




American Staffing Association

The background of the entire page is a photograph of a law library. A man in a dark suit and glasses is walking from left to right, carrying a blue folder. He is slightly out of focus. The shelves are filled with rows of law books, mostly with blue and red spines. In the bottom left foreground, there is a desk with some papers and a red office chair.

# STATE EMPLOYMENT LAW WORKBOOK

**DELAWARE**





Employment Law

# workbook

Delaware

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Participant Name

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Company



American Staffing Association

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The information in this workbook was provided by the law firm Seyfarth Shaw LLP. The workbook is intended as information and not as legal advice. Readers requiring legal or other advice regarding the matters discussed in the workbook should consult with experienced legal counsel.

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# Introduction

Certification is a key element in maintaining high standards of professionalism in the staffing industry. The Certified Staffing Professional® and the Technical Services Certified<sup>SM</sup> programs are self-study programs that offer professional credentials to individuals who pass examinations of labor and employment law principles and ethical practices. Both exams test your knowledge of federal and state employment laws.

This workbook is one component of the study materials for the ASA CSP® and TSC<sup>SM</sup> exams. The workbook covers the following topics:

- Discrimination
- Pre-employment inquiry guidelines
- Family and medical leave
- Wage and hour laws
- Noncompete and other employment agreements
- Workplace safety
- Drug testing
- Workers' compensation

Study questions are included to assist you in preparing for the CSP and TSC exams. An answer key is also included.

In addition to using this workbook, study for the exam using the two textbooks, *Employment Law for Staffing Professionals* and *Co-Employment: Employer Liability Issues in Third-Party Staffing Arrangements*. These textbooks cover applicable federal laws and serve as authoritative references.

You may also use the online timed practice exam. This practice exam contains the same number of questions that are on the actual online exam. Questions cover the content in this workbook and the two textbooks.

Individuals who pass the CSP or TSC exam will be eligible to use the CSP or TSC designation on all professional correspondence. To maintain the designations, certified individuals must complete at least 30 hours of approved continuing education (CE) within a prescribed period after the award of their CSP or TSC certificate and within each period thereafter as specified by ASA. At least six of the 30 CE hours must pertain to employment law. For more information about certification and continuing education, visit the ASA Web site at [americanstaffing.net](http://americanstaffing.net) and click on Education & Certification.

## Important State Law Updates

The American Staffing Association understands the importance of keeping up-to-date with changing state laws. The ASA legal team works with the law firm Seyfarth Shaw LLP to track and maintain these state law updates. Before starting your study of this workbook, please visit [americanstaffing.net/stateaddendums](http://americanstaffing.net/stateaddendums) to see if any laws in your state have changed since this workbook was printed.

# Discrimination

## Overview

**Delaware's Discrimination in Employment Act** is the primary antidiscrimination law in the state. The law applies to employers with **four or more** employees within the state at the time of the alleged violation.

Delaware also has a separate law addressing disability discrimination, the **Persons With Disabilities Employment Protections Act**. PDEPA applies to employers with **four or more** employees within the state at the time of the alleged violation.

Individuals are protected from employment discrimination under the DEA or PDEPA based on

- Age
- Color
- Disability (under the PDEPA)
- Gender Identity
- Genetic information
- Marital status
- Membership in a volunteer emergency responder organization
- National origin
- Race
- Religion
- Sex (including pregnancy)
- Sexual Orientation

It is an unlawful employment practice for an employer to

- Fail or refuse to hire; discharge; or otherwise discriminate against individuals with respect to compensation, terms, conditions, or privileges of employment because of the protected categories
- Limit, segregate, or classify employees in any way that would deprive or attempt to deprive an individual of employment opportunities, or otherwise adversely affect the individual's employee status because of the protected categories

It is an unlawful employment practice for an employer to collect any genetic information concerning an employee or applicant, or any member of his or her family, unless it can be demonstrated that

- The information is job-related and consistent with business necessity.
- The information or access to the information is sought in connection with the employer's retirement policy.
- The information or access to the information is sought in connection with the underwriting or administration of a bona fide employee welfare or benefit plan.

It is unlawful for an employer to discharge, refuse to hire, or otherwise discriminate against an employee or applicant for employment on the basis of that person's race, marital status, color, age, religion, sex, or national origin; or because that person has opposed an unlawful employment practice or has testified, assisted, or participated in an investigation, proceeding, or hearing to enforce Delaware's antidiscrimination laws.



