Entitling a prevailing defendant to attorneys' fees and costs, treble the amount of actual damages, and punitive damages.

The second part of this Act prohibits any provision in a settlement agreement that prevents the disclosure of information related to a claim of sexual assault, harassment, or discrimination.

TAB 19

Delaware General Assembly (/)



Senate Bill 233

152nd General Assembly (Present)

Bill Progress

Current Status:

Senate Labor 3/6/24

What happens next?

Awaiting consideration in Committee

Bill Details

Introduced on:

3/6/24

Primary Sponsor:

Walsh (<https://senatedems.delaware.gov/members/senate-district-9>)

Additional Sponsor(s):

Rep. [Osienki](https://housedems.delaware.gov/members/house-district-24) (<https://housedems.delaware.gov/members/house-district-24>)

Co-Sponsor(s):

Sen. [Gay](https://senatedems.delaware.gov/members/senate-district-5) (<https://senatedems.delaware.gov/members/senate-district-5>), [Hoffner](https://senatedems.delaware.gov/members/senate-district-14) (<https://senatedems.delaware.gov/members/senate-district-14>), [Mantzavinos](https://senatedems.delaware.gov/members/senate-district-7) (<https://senatedems.delaware.gov/members/senate-district-7>),
Reps. [Heffernan](https://housedems.delaware.gov/members/house-district-6) (<https://housedems.delaware.gov/members/house-district-6>), [Morrison](https://housedems.delaware.gov/members/house-district-27) (<https://housedems.delaware.gov/members/house-district-27>).

Long Title:

AN ACT TO AMEND TITLE 19 AND TITLE 29 OF THE DELAWARE CODE RELATING TO THE SERVICE WORKER PROTECTION ACT.

Original Synopsis:

This Act establishes employment protections for certain service employees during changes of ownership by requiring all of the following: 1. Notice to affected service employees at covered locations at least 15 days before a service contract is terminated, services are contracted out, or the property where they are employed is sold or transferred. This notice must state the event triggering the notice, information about the new awardee, purchaser, or transferee, and the service employee's rights under this Act. 2. The successor employer must retain all affected service employees at a covered location for a 90-day transition period. The successor employer may not reduce any affected service employee's work hours in order to circumvent the protections under this Act and requires that a successor employer give an affected service employee a written offer of employment in English, Spanish, and in any language that is the first language spoken by at least 5% of the affected service employees. 3. Copies of the required notice and offer of employment must also be sent to the employee's collective bargaining representative, if any. This Act applies as follows: 1. To contractors who enter into a service contract for a covered location, if the contractor employs more than 4 service employees anywhere in the United States. 2. To service employees at covered locations. "Service employees" are individuals employed or assigned to a covered location on a full or part-time basis for at least 60 days in connection with the care or maintenance of a building or property, specific services at an airport, or food preparation services at a school that is an agency under § 6902 of Title 29. Service employees do not include managerial or professional employees, employees regularly scheduled to work less than 16 hours per week, or individuals who work on structural, electric, HVAC, or plumbing projects that require a permit. 3. To service contracts at the following locations: • A multi-family residential building with more than 50 units. • A commercial

center, commercial or office complex, or office building occupying more than 100,000 square feet. • A cultural center or complex, including museums, convention centers, arenas, or performance halls. • An industrial site. • A pharmaceutical lab. • An airport or train station. • A health care facility that provides long-term, acute, or outpatient health-care services as these services are defined in § 7971 of Title 29. • A warehouse or distribution center. • A building operated by a State agency subject to the procurement requirements under Chapter 69 of Title 29. A successor employer may only retain fewer than all of the affected service employees during the transition period if the successor employer: 1. Finds that fewer service employees are required to perform the work than the predecessor employer had employed. 2. Retains service employees by seniority within each job classification. 3. Maintains a preferential hiring list of those service employees not retained. 4. Hires any additional service employees from the preferential hiring list, in order of seniority, until all affected service employees have been offered employment. A service employee who has been discharged or otherwise not retained in violation of the requirements under this Act may bring an action against a successor employer or an awarding authority and these violations are subject to punitive damages as follows: 1. For a first violation, an amount not exceeding \$2,500. 2. For a second or subsequent violation, an amount not exceeding \$5,000. 3. Each work week during which there is a day when a violation occurs constitutes a separate violation. 4. A court may also order back pay, compensatory damages, issue injunctive relief requiring that the successor employer comply with requirements under this Act, and award the service employee reasonable attorney fees and costs. This Act takes effect 90 days after enactment and applies to all contracts entered into or renewed after its enactment into law and is known as "The Service Worker Protection Act".

Volume:Chapter: ?

N/A

Advisory Number:

N/A

Fiscal Note/Fee Impact:

Not Required

Effective Date:

Takes effect upon being signed into law

Sunset Date:

N/A

Bill Text

Original Text:

[View HTML \(/json/BillDetail/GenerateHtmlDocument?legislationId=140990&legislationTypeId=1&docTypeId=2&legislationName=SB233\)](#)

[View PDF \(/json/BillDetail/GeneratePdfDocument?legislationId=140990&legislationTypeId=1&docTypeId=2&legislationName=SB233\)](#)

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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details
No Records Available				

Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable
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No Records Available

Roll Calls

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
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No Records Available

Actions History

Date	Action
3/6/24	Introduced and Assigned to Labor Committee in Senate

Legislation Detail Feeds

Roll Calls (/rss/RssFeeds/RollCallsByLegislation?legislationId=140990). ⓘ (/RssFeeds/RSSFeedInfo)

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Dover, DE 19901

302-744-4114

DivisionOfResearch@state.de.us (DivisionOfResearch@delaware.gov) Legislative Hall
(LC_reception@delaware.gov)

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Other Resources

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SPONSOR: Sen. Walsh & Rep. Osienski
Sens. Gay, Hoffner, Mantzavinos; Reps. Heffernan,
Morrison

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 233

AN ACT TO AMEND TITLE 19 AND TITLE 29 OF THE DELAWARE CODE RELATING TO THE SERVICE
WORKER PROTECTION ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Part I, Title 19 of the Delaware Code by creating a new Chapter 20 and making deletions as
shown by strike through and insertions as shown by underline as follows:

Chapter 20. Service Worker Protection Act.

§ 2001. Definitions.

For purposes of this chapter:

(1) "Awarding authority" means a person that awards, enters into, or assumes a service contract or
subcontract.

(2) "Contractor" means a person, including a subcontractor, who enters into a service contract or subcontract
to be performed, if the person employs more than 4 service employees anywhere in the United States.

(3) "Covered location" means any of the following:

a. A multi-family residential building with more than 50 units.

b. If occupying more than 100,000 square feet, a commercial center, commercial complex, office
building, or office complex.

c. A cultural center or complex, including museums, convention centers, arenas, or performance halls.

d. An industrial site.

e. A pharmaceutical lab.

f. An airport.

g. A train station.

h. A health-care provider.

i. A warehouse, distribution center, or other facility for which the primary purpose is the storage or
distribution of general merchandise, refrigerated goods, or any other products.

j. A building operated or managed by an agency as defined in § 6902 of Title 29.

(4) "Employer" means a person who employs service employees at a covered location.

(5) "Health-care provider" means a facility that provides long-term, acute, or outpatient health-care services as these services are defined in § 7971 of Title 29.

(6) "Person" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that employs service employees or enters into a service contract.

(7) "Service contract" means a contract between an awarding authority and a contractor to provide services performed by a service employee at a covered location.

(8)a. "Service employee" means an individual employed or assigned to a covered location on a full or part-time basis for at least 60 days in connection with any of the following:

1. The care or maintenance of a building or property, including work performed by a security guard, front desk worker, janitor, maintenance employee, concierge, door attendant, building superintendent, grounds maintenance worker, stationary fireman, elevator operator, or window cleaner.

2. In addition to paragraph (8)a.1. of this section, any of the following in an airport: passenger-related security services, cargo-related and ramp services, in-terminal passenger and baggage handling, and cleaning services.

3. Food preparation services at a school that is an agency under paragraph (3)j. of this section.

b. "Service employee" does not include an individual who is any of the following:

1. A managerial or professional employee.

2. Regularly scheduled to work less than 16 hours per week.

3. Who performs work on any building, structural, electric, HVAC, or plumbing project, if the work requires a permit.

(9) "Successor employer" means an employer for which any of the following apply:

a. Is awarded a service contract to provide, in whole or in part, services that are substantially similar to those provided at any time during the previous 90 days.

b. Has purchased or acquired control of a property where service employees were employed at any time during the previous 90 days.

c. Terminates or does not renew a service contract and hires service employees as its direct employees to perform services that are substantially similar within 90 days after a service contract is terminated or ends.

§ 2002. Notice requirements; transition period.

(a) An awarding authority must comply with subsection (b) of this section before doing any of the following:

(1) Terminating a service contract.

(2) Contracting out services currently performed by the awarding authority.

(3) Selling or transferring any property where service employees are employed.

(b) No fewer than 15 days before taking any of the actions under subsection (a) of this section, an awarding authority must do all of the following:

(1)a. Provide the successor employer a list containing the name, date of hire, job classification of each service employee currently performing the work to be performed under the service contract, and the name and contact information of the service employee's collective bargaining representative, if any.

b. If the awarding authority is terminating a service contract, the awarding authority must request the information required under paragraph (b)(1)a. of this section from the contractor with the terminating service contract.

(2)a. Provide written notice to each affected service employee explaining which of the following events is or will be occurring:

1. The pending termination of the service contract.
2. The entrance into a service contract.
3. The sale or transfer of the property.

b. The written notice provided under paragraph (b)(2)a. of this section must include the name and address of the awardee, purchaser, or transferee, and the service employees' rights provided under this chapter.

(3) The information required under paragraph (b)(2) of this section must also be provided as follows:

- a. Posted conspicuously at each affected work site.
- b. If the affected service employees have a collective bargaining representative, to the collective bargaining representative.

(c) A successor employer shall take reasonable steps to ascertain the identity of all affected service employees.

(d)(1) Except as provided under subsection (f) of this section, a successor employer shall retain all affected service employees at a covered location for a transition period until the earlier of the following:

- a. Ninety days.
- b. The successor employer's service contract is terminated.

(2) A successor employer may not reduce any affected service employee's work hours to circumvent the protections provided under this chapter.

(e)(1) A successor employer shall provide each affected service employee a written offer of employment for the transition period under subsection (d) of this section that contains all of the following:

a. The date by which the service employee is required to accept the offer, which must be at least 10 days after the notice is delivered to the service employee.

b. The name, address, and telephone number of the successor employer and the name of the individual who is authorized by the successor employer to make the employment offer.

(2) The written offer required under paragraph (e)(1) of this section must be all of the following:

a. Substantially in the form under § 2004 of this title.

b. In English, Spanish, and any language that is the first language spoken by at least 5% the affected service employees.

(3) The successor employer must also send the written offer required under paragraph (e)(1) of this section to the service employee's collective bargaining representative, if any.

(4) The written offer required under this subsection (e) may be sent via electronic mail.

(f) A successor employer may retain less than all of the affected service employees during the transition period under subsection (d) of this section only if the successor employer does all of the following:

(1) Finds that fewer service employees are required to perform the work than the predecessor employer had employed.

(2) Retains service employees by seniority within each job classification.

(3) Maintains a preferential hiring list of those service employees not retained.

(4) Hires any additional service employees from the list maintained under paragraph (f)(3) of this section, in order of seniority, until all affected service employees have been offered employment.

(g) Except as provided under subsection (f) of this section, a successor employer may not discharge a service employee retained under this section without just cause during the transition period under subsection (d) of this section.

(h) At the end of the transition period under subsection (d) of this section, the successor employer shall perform a written performance evaluation for each service employee retained under this section. If a service employee's performance during this transition period is satisfactory, the successor employer shall offer the service employee continued employment under terms and conditions established by the successor employer.

(i) An agreement that restricts or hinders the ability of a successor employer to fulfill the obligations under this section is declared to be contrary to public policy and void.

§ 2003. Penalties.

(a) A service employee who has been discharged or otherwise not retained in violation of this chapter may bring an action as follows:

(1) Against the awarding authority, for any violation of §§ 2002(a) through (b) of this title.

(2) Against the successor employer, for any violation of §§ 2002(c) through (h) of this title.

(b) A person who refuses, fails, or neglects to comply with § 2002 of this title is liable to the service employee for punitive damages as follows:

(1) For a first violation, an amount not exceeding \$2,500.

(2) For a second or subsequent violation, an amount not exceeding \$5,000.

(3) Each work week during which there is a day when a violation occurs constitutes a separate violation.

(c) In addition to the damages under subsection (b) of this section, the court may do any of the following for a violation of § 2002 of this title:

(1) Award the service employee reasonable attorney fees and costs.

(2) Require the violator to pay special damages, including back pay and interest on back pay.

(3) Require the violator to pay compensatory damages.

(4) Issue injunctive relief requiring a successor employer to do any of the following:

a. Employ service employees as required under this chapter.

b. Provide information as required under § 2002 of this title.

§ 2004. Offer of Employment Form Letter.

The offer of employment to a service employee under § 2002(e) of this title must use the following form or be substantially similar to the following form:

DATE:

TO: [Name of Service Employee]

IMPORTANT INFORMATION REGARDING YOUR EMPLOYMENT

We have received information that you are employed by _____ and are currently performing work at _____. Your current employer, _____, will no longer be providing services or employment at your worksite as of this date: _____ because of the following reason:

☐ Your current employer has lost its contract with the owners of your worksite.

☐ Your current employer is contracting out for the service you perform.

☐ Ownership of your worksite is changing.

We are [Name of Successor Employer] and will be providing the same service at your worksite. We are offering you a job with us for a 90-day probationary period that starts _____, to perform the same type of work that you have already been doing, under the following terms:

Pay rate per hour: \$ _____

Hours per shift: _____

Total hours per week: _____

Benefits: _____

If you want to continue working at this worksite, you must let us know by this date: _____

If we do not receive your response by the end of business that day, we will not hire you and you will lose your job.

We can be reached by telephone at _____

The Delaware Service Worker Protection Act gives you the following rights:

1. We must give you at least 10 days to accept this offer of employment.

2. You have the right, with certain exceptions, to be hired by us for the first 90 days that we begin to provide services at this worksite.

3. During this period, you cannot be fired without just cause.

4. If you believe that you have been fired or laid off in violation of the Service Worker Protection Act, you have the right to institute legal action, and if successful may be awarded back pay, reinstatement, damages, attorney's fees, and court costs.

FROM: [Name of successor employer]

Authorized Representative: _____

Address: _____

Telephone No.: _____

Section 2. Amend Subchapter III, Chapter 69, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6940. Service worker protection.

An agency must comply with the Service Worker Protection Act, Chapter 20 of Title 19, when the agency is an awarding authority or a successor employer to a service contract.

Section 3. This Act takes effect 90 days after enactment and applies to all contracts entered into or renewed after its enactment into law.

SYNOPSIS

This Act establishes employment protections for certain service employees during changes of ownership by requiring all of the following:

1. Notice to affected service employees at covered locations at least 15 days before a service contract is terminated, services are contracted out, or the property where they are employed is sold or transferred. This notice must state the event triggering the notice, information about the new awardee, purchaser, or transferee, and the service employee's rights under this Act.

2. The successor employer must retain all affected service employees at a covered location for a 90-day transition period. The successor employer may not reduce any affected service employee's work hours in order to circumvent the protections under this Act and requires that a successor employer give an affected service employee a written offer of employment in English, Spanish, and in any language that is the first language spoken by at least 5% of the affected service employees.

3. Copies of the required notice and offer of employment must also be sent to the employee's collective bargaining representative, if any.

This Act applies as follows:

1. To contractors who enter into a service contract for a covered location, if the contractor employs more than 4 service employees anywhere in the United States.

2. To service employees at covered locations. "Service employees" are individuals employed or assigned to a covered location on a full or part-time basis for at least 60 days in connection with the care or maintenance of a building or property, specific services at an airport, or food preparation services at a school that is an agency under § 6902 of Title 29. Service employees do not include managerial or professional employees, employees regularly scheduled to work less than 16 hours per week, or individuals who work on structural, electric, HVAC, or plumbing projects that require a permit.

3. To service contracts at the following locations:

- A multi-family residential building with more than 50 units.
- A commercial center, commercial or office complex, or office building occupying more than 100,000 square feet.
- A cultural center or complex, including museums, convention centers, arenas, or performance halls.
- An industrial site.
- A pharmaceutical lab.
- An airport or train station.
- A health care facility that provides long-term, acute, or outpatient health-care services as these services are defined in § 7971 of Title 29.
- A warehouse or distribution center.
- A building operated by a State agency subject to the procurement requirements under Chapter 69 of Title 29.

A successor employer may only retain fewer than all of the affected service employees during the transition period if the successor employer:

1. Finds that fewer service employees are required to perform the work than the predecessor employer had employed.
2. Retains service employees by seniority within each job classification.
3. Maintains a preferential hiring list of those service employees not retained.
4. Hires any additional service employees from the preferential hiring list, in order of seniority, until all affected service employees have been offered employment.

A service employee who has been discharged or otherwise not retained in violation of the requirements under this Act may bring an action against a successor employer or an awarding authority and these violations are subject to punitive damages as follows:

1. For a first violation, an amount not exceeding \$2,500.
2. For a second or subsequent violation, an amount not exceeding \$5,000.
3. Each work week during which there is a day when a violation occurs constitutes a separate violation.
4. A court may also order back pay, compensatory damages, issue injunctive relief requiring that the successor employer comply with requirements under this Act, and award the service employee reasonable attorney fees and costs.

This Act takes effect 90 days after enactment and applies to all contracts entered into or renewed after its enactment into law and is known as "The Service Worker Protection Act".

Author: Senator Walsh

TAB 20

Delaware General Assembly (/)



House Bill 17 152nd General Assembly (Present)

Bill Progress

Current Status:

House Labor 3/4/24

What happens next?

Committee Hearing takes place within twelve legislative days.

Bill Details

Introduced on:

2/29/24

Primary Sponsor:

Morrison (<https://housedems.delaware.gov/members/house-district-27>)

Additional Sponsor(s):

Sen. Pinkney (<https://senatedems.delaware.gov/members/senate-district-13>)

Rep. Dorsey Walker (<https://housedems.delaware.gov/members/house-district-3>)

Co-Sponsor(s):

Sen. Gay (<https://senatedems.delaware.gov/members/senate-district-5>), Hansen

(<https://senatedems.delaware.gov/members/senate-district-10>), Hoffner

(<https://senatedems.delaware.gov/members/senate-district-14>), Lockman

(<https://senatedems.delaware.gov/members/senate-district-3>), Sokola (<https://senatedems.delaware.gov/members/senate-district-8>), Townsend (<https://senatedems.delaware.gov/members/senate-district-11>)

Reps. Baumbach (<https://housedems.delaware.gov/members/house-district-23>), Bolden

(<https://housedems.delaware.gov/members/house-district-2>), Heffernan (<https://housedems.delaware.gov/members/house-district-6>), K. Johnson (<https://housedems.delaware.gov/members/house-district-5>), Lambert

(<https://housedems.delaware.gov/members/house-district-7>), S. Moore (<https://housedems.delaware.gov/members/house-district-8>), Neal (<https://housedems.delaware.gov/members/house-district-13>), Phillips

(<https://housedems.delaware.gov/members/house-district-18>), Romer (<https://housedems.delaware.gov/members/house-district-25>), Wilson-Anton (<https://housedems.delaware.gov/members/house-district-26>)

Long Title:

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO SICK TIME AND SAFETY LEAVE.

Original Synopsis:

This Act requires all employers in the State to provide employees with a minimum of 1 hour of earned sick time and safety leave for every 30 hours worked. For employers with 9 or fewer employees, the time may be unpaid, job-protected time instead of paid time. Accrued earned sick time and safety leave may be used by the employee for time off with pay at the employee's same wage and benefit rate to deal with the mental and physical health needs of either the employee or an employee's family member and other specified purposes. Earned sick time and safety leave may also be used to address the consequences of domestic violence for such things as meeting with lawyers, obtaining services from victim service organizations, temporary relocation and the like. Employers may cap the number of hours earned per year at 40, the carryover from one year to the next at 40 hours, and the maximum earned sick and safety leave an employee has access to at any one time at 40 hours. Employers may require employees to have been employed at least 90 days before they may take earned sick leave and safety time. Employers whose benefits packages already meet the minimum requirements of

this Act are not required to offer anything additional. The Department of Labor will promulgate regulations governing operation of the Act and will enforce the provisions of the Act. Employers who violate the Act are subject to civil penalty of no less than \$2,000 nor more than \$20,000. Employers are prohibited from discriminating against an employee who complains to the Department that an employer has violated the Act. Where discrimination or retaliation is found to have occurred a penalty between \$20,000 and \$50,000 may be applied.

Volume:Chapter: ②

N/A

Advisory Number:

N/A

Fiscal Note/Fee Impact:

F/N (Incomplete)

Effective Date:

Takes effect upon being signed into law

Sunset Date:

N/A

Bill Text

Original Text:

[View HTML \(/json/BillDetail/GenerateHtmlDocument?legislationId=140916&legislationTypeId=1&docTypeId=2&legislationName=HB17\)](#)

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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details
No Records Available				

Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable
No Records Available					

Roll Calls

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
No Records Available								

Actions History

Date	Action
2/29/24	Introduced and Assigned to Economic Development/Banking/Insurance & Commerce Committee in House
3/4/24	Re-Assigned to Labor Committee in House

Legislation Detail Feeds

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Townsend

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 17

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO SICK TIME AND SAFETY LEAVE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

CHAPTER 12. Earned Sick Time and Safety Leave

§ 1201. Definitions.

As used in this chapter:

(1) "Department" means the Department of Labor or its authorized representatives.

(2) "Domestic violence" means as defined in § 710 of this title.

(3) "Employee" means an individual employed by an employer within the State, but does not include any of the following:

a. Any individual employed by the United States.

b. An "employee" as defined by 45 U.S.C. § 351(d) who is subject to the federal Railroad Unemployment Insurance Act, 45 U.S.C. § 351 et seq.

c. A substitute education employee.

(4) "Employer" means all those who employ employees working anywhere in this State, as well as any person or group of persons acting, directly or indirectly, in the interest of an employer in relation to an employee. Employer also includes any successor in interest of the employer as defined by 29 CFR 825.107, an integrated employer as defined by 29 CFR 825.104(c)(2), and a joint employer where 2 or more businesses exercise some control over the work or working conditions of the employee. Joint employers may be separate and distinct entities with separate owners, managers, and facilities. For purposes of earned sick time and safety leave, the employer who actually pays the employee will be considered that individual's employer.

21 (5) "Extra Pay for Extra Responsibility education time" means all of the following activities that are beyond
22 the standard contract for teachers and education support personnel:

- 23 a. Supervision or coaching of extracurricular activities, co-curricular activities, or sports.
- 24 b. Chaperoning of school-affiliated events.
- 25 c. Ticket taking for school-affiliated events.
- 26 d. Lunch-room supervision.
- 27 e. Any other similar and related activities, as detailed in regulations of the Department, that are beyond
28 the standard contract for teachers and education support personnel.

29 (6) "Family member" means all of the following:

- 30 a. An individual to whom an employee stands as parent, whether through biology, adoption, domestic
31 partnership, marriage, foster care, or court order, or an individual to whom an employee stands in loco parentis or
32 to whom the employee stood in loco parentis when the individual was a minor.
- 33 b. A biological parent, adoptive or foster parent, stepparent or legal guardian of an employee or an
34 employee's spouse or domestic partner, or an individual who stood in loco parentis when the employee or the
35 employee's spouse or domestic partner was a minor.
- 36 c. A spouse or domestic partner of an employee, regardless of whether the domestic partnership is legally
37 recognized.
- 38 d. A grandparent or grandchild of an employee or the employee's spouse or domestic partner.
- 39 e. A biological, foster, adoptive, or step sibling of an employee or the employee's spouse or domestic
40 partner.

41 (7) "Earned sick time and safety leave" means time that is provided by an employer to an employee under §
42 1202 of this title for the purposes described in § 1203 of this title.

43 (8) "Retaliation" includes, but is not limited to, any threat, discharge, discipline, suspension, demotion, non-
44 promotion, less favorable scheduling, reduction of hours or application of absence control policies that count an
45 employee's use of earned sick time and safety leave as an absence that may lead to adverse action, a report or threat to
46 report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of a
47 family member of the employee to a federal, state, or local agency, or other adverse action against employees for the
48 exercise of a right guaranteed pursuant to this chapter, including sanctions against an employee who is a recipient of
49 public benefits for rights pursuant to this chapter. "Retaliation" includes interference with or punishment for
50 participating in an investigation, proceeding, or hearing pursuant to this chapter.

51 (9) "Secretary" means the Secretary of the Department of Labor or the Secretary's authorized designee.

52 (10) "Small business" means an employer that employs 9 or fewer employees.

53
54 (11) "Stalking" means as defined in § 710 of this title.

55 (12) "Sexual offense" means as defined in § 710 of this title.

56 (13) "Substitute education employee" means an individual employed by a school district who:

57 a. Is employed on a temporary basis or without a defined schedule or assignment.

58 b. Provides temporary coverage when a regular employee is unavailable due to vacancy, illness, leave, or
59 other reasons.

60 (14) "Wage" means compensation due to an employee by reason of the employee's employment, payable in
61 legal tender of the United States or check or bank convertible into cash on demand at full face value, subject to such
62 deductions, charges, or allowances as may be permitted by the regulations of the Department under this title.

63 (15) "Year" means, unless the context requires otherwise, a regular and consecutive 12-month period as
64 determined by the employer.

65 § 1202. Accrual of earned sick time and safety leave.

66 (a) (1) All employees shall accrue a minimum of 1 hour of earned sick time and safety leave for every 30 hours
67 worked, including overtime hours. However, an employee of a school district shall not accrue earned sick time and safety
68 leave for Extra Pay for Extra Responsibility education time.

69 (2) An employer may cap the number of earned sick time and safety leave hours that may be accrued in a
70 year, but the cap may not be set at less than 40 hours per year. If an employer chooses to cap the number of earned sick
71 time and safety leave hours that may be accrued in a year, they must notify employees in writing of that policy,
72 including the number of hours to which the employees are capped.

73 (3) Employees who are exempt from overtime requirements under 29 U.S.C. § 213(a)(1) of the Federal Fair
74 Labor Standards Act will be assumed to work 40 hours in each work week for purposes of earned sick time and safety
75 leave accrual unless their normal work week is less than 40 hours, in which case earned sick time and safety leave
76 accrues based upon that normal work week.

77 (b) Earned sick time and safety leave shall begin to accrue on an employee's first day of work or upon the
78 effective date of this chapter, whichever is later, but employees are not entitled to use accrued earned sick time and safety
79 leave until the 90th calendar day following the employee's first day of work. On and after this 90-day period, employees
80 may use earned sick time and safety leave as it is accrued.

81 (c) Earned sick time and safety leave shall be compensated at the same hourly wage, or the full state minimum
82 wage, if higher, and with the same benefits, including healthcare benefits, as the employee normally earns during hours
83 worked; provided, however, that employees of a small business shall only be entitled to unpaid earned sick time and safety
84 leave under this chapter with the same benefits, including healthcare benefits, as the employee normally earns during hours
85 worked.

86 (d)(1) Unused earned sick time and safety leave shall be carried over to the year following the year in which it is
87 earned.

