

DELAWARE AUGUST 2018 LEGISLATIVE UPDATE
(DELAWARE STATE COUNCIL, DELMARVA SHRM & DE SHRM CHAPTERS)

BRIEF SUMMER EDITION – MOSTLY REMINDERS FROM PREVIOUS UPDATES
LEGISLATION YOU NEED TO GET READY TO IMPLEMENT

1. OCTOBER 1, 2018 - SEXUAL HARASSMENT TRAINING REQUIREMENT FOR ALL EMPLOYEES + SPECIAL TRAINING FOR SUPERVISORS

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 of Delaware 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 of Labor 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>

2. JANUARY 1, 2019 – MINIMUM WAGE INCREASES TO \$8.75 PER HOUR

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

The bill allows employers to pay \$.50 per hour less than the established Delaware Minimum Wage in two situations:

- a. **Training Wage** – In lieu of the minimum wage otherwise required by this section, 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.
- b. **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. JANUARY 7, 2019 - DELAWARE WORKPLACE ADJUSTMENT AND RETRAINING NOTIFICATION ACT (WARN)

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 to 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>

5. ADDITIONAL LEGISLATIVE WORKSHOPS

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

6. 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.