## Exceptions

The DEA does not cover

- Any individual employed in agriculture or in domestic service
- Any individual who, as a part of employment, resides in the personal residence of the employer
- Any individual employed by his or her parents, spouse, or child
- Any individual elected to public office in the state or political subdivision; or any person chosen by a public officer to be on the officer's personal staff

Additional exceptions include

- **Bona fide occupational qualifications (BFOQs):** BFOQs permit discriminatory behavior. A BFOQ is a personal characteristic that is necessary for the employer to conduct its business and requires that the employer exclude individuals in other protected classes from consideration. A good example would be recruiting only females to model women's clothing. Delaware interprets BFOQs very strictly.
- **Bona fide seniority or merit systems; ability tests; or retirement policies or systems:** It is not an unlawful employment practice for an employer to apply different standards of compensation or different terms, conditions, or privileges of employment in accordance with a bona fide seniority or merit system, or a system that measures earnings by quantity or quality of production, or to employees who work in different locations. This practice is lawful as long as the differences are not intended to discriminate based on the protected categories. It also is not an unlawful employment practice for an employer to give or act upon the results of any professionally developed ability test, provided that the test, its administration, or action upon the results is not designed, intended, or used to discriminate. Furthermore, nothing in the state's antidiscrimination law as it applies to age or sex discrimination may be interpreted to affect or interfere with the retirement policy or system of any employer or the underwriting or administration of a bona fide employee welfare or benefit plan, as long as the policy, system, or plan is not merely a way to evade the law.
- **Mandatory retirement:** Mandatory retirement policies are not unlawful for employees who have attained 65 years old and have been employed in bona fide executive or high policy-making positions for at least two years prior to retirement, if the employee is entitled to an annual retirement benefit of at least \$44,000.
- **Religion:** It is not unlawful for a school, college, university, or other educational institution to hire and employ employees of a particular religion if the institution is owned, supported, controlled, or managed by a particular religion, or if the curriculum is directed toward the propagation of a particular religion.
- **Veterans' preference:** Giving preferential treatment to veterans as required by state or local law is not unlawful.

## Complaints and Violations

Any person who believes his or her rights have been infringed by an alleged unlawful employment practice may file a charge with the **Department of Labor's Division of Industrial Affairs** within **120 days** after discovery of the alleged conduct.

The Delaware Department of Labor is authorized to investigate complaints of discriminatory conduct. The DOL tries to eliminate unlawful discrimination through its administrative process. Upon termination of the administrative process by the department and upon receiving a right-to-sue notice, the charging party may institute a civil action in superior court within 90 days.

Among other items, a superior court has the authority to provide the following relief:

- Ordering the respondent to cease and desist from, or modify, its existing employment practices
- Ordering the respondent to hire, reinstate or promote the charging party
- Ordering payment of compensatory damages, including general and special damages, and punitive damages when appropriate, but not exceeding the damage awards allowable under federal law (Title VII of the Civil Rights Act of 1964), provided that employers with four to 14 employees are treated as an employer having fewer than 50 employees
- Ordering that the costs of litigation and reasonable attorney's fees be awarded to the prevailing party

## Classifications Under the Law

Following is an overview of each classification.

### Classification

### Delaware Law

#### Age

Discrimination in employment on the basis of age is prohibited for individuals age 40 or older.

#### Gender Identity

Discrimination in employment on the basis of gender identity is prohibited. Gender identity means a gender-related identity, appearance, expression, or behavior of a person regardless of the person's assigned sex at birth.

#### Emergency Responders

Delaware law protects those rendering service to volunteer fire and ambulance companies from discrimination in hiring and retention, and specifically prohibits discriminatory adverse actions related to compensation, terms, conditions and privileges.

Delaware's Volunteer Emergency Responders Job Protection Act prohibits an employer from terminating or taking any other disciplinary action against an employee who is a volunteer emergency responder if such employee, when acting as a voluntary emergency responder, is absent from his or her place of employment for a Governor-declared State of Emergency lasting up to 7 days or a President-declared National Emergency lasting up to 14 days. The Act further prohibits an employer from terminating or taking any other disciplinary action against an employee who misses work due to injury sustained when acting as a volunteer emergency responder.