88 (2) An employer may cap the number of earned sick time and safety leave hours that may be carried over to
89 the following year, but the cap may not be set at less than 40 hours per year. If an employer chooses to cap the number
90 of earned sick time and safety leave hours that may be carried over to the following year, they must notify employees
91 in writing of that policy, including the number of hours to which employees are capped.

92 (3) An employer may cap the total number of unused earned sick time and safety leave hours that an
93 employee has access to at one time, including hours carried over pursuant to this section and hours accrued by a single
94 employee, at no less than 40 hours. If an employer chooses to cap the total number of unused earned sick time and
95 safety leave hours that an employee has access to at one time, they must notify employees in writing of that policy,
96 including the number of hours to which employees are capped.

97 (4) As an employee uses earned sick time and safety leave to bring the accrued time below any cap
98 established by the employer under paragraph (d)(3) of this section, earned sick time and safety leave will again begin to
99 accrue 1 hour for every 30 hours worked up to the cap.

100 (e) Earned sick time and safety leave under this chapter must be provided in addition to any other paid leave an
101 employer provides employees for purposes other than sick time and safety leave, except as provided in subsection (g).

102 (f) For a period of two years following [the effective date of this Act], an employer may not reduce any paid leave
103 allowed to employees to offset the employer's obligation to provide earned sick time and safety leave in compliance with
104 this chapter.

105 (g) Notwithstanding subsections (e) and (f) of this section, an employer with a paid leave policy, such as a paid
106 time off policy, who makes available an amount of paid leave sufficient to meet all requirements of this chapter, including
107 the rate of accrual and use for the same purposes and under the same conditions as earned sick time and safety leave under
108 this chapter, is not required to provide additional earned sick time and safety leave under this chapter.

109 (h) An employer shall not require an employee to exhaust any other paid leave before the employee uses earned
110 sick time and safety leave pursuant to this chapter.

111 (i) If an employee is transferred to a separate division, entity, or location within this State, but remains employed
112 by the same employer, the employee is entitled to all earned sick time and safety leave accrued prior to transfer.

113 (j) When an employer is a successor in interest, all employees of the original employer who remain employed in
114 this State by the successor in interest are entitled to all earned sick time and safety leave accrued under the original
115 employer.

116 (k) An employer's failure to provide earned sick time and safety leave based on the employer's misclassification
117 of the employee as an independent contractor is a violation of this chapter.

118 § 1203. Use of earned sick time and safety leave.

119 (a) An employer must allow an employee to use earned sick time and safety leave for any of the following
120 purposes:

121 (1) Care or treatment for the employee's mental or physical illness, injury, or condition, including those
122 caused by substance abuse.

123 (2) Care or treatment for a family member with a mental or physical illness, injury, or condition, including
124 those caused by substance abuse.

125 (3) Preventative medical care for the employee or the employee's family member.

126 (4) Closure of a family member's school, childcare center, group home, or other facility due to a public health,
127 safety, or weather emergency that requires the employee to provide transportation or care for the family member
128 affected by the closure.

129 (5) Time needed by the employee in connection with a child of the employee to attend a school-related
130 conference, meeting, function or other event requested or required by a school administrator, teacher, or other
131 professional staff member responsible for the child's education, or to attend a meeting regarding care provided to the
132 child, in connection with the child's health conditions, behavioral health, or disability.

133 (6) To address circumstances arising as a result of domestic violence, sexual offense, or stalking committed
134 against the employee or an employee's family member including all of the following:

135 a. Obtaining medical or mental health services.

136 b. Obtaining services from a domestic violence shelter, rape crisis center, or other types of services.

137 c. Participation in safety planning.

138 d. Engagement with law enforcement personnel, attorneys, social service providers or related providers in
139 order to obtain advice and counsel or to prepare for civil or criminal proceedings.

140 e. Temporary relocation or attendant activities such as changing a family member's enrollment in any
141 institution, including schools and any school-related activities.

142 f. Any other action necessary to maintain, improve, or restore the physical, psychological, or economic
143 health or safety of the employee or the employee's family member, or to protect those who associate or work with
144 the employee.

145 (7) To comply with an order or determination by a local, state, or federal public official, a health care
146 professional, a health authority having jurisdiction, or the employee's employer to self-isolate, on the basis that the
147 employee's physical presence on the job or in the community would jeopardize the employee's health, the health of
148 other employees, or the health of an individual in the employee's household because of: (i) possible exposure to a
149 communicable illness related to a public health emergency; or (ii) exhibiting of symptoms of a communicable illness
150 related to a public health emergency, regardless of whether the employee has been diagnosed with such illness.

151 (b) An employee who anticipates a need to use earned sick time and safety leave must provide the employer with
152 as much advanced notice as reasonably possible and make a reasonable effort to schedule the use of earned sick time and
153 safety leave in a manner that will not unduly disrupt the employer's operations. An employer may not penalize an employee
154 who takes accrued earned sick time and safety leave prior to giving the employer advanced notice when the need for leave
155 arises unexpectedly.

156 (c) An employer may not require documentation or other proof of the reason for which an employee uses earned
157 sick time and safety leave unless the employee is absent from work for three or more consecutive work days. An employer
158 may not require the employee to reveal specific facts justifying the need for leave. If an employee chooses to relate the facts
159 underlying a need for earned sick time and safety leave, the employer must keep those facts confidential unless otherwise
160 required by law.

161 (d) Reasonable documentation for earned sick time includes documentation from a medical professional, mental
162 health professional, substance abuse professional, counselor, social worker, school administrator, or the administrator of a
163 group home or similar facility.

164 (e) Reasonable documentation for earned safety leave pursuant to paragraph (a)(6) of this section includes:
165 medical documentation; a law enforcement agency record or report; a court order; documentation substantiating that the
166 perpetrator of the domestic or sexual violence has been convicted of a domestic or sexual violence offense; certification
167 from advocates or a representative of a designated domestic violence agency or other victim services organization; or other
168 documentation or certification provided by a counselor, social worker, member of the clergy, shelter worker, health care

professional, attorney, school administrator, or other professional who has assisted the employee or family member in dealing with the domestic violence, sexual offense, or stalking.

(f) An employer must not require, as a condition of providing earned sick time and safety leave, the employee either search for or find a person to cover the hours during which the employee is using earned sick time and safety leave.

(g) Employees shall determine how much earned sick time and safety leave they need to use for an absent shift, provided that employers may set a reasonable minimum increment for use of earned sick time and safety leave not to exceed one half the number of hours the employee was scheduled to work during that shift.

§ 1204. Employer obligations.

(a) An employer must provide employees with written notice of the entitlement to accrue earned sick time and safety leave as required by this chapter, at the commencement of employment or within one month of [the effective date of this Act], whichever is later. The notice must include an explanation for how earned sick time and safety leave is accrued, the purpose for which it may be used, the rules set forth in § 1203 of this title, that retaliation against employees exercising their rights under this chapter is prohibited, and the employee's right to submit a complaint pursuant to § 1205 of this title."

(b) An employer must display and maintain a poster in a conspicuous place accessible to employees at the employer's place of business that contains the information required under subsection (a) of this section in English, Spanish, and any language that is the primary language spoken by at least 5% of the employer's workforce, if the poster has been translated by the Department.

(c) An employer may develop reasonable rules governing the method and manner by which an employee must give the employer notice of the intent to use earned sick time and safety leave. Rules may include requirements for notice prior to taking leave if the need for leave is known in advance and for notice after leave is taken if the need for leave arises unexpectedly. Unless the employer develops rules governing notice of the intent to use earned sick time and safety leave and provides the rules to an employee in writing, the employer may not deny an employee the right to use earned sick time and safety leave for failure to comply with notice requirements.

(d) An employer may not take any retaliatory action against an employee for any of the following reasons:

(1) The employee has exercised or attempted to exercise the employee's rights under this chapter.

(2) The employee has reasonably alleged a violation of this chapter.

(3) The employee has raised a bona fide concern about violations of this chapter to the employer, the employer's agent, other employees, a government agency, or the public through print, online, social, or any other media.

198 (e) Except as provided in § 1207(e) of this title, an employer may not require an employee to sign a contract or
199 other agreement that would limit or prevent the employee from asserting rights provided for in this chapter or to otherwise
200 establish a workplace policy that would limit or prevent the exercise of such rights. An employer's attempt to impose such a
201 contract, agreement, or policy shall constitute an adverse action enforceable pursuant to this chapter.

202 (f) An employer may not count use of earned sick time or safety leave in a way that will lead to discipline,
203 discharge, demotion, non-promotion, less favorable scheduling, reduction of hours, suspension or any other adverse action.

204 (g) The Department shall create and provide model notices and posters that contain the information required under
205 subsection (a) and (b) of this section for employers' use in complying with this section. The Department may, in its
206 discretion, combine the model poster required under subsection (b) of this section with other posters required under this
207 title.

208 § 1205. Enforcement.

209 (a) The Department shall take all appropriate action to administer and enforce this chapter, including all of the
210 following:

211 (1) Establishing a system to receive complaints, in writing, by telephone, and online, regarding alleged
212 violations of this chapter.

213 (2) Establishing a process for investigating and resolving complaints in a timely manner and keeping
214 complainants notified regarding the status of the investigation of their complaint.

215 (3) Ensuring employer compliance with this chapter through the use of audits, investigations, record keeping
216 requirements, or other measures.

217 (4) Establishing a system and procedures for reviewing complaints and holding hearings.

218 (5) Developing and implementing an outreach and education program to inform employees, parents,
219 caregivers, schools, social service and care providers, and persons who are under the care of a health care professional
220 about the availability of earned sick time and safety leave under this chapter. Outreach information provided under this
221 section must be available in English, Spanish, and other languages spoken by more than 5% of the state's population.

222 (b) The Department shall investigate, and the Secretary shall adjudicate, alleged violations of this chapter.

223 (c) The Department may exercise all powers granted to it by law to conduct its investigations.

224 (d)(1) Following an investigation in which the Department makes an initial determination that an employer has
225 violated 1 or more provisions of this chapter, the Department shall notify the employer, in writing, of the initial
226 determination, of the action to be taken, of the grounds upon which the determination was made to take the action, of the

instructions to request a hearing, of the deadline for requesting a hearing, and of any amounts owed or equitable relief required.

(2) The Department shall give the employer at least 20 business days from the date of receipt of notice to request a hearing. If the employer does not request a hearing within the time provided in the notice, the Secretary shall issue a final order adopting the Department's initial determination and awarding appropriate relief.

(3) The Department may promulgate regulations to further govern the investigations and adjudicative procedures described in this chapter.

(e) The Department shall keep confidential the identity of complainants unless disclosure is necessary for the investigation or where required by law. This provision does not apply to disclosures made to the parties, their counsel, or witnesses where disclosure is deemed necessary or appropriate. Investigations under this chapter are not public information under Chapter 100 of Title 29. Where practicable, the Department shall notify a complainant that the Department will be disclosing the complainant's identity prior to such disclosure.

(f) A civil action may be filed in a court of competent jurisdiction for a violation of this chapter within 3 years from the date of the last event constituting the alleged violation for which the action is brought. Such action may be filed by an employee aggrieved by such violation, by a person or entity that has a member who has been affected by a violation of this chapter, or by an employee on behalf of the employee or on behalf of other employees similarly situated. Such action may only be filed after exhausting all administrative remedies provided by this chapter; provided, however, that if the Department has not acted on a filed complaint for a period of 180 days, the complainant may file a civil action after the 180-day period has expired. The lack of an investigation by the Department is not a bar to a civil action brought by a complainant pursuant to this chapter.

(1) The Department or the office of the attorney general may bring a civil action for a violation of this chapter.

(2) It is not a defense to any action brought pursuant to this section that the complaint was brought by or in regard to an employee who does not have evidence of having a legal presence in the United States.

(3) The parties in a civil action regarding retaliation by an employer shall be subject to the following burdens of proof:

a. When an employee presents a prima facie showing of retaliation, the employer shall then have the burden to establish a legitimate, non-retaliatory reason for the adverse employment action.

b. When an employer meets the burden of proof required by paragraph (f)(3)a. of this section, the employee shall then have the burden to establish that the reason cited by the employer was pretextual.

256 (4) A plaintiff prevailing in a legal action brought pursuant to this chapter shall recover all appropriate legal or
257 equitable relief, the costs and expenses of suit, and reasonable attorney fees. In an action brought by the Department or
258 the attorney general, any damages recovered, other than penalties assessed by the Department pursuant to subsections
259 (g) or (h) of this section, shall be payable to the individual employees who experienced the violation.

260 (g) Any employer who violates or fails to comply with any requirement of this chapter is subject to a civil penalty
261 of not less than \$2,000 nor more than \$20,000 for each violation.

262 (h) An employer is subject to a civil penalty of not less than \$20,000 and not more than \$50,000 for each violation
263 if the employer discharges or in any manner retaliates or discriminates against an individual because that individual does
264 any of the following under this section:

265 a. Makes a complaint or provides information to the Department.

266 b. Causes, or is going to cause, an investigation to be instituted.

267 c. Testifies, or is going to testify, in a hearing.

268 (i) In addition to penalties under this section, an employer is liable to the affected employee in an amount equal to
269 actual damages, including back pay, wages and benefits lost, and equitable relief as appropriate, such as reinstatement.

270 § 1206. Regulations.

271 The Department may adopt regulations and revise or rescind regulations it deems necessary or appropriate to
272 administer or enforce this chapter. Except as may be otherwise provided by the Department, a regulation adopted under this
273 section takes effect on publication.

274 § 1207. Application.

275 (a) This chapter provides minimum requirements pertaining to earned sick time and safety leave and shall not be
276 construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or
277 standard that provides for a greater amount, accrual, or use by employees of earned sick time and safety leave or that
278 extends other protections to employees.

279 (b) Nothing in this chapter is intended to discourage or prohibit an employer from the adoption or retention of an
280 earned sick time and safety leave policy more generous than the one required herein, including but not limited to allowing
281 accrual of earned sick time and safety leave at a faster rate or the use of earned sick time and safety leave at an earlier date
282 than this chapter requires.

283 (c) Nothing in this chapter is intended to diminish the obligation of an employer to comply with any contract,
284 collective bargaining agreement, employment benefit plan or other agreement providing more generous earned sick time
285 and safety leave to an employee than required herein. Nothing in this chapter shall be construed as diminishing the rights of

public employees regarding earned sick time and safety leave or use of earned sick time and safety leave as provided in other laws or regulations of this State.

(d) Nothing in this chapter requires financial or other reimbursement to an employee upon the employee's termination, resignation, retirement, or other separation from employment for earned sick time and safety leave that has been accrued but not used, unless such financial or other reimbursement is required under another law.

(e) All or any portion of the requirements of this chapter do not apply to employees covered by a valid collective bargaining agreement, to the extent that such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms.

Section 2. Amend § 1108, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1108. Duty of employer regarding notification, posting and records.

It shall be the duty of every employer of over 3 employees to:

(4) a. Furnish to each employee at the time of payment a statement, either on the check, or by a separate slip, or electronically, so long as the electronic statement is in a form capable of being retained by the employee, showing all of the following:

1. The amount of earned sick time and safety leave available to the employee, the amount of earned sick time and safety leave taken by the employee to date in the year, and the amount of pay the employee has received as earned sick time and safety leave.

2. ~~the~~ The wages due, the pay period for which the wages are due and the total amount of deductions, separately specified, which have been made from the wages due, provided such statement shall, for an employee who is paid at an hourly rate, show the total number of hours for the said pay period.

b. Where the statement provided pursuant to this paragraph is furnished electronically, an employee may request that the statement be provided in written form on a separate slip.

Section 3. This Act takes effect on January 1, 2025.

Section 4. If any provision of this Act or the application of this Act to any person or circumstance is held invalid, the provisions of this Act are severable if the invalidity does not affect the other provisions of this Act that can be given effect without the invalid provision or the application of this Act that can be given effect without the invalid application.

SYNOPSIS

This Act requires all employers in the State to provide employees with a minimum of 1 hour of earned sick time and safety leave for every 30 hours worked. For employers with 9 or fewer employees, the time may be unpaid, job-protected time instead of paid time. Accrued earned sick time and safety leave may be used by the employee for time off with pay at the employee's same wage and benefit rate to deal with the mental and physical health needs of either the

employee or an employee's family member and other specified purposes. Earned sick time and safety leave may also be used to address the consequences of domestic violence for such things as meeting with lawyers, obtaining services from victim service organizations, temporary relocation and the like.

Employers may cap the number of hours earned per year at 40, the carryover from one year to the next at 40 hours, and the maximum earned sick and safety leave an employee has access to at any one time at 40 hours. Employers may require employees to have been employed at least 90 days before they may take earned sick leave and safety time. Employers whose benefits packages already meet the minimum requirements of this Act are not required to offer anything additional.

The Department of Labor will promulgate regulations governing operation of the Act and will enforce the provisions of the Act. Employers who violate the Act are subject to civil penalty of no less than \$2,000 nor more than \$20,000. Employers are prohibited from discriminating against an employee who complains to the Department that an employer has violated the Act. Where discrimination or retaliation is found to have occurred a penalty between \$20,000 and \$50,000 may be applied.

TAB 21

Delaware General Assembly (/)



Senate Bill 222

152nd General Assembly (Present)

Bill Progress

Current Status:

Senate Legislative Oversight & Sunset 2/29/24

What happens next?

Awaiting consideration in Committee

Bill Details

Introduced on:

2/29/24

Primary Sponsor:

Walsh (<https://senatedems.delaware.gov/members/senate-district-9>)

Additional Sponsor(s):

Reps. Osienski (<https://housedems.delaware.gov/members/house-district-24>), K. Williams (<https://housedems.delaware.gov/members/house-district-19>)

Co-Sponsor(s):

Sen. Hoffner (<https://senatedems.delaware.gov/members/senate-district-14>), Mantzavinos (<https://senatedems.delaware.gov/members/senate-district-7>)
Reps. Morrison (<https://housedems.delaware.gov/members/house-district-27>), Wilson-Anton (<https://housedems.delaware.gov/members/house-district-26>)

Long Title:

AN ACT TO AMEND CHAPTER 14, TITLE 24 OF THE DELAWARE CODE RELATING TO THE BOARD OF ELECTRICAL EXAMINERS.

Original Synopsis:

This legislation closes a loophole in the current law which allows 100% of the work being completed on a jobsite to be done by workers only possessing an apprentice license. Currently, under Delaware law, an apprentice license can be acquired with little or no experience in the electrical trade. Recently the State discovered that construction on Delaware's largest building, measuring more than 3.7 million square feet, that houses over 500 workers and received \$3 million in State taxpayer dollars was being built with electrical workers not possessing the necessary licenses. When the job was shut down, the contractor had all the electrical workers acquire apprentice licenses rather than hire experienced, properly trained electricians. A similar violation was discovered at the construction site of an elementary school here in Delaware. The current law only holds the worker responsible and allows the contractor to avoid any fines. This legislation corrects that inequity by also holding the contractor responsible and subject to fines.

Volume:Chapter: ⓘ

N/A

Advisory Number:

N/A

Fiscal Note/Fee Impact:

Not Required

Effective Date:

Takes effect upon being signed into law

Sunset Date:

N/A

Bill Text

Original Text:

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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details
No Records Available				

Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable
No Records Available					


Roll Calls

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
No Records Available								

Actions History

Date	Action
2/29/24	Introduced and Assigned to Legislative Oversight & Sunset Committee in Senate

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SPONSOR: Sen. Walsh & Rep. Osienski & Rep. K. Williams
Sens. Hoffner, Mantzavinos; Reps. Morrison, Wilson-
Anton

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 222

AN ACT TO AMEND CHAPTER 14, TITLE 24 OF THE DELAWARE CODE RELATING TO THE BOARD OF ELECTRICAL EXAMINERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend § 1422, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1422. Apprentice electricians.

(a) An apprentice electrician must work under the direct onsite supervision of a licensed master electrician, master electrician special, limited electrician, limited electrician special, residential electrician or journeyman electrician. The ratio of Apprentices to Journeypersons where non-residential electrical work is performed shall be 1 Apprentice to 3 Journeypersons employed onsite. Journeypersons must remain on the jobsite with the individual possessing an Apprentice license throughout the working day.

(b) A licensed electrician supervising an apprentice electrician pursuant to subsection (a) of this section shall be responsible for the activities of the apprentice electrician performing work in the State.

Section 2. Amend § 1424, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1424. Penalty.

(a) A person, not currently licensed as an electrician or exempt from licensure under this chapter, when guilty of performing electrical work, or using in connection with that person's name, or otherwise assuming or using any title or description conveying, or tending to convey, the impression that the person is qualified to perform electrical work, such offender shall be guilty of a misdemeanor. Upon the first offense, the person shall be fined not less than \$500 nor more than \$1,500 for each offense. For a second or subsequent conviction, the fine shall be not less than \$1,500 nor more than \$2,300 for each offense. Justice of the Peace Courts shall have jurisdiction over all violations of this chapter.

20 (b) A contractor that employs a person not currently licensed as an electrician or is in violation of this chapter shall
21 be fined not less than \$5,000 nor more than \$10,000, per unlicensed individual. Failure of a contractor to assure the proper
22 ratio of apprentices to journeypersons shall be fined not less than \$10,000 for each violation.

SYNOPSIS

This legislation closes a loophole in the current law which allows 100% of the work being completed on a jobsite to be done by workers only possessing an apprentice license. Currently, under Delaware law, an apprentice license can be acquired with little or no experience in the electrical trade. Recently the State discovered that construction on Delaware's largest building, measuring more than 3.7 million square feet, that houses over 500 workers and received \$3 million in State taxpayer dollars was being built with electrical workers not possessing the necessary licenses. When the job was shut down, the contractor had all the electrical workers acquire apprentice licenses rather than hire experienced, properly trained electricians. A similar violation was discovered at the construction site of an elementary school here in Delaware.

The current law only holds the worker responsible and allows the contractor to avoid any fines. This legislation corrects that inequity by also holding the contractor responsible and subject to fines.

Author: Senator Walsh

TAB 22

Delaware General Assembly (/)



House Bill 318

152nd General Assembly (Present)

Bill Progress

Current Status:

House Judiciary 2/29/24

What happens next?

Committee Hearing takes place within twelve legislative days.

Bill Details

Introduced on:

2/29/24

Primary Sponsor:

Baumbach (<https://housedems.delaware.gov/members/house-district-23>)

Additional Sponsor(s):

Sen. Sokola (<https://senatedems.delaware.gov/members/senate-district-8>)

Rep. Lambert (<https://housedems.delaware.gov/members/house-district-7>)

Co-Sponsor(s):

Sen. Hansen (<https://senatedems.delaware.gov/members/senate-district-10>), Pinkney (<https://senatedems.delaware.gov/members/senate-district-13>), Wilson (<https://senategop.delaware.gov/members/senate-district-18>)

Reps. Bolden (<https://housedems.delaware.gov/members/house-district-2>), Morrison (<https://housedems.delaware.gov/members/house-district-27>)

Long Title:

AN ACT TO AMEND TITLE 10 AND TITLE 19 OF THE DELAWARE CODE RELATING TO EXEMPTIONS IN BANKRUPTCY AND DEBT PROCEEDINGS.

Original Synopsis:

This Act increases the exemption in bankruptcy and other debt proceedings for a debtor's personal residence from \$125,000 to \$200,000. The exemption has been limited to \$125,000 since 2012 while home prices have increased dramatically in the intervening years. It also increases the exemption for tools of the trade and for a vehicle to \$25,000 from \$15,000. This Act also exempts worker's compensation awards under the laws of other states from attachment in bankruptcy or other proceedings in the same manner that a worker's compensation award made under Delaware law is exempt. The Act takes effect on January 1, 2025.

Volume:Chapter: ⓘ

N/A

Advisory Number:

N/A

Fiscal Note/Fee Impact:

Not Required

Effective Date:

Takes effect upon being signed into law

Sunset Date:

N/A

Bill Text

Original Text:

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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details
No Records Available				

Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable
No Records Available					


Roll Calls

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
No Records Available								

Actions History

Date	Action
2/29/24	Introduced and Assigned to Judiciary Committee in House

Legislation Detail Feeds

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SPONSOR: Rep. Baumbach & Rep. Lambert & Sen. Sokola
Reps. Bolden, Morrison; Sens. Hansen, Pinkney, Wilson

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 318

AN ACT TO AMEND TITLE 10 AND TITLE 19 OF THE DELAWARE CODE RELATING TO EXEMPTIONS IN
BANKRUPTCY AND DEBT PROCEEDINGS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 4914, Title 10 of the Delaware Code by making deletions as shown by strike through and
insertions as shown by underline as follows:

§ 4914. Exemptions in bankruptcy and insolvency.

(a) In accordance with § 522(b) of the Bankruptcy Reform Act of 1978 (11 U.S.C. § 522(b)), in any bankruptcy
proceeding, an individual debtor domiciled in Delaware is not authorized or entitled to elect the federal exemptions as set
forth in § 522(d) of the Bankruptcy Reform Act of 1978 (11 U.S.C. § 522(d)) and may exempt only that property from the
estate as set forth in subsection (b) of this section.

(b) In any federal bankruptcy or state insolvency proceeding, an individual debtor domiciled in Delaware shall be
authorized to exempt from the bankruptcy or insolvency estate, in addition to the exemptions made in this subsection and in
§ 4915 of this title, personal property and/or equity in real property, other than the debtor's principal residence having an
aggregate fair market value of not more than \$25,000.

(c) In any federal bankruptcy or state insolvency proceeding, an individual debtor and/or such individual's spouse
domiciled in Delaware shall be authorized to exempt from the bankruptcy or insolvency estate, in addition to the
exemptions made in subsection (b) of this section and in § 4915 of this title, the following:

(1) Equity in real property or equity in a manufactured home (as defined in Chapter 70 of Title 25) which
constitutes a debtor's principal residence in an aggregate amount not to exceed ~~\$75,000 in 2010, \$100,000 in 2011, and~~
~~\$125,000 thereafter, except that the exemption for persons totally disabled from working or married persons where at~~
~~least 1 of the spouses is 65 years old or older shall be \$125,000 effective immediately; and \$200,000.~~

(2) A vehicle and/or tools of the trade necessary for purposes of employment in an amount not to exceed
~~\$15,000~~ \$25,000 each.

(d) This section shall apply separately with respect to each debtor in a joint case but not to exceed \$25,000 each in
value in personal property and/or equity in real property, other than the debtor's principal residence, a total not to exceed

23 ~~\$125,000~~ \$200,000 in value in a principal residence in an individual or a joint case, and ~~\$15,000~~ \$25,000 each in subsection
24 (c) of this section vehicle and ~~\$15,000~~ \$25,000 each in subsection (c) of this section tools of the trade.

25 (e) A debtor may not exempt any amount of an interest in property described in paragraph (c)(1) of this section, if
26 the Bankruptcy Court determines, after notice and hearing, that the debtor owes a debt arising from:

27 (1) Any violation of the federal securities laws (as defined in § 3(a)(47) of the Securities and Exchange Act of
28 1934 [15 U.S.C. § 78c(a)(47)]), any state securities law, or any regulation or order issued under federal or state
29 securities laws,

30 (2) Fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any
31 security registered under § 12 or § 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. § 78l or § 78o(d)] or
32 under § 6 of the Securities Act of 1933 [15 U.S.C. § 77f], or

33 (3) Any criminal act, intentional tort, or wilful or reckless misconduct that caused serious physical injury or
34 death to another individual in the preceding 5 years.

