

DELAWARE JULY 2018 LEGISLATIVE UPDATE

(DELAWARE STATE COUNCIL, DELMARVA SHRM & DE SHRM CHAPTERS)



1. DELAWARE GENERAL ASSEMBLY WORKS THROUGH THE NIGHT TO COMPLETE ITS WORK!

The 149th Delaware General Assembly extended its session beyond the June 30, 2018 deadline to complete its important work. Of course, their work included a number of important changes impacting employers and employees. The primary focus of this **Legislative Update** will be to make you aware of the new employment laws that will become effective in the very near future. The key legislative mandates that were passed and signed into law by Governor Carney are addressed in this Legislative Update:

- Minimum Wage Increases
- Establishment of a Training Minimum Wage Rate & Youth Minimum Wage Rate
- Requirements for Sexual Harassment Training
- Establishment of a Delaware Worker Adjustment and Retraining Notification

2. MINIMUM WAGE INCREASES – JANUARY 1, 2019 & OCTOBER 1, 2019

Senate Bill No. 170 that has been reported in prior Legislative Updates was amended (Senate Amendment No. 2) on Saturday night. Senate Amendment No. 2 to Senate Bill No. 170 reduced the minimum wage increases from four (4) fifty cent (\$.50) increases to two (2) fifty cent (\$.50) increases. The bill was passed by both the State Senate (11 yes votes, 10 no votes) and the State House of Representatives (21 yes votes, 18 no votes, and 1 not voting). Governor Carney signed the bill into law on July 1, 2019. The bill provides for the following increases to the Delaware Minimum Wage:

\$8.75 per hour effective January 1, 2019

\$9.25 per hour effective October 1, 2019

<http://legis.delaware.gov/BillDetail?LegislationId=26445> (Important Note – SB 170 was further amended by HB 409 to change the effective date of the increase to \$8.75 per hour from October 1, 2018 to January 1, 2019)

3. NEW TRAINING MINIMUM WAGE & YOUTH MINIMUM WAGE ESTABLISHED – JANUARY 1, 2019

House Bill No. 483 was introduced by Representative Ramone on July 1, 2018 and passed both the State House of Representatives (32 yes votes, 7 no votes, 1 not voting, 1 absent) and State Senate (15 yes votes, 5 no votes, 1 absent). The bill establishes both a new training minimum wage and a youth minimum wage beginning January 1, 2019. Governor Carney signed the bill into law on July 1, 2018. The bill allows employers to pay \$.50 per hour less than the established Delaware Minimum Wage in two situations:

- Training Wage** – in lieu of the minimum wage otherwise required, an employer may pay an employee who is 18 years of age or older, during the first 90 consecutive days after the employee is initially employed by the employer, a wage rate that is not more than \$.50 less than the Delaware Minimum Wage.
- Youth Wage** – in lieu of the minimum wage otherwise required by this section, an employer may pay an employee who is under 18 years of age a wage rate that is not more than \$.50 per hour less than the established Delaware Minimum Wage.

<https://legis.delaware.gov/json/BillDetail/GenerateHtmlDocument?legislationId=27033&legislationTypeId=1&docTypeId=2&legislationName=HB483>

4. SEXUAL HARASSMENT TRAINING REQUIREMENT – BEGINS OCTOBER 1, 2018

House Substitute No. 1 to House Bill No. 360 as Amended by House Amendment No. 2 was passed by both the State House of Representatives (24 Yes votes, 14 No votes, 1 Not Voting and 2 Absent) and the State Senate (11 Yes votes, 6 No votes, 1 Not Voting and 3 Absent). Governor Carney has 10 days to sign or veto the bill. If he takes no action within 10 days, the bill automatically becomes law. The bill provides for the following:

- Sexual harassment is now an unlawful employment practice under Delaware law as it has been under federal law.
- An employer is defined as any person employing 4 or more employees within the State
- An employer is responsible for sexual harassment of an employee when:
 - A supervisor's sexual harassment results in a negative employment action of an employee

- The employer knew or should have known of the non-supervisory employee's sexual harassment of an employee and failed to take appropriate corrective measures
- A negative employment action is taken in retaliation for an employee filing or taking part in an investigation or testifying about the sexual harassment of an employee
- An employer is provided an affirmative defense if the employer exercised reasonable care to prevent or correct any harassment promptly or the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer
- The State Department of Labor will produce a sexual harassment information sheet for employers to distribute to employees
- Employers with 50 or more employees shall provide interactive training and education within 1 year of commencement of employment and thereafter every 2 years
- Employers shall provide all supervisors additional training detailing their responsibilities regarding prevention and correction of sexual harassment and the prohibition against retaliation
- The State of Delaware Department is empowered to prevent any person from engaging in any unlawful employment practice and may investigate, make/revise rules, and/or commence civil action in Superior Court.
- A 300-day statute of limitations applies to alleged unlawful employment practices or its discovery
- The Department of Labor shall have 60 days from notification to investigate and make preliminary findings of "reasonable cause" or "no reasonable cause"
- Determinations of "reasonable cause" will require the parties to appear for compulsory conciliation
- Delaware Right to Sue Notices will be issued by the Department of Labor upon finding "no reasonable cause" and "no cause" determinations.

<http://legis.delaware.gov/BillDetail?legislationId=26453>

5. DELAWARE WORKPLACE ADJUSTMENT AND RETRAINING NOTIFICATION ACT (WARN)

House Bill No. 409 as Amended by House Amendment No. 2 establishes a Workplace Adjustment and Retraining Notification Act similar to the already existing federal W.A.R.N. The bill as amended was passed by both the State House of Representatives (34 yes votes, 3 no votes, 3 absent, 1 not voting) and the State Senate (15 yes votes, 3 no votes, 1 not voting, 2 absent). **The Delaware WARN Act provides the following:**

- State's version of the federal Worker Adjustment and Retraining Notification Act (federal WARN)
- Requires employers to provide 60 days advanced notice prior an employment loss due to either a mass layoff or plant closing or relocation impacting 50 or more employees
- The Delaware WARN Act applies to employers with 100 or more employees that collectively work at least 2,000 hours per week
- Requires employers to notify the impacted employees, their representatives, the Delaware Department of Labor, Division of Employment and Training and the Delaware Workforce Development Board
- Provides exemptions, like the federal WARN Act, from the notice requirement in certain circumstances (see the actual bill)
- Provides that an employer may be liable for back pay and benefits and subjects an employer to a penalty of \$1,000 per day for every day notice was not provided or \$100 per day for each terminated employee, whichever is greater.

<https://legis.delaware.gov/json/BillDetail/GetPdfDocument?fileAttachmentId=115446>

6. ADDITIONAL LEGISLATIVE WORKSHOPS

During the month of June, the Delaware SHRM Joint Legislative Initiative offered two legislative workshops hosted by BMI Insurance and Del-One Federal Credit Union. We are seeking employers in all three counties to host small workshops (5-15 participants). If you are interested in hosting a workshop email Jon McDowell at jmcdowell1@comcast.net.

7. DELAWARE SHRM JOINT LEGISLATIVE INITIATIVE COMMITTEE CONTACT INFORMATION

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This publication is the result of combined efforts by members of Delaware SHRM State Council, DE SHRM and DelMarVa SHRM Chapters. Any questions or suggestions should be referred to members of the Delaware SHRM State Joint Legislative Initiative Committee. This Legislative update is for informational purposes only. It is strongly recommended that you consult with an attorney for legal advice.