At the employer's request, an employee who is a volunteer emergency responder that misses work due to responding to an emergency or having sustained injury from responding to an emergency is required to provide proof of such emergency response or injury to the employer. An employee who is terminated or who is the victim of any other disciplinary action taken in violation of this Act shall be reinstated to his or her former position. An action to enforce this Act may be brought by the employee within one year of the alleged violation.

## Classification

## Delaware Law

### Sex

The **Equal Pay Act** prohibits discrimination in employment on the basis of sex.

In addition to the general prohibition against sex discrimination, Delaware also has an **equal pay law**. Employees in the same establishment must be paid equally for equal work on jobs requiring equal skill, effort, and responsibility, and that is performed under similar working conditions. However, differences in pay are not unlawful where payment is made according to a differential that is based on

- Seniority systems
- Merit systems
- Systems that measure earnings by quantity or quality of production
- Any other factor other than sex

Employers that pay wage rates in violation of the equal pay law may not reduce the wage rate of any employee in order to comply with the law.

Discrimination on the basis of pregnancy is discrimination on the basis of sex.

### Sexual Orientation

Delaware prohibits discrimination on the basis of an employee's heterosexuality, homosexuality, or bisexuality.

### Religion

Discrimination in employment on the basis of religion is generally prohibited.

### Disability

**Delaware's Persons With Disabilities Employment Protection Act** applies to all employers with **15 or more employees** for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

For purposes of the law, "handicapped person" means any person who

- Has a physical or mental impairment that substantially limits one or more major life activities
- Has a record of such impairment
- Is regarded as having such impairment

**"Qualified handicapped person"** means a handicapped person who, with or without a reasonable accommodation, can satisfactorily perform the essential functions of the job in question provided that

- The person may not be held to standards of essential job function performance that are different from other employees similarly employed.

## Classification

## Delaware Law

- The handicap does not create an unreasonable risk to the safety or health of the handicapped person, other employees, the employer's customers, or the public.

It is unlawful for an employer, because of a handicap, to

- Fail or refuse to hire, recruit, or promote a qualified handicapped person who seeks an employment opportunity in good faith
- Discharge or otherwise discriminate against qualified handicapped people with respect to compensation, or terms, conditions, or privileges of employment
- Limit, segregate, or classify an employee or applicant for employment in a way that may deprive a qualified handicapped person of employment opportunities or otherwise adversely affect the person's status as an employee
- Fail or refuse to hire, recruit, or promote a qualified handicapped person who seeks an employment opportunity in good faith, on the basis of physical, mental, or other examinations that do not directly relate to the essential functions of the job
- Discharge or discriminate against a qualified handicapped person on the basis of physical, mental, or other examinations that are not directly related to the essential functions of the job

It is unlawful for an employment firm to refuse or fail to accept, register, classify properly, refer for employment, or otherwise discriminate against a handicapped person because of a handicap.

It is unlawful for an employer or employment firm to require an applicant to identify himself or herself as a handicapped person prior to a conditional offer of employment. However, the employer may invite an applicant to identify himself or herself as a handicapped person in order to act affirmatively on the applicant's behalf.

Once a qualified handicapped person has requested an accommodation, or if a potential accommodation is obvious under the circumstances, an employer must investigate whether there are reasonable accommodations that can be made and make those accommodations.

For purposes of the PDEPA, "reasonable accommodation" means making reasonable changes in the workplace, including

- Making facilities accessible
- Modifying equipment
- Providing mechanical aids to assist in operating equipment
- Making reasonable changes in the schedules or duties of the job in question that would accommodate the known handicaps of the handicapped person by enabling that person to satisfactorily

## Classification

## Delaware Law

perform the essential duties of the job in question

A “reasonable accommodation” does not require the employer to make changes for a new employee that **would cost more than 5% of the annual salary or annualized hourly wage of the job in question**. A reasonable accommodation also does not require the employer to make changes for an existing employee that would cost more than 5% of the employee’s current salary or current annualized hourly wage. This amount would take into consideration all changes made since the employment relationship began.

Changes that cost less than 5% of an employee’s salary or annualized wage are presumed not to be an undue hardship. Under the federal Americans With Disabilities Act, there is no monetary cap on a possible reasonable accommodation, and whether or not the employer would need to expend the cost for the accommodation depends on factors such as the employer’s size and financial ability. For those employers with 15 or more employees that are subject to both the federal and state laws, the federal law would govern on this issue.