35 Section 2. Amend § 2355, Title 19 of the Delaware Code by making deletions as shown by strike through and
36 insertions as shown by underline as follows:

37 § 2355. Assignment of compensation prohibited; exemption from creditors' claims; child support exception.

38 Except for attachments pursuant to child support orders entered under Chapter 4, 5 or 6 of Title 13, claims or
39 payment for compensation due or to become due under this chapter or worker's compensation laws of another state shall
40 not be assignable and all compensation and claims therefor shall be exempt from all claims of creditors.

41 Section 3. This Act takes effect January 1, 2025.

SYNOPSIS

This Act increases the exemption in bankruptcy and other debt proceedings for a debtor's personal residence from \$125,000 to \$200,000. The exemption has been limited to \$125,000 since 2012 while home prices have increased dramatically in the intervening years. It also increases the exemption for tools of the trade and for a vehicle to \$25,000 from \$15,000.

This Act also exempts worker's compensation awards under the laws of other states from attachment in bankruptcy or other proceedings in the same manner that a worker's compensation award made under Delaware law is exempt.

The Act takes effect on January 1, 2025.

TAB 23

Delaware General Assembly (/)



Senate Bill 229

152nd General Assembly (Present)

Bill Progress

Current Status:

Senate Banking, Business, Insurance & Technology 2/29/24

What happens next?

Awaiting consideration in Committee

Bill Details

Introduced on:

2/29/24

Primary Sponsor:

Sturgeon (<https://senatedems.delaware.gov/members/senate-district-4>)

Additional Sponsor(s):

Rep. K. Williams (<https://housedems.delaware.gov/members/house-district-19>)

Co-Sponsor(s):

Sen. Gay (<https://senatedems.delaware.gov/members/senate-district-5>), Hansen (<https://senatedems.delaware.gov/members/senate-district-10>), Hoffner (<https://senatedems.delaware.gov/members/senate-district-14>), Sokola (<https://senatedems.delaware.gov/members/senate-district-8>),
Reps. Cooke (<https://housedems.delaware.gov/members/house-district-16>), K. Johnson (<https://housedems.delaware.gov/members/house-district-5>), Morrison (<https://housedems.delaware.gov/members/house-district-27>), Neal (<https://housedems.delaware.gov/members/house-district-13>), Osienski (<https://housedems.delaware.gov/members/house-district-24>), Parker Selby (<https://housedems.delaware.gov/members/house-district-20>), Phillips (<https://housedems.delaware.gov/members/house-district-18>)

Long Title:

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO AN EMPLOYEE'S RIGHT TO INSPECT PERSONNEL FILES.

Original Synopsis:

This Act extends the right of employees to inspect their own personnel files to former employees. Under this Act, an employer must permit a former employee to inspect the employee's own personnel files that exist at the time of the request. This Act does not create or change any requirements regarding the length of time that an employer must retain personnel files of former employees. This Act also updates the specific information included in personnel files that an employee may inspect and makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Volume:Chapter: ⓘ

N/A

Advisory Number:

N/A

Fiscal Note/Fee Impact:

Not Required

Effective Date:

Takes effect upon being signed into law

Sunset Date:

N/A

Bill Text

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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details
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No Records Available

Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable
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No Records Available

Roll Calls

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
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No Records Available

Actions History

Date	Action
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2/29/24	Introduced and Assigned to Banking, Business, Insurance & Technology Committee in Senate
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SPONSOR: Sen. Sturgeon & Rep. K. Williams
Sens. Gay, Hansen, Hoffner, Sokola; Reps. Cooke,
K. Johnson, Morrison, Neal, Osienski, Parker Selby,
Phillips

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 229

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO AN EMPLOYEE'S RIGHT TO
INSPECT PERSONNEL FILES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 731, Title 19 of the Delaware Code by making deletions as shown by strike through and
insertions as shown by underline as follows:

§ 731. Definitions.

~~As used in~~ For purposes of this subchapter:

(1)a. "Employee" means ~~any person currently employed, laid~~ an individual who is any of the following:

1. Currently employed.

2. Laid off with reemployment rights or on rights.

3. On a leave of absence. The term "employee" shall

4. Previously employed.

b. "Employee" ~~does~~ not include applicants for employment or designated agents.

(2) "Employer" ~~shall mean~~ includes any individual, person, partnership, association, corporation, and the
~~State, State or~~ any of its political ~~subdivisions or subdivisions, including~~ any agency, authority, ~~board~~ board, or
~~commission created by them; commission.~~

(3)a. "Personnel file" ~~means;~~ files means any of the following, if maintained by the ~~employer; any~~
~~application employer:~~

1. Application for employment, wage employment.

2. Wage or salary information, notices information.

3. Notices of commendations, warning or discipline, authorization commendation, warning, or
discipline.

4. Authorization for a deduction or withholding of pay, fringe pay.

5. Fringe benefit information, leave records, employment information.

22 6. Leave records.

23 7. Employment history with the employer, including salary information, job title, dates of changes,
24 retirement record, attendance records, medical records, performance ~~evaluations and medical records~~. The
25 term "personnel file" shall evaluations, qualifications for employment, promotion, additional compensation,
26 termination, and disciplinary action.

27 8. Service letters under § 708 of this title.

28 9. Employment information disclosed under § 709 of this title.

29 b. "Personnel files" does not include records any of the following:

30 1. Records of an employee relating to the investigation of a possible criminal offense, ~~letters of~~
31 ~~reference, documents which~~ offense.

32 2. Documents that are attorney work product or the employer drafts that are being developed or
33 prepared for use in civil, ~~criminal~~ criminal, or grievance ~~procedures or materials which are~~ procedures.

34 3. Letters of reference.

35 4. Materials used by the employer to plan for future ~~operations or information~~ operations.

36 5. Information available to the employee under the Fair Credit Reporting Act ~~[15 U.S.C. §§ 1681-~~
37 ~~1681t]. Act, 15 U.S.C. §§ 1681-1681t.~~

38 Section 2. Amend § 732, Title 19 of the Delaware Code by making deletions as shown by strike through and
39 insertions as shown by underline as follows:

40 § 732. Inspection of personnel files.

41 ~~An employer shall, at a reasonable time, upon request of an employee, (a)(1) Upon the request of an employee, an~~
42 employer shall permit that employee to inspect ~~that the~~ employee's own personnel ~~files used to determine that employee's~~
43 ~~own qualifications for employment, promotion, additional compensation, termination or disciplinary action: files.~~

44 (2) If the request under paragraph (a)(1) of this section is from an individual who was previously
45 employed, the employer shall permit that employee to inspect the employee's own personnel files that exist at the
46 time of the employee's request.

47 (b) The employer shall make these records the employee's personnel files available to the employee during the
48 regular business hours of the office where these records are usually and ordinarily maintained, when sufficient time is
49 available during the course of a regular business day to inspect the personnel ~~files in question: files.~~ The employer may
50 require ~~the requesting~~ that a current employee ~~to inspect~~ their personnel files outside of the employee's scheduled work

51 hours, such records on the free time of the employee. At the employer's discretion, the employee may be required to file a
52 written form to request access to the personnel file. This form is solely

53 (c)(1) An employer may require that an employee use a form to make a request under subsection (a) of this
54 section, however, this form may only require the information necessary for the purpose of identifying the requesting
55 individual making the request to avoid disclosure of personnel files to ineligible individuals.

56 (2) To assist the employer in providing the correct records to meet the employee's need, a form under
57 paragraph (c)(1) of this section may ask, but may not require, that the employee shall indicate in the written request
58 either the purpose for which the inspection is requested or the if there are particular parts of the employee's personnel
59 record which files that the employee wishes to inspect.

SYNOPSIS

This Act extends the right of employees to inspect their own personnel files to former employees. Under this Act, an employer must permit a former employee to inspect the employee's own personnel files that exist at the time of the request. This Act does not create or change any requirements regarding the length of time that an employer must retain personnel files of former employees.

This Act also updates the specific information included in personnel files that an employee may inspect and makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Sturgeon

TAB 24

Delaware General Assembly (/)



Senate Bill 20

152nd General Assembly (Present)

Bill Progress

Current Status:

House Education 3/6/24

What happens next?

Committee Hearing takes place within twelve legislative days.

Bill Details

Introduced on:

1/18/24

Primary Sponsor:

Townsend (<https://senatedems.delaware.gov/members/senate-district-11>)

Additional Sponsor(s):

Sen. Sturgeon (<https://senatedems.delaware.gov/members/senate-district-4>)
 Reps. Romer (<https://housedems.delaware.gov/members/house-district-25>), K. Williams (<https://housedems.delaware.gov/members/house-district-19>),
Heffernan (<https://housedems.delaware.gov/members/house-district-6>)

Co-Sponsor(s):

Sen. Brown (<https://senatedems.delaware.gov/members/senate-district-2>), Buckson (<https://senategop.delaware.gov/members/senate-district-16>), Gay (<https://senatedems.delaware.gov/members/senate-district-5>), Hansen (<https://senatedems.delaware.gov/members/senate-district-10>), Hocker (<https://senategop.delaware.gov/members/senate-district-20>), Hoffner (<https://senatedems.delaware.gov/members/senate-district-14>), Huxtable (<https://senatedems.delaware.gov/members/senate-district-6>), Lawson (<https://senategop.delaware.gov/members/senate-district-15>), Lockman (<https://senatedems.delaware.gov/members/senate-district-3>), Mantzavinos (<https://senatedems.delaware.gov/members/senate-district-7>), S. McBride (<https://senatedems.delaware.gov/members/senate-district-1>), Paradee (<https://senatedems.delaware.gov/members/senate-district-17>), Pettyjohn (<https://senategop.delaware.gov/members/senate-district-19>), Pinkney (<https://senatedems.delaware.gov/members/senate-district-13>), Poore (<https://senatedems.delaware.gov/members/senate-district-12>), Richardson (<https://senategop.delaware.gov/members/senate-district-21>), Sokola (<https://senatedems.delaware.gov/members/senate-district-8>), Walsh (<https://senatedems.delaware.gov/members/senate-district-9>), Wilson (<https://senategop.delaware.gov/members/senate-district-18>)
 Reps. Baumbach (<https://housedems.delaware.gov/members/house-district-23>), Griffith (<https://housedems.delaware.gov/members/house-district-12>), Harris (<https://housedems.delaware.gov/members/house-district-32>), Morrison (<https://housedems.delaware.gov/members/house-district-27>), Osienski (<https://housedems.delaware.gov/members/house-district-24>), Parker Selby (<https://housedems.delaware.gov/members/house-district-20>), Yearick (<https://housedems.delaware.gov/members/house-district-34>)

Long Title:

AN ACT TO AMEND TITLE 14 AND TITLE 29 OF THE DELAWARE CODE AND CHAPTER 187 OF VOLUME 81 OF THE LAWS OF DELAWARE RELATING TO DONATED LEAVE.

Original Synopsis:

The primary purpose of this Act is to remove the requirement that a public school district employee who donates leave to another employee must donate 2 days of leave for the other employee to receive 1 day of leave. Further, this Act repeals Chapter 187 of Volume 81 of the Laws of Delaware ("this law"). Adopted in 2017, this law was designed to provide full-time employees of the State, including employees of school districts, with the ability to donate leave to other employees for use in connection with the birth or adoption of a child under 6 years of age. This law has never taken effect as the law does not take effect until the Office of Management and Budget ("OMB") receives a letter from the Internal Revenue Service ("IRS") stating that the tax treatment of the expansion of the donated leave program contemplated by this law will receive the same tax treatment as Delaware's current donated leave program. OMB has not requested this letter from the IRS because, based on OMB's research, OMB does not believe this law would receive the same tax treatment by the IRS and because the General Assembly subsequently enacted Chapter 285 of Volume 81 of the Laws of Delaware, which provides 12 weeks of paid leave upon the birth or adoption of a child 6 years of age or younger for those continuously employed for at least 1 year as full-time employees of this State, including employees of school districts. Sections 1 and 2 of this Act re-enact portions of Chapter 187 of Volume 81 of the Laws of Delaware that would have also applied to the existing donated leave program for catastrophic illness. Specifically these provisions are intended to do the following: (1) Clarify how much leave employees of a public school district who do not accrue annual leave must use before being eligible for donated leave. (2) Clarify the interaction between donated leave and leave available under the federal Family and Medical Leave Act. This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual, including transferring existing definitions to a central definition section and transferring provisions that are substantive law out of defined terms. This Act is named in honor of Christopher Chujoy, a special education instructional aide in the Red Clay Consolidated School District. Mr. Chujoy was diagnosed in August 2022 with stage IV cancer. Mr. Chujoy used up all of his available sick time before his passing and his situation raised the issue that is the primary purpose of this Act.

Volume:Chapter: 9

N/A

Advisory Number:

N/A

Fiscal Note/Fee Impact:

Not Required

Effective Date:

Takes effect upon being signed into law

Sunset Date:

N/A

Bill Text**Original Text:**[View HTML \(/json/BillDetail/GenerateHtmlDocument?legislationId=140869&legislationTypeId=1&docTypeId=2&legislationName=SB20\)](#)[View PDF \(/json/BillDetail/GeneratePdfDocument?legislationId=140869&legislationTypeId=1&docTypeId=2&legislationName=SB20\)](#)

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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details
No Records Available				

Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable	
1/24/24	Education (/CommitteeDetail?committeeId=604)	8	8	0	0	view ()

Roll Calls

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
Senate	Passed	3/5/24 3:33 PM	SM	20	0	0	1	(/json/RollCallController/GenerateRollCallPdf?rollCallId=55238&chamberId=1) view ()

Actions History

Date	Action
1/18/24	Introduced and Assigned to Elections & Government Affairs Committee in Senate
1/18/24	Assigned to Education Committee in Senate
1/24/24	Reported Out of Committee (Education) in Senate with 8 Favorable
3/5/24	Passed By Senate. Votes: 20 YES 1 ABSENT
3/6/24	Assigned to Education Committee in House


Legislation Detail Feeds[Roll Calls \(/rss/RssFeeds/RollCallsByLegislation?legislationId=140869\)](#) [\(/RssFeeds/RSSFeedInfo\)](#)


[View All Legislation \(/AllLegislation\)](#)


[View All Senate Legislation \(/Legislation/Senate\)](#)

[View All House Legislation \(/Legislation/House\)](#)

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 (<mailto:DivisionOfResearch@state.de.us>) (<mailto:DivisionOfResearch@delaware.gov>) Legislative Hall (mailto:LC_reception@delaware.gov)

To ensure quick and accurate assistance, please include your full name and address in your correspondence.

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Other Resources

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SPONSOR: Sen. Townsend & Sen. Sturgeon & Rep. Romer &
Rep. K. Williams & Rep. Heffernan
Sens. Brown, Buckson, Gay, Hansen, Hocker, Hoffner,
Huxtable, Lawson, Lockman, Mantzavinos, S. McBride,
Paradee, Pettyjohn, Pinkney, Poore, Richardson, Sokola,
Walsh, Wilson; Reps. Baumbach, Griffith, Harris,
Morrison, Osienski, Parker Selby, Yearick

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 20

AN ACT TO AMEND TITLE 14 AND TITLE 29 OF THE DELAWARE CODE AND CHAPTER 187 OF VOLUME 81
OF THE LAWS OF DELAWARE RELATING TO DONATED LEAVE.

1 WHEREAS, Christopher Chujoy worked as a paraprofessional at Anna P. Mote Elementary School, where he
2 worked closely with students with autism and was known for his generosity towards his students and colleagues; and

3 WHEREAS, in 2022, Christopher was named Red Clay Consolidated School District's Education Support
4 Professional of the Year, reflective of his skill and tireless dedication to serving and supporting Delaware students with
5 exceptional needs; and

6 WHEREAS, in August 2022, after having major abdominal surgery, Christopher was diagnosed with stage 4
7 colon, lung, and liver cancer; and

8 WHEREAS, after Christopher used all of his accrued sick days quickly due to his illness, his colleagues and
9 friends asked fellow educators to consider donating sick days to him; and

10 WHEREAS, because of Delaware state law, educators must donate 2 of their sick days in order to provide a
11 colleague in need with just 1 additional sick day despite having earned those days; and

12 WHEREAS, this limitation restricted Christopher from receiving half of the sick days that his co-workers donated
13 to him, with the other half of these hard-earned sick days being wasted and unable to be used by any school employee; and

14 WHEREAS the 2-to-1 donated time restriction puts educators in the position of potentially losing their own ability
15 to care for themselves and their families in difficult times in order to help a colleague in need; and

16 WHEREAS, recruiting and retaining quality educators in Delaware is dependent on enacting policies that address
17 issues central to educator working conditions like leave time; and

18 WHEREAS, ensuring that educator time, specifically accrued leave time, is treated fairly under the law, is a
19 reasonable improvement to educator working conditions that will help promote educator retention; and

20 WHEREAS, on January 12, 2024, Christopher Chujoy passed away after an inspirational battle against multiple
21 cancers.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 1318A, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1318A. Donated leave program [Effective until fulfillment of the contingency in 81 Del. Laws, c. 187, § 3]

(a) For purposes of this section:

(1) "Catastrophic illness" means any illness or injury to an employee or an employee's family member which is diagnosed by a physician and certified by the physician as rendering the employee or employee's family member unable to work, or, in the case of a family member who does not work, the medical equivalent of "unable to work", for a period greater than 5 calendar weeks. Separate periods of disability lasting 7 consecutive work days or more each, and totaling more than 5 calendar weeks, resulting from the same or a related illness or injury and occurring within any 12-month consecutive period, are considered the same period of disability.

(2) "Child" means an immediate descendant by blood or adoption and of any age.

(3) "Donated leave program" means a ~~program~~; program that meets all of the following:

(1)a. ~~In Is one in~~ which 1 or more employees of a public school district may transfer accrued, unused sick leave days to 1 or more other employees of the same public school ~~district~~; district.

(2)b. Is established by the public school district as a local Board of Education policy ~~and/or or~~ pursuant to the terms of a collective bargaining agreement negotiated under the terms of Chapter 40 of ~~Title 14~~; and this title.

(3)c. Is consistent with the provisions set forth in subsection (b) of this section. ~~No donated leave program shall prohibit participation by employees based on inclusion in or exclusion from a certified bargaining unit.~~

(4) "Family member" means an employee's spouse, child, or parent who resides with the employee and who requires the personal attendance of the employee during the spouse's, child's, or parent's catastrophic illness.

(b) Any donated leave ~~shall be required to~~ program must comply with all of the following requirements:

(1) Employees wishing to donate accrued sick leave must donate in increments of whole days. ~~For every 2 days donated, 1 day will be made available to a recipient.~~

(2) Donated days ~~shall be made~~ are available only for recipients within the public school district for a catastrophic illness of a recipient or ~~of a member of a recipient's family~~. ~~For this section, "catastrophic illness" shall mean any illness or injury to an employee or to a member of an employee's family which is diagnosed by a physician and certified by the physician as rendering the employee or a member of the employee's family unable to work, or, in the case of a family member who does not work, the medical equivalent of "unable to work", to work for a period~~

greater than 5 calendar weeks. Separate periods of disability lasting 7 consecutive work days or more each, and totaling more than 5 calendar weeks, resulting from the same or a related medical condition and occurring within any 12 month consecutive period, shall be considered the same period of disability. For this section, "family member" or "member of an employee's family" means an employee's spouse, son, daughter or parent who resides with the employee and who requires the personal attendance of the employee during the family member's catastrophic illness. a recipient's family member.

a. Donated leave may be used by the recipient for subsequent absence because of personal medical treatments or personal illness directly related to the employee's "catastrophic illness" recipient's catastrophic illness as certified by the physician.

b. This provision Paragraph (b)(2)a. of this section is limited to an absence that occurs because of an employee's "catastrophic illness" a recipient's catastrophic illness not a family member's "catastrophic illness." catastrophic illness.

(5)a. The Except as provided in paragraph (b)(5)b. of this section, when the donated leave is for the catastrophic illness of a recipient, the recipient shall must have used all of that the recipient's own sick days and personal days and half of that the recipient's annual leave, where applicable. However, when Except as provided in paragraph(b)(5)b. of this section, when the donated leave is for the catastrophic illness of a family member, the employee recipient must have used all of that employee's the recipient's own sick days, personal days days, and annual leave.

b. If a recipient is not eligible for annual leave, the recipient must have used all of the recipient's personal days and all but 3 of the recipient's sick days.

(11) Not prohibit participation by employees based on inclusion in or exclusion from a certified bargaining unit.

(d) Donated leave received by an employee of a public school district under this section is to run concurrently with any leave available under the Family and Medical Leave Act, 29 U.S.C. § 2601 et seq.

Section 2. Amend § 5956, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5956. Donated leave program [Effective until fulfillment of the contingency in 81 Del. Laws, c. 187, § 3].

(k) Donated leave received by an officer or employee of this State under this section is to run concurrently with any leave available under the Family and Medical Leave Act, 29 U.S.C. § 2601 et seq.

Section 3. Amend Chapter 187 of Volume 81 of the Laws of Delaware by striking the Chapter in its entirety.

SYNOPSIS

The primary purpose of this Act is to remove the requirement that a public school district employee who donates leave to another employee must donate 2 days of leave for the other employee to receive 1 day of leave.

Further, this Act repeals Chapter 187 of Volume 81 of the Laws of Delaware ("this law"). Adopted in 2017, this law was designed to provide full-time employees of the State, including employees of school districts, with the ability to donate leave to other employees for use in connection with the birth or adoption of a child under 6 years of age. This law has never taken effect as the law does not take effect until the Office of Management and Budget ("OMB") receives a letter from the Internal Revenue Service ("IRS") stating that the tax treatment of the expansion of the donated leave program contemplated by this law will receive the same tax treatment as Delaware's current donated leave program. OMB has not requested this letter from the IRS because, based on OMB's research, OMB does not believe this law would receive the same tax treatment by the IRS and because the General Assembly subsequently enacted Chapter 285 of Volume 81 of the Laws of Delaware, which provides 12 weeks of paid leave upon the birth or adoption of a child 6 years of age or younger for those continuously employed for at least 1 year as full-time employees of this State, including employees of school districts.

Sections 1 and 2 of this Act re-enact portions of Chapter 187 of Volume 81 of the Laws of Delaware that would have also applied to the existing donated leave program for catastrophic illness. Specifically these provisions are intended to do the following:

- (1) Clarify how much leave employees of a public school district who do not accrue annual leave must use before being eligible for donated leave.
- (2) Clarify the interaction between donated leave and leave available under the federal Family and Medical Leave Act.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual, including transferring existing definitions to a central definition section and transferring provisions that are substantive law out of defined terms.

This Act is named in honor of Christopher Chujoy, a special education instructional aide in the Red Clay Consolidated School District. Mr. Chujoy was diagnosed in August 2022 with stage IV cancer. Mr. Chujoy used up all of his available sick time before his passing and his situation raised the issue that is the primary purpose of this Act.

Author: Senator Townsend

TAB 25

Delaware General Assembly (/)



Senate Substitute 1 for Senate Bill 147 152nd General Assembly (Present)

Bill Progress

Current Status:

House Judiciary 3/12/24

What happens next?

Committee Hearing takes place within twelve legislative days.

Bill Details

View Parent Bill:

[SB 147 \(/BillDetail/140457\)](#)

Introduced on:

1/18/24

Primary Sponsor:

[Sturgeon \(https://senatedems.delaware.gov/members/senate-district-4\)](https://senatedems.delaware.gov/members/senate-district-4)

Additional Sponsor(s):

Sen. [Townsend \(https://senatedems.delaware.gov/members/senate-district-11\)](https://senatedems.delaware.gov/members/senate-district-11), [Walsh \(https://senatedems.delaware.gov/members/senate-district-9\)](https://senatedems.delaware.gov/members/senate-district-9)
Rep. [Osienski \(https://housedems.delaware.gov/members/house-district-24\)](https://housedems.delaware.gov/members/house-district-24)

Co-Sponsor(s):

Sen. [Hoffner \(https://senatedems.delaware.gov/members/senate-district-14\)](https://senatedems.delaware.gov/members/senate-district-14), [S. McBride \(https://senatedems.delaware.gov/members/senate-district-1\)](https://senatedems.delaware.gov/members/senate-district-1)
Reps. [Morrison \(https://housedems.delaware.gov/members/house-district-27\)](https://housedems.delaware.gov/members/house-district-27), [K. Williams \(https://housedems.delaware.gov/members/house-district-19\)](https://housedems.delaware.gov/members/house-district-19)

Long Title:

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO COMPUTER-RELATED OFFENSES.

Original Synopsis:

This Act creates a narrow exception to the computer crimes under §§ 932, 933, and 935 of Title 11 because these crimes contain elements broad enough to include actions employees may take to document or report an employer's violation of state or federal employment laws protecting the rights of employees. In addition to criminal penalties, § 941 of Title 11 allows a civil action for treble damages against an employee for a violation of any provision of §§ 932, 933, or 935 of Title 11. Like Senate Bill No. 147, Senate Substitute No. 1 for SB 147, does all of the following: 1. Provides that an employee is not guilty of a crime under §§ 932, 933, or 935 of Title 11 if the employee's actions were taken to pursue a claim by an employee that the employer violated a state or federal employment law protecting the rights of employees and the information obtained by the employee was only disclosed for this purpose. 2. Clarifies that if an exemption to a crime under §§ 932, 933, or 935 of Title 11 applies, an employer may not bring a civil action under § 941 of Title 11 against a current or former employee for a violation of §§ 932, 933, or 935 of Title 11. Senate Substitute No. 1 for SB 147 differs from SB 147 by making the following revisions to clarify the narrow intent of this Act: 1. Does not include § 936 of Title 11, destruction of computer equipment, under this exemption. 2. Replaces the words "investigating, exploring, or pursuing" with "reporting or filing". 3. Requires that the employee accessed computer services or systems as authorized for the employee's use in the course of the employee's employment.

Volume:Chapter:

N/A

Advisory Number:

N/A

Fiscal Note/Fee Impact:

Not Required

Effective Date:

Takes effect upon being signed into law

Sunset Date:

N/A

Bill Text

Original Text:

[View HTML \(/json/BillDetail/GenerateHtmlDocument?legislationId=140865&legislationTypeId=6&docTypeId=2&legislationName=SS1forSB147\)](#)

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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details
SA 1	Passed	3/5/24	Sturgeon (https://senatedems.delaware.gov/members/senate-district-4)	view amendment details (/BillDetail?legislationId=140969)

Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable
No Records Available					

Roll Calls

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
Senate	Passed	3/7/24 4:11 PM	SM	12	8	0	1	(/json/RollCallController/GenerateRollCallPdf?rollCallId=55253&chamberId=1) view ()

Actions History

Date	Action
1/18/24	was introduced and adopted in lieu of SB 147
3/5/24	Amendment SA 1 to SS 1 - Introduced and Placed With Bill
3/7/24	Amendment SA 1 to SS 1 - Passed By Senate. Votes: 18 YES 2 NO 1 ABSENT
3/7/24	Laid On Table in Senate
3/7/24	Lifted From Table in Senate
3/7/24	Passed By Senate. Votes: 12 YES 8 NO 1 ABSENT
3/12/24	Assigned to Judiciary Committee in House

Legislation Detail Feeds


[Roll Calls \(/rss/RssFeeds/RollCallsByLegislation?legislationId=140865\)](#) [\(/RssFeeds/RSSFeedInfo\)](#)


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SPONSOR: Sen. Sturgeon & Sen. Townsend & Sen. Walsh &
Rep. Osienski
Sen. S. McBride; Reps. Morrison, K. Williams

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 147

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO COMPUTER-RELATED OFFENSES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Subpart K, Subchapter III, Chapter 5, Title 11 of the Delaware Code by making deletions as
2 shown by strike through and insertions as shown by underline as follows:

3 § 942. Computer-related offense; exceptions.

