

# DELAWARE LABOR LAW POSTINGS



## WHISTLEBLOWERS' PROTECTION ACT

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

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



### DELAWARE DEPARTMENT OF LABOR DIVISION OF INDUSTRIAL AFFAIRS

Email: [wages@delaware.gov](mailto:wages@delaware.gov) | Email: [workpermits@delaware.gov](mailto:workpermits@delaware.gov) | Website: [Labor.delaware.gov](http://Labor.delaware.gov)

## DELAWARE WHISTLEBLOWERS' PROTECTION ACT

### § 1702 Definitions.

As used in this chapter:

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

74 Del. Laws, c. 361, § 1;

### § 1703 Protection.

An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment, including reporting or threatening to report an employee's suspected or actual citizenship or immigration status or the suspected or actual citizenship or immigration status of a family member of the employee to a federal, state, or local agency:

- (1) Because the employee, or a person acting on behalf of the employee, reports or is about to report to a public body, verbally or in writing, a violation which the employee knows or reasonably believes has occurred or is about to occur, unless the employee knows or has reason to know that the report is false;
- (2) Because an employee participates or is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action, in connection with a violation as defined in this chapter;
- (3) Because an employee refuses to commit or assist in the commission of a violation, as defined in this chapter;
- (4) Because the employee reports verbally or in writing to the employer or to the employee's supervisor a violation, which the employee knows or reasonably believes has occurred or is about to occur, unless the employee knows or has reason to know that the report is false. Provided, however, that if the report is verbally made, the employee must establish by clear and convincing evidence that such report was made;
- (5) Because an employee reports or is about to report to a public body, to the employer or the employee's supervisor, verbally or in writing any noncompliance or an infraction which the employee knows or reasonably believes has occurred or is about to occur, of Chapter 80 of Title 15 unless the employee knows or has reason to believe the report is false, or participates or is requested to participate in an investigation, hearing, trial or inquiry of a person or entity other than employee, regarding noncompliance or an infraction of Chapter 80 of Title 15; or refuses to participate or assist in the noncompliance or an infraction of Chapter 80 of Title 15.

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

### § 1704 Relief and damages.

- (a) A person who alleges a violation of this chapter may bring a civil action for appropriate declaratory relief, or actual damages, or both within 3 years after the occurrence of the alleged violation of this chapter.
- (b) An action commenced pursuant to subsection (a) of this section may be brought in Superior Court in the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against whom the civil complaint is filed resides or has their principal place of business.
- (c) As used in subsection (a) of this section, "damages" means damages for injury or loss caused by each violation of this chapter.

- (d) A court, in rendering a judgment in an action brought under this chapter, shall order, as the court considers appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, expungement of records relating to the disciplinary action or discharge, actual damages, or any combination of these remedies. A court may also award, as part of a judgment in an action brought under this chapter, all or a portion of the costs of litigation, including attorneys' fees, if the court determines that such an award is appropriate.

74 Del. Laws, c. 361, § 1;

### § 1705 Collective bargaining.

This chapter shall not be construed to diminish or impair the rights of a person under any collective bargaining agreement.

74 Del. Laws, c. 361, § 1;

### § 1706 Exemption.

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

74 Del. Laws, c. 361, § 1;

### § 1707 Notices requirement.

An employer shall post notices and use other appropriate means to keep the employer's employees informed of their protections and obligations under this chapter.

74 Del. Laws, c. 361, § 1; 70 Del. Laws, c. 186, § 1;

### § 1708 Burden of proof.

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

74 Del. Laws, c. 361, § 1;

It is unlawful to retaliate against an employee because (s)he has made a complaint or given information to the Dept of Labor about possible labor law violations.

Employers Are Required By Law To Display This Official Poster In A Place Accessible To Employees And Where They Regularly Pass

Violations of Delaware Labor Laws could result in fines of up to \$20,000 per violation.

74 Del. Laws, c. 361, § 1;

## FAIR EMPLOYMENT



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

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

### DELAWARE DEPARTMENT OF LABOR DIVISION OF INDUSTRIAL AFFAIRS

Email: [wages@delaware.gov](mailto:wages@delaware.gov) | Email: [workpermits@delaware.gov](mailto:workpermits@delaware.gov) | Website: [Labor.delaware.gov](http://Labor.delaware.gov)

## DISCRIMINATION

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

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

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

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

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

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

It is unlawful to retaliate against an employee because (s)he has made a complaint or given information to the Dept of Labor about possible labor law violations.

Employers Are Required By Law To Display This Official Poster In A Place Accessible To Employees And Where They Regularly Pass

Violations of Delaware Labor Laws could result in fines of up to \$20,000 per violation.



## MINIMUM WAGE



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

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

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

University Office Plaza  
252 Chapman Road, 2nd Floor  
Newark, DE 19702  
(302) 761-8200

### DELAWARE DEPARTMENT OF LABOR DIVISION OF INDUSTRIAL AFFAIRS

Email: [wages@delaware.gov](mailto:wages@delaware.gov) | Email: [workpermits@delaware.gov](mailto:workpermits@delaware.gov) | Website: [Labor.delaware.gov](http://Labor.delaware.gov)

## MINIMUM WAGE

### Regular Rate

effective: 06-01-15 - \$8.25/hour  
effective: 01-01-19 - \$8.75/hour  
effective: 10-01-19 - \$9.25/hour  
effective: 01-01-22 - \$10.50/hour

### EMPLOYEES WHO RECEIVE TIPS

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

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

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

### MINIMUM WAGE EXEMPTIONS:

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

### RECORD KEEPING REQUIREMENTS:

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

It is unlawful to retaliate against an employee because (s)he has made a complaint or given information to the Dept of Labor about possible labor law violations.

Employers Are Required By Law To Display This Official Poster In A Place Accessible To Employees And Where They Regularly Pass

Violations of Delaware Labor Laws could result in fines of up to \$20,000 per violation.



DELAWARE DEPARTMENT OF LABOR

revised 01/17/2023

## WAGE THEFT



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

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

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

University Office Plaza  
252 Chapman Road, 2nd Floor  
Newark, DE 19702  
(302) 761-8200

### DELAWARE DEPARTMENT OF LABOR DIVISION OF INDUSTRIAL AFFAIRS

Email: [wages@delaware.gov](mailto:wages@delaware.gov) | Email: [workpermits@delaware.gov](mailto:workpermits@delaware.gov) | Website: [Labor.delaware.gov](http://Labor.delaware.gov)

## WAGE THEFT

### An employer may not do any of the following:

- Employ an individual without reporting the individual's employment to all appropriate government agencies and paying all applicable taxes and fees for the individual.
- Fail to properly withhold state and federal taxes from an employee.
- Fail to forward money withheld from an employee's wages to the appropriate state or federal agency within 7 days of the applicable pay period.
- Pay an employee wages that are less than the minimum wage established under state and federal law for the work performed.
- Misclassify a worker as an independent contractor for purposes of avoiding wage, tax, or workers' compensation obligations under this title.
- Knowingly conspire to assist, advise, or facilitate a violation of this section.

### PENALTIES

- Following an investigation in which the Department makes an initial determination that an employer has violated one or more provisions of subsection (a) of this section, the Department may decide to impose a civil penalty.
- An employer who violates this section is subject to a civil penalty of not less than \$2,000 and not more than \$20,000 for each violation.
- Each instance of a violation of subsection (a) of this section per employee is a separate violation.
- The Department may also refer cases to the Department of Justice for criminal prosecution consistent with § 841D of Title 11.

### RETALIATION

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.