## Military Status

Delaware’s military leave law covers only public employers. Military leave in the private sector is governed on the federal level by the Uniformed Services Employment and Re-Employment Rights Act.

## Study Questions

1. Lisa is an applicant for employment with DelaCo. Lisa is disabled. To hire Lisa, DelaCo would have to make some structural changes to the building so she can access the work facilities. Under the federal Americans With Disabilities Act, a reasonable accommodation does not require an employer to make changes that would cost more than 5% of the annual wages of the job in question.
  - a. True
  - b. False
2. Jerry recently applied for a job with DelaCo. Jerry did not get the job and is certain that it is because he is disabled. Jerry is considering filing a charge of discrimination under the federal ADA. DelaCo has 15 employees. Does the ADA apply to DelaCo?
  - a. Yes
  - b. No
3. Anthony is certain that DelaCo recently denied him a job because he is gay. However, sexual orientation is not considered to be a protected class under Delaware or federal law.
  - a. True
  - b. False

4. Jerry and Lisa both work for DelaCo in the same position. Both employees have the same education, skill, experience, and other job-related attributes. Jerry has worked for DelaCo for three years longer than Lisa, and is paid more than she is. This is a violation of Delaware's equal pay law.
  - a. True
  - b. False
5. DelaCo is a local staffing firm that recently filled an order for OtherCo for five male employees to help move some heavy office furniture. Is being a man a BFOQ under the circumstances because the job requires moving heavy furniture?
  - a. Yes
  - b. No
6. Anthony is 27 years old. While on an employment interview with DelaCo, the interviewer said to Anthony, "Although you are the most qualified applicant we have for this position, I think you are just too young. All your subordinates will be significantly older than you." Delaware's Discrimination in Employment Act does not have any age limitations.
  - a. True
  - b. False
7. DelaCo recently refused to hire Jerry because he is married. DelaCo thinks that married people tend to do poorly in the position because of the job's travel requirements. Is this lawful in Delaware?
  - a. Yes
  - b. No
8. Anthony was recently on a job interview at DelaCo. During the interview, the interviewer told Anthony that he is just too old for the job. Anthony is 60. If Anthony decides to file a charge of discrimination with the state, he must do so within 300 days of the alleged discrimination.
  - a. True
  - b. False
9. DelaCo recently filled an order for 10 temporary employees to hand out T-shirts in a men's locker room during an upcoming sporting event. Under the circumstances, being a man would be considered a BFOQ.
  - a. True
  - b. False
10. The Delaware DEA covers only employers with four or more employees.
  - a. True
  - b. False
11. In Delaware it is unlawful to discriminate based on \_\_\_\_\_.
  - a. Gender identity
  - b. Gender expression
  - c. Both gender identity and gender expression

12. Lourdes is a volunteer fire fighter. Due to a significant ice storm the governor declared a state of emergency. Due to her volunteer work to support the state of emergency situation she missed three days of work. Select the statement that is true.
- a. Lourdes's employer may force her to use vacation time for the three day of missed work
  - b. Lourdes's employer may discipline her for taking time off as aligned with the company's absenteeism policy
  - c. Under the law, Lourdes may take a leave for up to 14 days to support the state of emergency
  - d. None of the above are true

## Pre-Employment Inquiry Guidelines

Delaware does not have a general law addressing pre-employment inquiries.

### References

Employers that disclose information about a current or former employee's job performance to a prospective employer are presumed to be acting in good faith, and unless lack of good faith is shown, are immune from civil liability for this type of disclosure or its consequences.

The presumption of good faith may be refuted by showing that the information disclosed was either knowingly false, deliberately misleading, or rendered with a malicious purpose. The presumption may also be refuted by showing that the information was disclosed in violation of a nondisclosure agreement, or was otherwise confidential according to applicable federal, state, or local law.

For purposes of the law, "information" means

- Information about an employee's or former employee's job performance or work-related characteristics
- Any act committed by the employee that would constitute a violation of federal, state, or local law
- An evaluation of the ability or lack of ability of the employee or former employee to accomplish or comply with the duties or standards of the position held

### Employee Background Checking

Following are guidelines for employee background checking.

#### Category

#### Delaware Law

##### Consumer and Credit Reports

Delaware does not have a law addressing the use of consumer and credit reports. This is governed on the federal level by the **Fair Credit Reporting Act**.