4 A person is not guilty of a crime under §§ 932, 933, or 935 of this title if all of the following apply:

5 (1) The employee's actions were for the purpose of reporting or filing a claim by an employee that the
6 employer violated a state or federal employment law protecting the rights of employees.

7 (2) The employee accessed computer services or systems as authorized for the employee's use in the course of
8 the employee's employment.

9 (3) Information obtained by the employee was disclosed only for the purpose of reporting or filing a claim by
10 an employee under paragraph (1) of this section.

11 Section 2. Amend § 941, Title 11 of the Delaware Code by making deletions as shown by strike through and
12 insertions as shown by underline as follows:

13 § 941. Remedies of aggrieved persons.

14 (h) If a person's actions are not a crime under § 942 of this title, an employer may not use a violation of §§ 932,
15 933, or 935 of this title to bring an action, claim, counterclaim, or crossclaim against a current or former employee under
16 this section.

SYNOPSIS

This Act creates a narrow exception to the computer crimes under §§ 932, 933, and 935 of Title 11 because these crimes contain elements broad enough to include actions employees may take to document or report an employer's violation of state or federal employment laws protecting the rights of employees. In addition to criminal penalties, § 941 of Title 11 allows a civil action for treble damages against an employee for a violation of any provision of §§ 932, 933, or 935 of Title 11.

Like Senate Bill No. 147, Senate Substitute No. 1 for SB 147, does all of the following:

1. Provides that an employee is not guilty of a crime under §§ 932, 933, or 935 of Title 11 if the employee's actions were taken to pursue a claim by an employee that the employer violated a state or federal employment law protecting the rights of employees and the information obtained by the employee was only disclosed for this purpose.

2. Clarifies that if an exemption to a crime under §§ 932, 933, or 935 of Title 11 applies, an employer may not bring a civil action under § 941 of Title 11 against a current or former employee for a violation of §§ 932, 933, or 935 of Title 11.

Senate Substitute No. 1 for SB 147 differs from SB 147 by making the following revisions to clarify the narrow intent of this Act:

1. Does not include § 936 of Title 11, destruction of computer equipment, under this exemption.
2. Replaces the words "investigating, exploring, or pursuing" with "reporting or filing".
3. Requires that the employee accessed computer services or systems as authorized for the employee's use in the course of the employee's employment.

Author: Senator Sturgeon

TAB 26

Delaware General Assembly (/)



House Bill 296

152nd General Assembly (Present)

Bill Progress

Current Status:

House Administration 1/24/24

What happens next?

Committee Hearing takes place within twelve legislative days.

Bill Details

Introduced on:

1/24/24

Primary Sponsor:

Shupe (<https://housegop.delaware.gov/members/house-district-36>)

Additional Sponsor(s):

Sen. Buckson (<https://senategop.delaware.gov/members/senate-district-16>)

Co-Sponsor(s):

Sen. Hocker (<https://senategop.delaware.gov/members/senate-district-20>), Lawson (<https://senategop.delaware.gov/members/senate-district-15>), Wilson (<https://senategop.delaware.gov/members/senate-district-18>)

Reps. Hilovsky (<https://housegop.delaware.gov/members/house-district-4>), Morris (<https://housegop.delaware.gov/members/house-district-30>), Yearick (<https://housegop.delaware.gov/members/house-district-34>)

Long Title:

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO PREVAILING WAGE.

Original Synopsis:

This Act grants school districts and charter schools the ability to decide if they want to pay prevailing wage for school construction projects. This Act is in response to rising school construction costs. Between Fiscal Year 2023 and Fiscal Year 2024 school districts and charter schools stated they experienced \$260,163,873 in market pressure inflation and asked the State to support a share of that, specifically \$175,331,704. This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Volume:Chapter: ⓘ

N/A

Advisory Number:

N/A

Fiscal Note/Fee Impact:

Not Required

Effective Date:

Takes effect upon being signed into law

Sunset Date:

N/A

Bill Text

Original Text:

[View HTML \(/json/BillDetail/GenerateHtmlDocument?](#)

[legislationId=140889&legislationTypeId=1&docTypeId=2&legislationName=HB296\)](#)

[View PDF \(/json/BillDetail/GeneratePdfDocument?](#)

[legislationId=140889&legislationTypeId=1&docTypeId=2&legislationName=HB296\)](#)

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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details
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No Records Available

Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable
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No Records Available

Roll Calls

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
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No Records Available

Actions History

Date	Action
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1/24/24 Introduced and Assigned to Administration Committee in House

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SPONSOR: Rep. Shupe & Sen. Buckson
Reps. Hilovsky, Morris, Yearick; Sens. Hocker, Lawson,
Wilson

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 296

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO PREVAILING WAGE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 6960, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6960. Prevailing wage requirements.

(a)(1) The ~~Except as provided under paragraph (a)(3) of this section, the~~ specifications for every contract or aggregate of contracts relating to a public works project in excess of \$500,000 for new construction (including painting and decorating) or \$45,000 for alteration, repair, renovation, rehabilitation, demolition or reconstruction (including painting and decorating of buildings or works) to which this State or any subdivision thereof is a party and for which the State appropriated any part of the funds and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Delaware Department of Labor, Division of Industrial Affairs, to be prevailing in the county in which the work is to be performed. As of January 1, 2016, the Delaware Department of Labor, Division of Industrial Affairs shall establish the prevailing wage for each respective craft or class of laborers and mechanics at the same rates established in collective bargaining agreements between labor organizations and their employers, or when collective bargaining agreement rates do not prevail, that govern work of a similar nature and similar crafts or classes of laborers and mechanics for the county where the public works contract will be performed if that particular labor organization's collective bargaining rate prevailed and they participated in the survey, for that particular trade or craft in that particular county for 4 consecutive years. When collective bargaining rates do not apply, the prevailing wage shall be the highest rate of the 4 years. If the agreed rate of pay is designated to be the craft's collective bargaining agreement, the annual rate adjustment will be determined by the collective bargaining agreement rate for each craft and county, each year. When collective bargaining rates do not prevail, the annual rate adjustment shall be the Consumer Price Index-Construction. If the prevailing wage cannot be reasonably and fairly determined in any locality because no such agreements exists or the collective bargaining rate has not prevailed for 4 consecutive years the Department shall use the prevailing

wage as established by the Department's annual prevailing wage survey. There will be a 1-time challenge of the prevailing wage rate per cycle as in the Department regulations.

(2) For each respective craft or class of laborers or mechanics, the craft or class whose collectively bargained wages as of January 1, 2015, for that particular labor organization's collective bargaining rate prevailed for that particular trade or craft in that particular county is the prevailing wage rate and whose rate has prevailed for 4 of the last 5 years, or will prevail in the future for 4 consecutive years, shall have their collective bargaining agreement adopted as the prevailing wage rate negotiated by industry standards between workers and employers and the raise be determined by the collective bargaining agreement rate as of September 1 for that craft, county, and year.

(3) This section does not apply to a school district or charter school.

(4) All other provisions of this law are to remain unchanged.

SYNOPSIS

This Act grants school districts and charter schools the ability to decide if they want to pay prevailing wage for school construction projects.

This Act is in response to rising school construction costs. Between Fiscal Year 2023 and Fiscal Year 2024 school districts and charter schools stated they experienced \$260,163,873 in market pressure inflation and asked the State to support a share of that, specifically \$175,331,704.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

TAB 27

Delaware General Assembly (/)



House Bill 275

152nd General Assembly (Present)

Bill Progress

Current Status:

House Administration 12/14/23

What happens next?

Committee Hearing takes place within twelve legislative days.

Bill Details

Introduced on:

12/14/23

Primary Sponsor:

Morrison (<https://housedems.delaware.gov/members/house-district-27>)

Additional Sponsor(s):

Sen. Sturgeon (<https://senatedems.delaware.gov/members/senate-district-4>), S. McBride (<https://senatedems.delaware.gov/members/senate-district-1>)

Reps. Baumbach (<https://housedems.delaware.gov/members/house-district-23>), Neal (<https://housedems.delaware.gov/members/house-district-13>), Heffernan (<https://housedems.delaware.gov/members/house-district-6>), Romer (<https://housedems.delaware.gov/members/house-district-25>)

Co-Sponsor(s):

Sen. Hoffner (<https://senatedems.delaware.gov/members/senate-district-14>)
Reps. Bush (<https://housedems.delaware.gov/members/house-district-29>), Harris (<https://housedems.delaware.gov/members/house-district-32>), K. Johnson (<https://housedems.delaware.gov/members/house-district-5>), Lambert (<https://housedems.delaware.gov/members/house-district-7>), Lynn (<https://housedems.delaware.gov/members/house-district-31>), Minor-Brown (<https://housedems.delaware.gov/members/house-district-17>), Osienski (<https://housedems.delaware.gov/members/house-district-24>), Parker Selby (<https://housedems.delaware.gov/members/house-district-20>), Phillips (<https://housedems.delaware.gov/members/house-district-18>), Wilson-Anton (<https://housedems.delaware.gov/members/house-district-26>)

Long Title:

AN ACT TO AMEND TITLE 6, TITLE 11, TITLE 18, TITLE 19, AND TITLE 25 OF THE DELAWARE CODE RELATING TO THE DEFINITION OF SEXUAL ORIENTATION.

Original Synopsis:

This Act updates the definition of "sexual orientation" throughout the Delaware Code by adding asexuality and pansexuality. Asexuality refers to individuals with little to no sexual attraction to other individuals, although asexual individuals may desire emotionally intimate relationships with other individuals. Pansexuality refers to individuals who are attracted sexually or romantically, or both, to another individual regardless of that individual's sex or gender identity. This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Volume:Chapter:

N/A

Advisory Number:

N/A

Fiscal Note/Fee Impact:

Not Required

Effective Date:

Takes effect upon being signed into law

Sunset Date:

N/A

Bill Text**Original Text:**

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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details
No Records Available				

Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable
No Records Available					

Roll Calls

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
No Records Available								

Actions History

Date	Action
12/14/23	Introduced and Assigned to Administration Committee in House

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Reps. Bush, Harris, K. Johnson, Lambert, Lynn, Minor-
Brown, Osienski, Parker Selby, Phillips, Wilson-Anton;
Sen. Hoffner

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 275

AN ACT TO AMEND TITLE 6, TITLE 11, TITLE 18, TITLE 19, AND TITLE 25 OF THE DELAWARE CODE
RELATING TO THE DEFINITION OF SEXUAL ORIENTATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 4502, Title 6 of the Delaware Code by making deletions as shown by strike through and
insertions as shown by underline as follows:

§ 4502. Definitions.

For purposes of this chapter:

(27) "Sexual orientation" includes heterosexuality, homosexuality, ~~or bisexuality.~~ bisexuality, asexuality, or
pansexuality.

Section 2. Amend § 4602, Title 6 of the Delaware Code by making deletions as shown by strike through and
insertions as shown by underline as follows:

§ 4602. Definitions.

~~As used in~~ For purposes of this chapter:

(26) "Sexual orientation" includes heterosexuality, homosexuality, ~~or bisexuality.~~ bisexuality, asexuality, or
pansexuality.

Section 3. Amend § 222, Title 11 of the Delaware Code by making deletions as shown by strike through and
insertions as shown by underline as follows:

§ 222. General definitions.

When used in this Criminal Code:

(32) "Sexual orientation" includes heterosexuality, ~~bisexuality, or homosexuality.~~ homosexuality, bisexuality,
asexuality, or pansexuality.

Section 4. Amend § 2304, Title 18 of the Delaware Code by making deletions as shown by strike through and
insertions as shown by underline as follows:

§ 2304. Unfair methods of competition and unfair or deceptive acts or practices defined.

The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(22) *Unfair discrimination in the value of insurance policies and premiums based on race, color, religion, sexual orientation, gender identity or national origin; penalty.* — a. It is an unlawful practice for any insurance company licensed to do business in this State to discriminate in any way because of the insured's race, color, religion, sexual orientation, gender identity, or national origin, or to make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, to include the writing of any policy or the application therefor, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of the insurance business, which discriminates in any way because of the insured's race, color, religion, sexual orientation, gender identity, or national origin or to classify or refer to any individual on the basis of race, color, religion, sexual orientation, gender identity, or national origin.

b. For purposes of this paragraph (22):

4. "Sexual orientation" includes heterosexuality, homosexuality, ~~or bisexuality~~, bisexuality,

asexuality, or pansexuality.

Section 5. Amend § 710, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 710. Definitions.

For the purposes of this subchapter:

(28) "Sexual orientation" includes heterosexuality, homosexuality, ~~or bisexuality~~, bisexuality, asexuality, or pansexuality.

Section 6. Amend § 5141, Title 25 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5141. Definitions.

~~The following words, terms and phrases, when used in this part, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~ For purposes of Part III of this title:

(34) "Sexual orientation" includes heterosexuality, homosexuality, ~~or bisexuality~~, bisexuality, asexuality, or pansexuality.

SYNOPSIS

This Act updates the definition of "sexual orientation" throughout the Delaware Code by adding asexuality and pansexuality. Asexuality refers to individuals with little to no sexual attraction to other individuals, although asexual individuals may desire emotionally intimate relationships with other individuals. Pansexuality refers to individuals who are attracted sexually or romantically, or both, to another individual regardless of that individual's sex or gender identity.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

TAB 28

Delaware General Assembly (/)



House Bill 258

152nd General Assembly (Present)

Bill Progress

Current Status:

House Labor 7/7/23

What happens next?

Committee Hearing takes place within twelve legislative days.

Bill Details

Introduced on:

7/7/23

Primary Sponsor:

Baumbach (<https://housedems.delaware.gov/members/house-district-23>)

Additional Sponsor(s):

Sen. Sturgeon (<https://senatedems.delaware.gov/members/senate-district-4>)

Co-Sponsor(s):

Sen. Walsh (<https://senatedems.delaware.gov/members/senate-district-9>)

Reps. Griffith (<https://housedems.delaware.gov/members/house-district-12>), K. Williams (<https://housedems.delaware.gov/members/house-district-19>)

Long Title:

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO DOMESTIC SERVICE EMPLOYEES.

Original Synopsis:

Section 1 of this Act removes domestic service workers from the definition of "employee" in Chapter 9, Title 19 of the Delaware Code pertaining to minimum wage. A domestic service worker who otherwise qualifies as an employee is entitled to a minimum wage under this Act. Section 2 of this Act creates Chapter 9A of Title 19 of the Delaware Code, provides definitions pertaining to domestic work employees, and specifies that such employees are entitled to overtime of at least one and a half times their regular pay for working time that exceeds 8 hours in one day or 40 hours in one week. Section 3 removes individuals who are employed in domestic work to the exception contained in Chapter 23, Title 19 of the Delaware Code pertaining to workers' compensation. A domestic service worker who otherwise qualifies as an employee rather than a contractor or other non-covered individual under Chapter 23, Title 19 of the Delaware Code is entitled to workers' compensation coverage under this Act.

Volume:Chapter: ?

N/A

Advisory Number:

N/A

Fiscal Note/Fee Impact:

Not Required

Effective Date:

Takes effect upon being signed into law

Sunset Date:

N/A

Bill Text

Original Text:

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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details
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Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable
No Records Available					

Roll Calls

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
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Actions History

Date	Action
7/7/23	Introduced and Assigned to Labor Committee in House

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SPONSOR: Rep. Baumbach & Sen. Sturgeon
Reps. Griffith, K. Williams; Sen. Walsh

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 258

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO DOMESTIC SERVICE EMPLOYEES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 901, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

As used in this chapter:

(1) "Department" means the Department of Labor or its authorized representatives.

(2) "Employ" means to suffer or permit to work.

(3) "Employee" includes any individual employed by an employer but shall not ~~include~~ include the following:

a. Any individual employed in ~~agriculture~~ agriculture.

~~b. Any individual employed in domestic service in or about a private home;~~

~~e.b.~~ Any individual employed in a bona fide executive, administrative or professional capacity, or as an outside commission paid salesperson, not route driver, who customarily performs services away from the individual's employer's premises taking orders for goods or ~~services~~ services.

~~d.c.~~ Any individual employed by the United ~~States~~ States.

~~e.d.~~ Any individual engaged in the activities of an educational, charitable, religious or nonprofit organization where the employment relationship does not in fact exist or where the services are rendered to such organization ~~gratuitously~~ gratuitously.

~~f.e.~~ Any individual employed in the catching, taking, propagating, harvesting, cultivating or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as an incident to or in conjunction with such fishing operations, including the going to and returning from work and loading and unloading when performed by any such ~~employee~~ employee.

~~g.f.~~ Any individual under the age of 18 participating in and employed as a junior counselor or counselor in training (CIT) by a nonprofit organization in a summer camp program.

h-g. Any inmate in the custody of the Department of Correction and any inmate on work release who participates in the Prison Industries programs or other programs sponsored for inmates by the Department of Correction pursuant to Chapter 65 of Title 11 or other applicable Delaware law, unless said inmate is employed by an employer other than the State or a political subdivision thereof.

Section 2. Amend Part I, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 9A. Domestic Service Workers.

§ 901A. Definition of terms.

(1) "Domestic work" means services of a household nature performed in or about a private home.

(2) "Domestic work employee" means an individual who performs domestic work. Domestic work employees may include, but are not limited to, individuals who perform live-in domestic work, companions, babysitters, cooks, waiters, butlers, valets, maids, housekeepers, nannies, nurses, janitors, laundresses, caretakers, handymen, gardeners, home health aides, personal care aides, and chauffeurs of automobiles for family use.

(3) "Employer" means as defined in § 901 of this title.

§ 902A. Overtime pay.

No employer may employ any domestic work employee in or about one or more private homes for a workweek longer than forty hours unless such employee receives compensation for any such employment in excess of eight hours in one workday or forty hours in one workweek at a rate not less than one and one-half times the regular rate at which the domestic work employee is employed.

Section 3. Amend § 2307, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 2307. Applicability — ~~Domestic servants and farm laborers.~~ Farm laborers.

~~(a) This chapter shall not apply to any person employed as a household worker in a private home or household who earns less than \$750 in cash in any 3-month period from a single private home or household and any person employed as a casual worker in a private home or household who earns less than \$750 in cash in any 3-month period from a single private home or household. [Repealed.]~~

SYNOPSIS

Section 1 of this Act removes domestic service workers from the definition of "employee" in Chapter 9, Title 19 of the Delaware Code pertaining to minimum wage. A domestic service worker who otherwise qualifies as an employee is entitled to a minimum wage under this Act.

Section 2 of this Act creates Chapter 9A of Title 19 of the Delaware Code, provides definitions pertaining to domestic work employees, and specifies that such employees are entitled to overtime of at least one and a half times their regular pay for working time that exceeds 8 hours in one day or 40 hours in one week.

Section 3 removes individuals who are employed in domestic work to the exception contained in Chapter 23, Title 19 of the Delaware Code pertaining to workers' compensation. A domestic service worker who otherwise qualifies as an employee rather than a contractor or other non-covered individual under Chapter 23, Title 19 of the Delaware Code is entitled to workers' compensation coverage under this Act.

TAB 29

Delaware General Assembly (/)



Senate Bill 181 152nd General Assembly (Present)

Bill Progress

Current Status:

Senate Labor 6/15/23

What happens next?

Awaiting consideration in Committee

Bill Details

Introduced on:

6/15/23

Primary Sponsor:

Walsh (<https://senatedems.delaware.gov/members/senate-district-9>)

Additional Sponsor(s):

Rep. Osienski (<https://housedems.delaware.gov/members/house-district-24>)

Co-Sponsor(s):

Sen. Hoffner (<https://senatedems.delaware.gov/members/senate-district-14>), Huxtable (<https://senatedems.delaware.gov/members/senate-district-6>)

Reps. Carson (<https://housedems.delaware.gov/members/house-district-28>), Parker Selby (<https://housedems.delaware.gov/members/house-district-20>)

Long Title:

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO THE DELAWARE CONTRACTOR REGISTRATION ACT.

Original Synopsis:

This Act provides that a contractor is jointly or severally liable for a violation of the Delaware Contractor Registration Act by a subcontractor.

Volume:Chapter: ?

N/A

Advisory Number:

N/A

Fiscal Note/Fee Impact:

Not Required

Effective Date:

Takes effect upon being signed into law

Sunset Date:

N/A

Bill Text

Original Text:

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Amendments

Amendment	Status	Introduction Date	Primary Sponsor	View Details
No Records Available				

Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable
No Records Available					

Roll Calls

Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
No Records Available								

Actions History

Date	Action
6/15/23	Introduced and Assigned to Labor Committee in Senate

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SPONSOR: Sen. Walsh & Rep. Osienski
Sens. Hoffner, Huxtable; Reps. Carson, Parker Selby

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 181

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO THE DELAWARE CONTRACTOR
REGISTRATION ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 3609, Title 19 of the Delaware Code by making deletions as shown by strike through and
insertions as shown by underline as follows:

§ 3609. Penalties.

(a) A knowing violation of this chapter is subject to a civil penalty of not less than \$5,000 and not more than
\$85,000 per violation.

(b) A violation that is not a knowing violation may be subject to a civil penalty of not more than \$1,000 per
violation.

(c) A contractor is jointly or severally liable for a violation of this chapter by a subcontractor. Joint or several
liability means 2 or more contractors are jointly or severally liable for the same violation, whether or not the amount of the
violation has been recovered against all or some of the contractors.

SYNOPSIS

This Act provides that a contractor is jointly or severally liable for a violation of the Delaware Contractor
Registration Act by a subcontractor.

Author: Senator Walsh

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TAB 31

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Authenticated PDF Version**1400 Division of Paid Leave****1401 Rules Defining and Regulating the Healthy Delaware Families Act, Family and Medical Leave Insurance Program and the Division of Paid Leave****1.0 Definitions**

The following words and terms, when used in this regulation, have the following meaning:

"Act" means the Healthy Delaware Families Act. 19 **Del.C.** Ch. 37.

"Application year" means the 12-month period of leave as defined in the Family Medical Leave Act ("FMLA") Regulations, 29 CFR 825.200(b).

"Average weekly wage" means the employee's gross earnings, whether salaried or hourly (prior to any payroll deductions or withholdings) for the prior 52 weeks divided by 52.

"Board" means Family and Medical Leave Insurance Appeal Board.

"Child" means "son or daughter" as defined in the FMLA Regulations, 29 CFR 825.

"Continuing treatment" means as defined in the FMLA, 29 CFR 825.102.

"Covered active duty" means duty during the deployment of the member with the Armed Forces to a foreign country; and duty during the deployment of a reserve member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in Section 101(a)(13)(B) of Title 10 of the United States Code. 10 USC §101(a)(13)(B).

"Covered individual" means an individual employed for at least 1,250 hours of service performed within the territory of the State of Delaware with the employer during the previous 12-month period.

"Department" means Department of Labor.

"Division" means Department of Labor, Division of Paid Leave.

"Employee" means an individual employed by an employer. For purposes of the Act, individuals primarily reporting for work at a worksite in this State are employees unless otherwise excluded. "Primarily" is defined as working at least 60% of an employee's work hours physically in Delaware each calendar quarter. Individuals primarily reporting for work at a worksite or telecommuting outside of this State are not considered employees under the Act unless the employer and employee elect in writing to reclassify them as such. Employee does not include those in business for themselves in a non-corporate form who offer services to the public as a sole proprietor or partner in a partnership. Notwithstanding, these individuals may "reclassify" to be considered employees to participate in the Paid Family and Medical Leave Insurance Program 19 **Del.C.** Ch. 37 ("PFML"). An "employee" under PFML does not include the following types of individuals:

- Federal government workers, railroad workers, and employees of Tribal Governments;
- State of Delaware employees in a casual/seasonal position covered under §5903(17)a. of Title 29; and
- Department of Education employees who are in a casual/seasonal position that would be covered under §5903(17)a. of Title 29, or in an equivalent casual/seasonal position with an entity covered by State employee benefits.

"Employer" means those who engage in commerce, or any industry or activity affecting commerce, anywhere within the State of Delaware as well as those acting, directly or indirectly, in the interest of a covered employer to any of the employees of the employer, subject to the limitations set forth in the Act. Employer also includes any successor in interest of the employer as defined by 29 CFR 825.107, an integrated employer as defined by 29 CFR 825.104(c)(2), and a joint employer where 2 or more businesses exercise some control over the work or working conditions of the employee. Joint employers may be separate and distinct entities with separate owners, managers, and facilities. For purposes of the PFML, the employer who actually pays the employee will be considered that individual's employer.

"Family and Medical Leave Act" or "FMLA" means the Family and Medical Leave Act of 1993, 2006 (29 USC §§2601-2654).

"Family caregiving" means those acts as set forth in the Act.

"Family member" means parent, child, and spouse, but it does not include siblings, parents-in-law, or any other relations not specified.

"Fund" means the Family and Medical Leave Insurance Account Fund created by the Act.

"Health care provider" means as defined under the FMLA 29 CFR 825.125.

"Inpatient care" means an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity as defined in 29 CFR 825.113(b) or any subsequent treatment in connection with the inpatient care.

"Line of coverage" means the different coverages for the 4 different types of leave that are authorized under the Act:

- Parental leave: Leave authorized which offers covered individuals time off in the event of the birth, adoption, or fostering of a child.
- Family caregiving leave: Leave authorized which offers covered individuals time off in the event of a serious health condition (illness or accident) of a child, spouse, or parent.
- Medical leave: Leave authorized which offers covered individuals time off in the event of a serious health condition (illness or accident) of the employee themselves.
- Qualified Exigencies: Leave authorized which offers covered individuals time off for qualified issues that arise in connection with a military deployment.

"Parent" means as defined under the FMLA, 29 U.S.C. §2611(7).

"Private plan" means a paid time off employee benefit to which the State of Delaware is not a party to the agreement, except in instances where the State of Delaware is the employer.

"Public plan" or "PFML" means the paid family and medical leave insurance program created by the Act.

"Qualifying exigency" means as defined under the FMLA, 29 CFR §825.126.

"Serious health condition" means as defined under the FMLA, including 29 CFR 825.113 and 29 CFR 825.113.

"Small business" means those who employ 9 or less employees working anywhere within the State for the parent leave benefit and means those who employ 24 or less employees working anywhere within the State for family caregiving and medical leave benefits.

"Spouse" means as defined under the FMLA, 29 CFR 825.102.

2.0 Relevant federal laws and regulations

2.1 Application year under FMLA. The employer has the right to choose which method of counting the 12-month period works best for its business. Whichever method is chosen by the employer must be

uniformly applied to all employees. Any change to an employer's selected application year must be made in accordance with 29 CFR 825.200. FMLA provides the 12-month period can be established in any of the following ways:

2.1.1 "Calendar year" is a 12-month period that runs from January 1 through December 31;

2.1.2 "Any fixed 12-months" is a 12-month period such as a fiscal year, a year starting on an employee's anniversary date, or a 12-month period required by state law;

2.1.3 "12-month period measured forward" is a 12-month period measured forward from the first date an employee takes family and medical leave. The next 12-month period would begin the first-time family and medical leave is taken after completion of the prior 12-month period; or

2.1.4 "A 'rolling' 12-month period measured backward" is 12-month period measured backward from the date an employee uses any family and medical leave. Under the "rolling" 12-month period, each time an employee takes family and medical leave, the remaining leave entitlement would be the balance of the 12 weeks which has not been used during the immediately preceding 12-months.

2.2 Spouses, children, and parents under FMLA

2.2.1 A spouse, under the FMLA, is a husband or wife as defined or recognized in the state where the individuals were married and includes persons in common law or same-sex marriage. Spouse also includes a husband or wife in a marriage that was validly entered into outside of the United States if the marriage could have occurred here in at least 1 State. 29 CFR 825.102.

2.2.2 A "son or daughter" under the FMLA is a biological, adopted, or foster child, a stepchild, a legal ward, or a child of person standing *in loco parentis* who is either:

2.2.2.1 Under 18 years of age; or

2.2.2.2 18 years of age or older and incapable of self-care because of a mental or physical disability at the time that leave under the FMLA is to commence.

2.2.3 A parent under the FMLA is the biological, adoptive, step, foster father or mother, or any other individual who stood *in loco parentis* to the employee when the employee was a son or daughter as defined by FMLA. This term does not include parents "in law".

2.2.3.1 "*In loco parentis*" includes those with day-to-day responsibilities to care for and financially support a child.

2.2.3.2 An employee is to provide sufficient information to make the employer aware of the *in loco parentis* relationship. A simple statement asserting the relationship, including the name of the child and a statement of the employee's *in loco parentis* relationship to the child may be sufficient.

2.3 Health care provider, serious health condition, and continuing treatment under FMLA

2.3.1 A health care provider under the FMLA includes:

2.3.1.1 A Doctor of Medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or

2.3.1.2 Any other person determined by the State to be capable of providing health care services. Others capable of providing health care services include only:

2.3.1.2.1 Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law;

2.3.1.2.2 Nurse practitioners, nurse-midwives, clinical social workers, and physician assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law;

2.3.1.2.3 Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employer that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement;

2.3.1.2.4 Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and

2.3.1.2.5 A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of the health care provider's practice as defined under that country's law.

2.3.1.3 The phrase "authorized to practice" as used in subsection 2.3 means that the provider must be authorized to diagnose and treat physical or mental health conditions by the state where they practice.

2.3.2 Serious health condition under the FMLA is an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.

2.3.2.1 Treatment does not include routine physical examinations, eye examinations, or dental examinations.

2.3.2.2 Ordinarily, unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for PFML. Conditions for which cosmetic treatments are administered (for example, most treatments for acne or plastic surgery) are not serious health conditions unless inpatient hospital care is required or unless complications develop. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of the FMLA regulation are met. Mental illness or allergies may be serious health conditions but only if all the conditions of 29 CFR 825.113 are met.

2.3.3 Continuing treatment by a health care provider under the FMLA includes incapacity and treatment; pregnancy and prenatal care; chronic conditions; permanent or long-term conditions; and conditions requiring multiple treatments. Treatment is an in-person visit to a health care provider. The first in-person treatment visit must take place within 7 days of the first day of incapacity. Whether additional treatment visits or a regimen of continuing treatment is necessary within the 30-day period shall be determined by the health care provider.

2.3.3.1 Permanent or long-term conditions include Alzheimer's, a severe stroke, or the terminal stages of a disease.

2.3.3.2 Absences attributable to incapacity qualify for leave even though the employee or the covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than 3 consecutive, full calendar days.

2.4 Employee hours, work location and job protection

2.4.1 For purposes of determining the service hours requirement, the legal standard under the FMLA is "those hours actually worked for the employer." Time not actually worked, whether paid leave or unpaid leave, including vacation, holidays, furlough, sick leave, leave under the FMLA, or other time off is not included. Per 29 CFR 825.110, whether the employee has worked the minimum 1,250 hours of service is determined by the principles of the Fair Labor Standards Act.

2.4.2 The determination of whether an employee's particular work hours or wages were earned in Delaware or outside of Delaware shall be determined according to whether the income that arose from those hours or wages was withheld from the employee's paycheck as in-state or out-of-state by the Delaware Department of Finance's rules and regulations.

2.4.3 Equivalent position under the FMLA is one that is virtually identical to the employee's former position in terms of pay, benefits and working conditions, including privileges, prerequisites, and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.

2.5 Integrated employer and successor in interest

2.5.1 An integrated employer exists where separate entities are deemed to be part of a single employer for purposes of FMLA, based upon the entire relationship between the entities viewed in its totality. Factors considered in determining an integrated employer include:

2.5.1.1 Common management;

2.5.1.2 Interrelation between operations;

2.5.1.3 Centralized control of labor relations; and

2.5.1.4 Degree of common ownership/financial control.

2.5.2 Successor in interest. The factors to consider when determining if an employer is a "successor in interest" are as follows:

2.5.2.1 Substantial continuity of the same business operations;

2.5.2.2 Use of the same plant;

2.5.2.3 Continuity of the work force;

2.5.2.4 Similarity of jobs and working conditions;

2.5.2.5 Similarity of supervisory personnel;

2.5.2.6 Similarity in machinery, equipment, and production methods;

2.5.2.7 Similarity of products or services; and

2.5.2.8 The ability of the predecessor to provide relief.

2.5.3 A successor in interest is determined by the totality of the circumstances, when considering the factors set forth in subsections 2.5.2.1 - 2.5.2.8. When an employer is a successor in interest, employees' entitlements are the same as if the employment by the predecessor and successor were continuous employment by a single employer.

2.6 Qualified exigency under FMLA

2.6.1 Qualified exigency is a separate line of coverage which has its own FMLA rules and regulations but is required under the Act to be combined with family caregiving leave in terms of eligibility and contributions. The Act combines coverage for both qualified exigencies and family caregiving leave into a single contribution rate, so both coverages must be provided by employers.

2.6.2 Qualified exigency leave under the FMLA occurs "while the employee's spouse, son, daughter, or parent is on covered active duty or call to covered active-duty status (or has been notified of an impending call or order to covered active duty)." FMLA regulations limits "active-duty status" for the sake of qualified exigency leave to deployment in a foreign country. FMLA further defines a "qualifying exigency" as:

2.6.2.1 Issues arising from the military member's short notice deployment (i.e., deployment within 7 or less days of notice). For a period of up to 7 days from the day the military member receives notice of deployment, an employee may take qualifying exigency leave to address any issue that arises from the short notice deployment;

2.6.2.2 Attending military events and related activities, such as official ceremonies, programs, events and informational briefings, or family support or assistance programs sponsored by the military, military service organizations, or the American Red Cross that are related to the member's deployment;

2.6.2.3 Certain childcare and related activities arising from the military member's covered active duty, including arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling in or transferring a child to a new school or day care facility. The employee taking FMLA qualifying exigency leave does not need to be related to the military member's child; however:

2.6.2.3.1 The military member must be the parent, spouse, son, or daughter of the employee taking FMLA leave; and

2.6.2.3.2 The child must be the child of the military member (including a child to whom the military member stands *in loco parentis*).

2.6.2.4 Certain activities arising from the military member's covered active duty related to care of the military member's parent who is incapable of self-care, such as arranging for alternative care, providing care on a non-routine, urgent, immediate need basis, admitting or transferring a parent to a new care facility, and attending certain meetings with staff at a care facility, such as meetings with hospice or social service providers. The employee taking FMLA qualifying exigency leave does not need to be related to the military member's parent; however:

2.6.2.4.1 The military member must be the parent, spouse, son, or daughter of the employee taking FMLA leave; and

2.6.2.4.2 The parent must be the parent of the military member (including an individual who stood *in loco parentis* to the military member when the member was a child).

2.6.2.5 Making or updating financial and legal arrangements to address a military member's absence while on covered active duty, including preparing and executing financial and healthcare powers of attorney, enrolling in the Defense Enrollment Eligibility Reporting System, or obtaining military identification cards;

2.6.2.6 Attending counseling for the employee, the military member, or the child of the military member when the need for that counseling arises from the covered active duty of the military member and is provided by someone other than a health care provider;

2.6.2.7 Taking up to 15 calendar days of leave to spend time with a military member who is on short-term, temporary Rest and Recuperation leave during deployment. The employee's leave for this reason must be taken while the military member is on Rest and Recuperation leave;

2.6.2.8 Certain post-deployment activities within 90 days of the end of the military member's covered active duty, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military, and addressing issues arising from the death of a military member, including attending the funeral; and

2.6.2.9 Any other event that the employee and employer agree is a qualifying exigency.

3.0 Eligibility for benefits; serious health condition; certification or documentation of leave

3.1 Employer exclusions. For purposes of the Act, the following are not considered employers and are excluded from coverage under the Act:

3.1.1 Anyone who employs less than 10 employees;

3.1.2 The Federal government; or

3.1.3 Employers that completely close their business for 30 consecutive days or more per year. To qualify under this exception, employers must not pay its employees during the annual closure, and the employer must not do any business with any client.

3.2 Employer eligibility and employee threshold number.

3.2.1 To be eligible under the Act, an employer must first employ the minimum number of employees who are subject to the provisions of the Act (the "threshold number") during the previous 12-month period. As contributions begin on January 1, 2025, the initial 12-month period to determine the employer's employee threshold number will be the 12-month period prior to the start of contributions. For parental leave, that threshold number is 10 employees. For family caregiving and medical leave, that threshold number is 25 employees. Employees subject to the provisions of the Act are those who meet or are reasonably expected to meet the requirements of a covered individual under the Act, being the 12-month employment period requirement and the 1,250 hours of service requirement during the previous 12-month period.

3.2.2 Employees who are covered by a waiver as set forth in subsection 6.8 of this regulation, signed by both the employer and employee, are excluded from this count towards the 10 or 25 employee threshold numbers. Employees who would normally be excluded from the count, as they are physically employed outside of Delaware, but who have signed a reclassification form, as set forth in subsection 6.15 of this regulation, with their employer, shall be included in this count towards the 10 or 25 employee threshold numbers.

3.3 Employers with fewer than 10 employees. If the number of employees working for an employer is below 10 for all of the previous 12-months (the "lookback period"), that employer shall not be subject to any of the provisions of the Act, unless they elect to "opt-in" to any of the lines of coverage as permitted by the provisions of the Act. Those employees on waivers are not included in this count, while those employees who have been reclassified are included in this count.

3.4 Employers with 10 to 24 employees. Employers that have 10 but fewer than 25 employees during the previous 12-months shall only be subject to the parental leave provisions of the Act.

3.4.1 This means that once an employer has 10 or more employees, they are required to provide parental leave coverage for at least the next 12-months, within 30 days after which the employer threshold count rose to 10 or more employees.

3.4.2 If more than 12 consecutive months pass and the employer continues to stay below 10 employees, the employer will no longer be required to provide parental leave coverage, effective the next pay period after they fall below 10 employees for 12 consecutive months.

3.4.3 If the employee count should thereafter rise to 10 or more (but fewer than 25) employees, the employer will once again be required to provide parental leave coverage for at least the next 12-months, within 30 days after which the employee count rose to 10 or more employees.

3.4.4 At any time while the employee count is between 10 and 24 employees, the employer may select to voluntarily "opt-in" to any of the other lines of coverage per the provisions of the Act.

3.4.5 Those employees with waivers are not included in this count towards either the 10 or 25 employee threshold numbers, while those employees who have been reclassified are included in this count.

3.4.6 If an employee is on leave, that leave will continue as approved, even if an employer's employee threshold count has decreased and ended an employer's obligation to provide a particular line of coverage. This applies to both continuous and reduced or intermittent leave approved prior to the change in the employee threshold count.

3.5 Employers with more than 24 employees. An employer with 25 or more employees during the previous 12-months shall be subject to the parental, family caregiving, medical leave, and qualified exigency leave provisions of the Act.

3.5.1 If the employee count should fall under 25 employees, the employer will still be required to provide all lines of coverage until the employee count remains below the 25 employee threshold for 12 consecutive months. On the 13th consecutive month, if the employer is still below the threshold, they will no longer be required to offer medical leave, family caregiving leave, or qualified exigency leave.

3.5.2 If the employee count should ever rise above 24 employees, the employer will once again be required to provide all lines of coverage for at least the next 12-months, within 30 days after which the employer threshold count rose above 24 employees.

3.5.3 Those employees on waivers are not included in this count towards the 25 employee threshold number, while those employees who have been reclassified are included in this count.

3.6 Employee notice. Whenever an employee gains or loses any coverage provided under the Act due to a change in the number of employees in the employer, the employer must provide notice to its employees within 30 days of the date of the change in coverage.

3.7 Continuation of waivers and reclassifications. If an employee and employer sign a waiver where the employee acknowledges that the terms of their employment do not anticipate them meeting the requirements for coverage, the waiver remains in effect regardless of any fluctuation in the employer's threshold account.

3.7.1 If an employee has signed a waiver to decline coverage, they will not need to sign a new waiver in the event that the employer should fall below 9 employees for more than 12-months, then rise back above 9 employees at some point thereafter.

3.7.2 If an employee and employer sign a reclassification form where the employee acknowledges that they should be included in this PFML insurance program despite the employee not being physically located in the State of Delaware, the reclassification remains in effect regardless of any fluctuation in the employer's threshold count. If an employee has signed a reclassification to accept coverage, they will not need to sign a new reclassification form if the employer should fall below 9 employees for more than 12-months, then rise back above 9 employees at some point thereafter.

3.8 Certification. A certification from a health care provider is sufficient if it contains all of the following:

3.8.1 Date on which the serious health condition began;

3.8.2 Probable duration of the serious health condition;

3.8.3 Appropriate medical facts known to the medical provider regarding the condition;

3.8.4 Statement that either:

3.8.4.1 The covered individual is needed to care for the family member who has a serious health condition, along with an estimate of the time the covered individual will need to care for the family member; or

3.8.4.2 The covered individual is unable to perform the functions of the covered individual's position due to their own serious health condition.

3.8.5 If leave is going to be taken intermittently or on a reduced leave schedule for planned medical treatment, the certification must include the dates on which the medical treatment is expected to be given and the duration of the medical treatment.

3.8.6 If leave is to be taken intermittently or on a reduced leave schedule by a covered individual to care for a family member who has a serious health condition, then the statement should include that the intermittent or reduced leave schedule is necessary for the care of the family member with the serious health condition or will assist in the family member's recovery and the expected duration and schedule of the intermittent or reduced leave.

3.8.7 If leave is going to be taken intermittently or on a reduced leave schedule for covered individual who has a serious health condition, the statement should include a determination that the intermittent or reduced leave schedule is medically necessary and the expected duration of intermittent or reduced leave.

3.8.8 This certification may also require any other information as the Division may determine. The employee is responsible for the cost of obtaining the initial certification form.

3.8.9 Validity of certification. Any reason to doubt the validity of a certification means the employer, or approved private plan administrator has credible, objective evidence that would reasonably support a belief to suspect, question or not trust the legitimacy or soundness of a certification of a serious health condition submitted on the behalf of a covered individual.

3.8.9.1 Health care provider opinions. If the employer or approved private plan reasonably believes the certification provided by the health care provider is invalid for the reasons set forth in subsection 3.8.9, then an employer or approved private plan can request, at its expense, a second opinion.

3.8.9.2 Should the second opinion differ from the first, the employer or approved private plan may request, from a health care provider mutually agreed upon by all parties, a third opinion, which shall also be at the expense of the employer or approved private plan.

3.8.9.3 Provisional leave when obtaining second or third opinion. Once a claim has been approved, leave and benefit payments will begin and will continue while any second or third opinion is being obtained.

3.9 Recertification standards. The standards to determine a reasonable basis for recertification may be governed by a collective bargaining agreement. If no collective bargaining agreement or provision in an agreement exists, the standard to determine a reasonable basis for recertification is objective, specific evidence of an event that brings the seriousness of the health issue into doubt.

3.9.1 This evidence shall be set forth in a sworn, notarized statement by those with direct knowledge of the event in question.

3.9.2 Only 1 recertification process can be requested or required every 30 days.

3.9.3 Employers shall process a recertification request through the Division's online portal, which will provide the necessary forms and notice of the request to the appropriate parties.

3.9.4 It is unreasonable for an employer to request a recertification prior to the expiration of the leave period set forth in the initial medical certification, unless the employer has a reasonable basis to do so, based upon objective, specific evidence of an event that brings the seriousness of the health issue into doubt.

3.10 Payment for recertification. Should any amount for recertification not be covered by a covered individual's health insurance, an employer or private plan is responsible for the cost of obtaining a recertification. As with all aspects of plan administration, the recertification process is subject to audits by the Division. If the Division determines that the employer routinely requires employees on approved leave to undergo the recertification process where it becomes a pattern of behavior, especially if the majority of those recertification processes reconfirm the justification for the employee's leave, the employer may be subject to either the job protections provisions or the retaliation provisions of the Act.

3.11 Documentation or self-certification. Documentation demonstrating the nature and extent of the relationship between the covered individual and the family member with the serious health condition may include self-certification by the applicant on a form in the Division's online portal, as the Division may determine.

3.12 Penalty. If a willfully false claim is made, the individual shall be disqualified from receiving benefits for 3 years and the Division shall seek repayment of any benefits improperly paid from the Fund and may seek an additional penalty of up to 50% of overpayment and a penalty as permitted by the Act. The case may also be referred to the Delaware Department of Justice for investigation and possible prosecution.

4.0 Duration of benefits

4.1 Maximum allowable benefit period. Depending on the type of leave, covered individuals can only take a maximum of 12 weeks of PFML in any application year. If a covered individual in the public plan should elect to return to work earlier than the date provided for in the approved leave schedule, the covered individual's benefit payments will end 1 week after the payment period in which they returned.

4.1.1 Parental leave. The maximum duration of approved parental leave is 12 weeks in any application year.

4.1.1.1 The Act provides employers with 10 to 24 employees with the option to temporarily reduce the parental leave maximum benefit duration from 12 weeks to a minimum of 6 weeks for claims submitted prior to January 1, 2031 (the first 5 years after the start of benefits on January 1, 2026). To qualify for this option to temporarily reduce the maximum benefit duration, employers must notify the Division of their intention to do so by January 1, 2024.

4.1.1.2 If prior to January 1, 2031, employers who have availed themselves of this reduced parental leave option decide to offer the full 12 week benefit for parental leave claims, the employer may do so by notifying the Division.

4.1.1.3 Employers who chose to reduce maximum parental leave benefits must inform their employees, in writing, of this decision no later than December 1, 2024.

4.1.1.4 If the Division receives a complaint that the changes were discriminatory or done in a discriminatory manner, the Division shall investigate the claims as it would any other claim of discrimination.

4.1.2 Family caregiving leave. If the covered individual is on approved family caregiving leave and that person dies, the reason for that leave has ended. For the public plan, the Division may continue paying the benefit to the covered individual until 7 days after the death of the family member or the previously approved end date for the leave. The covered individual must notify the employer and the Division via the Division's online portal of the date of death of this family member for whom the covered individual was caring within 72 hours of the person's passing. The job protection provisions of the Act also remain in effect as they would during any other period of approved leave.

4.1.3 Family and medical leave look-back period. The maximum aggregate number of weeks during which benefits are payable for family caregiving leave and medical leave is 6 weeks in any 24-month period. For all new claim applications, a look-back period will be required. The Division determines the look-back period is the 24-month period that ends on the first day of requested leave.

4.2 Parent or multiple family members. The Division may limit aggregate family caregiving leave requested when multiple employees who are family members work for the same employer and are requesting leave for the same qualifying event. The Division hereby determines those limits are that both employees who are family members may take the full amount of leave that they would otherwise be allowed, but the employees may not take leave concurrently, unless the employer decides that all similarly situated covered individuals shall be allowed to take leave concurrently.

4.2.1 If an employer decides that 1 set of covered individuals in the same or an equivalent situation can take leave concurrently, then all similar requests for that employer thereafter shall be allowed to be done concurrently.

4.2.2 When 2 parents working for the same employer are both entitled to parental, family caregiving or qualified exigency leave for the same qualifying event, the employer may limit the aggregate number of weeks of leave to which they may be entitled to 12 weeks during any 12-month period.

4.3 Receipt of a completed application. An employer, insurance carrier, or third-party administrator has 5 business days after the receipt of a completed application to approve or deny the claim for benefits.

4.3.1 The date of an employer, insurance carrier, or third party administrator's receipt of the completed application is not counted. The 5 business day time period does not begin until an employer, insurance carrier, or third party administrator is in receipt of all necessary documentation, including the required documentation from the relevant healthcare provider. Upon review of the claim, if the employer, insurance carrier, or third party administrator finds the information required to make a decision is missing or materially incorrect, then the employer, insurance carrier, or third party administrator will notify the employee that the claim is incomplete and additional information is needed. The 5 business day time frame will again begin upon receipt of an updated claim application from the employee.

4.3.2 For the PFML public plan, once all of the required information has been uploaded to the Division's online portal by the appropriate parties, the software system will provide an advisory notice to the employer regarding the approval or denial of a claim.

4.3.3 The final decision to approve or deny a claim, however, will be made by an employer, insurance carrier, or third party administrator based on the totality of the circumstances known to the employer, insurance carrier, or third party administrator.

4.3.4 To approve a public plan claim, an employer must do so through the Division's online electronic system. If not already in the system, all supporting documentation relied upon by the employer to adjudicate the claim must be uploaded into the Division's online electronic system, or its insurance carrier's administrative system, within 3 business days of a claim being approved under the Act.

4.3.5 Upon approving an application, the employer, insurance carrier or third-party administrator, shall provide the claimant with written notice of this determination. If approval was for public plan benefits done within the Division's online portal, the covered individual will automatically receive the required notification electronically through an electronic mail system to the email address provided.

4.3.6 If approval is done by an insurance carrier or third-party administrator, written notice shall be provided through an electronic mail system, if the covered individual's email address is known to the insurance carrier/administrator, or via regular mail.

4.3.7 The written approved notice referred to above shall include at least the following information:

4.3.7.1 The amount of the benefit payment;

4.3.7.2 The party or parties to whom the benefit payment instrument is made payable;

4.3.7.3 The party to whom the benefit payment instrument was forwarded;

4.3.7.4 The address of the party to whom the benefit payment instrument was forwarded;

and

4.3.7.5 The date benefit payments began and expected date they will end, if known.

4.3.8 If a claim is denied, an employer shall notify the employee and provide the reason for denial.

4.3.8.1 If the denial was for public plan benefits submitted through the Division's online portal, the covered individual will automatically receive the required notification electronically through an electronic mail system to the email address provided by the employee.

4.3.8.2 If the denial is through an insurance carrier or third-party administrator, written notice shall be provided through an electronic mail system, if the covered individual's email address is known to the insurance carrier/administrator, or via regular mail.

4.3.8.3 The employer must ensure that all documents relating to the claim application and decision have been uploaded into the online portal. This requirement applies to all employers, regardless of whether they are utilizing a private insurance plan, self-insure, or third party administrator, to meet the requirements under the Act.

4.3.8.4 The notice shall inform the employee of the right to appeal the decision and shall provide the employee with instructions on how to file an appeal.

5.0 Amount of benefits

5.1 Standard benefit calculation. Weekly benefit payments shall be calculated by the online portal system on the following basis:

5.1.1 Average weekly wage. This is the "starting point" for the calculation. Take the average gross (before any deductions for taxes, premiums, or any other cause) weekly wages for the 52 weeks prior to the submission of the claims application. If the employee is salaried, divide the employee's gross wages by 52 weeks to obtain the average weekly wage.

5.1.2 Benefit percentage, minimum and maximum. Multiply the average weekly wage by the benefit percentage, which is currently 0.8 (80%).

5.1.2.1 If the result of the benefit calculation is below \$100, then the weekly benefit for that individual will instead be the average of the employee's weekly wages.

5.1.2.2 If the result of the benefit calculation is above the current maximum benefit, the weekly benefit amount shall be limited to the current maximum benefit.

5.1.3 Preservation of the Fund balance. At the Secretary of Labor's discretion, the benefit percentage may be reduced to a level sufficient to maintain the solvency of the Fund on the effective date specified by the Secretary of Labor. The reduced benefit percentage will then stay in effect for the next 12-months. This will only be done to protect the integrity of the Fund. Notice will be provided by the Division to all employers in the Fund at least 90 days before any change in the benefit percentage occurs. Employers shall provide notice to their employees within 30 days from the date the employers were notified by the Division of this change.

5.2 Inflation indexing the maximum benefit amount. Beginning on January 1, 2028, the maximum weekly benefit amount may be increased in line with the inflation rate of the prior year. Before December of 2027 (for the 2028 calendar year) and prior to every December thereafter, the Division will issue the maximum benefit amount that shall be used for the applicable calendar year. Unless the Act states otherwise, the inflation measure to be used in the Division's calculation will be the Consumer Price Index for all Urban Consumers, Philadelphia-Camden-Wilmington Metropolitan area, published by the Bureau of Labor Statistics of the United States Department of Labor. The maximum benefit for each calendar year shall be rounded to the nearest \$5.00 increment.

5.3 The Division has determined that benefits shall be calculated for a covered individual with more than 1 source of wages as follows:

5.3.1 If an employee is working multiple jobs at the time of the qualifying event, each employer, insurance carrier, or third-party administrator must review the employee's claims application based on the information about that particular job.

5.3.2 The applicable private or public plans will pay an approved claim as a separate claim.

5.3.3 If the State is the payer on multiple claims, it may combine the benefit payments into a single, bi-weekly payment, instead of multiple checks per payment cycle. However, the program requires that employees may not receive combined income-replacement benefits in excess of the employee's most recent wages.

5.4 If the employer has not submitted the required wage information, then the Division will accept the required wage information (12 months of wages and proof of hours requirement preceding the submission of an application for benefits) from the employee. The wage information must be uploaded into the Division's online portal supported by the appropriate documentation to verify the employee's missing weekly wages, subject to the Division's approval.

5.5 FICA Limits. The required contribution is subject to the FICA limits each year as established by the Internal Revenue Service. Once the employee's wage reaches the FICA limit in any given year, the employer and employee's required contributions will cease for that particular year and will restart at the next calendar year.

5.6 Delaware wages. As the State of Delaware has no jurisdiction over wages earned outside of its boundaries and has no authority to require contributions on wages earned outside of the State, PFML insurance program benefits will be calculated only on the basis of wages earned within the State of Delaware.

6.0 Contributions

6.1 If the employer is participating in the PFML public plan, the Division requires that contributions be paid at least quarterly, or more frequently if and as the Division regulates, based on the relevant information received during the period of coverage. Payroll contributions will be assessed against wages paid on or after January 1, 2025. Payroll contributions are assessed against individual employee's wages

on the first day of employment or on the first day that the employer's employee count rises above the threshold number or when the employee's waiver is revoked or when a reclassification form is submitted.

6.1.1 Payroll contributions for an employer shall begin the first day of the payroll period after the employer adds an employee and rise above the threshold number for 1 or all of the mandated lines of coverage under the Act.

6.1.2 Payroll contributions shall cease being assessed against individual employees on the day that they either sign a waiver or a declassification form, when the employee's wages reach the FICA limit, or when they are no longer employed by the employer.

6.1.3 Payroll contributions for the employees of an employer shall end on the first day of the payroll period after an employer is no longer required to provide 1 or all mandated lines of coverage due to a sustained drop in the employee count or on the day that any eligible employer should permanently end operations.

6.1.4 Payroll contributions shall be submitted to the Division on a quarterly basis on the 30th day after the end of each quarter (or, if the 30th day after the end of a particular quarter falls on a weekend or holiday, the first business day after the 30th day). At its discretion, the Division may provide up to a 6 business-day grace period during which contributions can be submitted after the due date without late fees or penalties or both.