##### Criminal Records

Delaware does not have a law that restricts or prohibits the use of criminal records. On the federal level, The **Equal Employment Opportunity Commission** has issued guidelines that require an employer to consider criminal records only to the extent that they are relevant to the performance of the job duties.

<b>Category</b>	<b>Delaware Law</b>
<b>Fingerprinting</b>	Delaware does not have a law that restricts or prohibits the use of fingerprinting.
<b>Driving Records</b>	Delaware does not have a law that restricts or prohibits the use of driving records.
<b>Education and Employment History</b>	Delaware does not have a law addressing the use of educational and employment history information.

### Study Questions

13. Jerry is a former employee of DelaCo who was excessively absent but generally a good worker. Jerry is now an applicant for employment with NewCo. NewCo called DelaCo to inquire about Jerry's work performance. DelaCo explained that Jerry was the worst worker it had ever employed, and probably a criminal. Jerry found out about DelaCo's communications with NewCo, and is furious. If Jerry does not get the job, DelaCo can be held liable.
  - a. True
  - b. False
  
14. Anthony is a job applicant at DelaCo. DelaCo had a background check performed on Anthony, just like all its other employment applicants. Under federal EEOC regulations, DelaCo is prohibited from considering any crimes Anthony may have committed in making an employment determination, unless the crime is a misdemeanor.
  - a. True
  - b. False

## Family and Medical Leave

Delaware does not have a family and medical leave law. This is governed on the federal level by the Family and Medical Leave Act.

## Wage and Hour Laws

Following are several guidelines used in wage and hour laws in Delaware.

<b>Category</b>	<b>Wage Guideline</b>
<b>Covered Employees</b>	Delaware's wage payment law covers all employers except the U.S., the state of Delaware, and any political subdivision of the state. Parties to a franchise agreement are not within the definition of "employee" under



## Category

## Wage Guideline

the wage payment law.

### Wage Definition

For purposes of the law, “wages” means compensation for services rendered by an employee, whether the amount is fixed or determined on a time, task, piece, commission, or other basis of calculation.

### Payment Form

Employers must pay all wages due to employees in lawful U.S. money or checks, provided suitable arrangements are made by the employer for cashing the checks for the full amount due at a bank or other business establishment convenient to the place of employment.

At an employee’s written request, an employer may pay that employee all wages due by credits to a bank account designated by the employee.

### Payment Frequency

Employers must pay all wages due to employees **at least once during each calendar month**, on regular paydays designated in advance by the employer.

Every employer must pay all **wages due within seven days from the end of the pay period in which the wages were earned**. However, if the regular payday falls on a nonworking day, payment must be made on the preceding workday. If the regular payday is within the pay period (on or before the final day of the pay period) and the pay period does not exceed 16 days, the employer may delay until the next pay period compensation for

- Overtime hours
- Employees hired or resuming employment during the pay period
- Part-time or temporary employees with variable working time

If an employee is not present on the regular payday, payment must be made either by mail, if requested by the employee, or on the next regular workday that the employee is present, or by credit to the bank account designated by the employee.

### Terminated Employees

Employees who are discharged, suspended, laid off, or have resigned must be paid on the **next regularly scheduled payday** through the usual pay channels, or by mail if requested by the employee.

If an employee dies, his or her wages due up to \$300 may, upon proper demand, be paid in the absence of notice of probate proceedings to the decedent’s

- Surviving children less than 21 years old, in equal shares, through payment to the parent, guardian, or other person having custody of the children
- Surviving spouse