6.2 In remitting contributions to the fund, an employer or authorized intermediary acting on the employer's behalf shall provide contributions in any of the following forms and manners: for each employee, the employer shall provide the employee's name and unique identifying information (DOB, SSN, etc.) and the employee's previous quarter's weekly wages and hours worked, with each week's data broken out separately by the particular week, by in-state versus out-of-state hours and wages, and listed separately for each employee. The determination of whether an employee's particular hours or wages were earned in Delaware or outside of Delaware shall be determined in accordance with the Delaware Department of Finance's rules or regulations.

6.2.1 Form of the contribution, Contributions shall be paid quarterly and in a lump sum that combines the employee and employer shares for each of the 13 weeks in each quarter, accompanied by the information specified in subsection 6.3 of this regulation.

6.2.2 An employer must select its employer/employee contribution split if it differs from the Act's default of 50/50. Employers may contribute more than 50% of the total contribution, but not less than 50%. If an employer decides to contribute a variation of 50/50, the employer must properly notice the employer's variation to all affected employees and file the change with the Division through its online portal system.

6.2.2.1 Any change in an employee/employer contribution split, either increase or decrease, shall be noticed to the Division and to all employees of the employer by December 15 of the year prior to the January 1 effective date the following year.

6.2.2.2 Employers may have different employee/employer contribution splits for different classes of employees, if:

6.2.2.2.1 The split applies equally to all that employee classes' lines of coverage; and

6.2.2.2.2 The employee classes are defined without reference to protected classes.

6.2.2.3 All rules regarding employee/employer contribution splits shall also apply to voluntary plans where an employer opts into PFML coverage.

6.3 Manner of Contribution. Funds and information must be submitted to the Division in electronic form; cash and checks will not be accepted. The Division may elect to allow employers to submit contributions by credit card, with an additional fee set by the Division for the convenience. In addition to monies, all employers shall be required to provide the following information, itemized by employee:

6.3.1 Employer name and employer identification number or individual tax identification number (for sole proprietorships);

6.3.2 Employee name & unique identifier (social security number, individual tax identification number, permanent resident card, or visa foil number);

6.3.3 Weekly hours (broken into Delaware vs. non-Delaware hours, if appropriate);

6.3.4 Weekly wages (broken into Delaware vs. non-Delaware wages, if appropriate).

6.3.5 Contributions and benefits shall be calculated according to the employee's FICA wages. The Division will perform these calculations on the data provided quarterly by the employer, which is recorded and tracked by the Division.

6.3.6 For full-time salaried employees for whom the employer does not track hours, the Division will accept 37.5 hours (or 40 hours, if appropriate), in place of an employee's actual hours worked.

6.3.7 If the Employer's system (or payroll servicing company's system) does not have this information available at a weekly level, but rather only on the basis of a payroll period, then the Division will accept the above information based on an estimated weekly basis.

6.3.7.1 For firms that send out paychecks once every other week, the Division will accept the payroll period information divided by 2 (so that both weeks have the same numbers for all 4 datapoints).

6.3.7.2 For monthly paychecks, the Division will accept estimated weekly information by dividing the monthly wages and hours by the number of days in the pay period, then multiplying it by 7 to arrive at an estimated weekly number for hours and wages (or by some other formula, as appropriate).

6.4 The contribution rates for medical, parental, and family caregiving leave benefits for the years 2025, 2026, and 2027 and each rating period thereafter shall be tracked separately by the Division.

6.5 Current rates are in effect for 12-months and will automatically renew at the same rates as stated in the Act. Beginning in 2027, if there is a new rate, the new rate will be changed by modification to this regulation. Employers will be provided at least 90 days' notice of any change in the payroll contributions rates for this program.

6.6 Employers can only withhold contributions from employees' paychecks at the time that the contribution was assessed. If the employer makes an error which would call for additional "back contributions" to be collected from the employee, once the paycheck that would have been reduced by the error has been issued, the employer cannot require the employee to pay their "share" of the employer's error.

6.7 The Division determines that an unpaid contribution as of the date it is due and payable shall accrue interest at a rate of 1.5% per month regardless of the total amount owed, from and after the due date until payment plus the accrued interest is received by the Fund. The employer is responsible for paying both any unpaid contribution amounts and any interest accrued to the Division as the employer is responsible for collecting the employee's contribution share, if any, from the employee.

6.8 Opting to file a waiver. If both the employer and the employee agree that the employee was not hired to work on a permanent basis or not expected to work at least 25 hours per week or both, so that they reasonably don't expect the employee to be covered by the Act, the employee and employer can apply to waive coverage.

6.8.1 To do so, the employer and employee must both sign the waiver of coverage form provided by the Division and return it to the Division via the Division's online electronic system.

6.8.2 The waiver will be accepted by the Division unless the Division has a substantial and verifiable reason compelling them to not accept the waiver, including reasonable proof that the employee is not temporary or will be expected to work over 25 hours per week.

6.8.3 Any waivers that were signed by the employee under any type of duress, intimidation, or coercion, whether explicit or implied, will be considered null and void. If evidence is obtained to indicate that a waiver was signed under any condition indicating that it was not voluntarily chosen by the employee, the case may be referred to the Delaware Department of Justice for consideration.

6.9 An employer's notice to an employee that the employee's work schedule or length of employment, on a permanent or temporary basis, does not meet the requirements for eligibility for PFML benefits, must be provided in writing within the most recent quarter of when that situation occurs.

6.9.1 The employer must then file either a waiver form or a reclassification form, as the situation dictates, with the Division through its online portal.

6.9.2 In its discretion, the Division may waive coverages and the employee's portion of the payroll contribution for prior quarters, if the employer's failure to submit the waiver on a timely basis was due to clerical error. The employer's contribution shall not be waived for prior quarters.

6.9.3 Waivers will be effective in the quarter they are received.

6.10 Waiver. Should a waiver not be submitted to the Division, be unsigned, contain a clerical error or otherwise, the Division may accept a sworn statement from the employer or employee, as appropriate, as explanation and support for a missed deadline, missed payment, or other clerical error.

6.11 Revocation of improper waivers. Coverage under the Act is not optional. Waivers cannot be used to "decline coverage" for employees who would otherwise be eligible for coverage and who reasonably expect they should be covered due to either the term of the employee's employment or the number of hours that they work.

6.11.1 Employers are required to provide accurate quarterly information on all employees, including those employees who are on waivers.

6.11.2 If those records show that the employee has worked for more than 12-months for the employer and that they have satisfied the 1,250 hours of service requirement during the preceding 12-months, the waiver will be revoked by the Division.

6.11.3 Upon revocation of a waiver, the employer will be responsible for the required payroll contributions for past relevant quarters.

6.11.4 Employees will become eligible for benefits beginning at the moment of the revocation of the waiver.

6.12 Fines for improper waivers. If the Division determines that the employer or the employee or both signed the waiver in a willfully false manner or if the employee worked substantially more than the minimum 1,250 hours in the previous 12-months, the employer may be fined up to \$1,000 for each instance and the employee may be required to pay an amount equal to what they ought to have paid in payroll deductions. If it is determined that the employee was forced to sign a waiver by the employer or any other individual or entity, the employee will not be subject to any fines or penalties under this rule.

6.13 Voluntary return to plan after waiver. After an employer voluntarily submits to the Division a form cancelling an employee's waiver and reinstating an employee's eligibility for the public plan, deductions from wages will begin. Upon submitting a voluntary return to plan after waiver form, the employee will thereafter be subject to the payroll contribution if the contribution is being shared by the employer and employee.

6.14 Form of waiver. The Division has adopted a form for each a waiver and a revocation of waiver which shall be available on the Division's website and the online portal.

6.15 Reclassification and Declassification Forms. Employers may reclassify an employee who primarily reports for work at a worksite in another state as working primarily in Delaware through the duration of that individual's tenure at the out-of-state worksite.

6.15.1 The purpose of this reclassification provision is to either:

6.15.1.1 Continue to provide coverage for those Delaware-based employees who are temporarily assigned to an out-of-state location; or

6.15.1.2 To make eligible for coverage those employees who are telecommuting or who work on a continuing basis out-of-state when they would normally be located in the State of Delaware.

6.15.2 A reclassification shall be memorialized through a reclassification form signed by both the employee and employer stating that, while the employee is not physically located in the State of Delaware, the employer and employee voluntarily agree to designate the employee as a Delaware-based employee for the purposes of paying payroll contributions into the PFML insurance program and to be eligible to apply for paid leave under the terms of this program.

6.15.3 Once an employee is reclassified in this manner, they will remain so until both the employee and employer voluntarily sign a form to declassify the employee. Upon declassification, the employer and employee will no longer be subject to the provisions of the PFML insurance program with respect to that particular employee.

6.15.4 Any reclassification or declassification forms that were signed by the employee under any type of duress, intimidation, or coercion, whether explicit or implied, will be considered null and void. If evidence is obtained to indicate that a reclassification or declassification form was signed under any condition indicating that it was not freely chosen by the employee, the case may be referred to the Delaware Department of Justice for consideration.

6.15.5 While an employee is covered under a reclassification form, they will be included in the employer's count towards the various thresholds for coverage (either more than 10 or more than 25 employees).

6.15.6 Once an employee and employer have signed a declassification form, the employee will no longer be counted towards any of the employer's threshold numbers.

6.16 While an employee is on leave, no contribution payments are required under the public plan.

7.0 Reduced leave schedule and intermittent leave

7.1 Family and medical leave benefits for intermittent or reduced leave schedules must first be determined by the employer in conjunction with the health care provider certification and recommendation and, if approved per the terms, then prorated by employer. The requirements to approve an application for benefits under a reduced leave schedule are the same as exist for leave periods of longer durations and may only be taken when medically necessary. For purposes of this section only, employers are permitted to request recertification once every 90 days, without the need to establish doubt regarding the seriousness of the covered individual's health condition.

7.2 Minimum duration of a leave on reduced schedule. If employee requests leave on a reduced schedule, the shortest leave that can be approved will be 1 full workday. Reduced leave will not be allowed in increments less than a full day under the PFML program.

7.2.1 Leave under the FMLA Regulations, 29 CFR 825.205, may be taken in periods of whole weeks, single days, hours, and, in some cases, even less than an hour. Nothing in the PFML Act changes the protections of the FMLA.

7.2.2 The employer must allow employees to use FMLA leave in the smallest increment of time the employer allows for the use of other forms of leave, as long as it is no less than 1 hour.

7.3 Prior notice. An employee should provide the employer with at least 30 days advance notice of a need for leave under the PFML program. If 30 days' notice is not practicable, because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable. "As soon as practicable" means as soon as both possible and practical, considering all the facts and circumstances in the individual case. When an employee becomes aware of a need for Delaware PFML leave less than 30 days in advance, it should be practicable for the employee to provide notice of the need for leave either the same day the employee knows they need leave or the next business day. In all cases, however, the determination of when an employee could practicably provide notice must consider the employee's individual facts and circumstances. When the need for leave is foreseeable at least 30 days in advance and an employee fails to give timely advance notice with no reasonable excuse, the employer, insurance carrier, or third party administrator may delay coverage until 30 days after the date the employee provides notice. For the employer, insurance carrier, or third party administrator to delay the start of leave, the need for leave and the approximate date leave would be taken must have been clearly foreseeable to the employee 30 days in advance of the leave.

8.0 Leave and employment protection

8.1 A covered individual shall continue to be provided with and receive health care benefits that they would have had if they had not taken leave. However, to continue to receive health care benefits during the period of approved leave, the covered individual must continue to pay their share of the health care insurance premium to the employer. Failure by the covered individual to pay their share of the medical premium may result in the loss of coverage under the employee's group healthcare plan.

8.1.1 The Division will not withhold these amounts from the covered individual's benefit payments.

8.1.2 The covered individual is entirely responsible for paying their share of the medical premium as applicable.

8.2 At no time will the Division be responsible for sending a covered individual's share of the medical premium to an employer for employer's payment to the insurer.

8.3 For purposes of the Act, "willful violation" means whether the employer knows or shows reckless disregard for whether the conduct violates the PFML. If an employer acts in good faith and with due diligence, those factors weigh against a finding of willfulness.

9.0 Retaliatory personnel actions prohibited [Reserved.]

10.0 Coordination of benefits [Reserved.]

11.0 Notice

11.1 Nothing in this regulation shall create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, the Department, or the Division, against an employer based upon a failure to serve the notice, or defective service of the notice. Nothing in this Section 11.0 shall establish a defense for any party to any cause of action based upon a failure by the employer to serve the notice, or by the defective service of the notice. However, employees ought to notify the Division if they believe their rights under this program are being violated and the Division will investigate the situation and take all appropriate actions, if necessary.

11.2 [Reserved].

11.3 [Reserved].

12.0 Employee Claims, employer adjudication, and Divisional review

12.1 Employee claims process. If an employee in the public plan wishes to make a claim, they must use the claims application form provided on the Division's online portal. The claim form will include the following information:

12.1.1 Employee name;

12.1.2 Employee address;

12.1.3 Employee social security number or other identifying number;

12.1.4 Employee date of birth;

12.1.5 Employee email;

12.1.6 Employee telephone number;

12.1.7 Employer name;

12.1.8 Employee work location;

12.1.9 Employee job title and department;

12.1.10 Employee number (if any);

12.1.11 Type of leave requested by employee;

12.1.12 Whether the employee has more than 1 employer;

12.1.13 Whether employee eligible for any other type of benefits, including workers compensation and short-term disability; and

12.1.14 Any additional information as set forth in the claims application that the Division shall create.

12.2 The employee must complete and submit the form on the online system. The Division will not accept physical copies or scans of physical copies that have been completed by hand, manual typewriters, or similar devices.

12.3 The online portal will distribute the claims application form to the employee, employer, and Division.

12.4 Designated employee assistant in case of employee incapacitation or inability to manage claim. If an employee is unable to complete the necessary paperwork due to the serious illness that is the qualifying event under the medical leave provisions described in the Act, the employee's inability to access or operate the online system, or the employee otherwise needs assistance, then either a family member or another individual who does not directly benefit from the decisions they make or actions they

take in this role may, through a signed, sworn assistant designation form created by the Division, be appointed to assist the employee.

12.4.1 While acting as the designated assistant, the individual is in fiduciary relationship with the employee.

12.4.2 If the designated assistant breaches their fiduciary duties, they will be subject to any applicable civil or criminal penalties. The Division, the employee, or the employee's estate shall have the authority to pursue any claims arising from the assistant's actions or decisions, through any appropriate legal means.

12.4.3 The employee may revoke this designation of an assistant at any time.

12.4.4 Only 1 assistant can be appointed at any 1 time, with the individual named in the chronologically applicable filing being recognized for that specific time period.

12.4.5 The online portal will distribute the assistant designation form and, if applicable, the revocation of assistant status form to both the employer and Division.

12.4.6 If requested, the Division shall provide reasonable assistance to all employees covered by the PFML insurance program and the employee's designated assistants to properly complete all online forms relating to this insurance program.

12.5 Employer's responsibilities, adjudication, protections.

12.5.1 Employers, insurance carriers, or third-party administrators shall adjudicate the employee's claims application form to the best of their ability, per the "reasonable person" standard."

12.5.2 The employer shall be expected to make a determination as to whether the claims should be paid, the amount of weekly benefit due to the employee, and the length of time the benefit should be paid out, according to the terms and provisions of the Act and based on the information provided by the employee and certified by the appropriate healthcare provider, in a manner and to the extent that a reasonable person would be expected to do so.

12.5.3 The employer shall not be required to make any substantive claims-related decision based on information not in the employer's possession. However, they must make a good faith effort to assist the employee in the gathering of all the required information from either the employee or the designated assistant to make an informed and reasonable decision on the eligibility and payment or ineligibility of the request.

12.5.4 Employers are required to provide reasonable assistance to their employees or the employee's designated assistants to properly complete all the online forms created by this Division or a private plan administrator for this insurance program, including claims forms and claims review forms. This requirement for employers to assist in the completion of these online forms is subject to the anti-retaliation provisions of the Act.

12.5.5 If the health care provider does not return a completed certification of serious health condition within 20 days, the system will notify the employer and employee that the certification is still outstanding. The employee has the responsibility of following up with the health care provider. If, after 30 days from the day the claim form was submitted, the health care provider has still not returned a completed certification via the online portal, the system will mark the claim as "Denied Due to Lack of Certification". This claim shall automatically be revived if the certification is received within 60 days after it has been marked "Denied Due to Lack of Certification" without requiring the submission of a new claims form.

12.5.6 For the PFML public plan, once all of the required information has been uploaded to the Division's online portal by the appropriate parties, the software system will provide an advisory notice to the employer regarding the approval or denial of a claim. The employer then has 5 business days to adjudicate the claim.

12.5.6.1 The length of the approved leave shall be based primarily on the recommendation of the appropriate healthcare provider, as supported by disability industry standards and best practices in this area.

12.5.6.2 After the claim determination is made, the employer will then have 3 business days to communicate their decision via the online portal system to the employee (or the employee's designated assistant) and the Division.

12.6 Division's responsibility to pay approved benefit. The Division shall be required to make the first payment of benefits to a covered individual within 30 days after the employer has notified the Division of

the approved claim, with subsequent payments being required to be made every 2 weeks thereafter until the approved length of the employee's leave expires.

12.6.1 New requests for (or requested changes to) benefits payments shall be due 2 days before the day on which the Division pays out biweekly claim payments, to allow for claims to be reconciled.

12.6.2 A new benefit payment or an adjustment to a previously approved claim will be released by the Division between 2 and 16 days after the approval or adjustment is granted by the employer.

12.7 Employee's right to request a claims review by the Division. After an employer who is covered by the public plan or a self-insured plan issues its decision on a claim for paid family and medical leave benefits, the employee or the employee's designated assistant may request, within 60 days of issuance of employer's decision, that the Division review the claim.

12.7.1 This request for the Division to review the claim must be made via a claims review request form that shall be created by the Division and made available on the Division's online portal.

12.7.2 Neither the employer nor the Division shall be required to respond to either a handwritten (or manually typed) form submitted by any means other than the online portal or to a handwritten (or manually typed) form that has been scanned and then submitted through the Division's online portal system, as neither of those methods are acceptable and will not update the Division's electronic claims database/records system.

12.7.3 Both the Division and the employer are required to provide, without any prejudice or fear of retaliation, reasonable assistance so that the employee or the employee's designated assistant can complete, *inter alia*, the claims review request form.

12.7.4 After the claims review request form has been completed and properly transmitted to the Division, the Division shall undertake a review of the employer's claims adjudication decision-making process.

12.7.5 For first level appeals under private plans, employees have the right to request reconsideration of a denial or other decision by an insurance carrier or third-party administrator ("TPA") directly with that entity. If the insurance carrier or TPA upholds the decision, the employee may pursue an appeal with the Division.

12.8 Division claims review determination. If a claims review request form is filed by the employee, the Division shall review the claim and issue a determination, in writing, to the parties within 10 business days of receipt of the review request, either upholding or reversing the employer's initial determination regarding the claim.

12.8.1 If, after submissions from the parties, the Division determines an employer violated 1 or more provisions of the Act, or a covered individual received an overpayment or violated 1 or more provisions of the Act, the Division shall notify the appropriate party in writing, both by regular mail and by electronic means, within 5 days of its initial determination.

12.8.2 The notice shall provide, at a minimum: the date of the notice, amounts owed, civil penalties (if any) under the Act if a violation is determined, and an opportunity to appeal the Division's initial determination to the Board.

13.0 Family and Medical Leave Insurance Appeal Board

13.1 A covered individual or employer may appeal to the Board within 30 days from the date of the Division's or the private plan's internal review determination. At all times, a covered individual, employer, or witness are required to keep all information related to the claim or appeal confidential and take reasonable steps to ensure confidentiality.

13.1.1 A covered individual may request, when filing an appeal, a disposition of the matter on the record without a hearing and may submit additional documents or evidence without appearing at a hearing. The Board shall provide notice within 5 days of the filing of an appeal that a date has been scheduled for disposition of the matter on the record, subject to the Board's schedule.

13.1.2 If a hearing is requested, the Board shall provide notice within 5 days of the filing of an appeal that a date has been set for an appeal hearing subject to the Board's schedule.

13.1.2.1 All requests for continuances or postponements are within the discretion of the Board.

13.1.2.2 Any request for a continuance or postponement of any hearing must be made via the online portal no later than 12:00 p.m. the day prior to the hearing. All parties will be automatically notified of this request. The request shall state the reasons for which the continuance or postponement is requested.

13.1.2.3 All cases that have been continued or postponed shall be rescheduled at the discretion of the Board.

13.1.3 An appealing party may withdraw its appeal at any time prior to the hearing. All requests for withdrawal must be made via the Division's online portal.

13.1.4 Failure to appear at a scheduled hearing may result in an unfavorable decision. If the party who filed the appeal does not participate, the Board may proceed to make its decision on the record or may dismiss the appeal on the ground of nonappearance unless it appears that there is good cause for a postponement.

13.1.5 The Board shall make a decision on the appeal within 60 days of the hearing or disposition date.

13.1.6 Hearings are scheduled to last 30 minutes from the time the presiding member calls the case. The Board may extend the length of the hearing at its discretion.

13.2 The Board will have access to all of the Division's records regarding the matter under appeal. Either party may submit additional, relevant information that they wish the Board to consider. Any supplemental information shall be provided to the Board and all parties at least 5 business days before the hearing date. No party may submit more than 40 pages of additional documentation. All additional documentation must be filed electronically in the Division's online portal and all parties will be notified when additional documentation has been filed by either party.

13.3 A party may request subpoenas to compel a witness to appear at a hearing.

13.3.1 This request shall be in writing and shall be received by the Board at least 10 business days prior to the hearing or disposition date via the Division's online portal.

13.3.2 The issuance of subpoenas shall be at the sole discretion of the Board and its attorney.

13.3.3 A subpoena for a witness must state the full name and address of the person to be subpoenaed. The Board limits witness subpoena requests to 2 per party. Upon a showing of extenuating circumstances and the filing of a motion by a party, the Board may, at its discretion, permit additional subpoenas to be issued.

13.3.4 Service of a subpoena for a witness to appear at a hearing shall be made by personally delivering the subpoena to the witness. Service shall be made at least 4 days prior to the hearing or disposition date.

13.3.5 The parties must submit proof of service of the subpoena.

13.4 Discovery is generally not permitted. Any request for discovery is at the discretion of the Board.

13.5 A party may represent themselves, may utilize a designated assistant as described in this regulation, or may be represented by an attorney admitted to practice law in the State of Delaware. The designated assistant cannot be an employee of the Division of Paid Leave. A corporation or other artificial entity must be represented by an authorized owner, officer, or employee of the entity, or by an attorney admitted to practice law in the State of Delaware. Attorneys-at-law should enter an appearance with the Board's clerk prior to the hearing.

13.6 A series of individual requests for an appeal hearing may be consolidated into a single group hearing when the sole issue involved is one of State or federal law, regulation, or policy. The individual appellant in a group hearing will be permitted to present his case or be represented by an authorized representative. If, at any stage in a group hearing, the Board finds that any individual appeal involved questions of fact unique to an individual appellant, that appeal shall be severed and heard individually.

13.7 Board hearings shall be held electronically, with all parties or witnesses participating by telephone, video, or other electronic means. At the discretion of the Board, a hearing may be held in person, upon a showing of good cause.

13.8 Any party to a Board proceeding may file and serve a motion at any time unless otherwise provided. A written motion shall contain a concise statement of the facts and law which support it and a specific request for relief. Any case dispositive motion, including a motion to dismiss, should be filed and served as soon as possible prior to the start of the hearing. A written reply to a case dispositive motion

may be filed. All motions shall be filed via the Division's online portal and all parties will be notified when this filing occurs.

13.9 The Board may permit oral motions and oral or written responses to be made during a hearing.

13.10 At least 5 business days before the hearing, the parties shall exchange proposed exhibits and witness summaries with copies to the Division; all documents shall be submitted electronically by 5:00 p.m. at least 5 business days prior to the hearing. Anything submitted after 5:00 p.m. shall be considered received the next business day. No documents or evidence will be accepted in physical form.

13.11 The Board has the authority to restrict the issues raised at the hearing to those raised in the appeal or any response to it.

13.12 A verbatim record of the proceedings before the Board will be made and archived electronically. The record will not be transcribed unless and until an appeal of the Board's decision is taken to the Superior Court of the State of Delaware.

13.13 All testimony before the Board shall be taken under oath or affirmation. Evidence, which is irrelevant, immaterial, or unduly repetitive may be excluded. Delaware's rules of evidence shall not apply to any documents submitted or testimony given.

13.14 After rendering an appeal decision, if the full Board concurs, it may suggest amendments to the Paid Family Medical Leave program regulations to the Secretary of Labor.

13.15 The Division of Paid Leave will provide reasonable administrative assistance to all parties involved in an appeal to ensure online forms are properly completed and supplement documentation is uploaded.

14.0 Family and Medical Leave Insurance Program

14.1 The Division shall establish and make available on the Division's online portal system, reasonable procedures, and forms for filing claims for benefits and other required or requested processes and shall specify the supporting documentation necessary to support a claim for benefits, including any documentation required from a health care provider for proof of a serious health condition.

14.2 The Division shall provide employers and employees with online tools, exportable reports, and forms to submit applications for leave, whether full-time, reduced, or intermittent, and to track the amount of leave taken and still available to be taken under the rules of the PFML insurance program. The Division shall provide all covered individuals or the covered individuals' designated assistants and employers with any necessary assistance completing all the Division's online forms.

14.3 In order to provide an incentive to healthcare providers to encourage the timely completion and submission of a claimant's medical certification documentation, the following schedule of payments to the healthcare providers shall be used for claims submitted through the public plan:

Medical certification documentation is completed in full and submitted to the Division via the online portal system within 10 calendar days of the Division's request:	\$20 per claim
Medical certification documentation is completed in full and submitted to the Division via the online portal system within 11-30 business days of the Division's request:	\$10 per claim

14.4 Healthcare providers may not charge employees or the employee's designated assistants a fee for the completion of this form.

15.0 Federal and state income tax

15.1 The Division shall withhold state and federal income tax from authorized benefit payments. The withholding shall be made at a single flat percentage, that will be applied to all benefits paid out during a calendar year. In December of each year and beginning in 2025, the withholding percent for the following year for federal income taxes shall be established based on the average federal effective income tax rate for the prior year, as calculated in accordance with the data series entitled "Average Federal Tax Rates,

by Tax Source, Individual Income Taxes" published by the Congressional Budget Office's annual report entitled "The Distribution of Household Income," which was published in November 2022, for information gathered in 2019. State income taxes shall be withheld at a flat rate of 3.0% for all claimants.

15.2 By the end of January, the Division shall send each claimant an accounting of the benefits amounts paid out and the federal and state taxes withheld during the previous calendar year. The accounting shall be presented and follow the rules of IRS form 1099G and shall be sent both by regular mail to the last known address of the claimant and in electronic form, with a record also sent to the federal IRS and the Delaware Division of Revenue by the format and means that those agencies require.

16.0 Family and Medical Leave Insurance Account Fund; establishment and investment

16.1 For purposes of the Act and this regulation, the Division may use expenditures from the Fund to pay for the costs associated with administering the provisions of the Act. Administrative costs are those reasonable costs incurred and necessary for the Division to perform any of the functions under the Act or this regulation.

16.2 The deposits into and withdrawals out of the Family and Medical Leave Insurance Account Fund ("Fund") shall be tracked, accounted for, and verified on a calendar day basis.

16.3 The Office of the State Treasurer shall manage and invest the monies in the Fund as directed by the Act. The Division shall follow Government Accounting Standards Board ("GASB") rules in recording the transactions of the Division's account.

17.0 Private plans

17.1 An employer that elects to provide benefits through a private plan issued and administered by an admitted insurance carrier must ensure that the private plan being purchased has been filed with and approved by the Delaware Department of Insurance (the "DOI"). The Division will provide additional approvals that employers who "opt-out" (in whole or in part, as a hybrid plan) will need to meet in order to satisfy their obligations through a private plan.

17.1.1 Insured private plans. An employer must notify the Division through its online portal of employer's decision to opt-out of the state's public plan. Employers must indicate that they intend to purchase a DOI- approved PFML insurance plan, which may include coverage through a captive insurance plan approved by the Delaware DOI, for 1 or all of the required lines of coverage. As part of the process to provide notice to the Division of a decision to opt-out of the public plan, employers must submit proof via the online portal of the declaration page from a DOI-approved insurance plan as well as a copy of the policy.

17.1.2 For employers seeking approval for 2025, the opt-out form will be available on the Division's online portal from September 1, 2024 through December 1, 2024, at which point the opt-out window will close. Failure to obtain coverage or to provide a copy of the required documents via the online portal or both will mean that employer cannot opt-out and must, instead, enroll in the public plan and remain in that until an approved private or self-insured plan, if any, is in place.

17.1.3 For all subsequent years, employers may seek to opt-out of the public plan or renew the approved private plan from October 1 through December 1, to be effective January 1 of the following calendar year, subject to plan approval by DOI and submission of the required documentation noted above via the Division's online portal by December 1. Failure to do so will, by default, deny approval of the plan and trigger enrollment in the public plan, which shall remain in effect until an approved private or self-insured plan, if any, is in place.

17.2 An employer shall impose no additional conditions or restrictions on the use of covered leave beyond those explicitly authorized by the Act or this regulation issued under that Act.

17.2.1 Required data. Within 30 days after the end of each quarter, employers will be required to send the Division updated weekly enrollment, wages, and hours information for each employee covered under the plan.

17.2.2 This information must be provided to the Division through the Division's online portal according to the technical specifications required at the time of submission.

17.3 The requirements for the private plan and internal administrative review process when a final determination is issued are subject to the appeal process consistent with the Act. That process is set forth in Section 13.0.

17.4 Self-Insured plans. An employer must notify the Division through its online portal of employer's decision to opt-out of the state's public plan by providing a private plan through a form of self-insurance.

17.4.1 Self-Insured groups must have at least 100 covered individuals in the plan at all times. Applicant groups with fewer than 100 covered individuals will have their applications declined. In addition, any employer seeking to self-insure must provide a surety bond.

17.4.2 For 2025 only, the opt-out form will be available on the Division's online portal from September 1, 2024 through December 1, 2024, at which point the opt-out window will close. By December 1, 2024, the employer must submit via the Division's online portal, the required surety bond in addition to any other required documentation. For all subsequent years, employers may seek approval to opt-out of the public plan or seek renewal of the self-insured plan during the period of October 1 to December 1, to be effective January 1 of the following calendar year. The employer must also submit the required bond by December 1 if not already on file with the Division.

17.4.3 If any self-insured employer falls below 100 employees at the time of the annual renewal, they will be decertified, will be required to enroll in the public plan immediately and remain in that plan until an approved private plan, if any, is in place. In addition, the employer must pay to the Fund, within 30 days from the date of decertification, an amount equal to the contributions that would have been due for the previous 12-months had the employer been a participant in the public plan.

17.4.4 The Division may waive this requirement of a minimum of 100 employees if the employer is able to demonstrate that it has the administrative capacity to adequately manage a self-insured plan. Each quarter, all self-insured plans must send the Division updated weekly enrollment, wages, and hour information for all the employees covered under the plan. This information should be provided to the Division through the Division's online portal according to the technical specifications required at the time of the submission.

17.4.5 Surety bonds. Employers that intend to provide the mandated coverage through a self-insured plan for 1 or more of the required lines of coverage must also provide the Division a surety bond.

17.4.5.1 The surety bond shall be issued by a surety company authorized to do business in Delaware, in an amount equal to 1 year of total contributions that would have been required to be paid by the employer had they participated in the public plan.

17.4.5.2 This bond shall be in the "continuous until canceled" bond on a form approved by the Division.

17.4.5.3 The contribution amount shall be based on the actual wages, adjusted for inflation by the "Consumer Price Index for All Urban Consumers, Philadelphia-Camden-Wilmington Metropolitan Area" that is published by the Bureau of Labor Statistics of the United States Department of Labor, earned by the employees in the 12-month period ending on October 31 prior to the December 31 due date of the plan approval.

17.4.5.4 Any change to the amount of the surety bond based on that calculation must be provided to the Division by December 1 of each year. Failure to provide the initial surety bond and documents supporting the initial bond calculation and any subsequent calculations supported by a signed statement by either a qualified actuary (having met the American Academy of Actuaries' qualification standards) or licensed Certified Public Accountant ("CPA") will result in the employer self-insured plan being terminating effective December 31 and entering the public plan as of January 1, the following year.

17.4.5.5 The State of Delaware shall be named as the obligee of the surety bond and the employer shall be named the principal.

17.4.5.6 The State of Delaware is the only entity that has standing to pursue a claim against the bond if the employer fails to meet its obligations under these provisions.

17.4.5.7 The bond shall include a statement that the bonding company must give 90 days' notice of its intent to terminate liability to the employer/principal and the Division, except that if a bonding company is terminating liability because it is issuing a replacement bond, it may do so without providing prior notice. In the event of a replacement bond, the surety company and the employer must notify the Division no later than 10 days after its effective date.

17.4.5.8 The employer must maintain surety bond coverage for the plan approval period granted by the Division. The Division will review the bond annually, in connection with the employer's annual opt-out renewal, to ensure that the amount of the bond corresponds with the wage requirements described in this regulation. Employers must apply to renew their approval no later than December 1 of each year. At that time, the employer must provide the Division with any documentation necessary to review the bond amount. If the Division determines the bond amount must increase, the employer must

do so to renew its self-insured plan approval. If the Division determines that the bond amount exceeds the actual wage calculation set forth above, then the employer may reduce the bond amount to correspond to the actual wages.

17.4.5.9 In addition to the bond review documents, the employer will provide the Division with any changes to the plan's Schedule of Benefits and report the current number of covered individuals under employer's self-insured plan. If the plan no longer "meets or exceeds" the provisions of the Act or if there are less than 100 eligible employees covered under the plan, the self-insured plan will not be allowed to renew for the next calendar year. Upon decertification of a self-insured plan, an employer must pay to the Fund, within 30 days from the date of decertification, an amount equal to the contributions that would have been due for the previous year had the employer been a participant in the public plan. The employer is then required to join the public plan beginning January 1 and remain in that plan until an approved private plan, if any, is in place.

17.4.5.10 The Division may execute on and collect the bond amount if the employer's self-insured plan approval is terminated, decertified, or withdrawn, voluntarily or involuntarily and the employer fails to pay, within the subsequent 30 day period, an amount equal to the contributions that would have been due for the previous year had the employer been a participant in the public plan. Upon execution, the amount to be collected by the Division will be the entire bond amount, less any funds received from the employer within the 30 day period after the effective date of the termination of the self-insured plan approval. Funds so received by the Division from the employer or surety or both will be deposited into the Fund and, if applicable, will be credited toward the employer's contribution obligation per this section.

17.4.6 Self-insured plan design. For any line of coverage that the employer provides under a self-insured plan, the terms and conditions of the plan must at least meet the requirements provided in the Act.

17.4.6.1 Beginning with the opening of the Division's online portal system on September 1, 2024, for self-insured plans not applying for grandfathering, the employer must provide a copy of the self-insured plan's schedule of benefits, terms, and conditions to the Division for its review and approval. The last day to submit this information and the required surety bond is December 1, 2024 for the initial benefit period beginning January 1, 2026.

17.4.6.2 The Division must either approve or decline the employer's application for self-insurance by December 31, 2024.

17.4.6.3 If the Division does not approve the employer's application for self-insurance, the employer must instead comply with the requirements of the Act.

17.4.6.4 For all subsequent years, employers seeking to self-insure must submit all of the required information to the Division no later than December 1 of the year prior to the start of the plan on the following January 1.

17.4.6.5 The Division will accept a sworn self-certification or attestation listing specific, detailed components of the plan design, signed by the employer, as initial proof that the plan design meets or exceeds the public plan requirements.

17.4.6.5.1 At its discretion, the Division will verify the attestation by comparing the submitted plan documents to the requirements of the Act.

17.4.6.5.2 If, at any time, the Division finds that the employer's self-insured plan does not meet or exceed the requirements of the Act, the Division shall have the power to immediately decertify the employer's self-insured plan, triggering the payment of contributions to the Fund by employer within 30 days from the date of decertification, an amount equal to the contributions that would have been due for the previous year had the employer been a participant in the public plan.

17.4.6.5.3 If the employer fails to make the required payment, the Division shall execute and collect on the employer's surety bond.

17.4.6.5.4 The employer will also be immediately added to the public plan with no lapse in coverage for the employers or employees and will remain on the public plan until an approved private voluntary plan, if any, is in place.

17.4.6.6 Any proposed substantive changes to any of the provisions of an approved self-insured plan must be approved by the Division in writing and must be equal or exceed the requirements of the public plan. The Division will review any requested change within 30 days from the receipt of the request via the Division's online portal. Changes to the plan can only go into effect at the beginning of each calendar year unless the Division approves a different effective date.

17.4.7 Self-insured plan claims fund. The Division reserves the right to audit the financials of any employer applying to administer a self-insured plan to verify that it has the financial ability to pay all expected claims. Employers with a self-insured private plan must have the financial ability to pay at least 6 maximum dollar claims per 100 employees per year, and each employer with a self-insured plan must prefund a claims reserve account in a separate dedicated bank account with at least 1/2 of that amount held in reserve to pay future claims. An employer must provide proof of the appropriately funded bank account as part of the opt-out process. This requirement does not apply to self-insured plans that have been approved under the grandfathering provisions of the Act.

17.4.8 Audits and claim review of self-insured plans. Employees and designated assistants shall be able to avail themselves of the claims review process as set forth in the Act.

17.4.8.1 The Division has the right to audit any and all claims or enrollment decisions made by the employer in any self-insured plan. The employer must make available to the Division any requested documentation, file, or system regarding any issue in connection with an audit of the self-insured plan within 24 hours of the Division's written request.

17.4.8.2 Self-insured plans that are found, either through the claims review or auditing process, to have an excessive number of mis-adjudicated claims, either due to error or arising from a purposeful attempt to deny claims for reasons including punitive, discriminatory, or financial, will be referred by the Division to the Delaware Attorney General for, at the Department of Justice's discretion, civil or criminal prosecution or both.

17.5 Grandfathering plans

17.5.1 Private paid time off benefit plans that employers had in place before May 10, 2022, the enactment date of the Act, and that are deemed by the Division to be comparable to the state's public plan, will be allowed to continue until December 31, 2029, 5 years from the start of contributions being collected under PFML. Employer paid time off benefit plans that are deemed comparable will qualify regardless of the risk transference provisions including any of the following arrangements:

17.5.1.1 Private insurance contracts through an admitted carrier including captives;

17.5.1.2 Self-insured plans regardless of whether they are backed by a surety bond; or

17.5.1.3 "Employee handbook plans" which continue paying an employee's wages in the same manner as it had been paying prior to the leave, while the employee is on a period of leave, that is defined by the contractual relationship between employer and the employee, usually as described in an employee handbook.

17.5.2 Grandfathering application. To qualify for the 5 year grandfathering period for existing plans, employers must apply through the Division's online portal by the January 1, 2024 deadline. The online portal will open for grandfathering requests on October 1, 2023. If an employer does not apply by January 1, 2024 through the portal, grandfathering an existing plan shall no longer be an option. If the employer's application is declined, the employer will be subjected to the normal requirements of the Act. If the employer's application is approved, the employer and the employees will not be subject to the normal provisions of the Act until December 31, 2029.

17.5.3 Definition of a comparable plan. For an employer's paid time off benefit plan to be considered in existence as of May 10, 2022, the employer must submit a sworn affidavit via the Division's online portal stating that the plan was in writing and had been available to all of the employer's employees on May 10, 2022. The employer's paid time off benefit plan may qualify even if does not provide all 4 lines of coverage included in the state's public plan, as long as the plan provides comparable coverage on 1 or more of the lines of coverage. Only that line of coverage that is comparable will be grandfathered. Each application must include a copy of the employer's paid time off benefit plan for consideration by the Division.

17.5.4 To be considered "comparable," the employees covered under the existing plan must not be required to contribute more to the employer's existing plan than is required under the public plan. All employer paid time off benefit plans that offer benefits that equal or exceed the state's public plan in 3 specific components of the plan design will qualify under the grandfathering provision of the Act. An employer's paid time off benefit plan will be considered "comparable" if the plan's 3 main plan components (benefit percent, maximum benefit, and benefit duration) are within 10% of the equivalent state plan components.

17.5.4.1 Benefit percent: Unless the Act states otherwise, this benefit percent provides for 80% of the employee's wages, 10% less than 80% is 72%.

17.5.4.2 Maximum benefit: Unless the Act states otherwise, it provides for a maximum weekly benefit of \$900 and 10% less than \$900 is \$810.

17.5.4.3 Benefit duration: For parental leave, the public plan allows up to 12 weeks of leave. If an employer's paid time off benefit plan allows 10.8 or more weeks (or up to 54 days) of parental leave, then it will be considered comparable. For all other types of leave, the public plan allows for 6 weeks of leave. If the employer's paid time off benefit plan allows for all employees to receive up to 5.4 weeks, or 27 days, of leave or more, then it will be considered comparable.

17.5.5 An employer's paid time off benefit plan must be within 10% of all 3 of these plan components for the employer's grandfathering application to be accepted by the Division. If the application is not accepted, the employer must enroll in the state's public plan and remain in that plan until an approved private or self-insured plan, if any, is in place.

17.5.6 In addition, for an employer's existing paternal leave plan to be comparable to the public plan for the paternal leave line of coverage, an employer's paid time off benefit plan must:

17.5.6.1 Provide coverage for birth, adoption, and fostering of a child; and

17.5.6.2 Offer these benefits regardless of the parent's sex or gender or marital status.

17.5.7 Any grandfathered plan cannot be altered unless the change improves the benefit offered to employees and is approved by the Division.

17.6 Short term disability plans. Employers with short term disability ("STD") plans that meet the 10% test are eligible to be grandfathered.

17.6.1 Once a plan is approved, all of the provisions of that plan continue as prior to May 10, 2022, including any applicable elimination period.

17.6.2 Due to the number of STD plans in force in the State of Delaware prior to the enactment of the Act and the number of which may be successfully grandfathered by employers, there is a significant potential for them to adversely impact the solvency of the Fund. The Division will undertake an analysis of the impact of STD plan grandfathering on the future solvency of the Fund based upon the actual experience of the medical leave line of coverage in each of the initial years of the program. If the grandfathered STD plans are determined to be a threat to the solvency of the Fund, the grandfathered status will be terminated earlier than normally provided by the Act.

17.7 Notice and appeal process

17.7.1 If the Division terminates, decertifies, or withdraws approval of an employer's private plan, the Division will notify the employer, with an effective date 15 days after the date of the notice. Prior to the effective date, the employer may file appeal this decision, on an appeal form found on the Division's online portal to the Board. The decision of the Board is final unless appealed to the Superior Court within 30 days.

17.7.2 The employer is required to provide notice as set forth in the Act to all employees affected by any changes in the plan.

18.0 Small business opt-in

18.1 Voluntary. For all small businesses, the ability to opt-in to provide parental leave benefits, medical leave benefits, or family caregiving leave benefits, any or all of them, is voluntary. However, once an employer opts-in, compliance with the terms of the program is mandatory and applies to all covered individuals.

18.2 Notice to the Division. For all opt-ins and opt-outs of any of the benefits, a small business must provide notice to the Division and its employees on the appropriate forms to be created by the Division and available on the Division's online portal system. All forms and processes shall take place in or by electronic means as established by the Division. Notwithstanding any provision to the contrary, employers who opt-in or opt-out of the State's public plan will do so on an effective date at the beginning of each calendar year. If the employer decides to opt-in to the public plan, they must do so for at least 3 years. If the employer then decides to leave the State's public plan, they must provide the employees with at least 12 months advanced notice before exiting the plan, which exit shall take effect not sooner than the end of the initial 3 year period.

19.0 Powers of the Division

19.1 Forms. The Division shall create forms, including a form for a complaint, that may be filed with the Division for a claim of non-compliance with the Act. The forms will be on the Division's website. All forms shall be produced and be made available on the Division's online portal and website in both English and Spanish. The website itself shall be available in both languages, as well. If additional languages achieve a level of common usage where it is primarily spoken by 5.0% of the state's population (as established by the U.S. Census Bureau), those languages shall also be used in all forms and communications, in addition to English and Spanish. All material released by the Division shall be formatted so that it can machine read for purposes of improved accessibility for people with disabilities.

19.2 Audit. In addition to those powers stated in the Act, the Division may audit employers for compliance with the Act, as the Division determines. The Division reserves the right to examine any adjudicated claims application, whether they have been approved or denied, on a random basis. Admitted private insurers with approved PFML coverage plans shall provide the Division access to their records systems, along with the training and assistance necessary to understand the materials therein, so that the Division may audit claims adjudicated by those insurers. The records and systems of self-insured private plans shall likewise be made available to and intelligible by the Division for auditing purposes.

19.3 Division audit and investigative authority. The Division may enter and inspect an employer's premises or place of business or employment. In so far as possible, the Division will attempt to arrange a mutually acceptable time for this inspection, providing at least 24 hours' notice to the employer.

19.3.1 All employers shall keep and preserve any or all books, registers, payrolls, and other records, including those required by the Act, for at least 3 calendar years. Items preserved or archived in electronic form (rather than in physical form for 3 years shall be considered to satisfy this requirement.

19.3.2 The Division may deem it necessary or appropriate to prescribe or approve forms, which may be used by an employer for statements, sworn statements, or other information the Division determines.

19.4 Division initial determination. If, after submissions from the parties, the Division initially determines an employer violated 1 or more provisions of the Act, or a covered individual received overpayment or violated the Act, the Division shall notify the appropriate party in writing within 5 days of its initial determination. The notice shall provide, at a minimum:

19.4.1 The date of the notice;

19.4.2 Amounts owed;

19.4.3 Civil penalties assessed, if any;

19.4.4 Notification of the ability to appeal the Division's initial determination to the Board.

19.5 Appeal to the Board. A covered individual or employer must file an appeal, if any, to the Board within 30 days from the date of the Division's claim review determination. Within 5 days of receipt of the appeal, the Board shall provide the parties with a hearing date.

19.6 Nothing in these regulations limits the Department of Insurance's jurisdiction over an insurer issuing an approved private plan and the Division shall have authority to pursue any issues in its jurisdiction that the Department of Insurance declines to pursue.

20.0 Erroneous payments; disqualification for benefits [Reserved.]

21.0 Penalties

21.1 Penalty. If the Division deems an employer in violation of the Act, the employer will receive 1 written warning of this violation and will be given 30 days to correct the violation. If the violation is not corrected within 30 days or this is a subsequent violation, then the employer may be subject to a civil penalty. This penalty shall not be less than \$1,000 nor more than \$5,000 for each violation. The Division has determined that "each violation" means each alleged action against each employee.

21.2 [Reserved].

21.3 Anti-discrimination. All provisions of the Act are subject to the state's anti-discrimination laws and regulations. While an employer may be granted discretion to make decisions in regard to certain

aspects of employee eligibility, claims adjudication, or any other aspect of the PFML insurance program, this grant of authority does not allow them to violate any provision of the state's anti-discrimination laws or regulations.

22.0 Reports [Reserved.]

23.0 Public education

23.1 When making outreach information available, the Division may determine those languages, other than English and Spanish, that are spoken by more than 5.0% of the state's population at the time. Under the terms of the Act, the Division may use a portion of the monies collected in the Fund to pay for a public education plan.

23.2 The Division may also use other funds, once properly authorized by the Secretary of Labor or other appropriate officials, from the State of Delaware or other sources to pay for a public education program.

24.0 Sharing technology [Reserved.]

25.0 Departmental Report [Reserved.]

26.0 Effective Date of Regulation

In accordance with the Act, the Regulations adopted herein take effect 10 days after their final publication.

27 DE Reg. 51 (07/01/23)

Last Updated: October 06 2023 15:35:04.

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Panel 2
Ethical, Fiduciary, and Employment Law Issues in
Law Firm Breakups and Attorney Departures

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Matthew F. Boyer, Esquire
Connolly Gallagher LLP

Luke W. Mette, Esquire
Baird Mandalas Brockstedt & Federico,
LLC

Luke Mette / *Baird Mandalas Brockstedt & Federico, LLC*

Luke has broad legal experience, including in the areas of general litigation, legal ethics, municipal government, land use, internal and government investigations, compliance, and environmental law. In addition to practicing law privately, Luke has held senior leadership roles in both the corporate (Global Head of Litigation at AstraZeneca) and government sectors. A Delaware lawyer since 1988, Luke has handled and managed matters in Delaware, across the United States and globally.

Following his roles as Chief Disciplinary Counsel in Delaware and as an Adjunct Professor of Law teaching professional responsibility at Delaware Law School, Luke now represents and advises law firms, law departments and individual lawyers in the area of legal ethics.

Luke's municipal government experience includes roles as the solicitor for the City of Wilmington, the Rehoboth Beach Planning Commission, the Town of Fenwick Island and the City of Seaford.

Matt Boyer / *Connolly Gallagher LLP*

As co-chair of Connolly Gallagher's labor and employment group, Matt provides legal counsel and representation in litigation on a broad range of employment law issues. His practice includes employment discrimination litigation, compliance counseling, drafting and enforcement of employment agreements and restrictive covenants, internal investigations, and employment-related mediations. Since 2011, Matt has been selected for inclusion in *The Best Lawyers in America*® for employment law. For 2023, he was selected as *Best Lawyers*® "Lawyer of the Year" for Wilmington, Delaware in Employment Law – Management, and was also included in *Best Lawyers*® for Employment Law – Individuals.

In addition, Matt collaborates with attorneys in the firm's Corporate Litigation and Government Law groups in representing clients in complex, high-profile litigation. Most recently, he represented the State of Delaware in two successful expedited cases upholding its vote-by-mail statute. He also was part of a team that successfully defended the State of Delaware before the United States Supreme Court in an original jurisdiction action brought by New Jersey challenging Delaware's sovereignty over the Delaware River within its historic Twelve-Mile Circle. *New Jersey v. Delaware*, 552 U.S. 597 (2008).

Drawing on his prior service with the Delaware Supreme Court's Office of Disciplinary Counsel and the Board of Bar Examiners, Matt also represents attorneys, physicians, nurses, and other professionals in regulatory and disciplinary proceedings. He provides advice on legal ethics issues and is a frequent speaker at continuing legal education programs on professional responsibility. By appointment of the Delaware Superior Court, Matt has served as a special master in dozens of cases. In 2019, Matt was presented with the Delaware State Bar Association's Daniel L. Herrmann Professional Conduct Award.

ETHICAL ISSUES IN LAW FIRM BREAKUPS AND ATTORNEY DEPARTURES¹

Luke W. Mette, Esq.

March 27, 2024

Planning for a departure generally

- Be civil, transparent and not too greedy (if at all possible)
- Lawyers have a duty to communicate with their clients
- Clients are not commodities
 - Clients decide which lawyers to hire, retain and fire
- Lawyer's files (largely) belong to the client
 - And clients can direct which law firm should retain the files
 - File fights typically are between lawyers (not between lawyer and client)
- Don't forget DLRPC 5.1
 - Internal controls and policies re conformance to Rules
- Duties to former clients

Client Communication

- DLRPC 1.4
- ABA Formal Op. 99-414 (Ethical Obligations When a Lawyer Changes Firms)
- ABA Formal Op. 19-489 (Obligations Related to Notice When Lawyers Change Firms)

Clients Are Not Commodities

- Lawyers do not "own" a client (despite the way some lawyers talk)
 - Clients are not commodities who can be traded (like baseball players or football players)
 - Clients decide which lawyers to hire, retain and fire

Clearing Conflicts

- DLRPC 1.6(b)(7)

¹ Today's discussion is focused on voluntary, planned departures (rather than disability, retirement, or involuntary termination).

Handling of Client Files

- DLRPC 1.15
- DLRPC 1.16(d)
- *TCV VI, L.P. v. TradingScreen*, Del. Ch., 2018 WL 1907212 (Apr. 23, 2018) (adopting the “entire-file” approach)
- ABA Formal Op. No. 15-471 (Ethical Obligations of Lawyer to Surrender Papers and Property to Which Former Client is Entitled)

Don't Forget DLRPC 5.1

- DLRPC 5.1 (emphasis added)

Duties to Former Clients (assuming client decides not to keep you as counsel)

- DLRPC 1.9(b) specifically contemplates lawyers changing firms
- DLRPC 1.9(c) (use and disclosure of information)
- DLRPC 1.11(a, d) (special rules if lawyer is moving in or out of a government job)

MATERIALS

- **DLRPC 1.4 (emphasis added)**

(a) A lawyer **shall**:

- (1) **promptly inform** the client of **any decision or circumstance** with respect to which the client's **informed consent**, as defined in Rule 1.0(e), **is required** by these Rules;
- (2) reasonably **consult** with the client about the **means by which the client's objectives are to be accomplished**;
- (3) keep the client reasonably **informed about the status of the matter**;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer **shall explain** a matter to the extent reasonably necessary **to permit the client to make informed decisions regarding the representation**.

[7] *Withholding information.* -- In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. **A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person.** Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.

- **ABA Formal Op. 99-414 (Ethical Obligations When a Lawyer Changes Firms)**
- **ABA Formal Op. 99-489 (Obligations Related to Notice When Lawyers Change Firms)**

- **DLRPC 1.6(b)(7) (emphasis added)**

(b) A lawyer **may** reveal information relating to the representation of a client **to the extent the lawyer reasonably believes necessary**:

(7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

[14] Paragraph (b)(7) recognizes that lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, **such as when a lawyer is considering an association with another firm**, two or more firms are considering a merger, or a lawyer is considering the purchase of a law practice. See Rule 1.17, Comment [7]. Under these circumstances, lawyers and law firms are permitted to disclose limited information, **but only once substantive discussions regarding the new relationship have occurred**. Any such disclosure should ordinarily include no more than the identity of the persons and entities involved in a matter, a brief summary of the general issues involved, and information about whether the matter has terminated. Even this limited information, however, should be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship. **Moreover, the disclosure of any information is prohibited if it would compromise the attorney-client privilege or otherwise prejudice the client (e.g., the fact that a corporate client is seeking advice on a corporate takeover that has not been publicly announced; that a person has consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a criminal investigation that has not led to a public charge).** Under those circumstances, paragraph (a) prohibits disclosure **unless the client or former client gives informed consent**. A lawyer's fiduciary duty to the lawyer's firm may also govern a lawyer's conduct when exploring an association with another firm and is beyond the scope of these Rules.