Category	Wage Guideline
	<ul style="list-style-type: none"> <li>▪ Surviving children 21 years old and older, in equal shares</li> <li>▪ Father and mother, in equal shares, or the survivor of the two</li> </ul>
<b>Wage Disputes</b>	In the case of a dispute about the amount of wages due, employers must pay, <b>without condition</b> and within the time set by Delaware’s wage payment law, all wages conceded by the employer to be due.
<b>Wage Deductions</b>	<p>Employers must not withhold or defer any portion of an employee’s wages unless</p> <ul style="list-style-type: none"> <li>▪ The employer is required or empowered to do so by state or federal law.</li> <li>▪ The deductions are for medical, surgical, or hospital care, without financial benefit to the employer, and are openly, clearly, and in due course recorded in the employer’s books.</li> <li>▪ The employer has a signed authorization by the employee for deductions for a lawful purpose accruing to the benefit of the employee.</li> </ul> <p>The Delaware DOL may prohibit withholdings or diverting if the prohibition is in the public interest.</p>
<b>Wage Statements</b>	<p>Employers with <b>three or more employees</b> must provide each employee, at the time of payment, a statement showing</p> <ul style="list-style-type: none"> <li>▪ The wages due</li> <li>▪ The pay period for which wages are due</li> <li>▪ The total amount of deductions</li> <li>▪ The total number of hours for the pay period (if paid hourly)</li> </ul> <p>A business or individual that contracts with another employer for the performance of work that the contracting party has undertaken to perform becomes civilly liable to all employees engaged in the performance of the work for wages, exclusive of liquidated damages. This includes the wages that the other employer fails to pay its employees. The employer that fails to pay the wages of its employees then becomes liable to the contracting party for those wages.</p> <p>Every employer of more than three employees must</p> <ul style="list-style-type: none"> <li>▪ Notify each employee in writing, at the time of hiring, of the rate of pay and the day, hour, and place of payment</li> <li>▪ Notify each employee in writing, or through a posted notice maintained in a place accessible to the employee, of any reduction in the regular rate of pay and the day, hour, and place of payment prior to the time of that reduction</li> <li>▪ Make available to each employee, in writing or through a poster maintained in a place accessible to the employees, employment</li> </ul>

## Category

## Wage Guideline

practices and policies regarding vacation pay, sick leave, and comparable matters

- Post in an accessible place a summary of Delaware's wage payment law, to be supplied by the DOL on request without charge

### Complaints and Violations

Delaware's **DOL enforces the state's wage payment law**. The department may institute actions in superior court for penalties for any violation of the wage payment law.

In addition to being liable for any unpaid wages, the employer is liable to the employee for liquidated damages in the amount of **10% of the unpaid wages for each day**, except Sundays and legal holidays, that wages are not paid after the day payment is required; or in an amount equal to the unpaid wages, whichever is less.

### Minimum Wage and Overtime Provisions

Each state has its own minimum wage, which may be the same as or different from the federal minimum wage. To ascertain your state's minimum wage, contact your state department of labor. (Note: your state agency may go by a name other than the department of labor.)

Delaware's minimum wage law does not apply to the following occupations:

- Agricultural employees
- Domestics in private homes
- Bona fide executive, administrative, or professional employees
- Outside commission-paid sales people who customarily perform services away from the employer's premises taking orders for goods or services (but not route drivers)
- Employees of the U.S.
- Those employed in catching, taking, propagating, harvesting, cultivating, or farming any kind of fish, shellfish, crustaceans, sponges, seaweeds, or other aquatic forms of animal and vegetable life; or in the first processing, canning, or packing of marine products at sea either incident to or in conjunction with fishing operations, including traveling to and from work and loading and unloading
- Junior counselors or counselors in training who are less than 18 years old and employed by nonprofit organizations in summer camp programs
- Inmates in the custody of the Department of Corrections or on work release who participate in Prison Industries programs or other sponsored programs, unless an inmate is employed by a private employer
- Those employed in the activities of educational, charitable, religious, or nonprofit organizations where an employment relationship does not exist or where the services are rendered to the organization gratuitously

Critical information regarding the minimum wage and overtime provisions follows.