- **DLRPC 1.15 (emphasis added)**

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. . . .

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

- **DLRPC 1.16 (emphasis added)**

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, **surrendering papers and property to which the client is entitled** and refunding any advance payment of fee or expense that has not been earned or incurred. **The lawyer may retain papers relating to the client to the extent permitted by other law.**

- **TCV VI, L.P. v. TradingScreen, Del. Ch., 2018 WL 1907212 (Apr. 23, 2018) (adopting the "entire-file" approach) (emphasis added)**

***5** The entire-file approach is just what it sounds like. As described in the *Restatement*, this approach means that "[o]n request, a lawyer must allow a client or former client to inspect and copy any document possessed by the lawyer relating to the representation, unless substantial grounds exist to refuse."³⁵ Commentary clarifies that "a client is entitled to retrieve documents in possession of a lawyer relating to representation of the client. That right extends to documents placed in the lawyer's possession as well as to documents produced by the lawyer."³⁶ The *Restatement* recognizes narrow exceptions for (i) situations "when compliance would violate the lawyer's duty to another," (ii) cases of "extreme necessity," such as where the disclosure "is likely to cause serious harm" to the client, and (iii) "certain law-firm documents reasonably intended only for internal review, such as a memorandum discussing which lawyers in the firm should be assigned to a case."³⁷

Courts adopting the entire-file approach have generally reasoned along two lines. First, they find that the approach best comports with the duty owed by a lawyer to his or her client.³⁸ Second, they find that the approach is consistent with the client's property interest in his or her file.³⁹

A minority of jurisdictions follow the "end product" approach.⁴⁰ This approach distinguishes between the lawyer's external work product, which the client has a right to obtain, and the lawyer's internal work product, which the client does not have any right to receive. A lawyer's external work product includes documents that "have been voluntarily and strategically exposed to public light by the attorney to further his client's interests," such as "pleadings and other papers which are filed with the court" and "correspondence to the client, to the opposition and to witnesses, and correspondence which the attorney receives from the same."⁴¹ The lawyer's internal work product includes those documents "typically characterized by their informality [and] candor, and containing mental impressions, conclusions, opinions, or legal theories," such as "notes written by the attorney to himself preparatory to drafting other documents or as preparation for deposition or trial, or notes of interviews."⁴²

In 2015, the Standing Committee on Ethics and Professional Responsibility of the American Bar Association (the “ABA Committee”) issued a formal opinion adopting a version of the end-product approach (the “ABA Opinion”).[46](#)

...

In my view, the cases applying the entire-file approach are more persuasive and consistent with other aspects of Delaware law governing the attorney-client relationship. The Delaware Supreme Court has stated that “[i]n all relations with his client, an attorney is bound to the highest degree of fidelity and good faith. Strict adherence to this rule of conduct is required by time-honored, deeply rooted concepts of public policy.”[51](#) The preamble to the Delaware Lawyers' Rules of Professional Conduct calls for the rules to be “interpreted with reference to the purposes of legal representation and of the law itself.”[52](#) **As other decisions adopting the majority rule have observed, the entire-file approach best comports with an attorney's heightened duties to his or her clients and the candor and transparency that characterize the attorney-client relationship.**

- **ABA Formal Op. No. 15-471 (Ethical Obligations of Lawyer to Surrender Papers and Property to Which Former Client is Entitled)**
- **DLRPC 5.1 (emphasis added)**
 - (a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable **managerial authority in a law firm**, shall make **reasonable efforts** to ensure that the **firm has in effect measures giving reasonable assurance** that **all lawyers in the firm conform to the Rules** of Professional Conduct.
 - (c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:
 - (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner or has comparable **managerial authority in the law firm** in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and **knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.**

- **DLRPC 1.9(b) (emphasis added) specifically contemplates lawyers changing firms**

(b) A lawyer shall not **knowingly** represent a person in the same or a substantially related matter in which a **firm with which the lawyer formerly was associated** had previously represented a client:

(1) whose interests are materially adverse to that person; and

(2) **about whom the lawyer had acquired information** protected by Rules 1.6 and 1.9(c) that is **material to the matter**

unless the former client gives informed consent, confirmed in writing.

Lawyers Moving Between Firms

[4] When lawyers have been associated within a firm but then end their association, the question of whether a lawyer should undertake representation is more complicated. There are **several competing considerations**. First, the client previously represented by the former firm must be reasonably assured that the **principle of loyalty to the client is not compromised**. Second, **the rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel**. Third, **the rule should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association**. In this connection, it should be recognized that today many lawyers practice in firms, that many lawyers to some degree limit their practice to one field or another, and that **many move from one association to another several times in their careers**. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

[5] **Paragraph (b) operates to disqualify the lawyer only when the lawyer involved has actual knowledge** of information protected by Rules 1.6 and 1.9(c). Thus, if a lawyer while with one firm acquired no knowledge or information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict. See Rule 1.10(b) for the restrictions on a firm once a lawyer has terminated association with the firm.

- **DLRPC 1.9(c) (use and disclosure of information) (emphasis added)**

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter **shall not** thereafter:

(1) **use** information relating to the representation **to the disadvantage of the former client** except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) **reveal** information relating to the representation except as these Rules would permit or require with respect to a client.

- Note, a lawyer may use information to the lawyer's own advantage if 1.9(c) is not otherwise implicated
- Is loyalty being replaced by confidentiality?

- **DLRPC 1.11(a, d) (emphasis added)**

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to Rule 1.9(c); and

(2) **shall not otherwise represent** a client in connection with a matter **in which the lawyer participated personally and substantially** as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) is subject to Rules 1.7 and 1.9; and

(2) shall not:

(i) **participate in a matter in which the lawyer participated personally and substantially** while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or

Panel 3

Restrictive Covenants: Developments in the Caselaw

Jesse L. Noa, Esquire
Potter Anderson & Corroon LLP



Jesse L. Noa

Partner

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Jesse L. Noa represents businesses and individuals in a wide variety of complex commercial, bankruptcy, employment, and real estate litigation matters in the state and federal courts of Delaware. These matters include contract disputes, expedited restrictive covenant and trade secret litigation, alternative entity disputes, business torts, and commercial foreclosure actions. Jesse's practice also includes providing counseling to clients regarding business and regulatory compliance matters, as well as cybersecurity and information governance issues.

While in law school, Jesse served as a judicial intern for the Honorable Michael M. Baylson of the U.S. District Court for the Eastern District of Pennsylvania.

Jesse served on active duty in the United States Marine Corps and was honorably discharged in 2005. He received a commendation from the New Jersey Senate and General Assembly for his service in 2009.

Representative Matters available upon request.

EDUCATION

Villanova University School of Law, J.D., *cum laude*
Rowan University, B.A., *summa cum laude*

BAR ADMISSIONS

Delaware

PROFESSIONAL HONORS

Best Lawyers Ones to Watch, Commercial Litigation, 2022 – Present
Delaware Super Lawyers, Rising Star – Business Litigation, 2013-2018



Restrictive Covenants: Developments in the Caselaw

Potter
Anderson

Restrictive Covenants Generally

Delaware courts “carefully review” restrictive covenants to ensure that they:

- 1 – Are reasonable in geographic scope and temporal duration;
- 2 – Advance a legitimate economic interest of the party seeking its enforcement, and
- 3 – Survive a balancing of the equities.

Common factors the Delaware courts consider are the “public interest in competition, the need for individuals to be able to earn a living, and the imbalances in bargaining power and repeat-player experience that exist between businesses and individuals.”

General Concepts

- “All else equal, a longer restrictive covenant will be more reasonable if geographically tempered, and a broader restrictive covenant will be more reasonable if temporally tailored.”
- The restriction must be viewed in context with the entire agreement.
- Does the provision restrict competition outside of the business in question?
- Does the provision restrict competition outside of the scope of the employee’s role?
- Blue penciling has been strongly disfavored in recent years.

Helpful Questions to Consider

- Vice Chancellor Laster's "five newspaper reporter questions":
 - Whom does the restriction cover?
 - What does it restrict?
 - When does it apply?
 - Where does it apply?
 - Why is it justified?

Notable Themes

- “For Delaware courts to address these matters is unsustainable because the Court of Chancery will never have sufficient resources to adjudicate restrictive covenant cases for Delaware entities throughout the world.” Vice Chancellor Laster
- “[T]he Court continues to grapple with Delaware’s interest in resolving actions that are fundamentally employment disputes where Delaware entities are used as vehicles for employment compensation.” Chancellor McCormick
- “Alabama’s interest in preventing the enforcement of non-competes against an Alabama resident working in Alabama is more significant than Delaware’s general contractarian policies.” Vice Chancellor Will
- “The courts of this State hold freedom of contract in high—some might say, reverential—regard.” Justice Traynor

Recent Cases

- *Brown v. Ct. Square Cap. Mgmt., L.P.*
- *Cantor Fitzgerald, L.P. v. Ainslie*
 - *LKQ Corporation v. Rutledge*
- *HighTower Holding, LLC v. Gibson*
- *Intertek Testing Servs. NA, Inc. v. Eastman*
- *Kodiak Building Partners LLC v. Adams*
- *Labyrinth, Inc. v. Urich*
- *Sunder Energy, LLC v. Jackson*

Other Developments

California SB699

- California courts will not enforce non-competition agreements, even if entered into in a state that permits them
- Employees whose agreements are invalidated can recover damages, injunctive relief, attorney fees, and costs

California AB 1076

- Makes it unlawful to enter into a non-compete with an employee unless it meets an exception under Section 16600, and employers must notify current and former employees (after January 1, 2022) by February 14, 2024 that the non-compete is void.

FTC Proposed Rule

- Would prohibit use of post-employment non-compete provisions nationally
- Rule expected soon.

Potter Anderson

Your Delaware Advantage

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ATTORNEY ADVERTISING

Panel 4

Generative AI: Current Issues Related to Labor and Employment Law

Moderator:

Ryan P. Newell, Esquire
Young Conaway Stargatt & Taylor, LLP

Speakers:

Gregory Strong, Esquire
DLx Law, LLP

Professor Mary Ellen Maatman, Esquire
Delaware Law School

Lauren Moak Russell, Esquire
Potter Anderson & Corroon LLP

Kenneth Kelemen
Administrative Office of the Courts



Ryan P. Newell

PARTNER

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Ryan Newell has a breadth of experience with a wide array of Delaware lawsuits. Whatever and wherever the dispute, Ryan's experience litigating different areas of the law and his understanding of the Delaware courts have resulted in Ryan being enlisted by parties and the Delaware courts in three distinct roles: as a litigator, as a mediator or arbitrator, and as a special master or discovery facilitator.

Litigator: Ryan's career as a litigator began with his role as a member of the team that successfully defended the State of Delaware before the United States Supreme Court in an original jurisdiction action brought by New Jersey that challenged Delaware's sovereignty over the Delaware River. Since that unique experience before the high court, the bulk of his experience has been in corporate and commercial lawsuits before the Delaware Court of Chancery, the Delaware Superior Court, the Delaware Supreme Court, and the District of Delaware. Beyond his business law disputes, he has also assisted parties with issues concerning employment law, government and municipal law, trusts and estates law, and intellectual property law. A Fellow of the Litigation Counsel of America, Ryan has regularly been recognized as a leading Delaware litigator by Chambers USA, Best Lawyers, Lawdragon, Super Lawyers, and Delaware Today.

Mediator & Arbitrator: Praised for his "productive and cordial demeanor," Ryan is frequently selected by parties to resolve their disputes as either a mediator or an arbitrator. According to sources from Chambers USA, "[h]e's got a good understanding of the law and knows the court." With nearly two decades of broad immersion in Delaware law and as someone who Delaware courts frequently appoint and trust to assist with disputes, Ryan's experience has led parties to engage him in these forms of alternative dispute resolution. As a mediator, Ryan has been trained by renowned mediators from Harvard Law School and the Pepperdine Caruso School of Law—regularly ranked as the top two mediation training programs in the world. Ryan is a mentee in the International Academy of Mediators, "an invitation-only membership organization of the world's most experienced commercial mediators[.]" He has also completed the Delaware Superior Court's mediation training program. As an arbitrator, Ryan has assisted parties in private arbitration and arbitration for the American Arbitration Association.

Court Appointed Special Master & Discovery Facilitator: Ryan is a Fellow of the Academy of Court Appointed Neutrals. In more than 20 lawsuits since 2016, the Delaware Court of Chancery and the Delaware Superior Court have appointed Ryan to assist those courts with discovery disputes, often in high stakes litigations. With extensive experience litigating similar claims under Delaware law as a first chair attorney, Ryan also brings a deep understanding of Delaware discovery law, in particular as to issues concerning electronic discovery. A frequent

author on such issues, Ryan is also the Delaware Law School's adjunct professor for electronic discovery. He also completed The Sedona Conference's eDiscovery Negotiation Training program, a prestigious invitation only program.

As a special master, Ryan quickly resolves discovery motions allowing parties to swiftly advance through discovery. He has served as the special master in cases such as: *Partner Investments, L.P. v. Theranos, Inc.*; *Preston Hollow Capital LLC v. Nuveen*; *Imorphics Ltd. v. Think Surgical, Inc.*; and *SPay, Inc. v. Stack Media Inc.*

As a discovery facilitator, Ryan helps parties narrow and often avoid expensive motion practice without court intervention. Much like mediation, Ryan utilizes both meetings among all parties and private confidential sessions with a subset of the parties in an attempt gain consensus on discovery disputes. In this role, Ryan has helped parties in a wide variety of cases, including litigations concerning high stakes corporate transactions such as: *Tiffany & Co. v. LVMH Moët Hennessy-Louis Vuitton SE*; *AB Stable VIII LLC v. MAPS Hotels & Resorts One LLC*; *Akorn, Inc. v. Fresenius Kabi AG*; *Navient Solutions, LLC v. Conduent Education Services, LLC*; and *Channel MedSystems, Inc. v. Boston Scientific Corp.*

In addition to these roles, Ryan has also served as a court appointed receiver.

* * *

Born and raised in Delaware, Ryan returned to practice in Delaware following his undergraduate studies and legal studies. Ryan graduated from the University of Notre Dame and its Mendoza College of Business. He then attended at the Dickinson School of Law of the Pennsylvania State University on a Dean's Scholarship, where he was a member of the Law Review. Outside of practice, Ryan is the past president of the Notre Dame Club of Delaware, the president of the Richard K. Herrmann Technology Inn of Court, a member of the Richard S. Rodney Inn of Court and its past treasurer, and a current board member of Delaware Volunteer Legal Services. Throughout his career in the bar, he has consistently volunteered with Delaware's Office of the Child Advocate.

Practices

- Alternative Dispute Resolution: Arbitration and Mediation
- Alternative Entities Governance and Disputes
- Appeals
- Business Divorce
- Busted Deal Litigation
- Challenged Transactions Involving Controlling Owners
- Commercial Litigation
- Complex and Specialty Litigation
- Special Legal Counsel
- Expedited Litigation

Bar Admissions

- Delaware, 2005
- Pennsylvania, 2008
- New Jersey, 2008

Clerkships

- The Honorable Kevin A. Hess, Cumberland County, Pennsylvania Court of Common Pleas, 2004

Distinctions

- *Chambers USA: Guide to America's Leading Lawyers for Business*, recognized since 2016
- *The Best Lawyers in America*®, recognized since 2018
- *Lawdragon 500 Leading Litigators in America*, recognized since 2023
- *Delaware Today* Top Lawyers, 2015, 2016 and 2021 - 2023
- Delaware *Super Lawyers*®, recognized since 2014
- Delaware *Super Lawyers*® – Rising Star, 2013
- Academy of Court-Appointed Neutrals, Fellow
- International Academy of Mediations, Mentee
- Litigation Counsel of America, Fellow
- American Bar Foundation, Fellow
- AV® Preeminent™ Peer Review Rating by Martindale-Hubbell
- Irish Echo: 40 Under 40 Honoree, 2015
- Delaware State Bar Association's New Lawyers Distinguished Service Award, 2010

Mary Ellen Maatman is a Professor of Law at Widener University's Delaware Law School.

Professor Maatman received a B.A. from Swarthmore College in 1981, and a J.D. from University of Pennsylvania Law School in 1985, where she served as a Comment Editor with the University of Pennsylvania Law Review.

Following graduation from law school, Professor Maatman clerked for Judge Marvin Katz, a United States District Court Judge for the Eastern District of Pennsylvania, from 1985-86. She was an Associate (Litigation) at Ballard, Spahr, Andrews & Ingersoll, Philadelphia, Pennsylvania, from 1986-90. ^[L]_{SEP}

Professor Maatman joined the faculty at Widener in 1990 as a Legal Methods professor, and served in that capacity from 1990-93. She then served as Assistant Professor of Law from 1993-96, as an Associate Professor of Law from 1996 through 2015, and now as a Full Professor.

Professor Maatman is admitted to practice in Pennsylvania, and she teaches and writes in the areas of Employment Discrimination, Torts, Legal Methods, Law and Literature, Landmark Cases, and Academic Success.

Lauren Russell Bio

Lauren Russell specializes in the representation of employers on a range of issues relating to compliance with local, state, and federal labor and employment laws and constitutional provisions. Lauren emphasizes client counseling—on issues ranging from wage and hour compliance, to workplace training and investigations, to effective employee terminations—with the goal of avoiding litigation before it begins. Her counseling practice includes handbook revisions, effective policy implementation, and on-site training on legal compliance.

When litigation becomes necessary, Lauren is a dedicated advocate, aggressively pursuing her clients' best interests and providing clear guidance at each stage of the proceeding. Lauren has litigated a wide variety of employment-related matters to successful resolutions, including employment discrimination, non-competition, and constitutional law cases. Lauren has experience in each of Delaware's state and federal courts, as well as the U.S. Court of Appeals for the Third Circuit. Lauren also regularly assists clients in administrative proceedings before state and federal administrative agencies, including the EEOC, the Delaware Office of Anti-Discrimination, the National Labor Relations Board, and the Delaware Unemployment Insurance Appeals Board.

Ken Kelemen Bio

Ken Kelemen has served the Delaware Judicial Branch for over 16 years, currently serving as Deputy State Court Administrator and Judicial Branch Chief Information Officer (CIO). Throughout his career, Ken has been a thought leader for the Courts and has played an integral role in the adoption of new technologies in and out of the Courtroom. Ken was the honored recipient of the 2020 Governor's Team Excellence - GEAR P3 Innovation and Efficiency Award as well as the 2021 Delaware State Bar Association's Government Service Award. Ken is a member of the Court Information Technology Officers Consortium (CITOC) and is a former 6-year board member for the American Association of Electronic Reporters and Transcribers (AAERT). It is an honor for Ken to share the accomplishments and initiatives of the Delaware Judicial Branch with everyone.

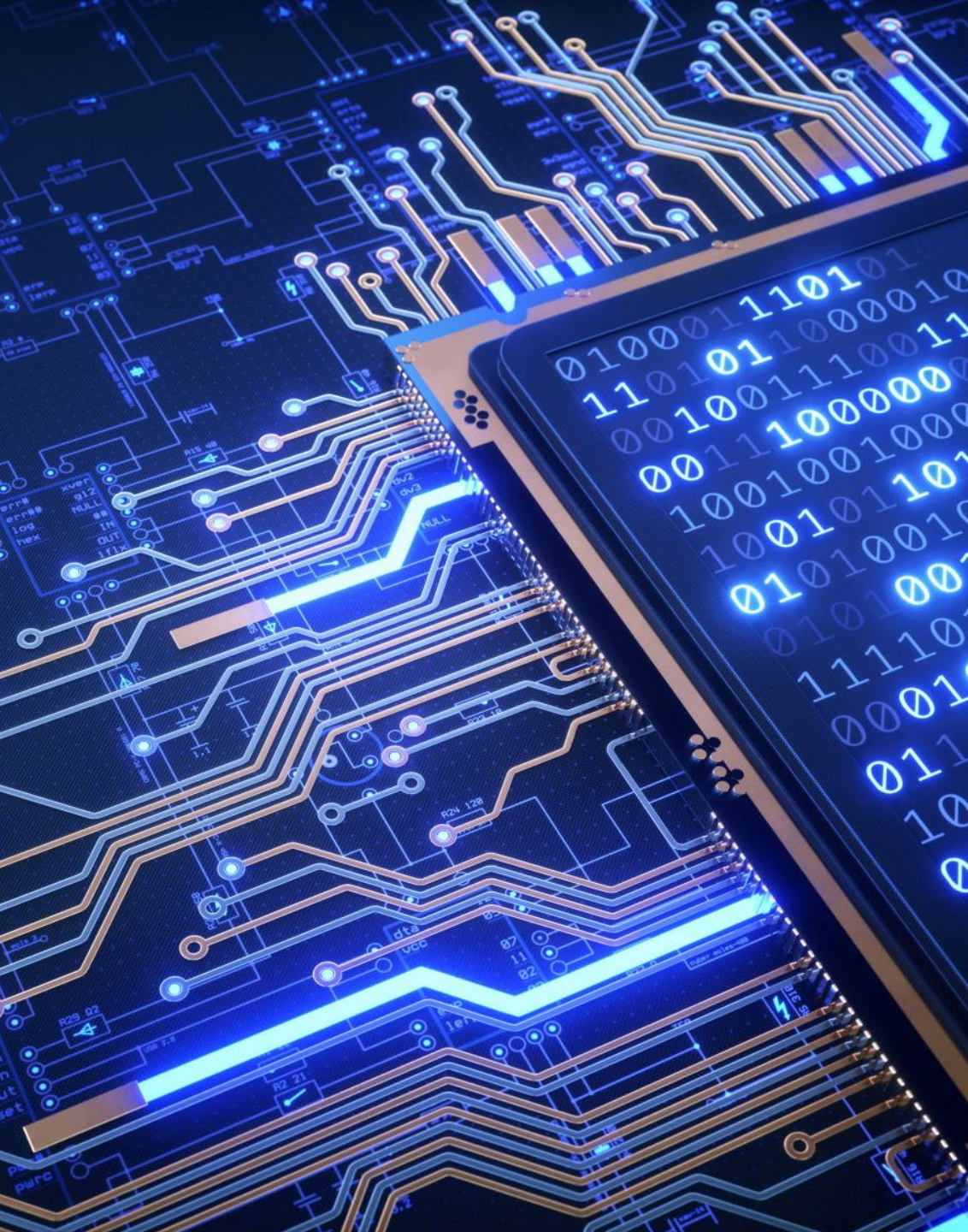


Artificial Intelligence

Greg Strong, Esquire, DLx Law

Delaware State Bar Association Presentation

March 27, 2024



Roadmap

- What is Artificial Intelligence (“AI”)
- What are the Different Types of AI
- How are AI Algorithms Developed
- Benefits and Risks of AI
- Efforts to Promote Responsible Development and Use of AI
- Enforcement Involving AI
- Global Law and Policy Efforts

What is AI?

Artificial intelligence is a broad term used to describe an engineered system that uses various computational techniques to perform or automate tasks. This may include techniques, such as machine learning, where machines learn from experience, adjusting to new input data and potentially performing tasks previously done by humans. More specifically, it is a field of computer science dedicated to simulating intelligent behavior in computers. It may include automated decision-making.

IAPP Key Terms for AI Governance

What is AI?

*An AI system is a machine-based system that ~~can, for a given set of human-defined~~ **explicit or implicit** objectives, **infers, from the input it receives, how to generate outputs such as** ~~makes predictions,~~ **content,** recommendations, or decisions **that can** ~~influence~~ **physical real** or virtual environments. **Different AI systems** ~~are designed to operate with varying~~ **in their** levels of autonomy **and adaptiveness after deployment***

OECD Explanatory Memorandum on Updated Definition of an AI System

What is AI?

Technology that enables computers and machines to simulate human intelligence

What Are the Different Types of AI?

- Capability
 - Artificial Narrow AI (Weak AI)
 - All current AI systems in this category
 - General AI (Strong AI)
 - Theoretical
 - Super AI
 - Theoretical
- Functionality
 - Reactive Machine AI
 - No memory, task specific, present data
 - Limited Memory AI
 - Can recall past events and outcomes and use that data and present data to achieve desired outcome
 - Limited data retention over long term
 - Theory of Mind AI
 - Ability to understand thoughts and emotions - theoretical
 - Self-Aware AI
 - Ability to understand internal conditions and traits as well as human emotion and thoughts - theoretical

What Are the Different Types of AI?

- Limited Memory AI
 - Generative AI
 - ChatGPT
 - Bard
 - Midjourney
 - StarryAI
 - Virtual Assistants
 - Siri
 - Alexa
 - Autonomous Vehicles

Generative AI

A field of AI that uses deep learning trained on large datasets to create new content, such as written text, code, images, music, simulations and videos.

Unlike discriminative models, Generative AI makes predictions on existing data rather than new data. These models are capable of generating novel outputs based on input data or user prompts.

Developing AI Models

Machine Learning

- A subfield of AI involving algorithms that enable computer systems to iteratively learn from and then make decisions, inferences or predictions based on input data. These algorithms build a model from training data to perform a specific task on new data without being explicitly programmed to do so.
- Machine learning implements various algorithms that learn and improve by experience in a problem-solving process that includes data cleansing, feature selection, training, testing and validation. Companies and government agencies deploy machine learning algorithms for tasks such as fraud detection, recommender systems, customer inquiries, health care, or transport and logistics.

Developing AI Models

Deep Learning

A subfield of AI and machine learning that uses artificial neural networks. Deep learning is especially useful in fields where raw data needs to be processed, like image recognition, natural language processing and speech recognition.

IAPP Key Terms for AI Governance

Developing AI Models

Neural Networks

A type of model (see machine learning model) used in machine learning that mimics the way neurons in the brain interact with multiple processing layers, including at least one hidden layer. This layered approach enables neural networks to model complex nonlinear relationships and patterns within data. Artificial neural networks have a range of applications, such as image recognition and medical diagnosis.

IAPP Key Terms for AI Governance



Benefits and Risks of AI

AI Risk Vectors

- Hallucinations
- Reliability of Training Data
 - What are the Inputs used to train the model?
- Deepfakes
- Copyright and Intellectual Property Issues
- Potential for Bias and Discrimination



BLUEPRINT FOR AN AI BILL OF RIGHTS

MAKING AUTOMATED SYSTEMS WORK FOR
THE AMERICAN PEOPLE



OSTP



You should be protected from unsafe or ineffective systems.



You should not face discrimination by algorithms and systems should be used and designed in an equitable way.



You should be protected from abusive data practices via built-in protections and you should have agency over how data about you is used.



You should know that an automated system is being used and understand how and why it contributes to outcomes that impact you.



You should be able to opt out, where appropriate, and have access to a person who can quickly consider and remedy problems you encounter.

Enforcement and AI



JOINT STATEMENT ON ENFORCEMENT EFFORTS AGAINST DISCRIMINATION AND BIAS IN AUTOMATED SYSTEMS

Enforcement and AI

[SEC Charges Two Investment Advisers with Making False and Misleading Statements About Their Use of Artificial Intelligence](#)

03/18/2024 06:43 AM EDT

The Securities and Exchange Commission today announced settled charges against two investment advisers, Delphia (USA) Inc. and Global Predictions Inc., for making false and misleading statements about their purported use of artificial intelligence (AI)....

Global Law and Policy Efforts

- [EU AI Act](#)
- [OECD AI Principles](#)
- [IAPP Global AI Legislation Tracker](#)
- [NIST AI Risk Management Framework](#)



- Questions?