Category	Wage Guideline
<b>Minimum Wage</b>	Delaware's minimum wage will automatically be replaced by the federal minimum wage if the federal minimum wage exceeds the state's minimum wage.
<b>Tipped Employees</b>	<p>The minimum cash wage payable to employees <b>who receive tips is \$2.23 per hour.</b></p> <p>Gratuities received by an employee may not be taken or retained by the employer except as required by state or federal law.</p> <p>The DOL administers and enforces the minimum wage law. Should the department prevail in an action against the employer to collect unpaid minimum wages, the employer will also be liable to pay the costs of the action and reasonable attorney's fees.</p>
<b>Overtime Compensation</b>	Delaware has not enacted an overtime compensation law. This would be governed on the federal level by the <b>Fair Labor Standards Act</b> . Under the FLSA, covered employers of covered employees are required to pay 1½ times an employee's regular rate of pay for all hours worked in excess of 40 hours per week.
<b>Legal Day's Work</b>	Delaware does not recognize the concept of a legal day's work.
<b>Maximum Hours</b>	Required maximum hours for minors are found in Delaware's child-labor law.
<b>Meals and Rest Periods</b>	<p>Employees working <b>7.5 consecutive hours, or more, must be given an uninterrupted meal break of 30 minutes.</b> This unpaid break must be given after the first two hours of work but before the last two hours of work.</p> <p>A mother is entitled to breast-feed her child in any place of public accommodation in which the mother is otherwise permitted to be.</p> <p>Required meal and rest periods for minors are found in Delaware's child-labor law.</p> <p>Delaware's meal and rest period law does not apply when there is a collective bargaining agreement or any other written employer-employee agreement specifying otherwise.</p>
<b>Record-Keeping Requirements</b>	Every employer with <b>more than three employees</b> must make, keep, and preserve, for at least three years, the records specified in Delaware's wage payment law, including wage and hour records. The records must be kept on or about the premises or place of business or at one or more central

## Category

## Wage Guideline

record-keeping offices. These records must be available to the DOL as it deems necessary or appropriate to administer or enforce the wage payment law.

### Study Questions

15. Anthony's boss recently ordered him to clean up his messy office. Anthony is the human resource manager and stores all employee-related records in his office. Under Delaware law, Anthony can dispose of wage and hour records that are more than two years old.
  - a. True
  - b. False
16. Anthony is a new employee of DelaCo. Anthony recently moved from another state. At his old job, Anthony received a one-hour lunch break for every eight-hour shift he worked. Anthony wants to know what he is entitled to for a meal break under Delaware law. Under Delaware law, Anthony is entitled to a 60-minute meal break for every 7.5 consecutive hours worked.
  - a. True
  - b. False
17. Jerry was terminated from his job at DelaCo for excessive absenteeism. Under Delaware law, DelaCo must pay Jerry at the time of his discharge.
  - a. True
  - b. False
18. Lisa is a nonexempt employee of DelaCo. She knows that there are federal laws regarding the payment of overtime wages but she is not exactly sure to what she is entitled. Under federal overtime law, Lisa must be paid two times her regular hourly rate of pay for all hours worked in excess of 40 hours per week.
  - a. True
  - b. False
19. Lisa is a new employee of DelaCo and a new resident of the state. Before Lisa moved to Delaware, at her old job she was paid on a weekly basis. Lisa is curious about how often she will be paid as an employee of DelaCo. Under Delaware law, Lisa must be paid on a biweekly basis.
  - a. True
  - b. False
20. Parties to a franchise agreement \_\_\_\_\_ within the definition of "employee" under the wage payment law.
  - a. Are
  - b. Are not

# Noncompete and Other Employment Agreements

Following are guidelines for noncompete and other employment agreements.

Category	Guidelines
Noncompete Agreements	<p>Delaware courts will enforce noncompete agreements if they are reasonable. There is no general form of agreement regarding the duration or scope terms that employers can use to restrict their employees from competing against them. Depending on the industry or the type of confidential information that an employer is trying to protect, the geographical area and the duration of time that competition is restricted will vary.</p> <p>In addition to having reasonable restrictions, the employer must have a legitimate economic interest. The restricted activity must be closely defined to mirror the former employer's business. Courts will also consider the essential fairness of the situation. Courts may refuse to enforce an agreement because of the harm that may result to the employee.</p>
Other Employment Agreements	<p>Delaware has adopted the <b>employment-at-will rule</b>, which means that if the employment agreement is indefinite, the employer or the employee may end the relationship at any time and for any reason that is not against the law.</p> <p>There is a strong presumption in Delaware that the relationship is at-will. In order for an employee to successfully rely on statements in an <b>employee handbook</b> as an exception to the at-will status, the employee must demonstrate that the handbook has clear and explicit language providing that the employment relationship is for a fixed term. If that cannot be shown, the handbook is considered nothing more than a nonbinding statement of company policy.</p> <p>Delaware also recognizes that there is a very narrow exception to the at-will rule based on the employer's violation of <b>public policy</b>. So far, the only violation of public policy that has been held to be a wrongful discharge is terminating an employee for refusal to commit a criminal act. The courts will not find an exception to the at-will rule where instances of bad faith or fraud have not been adequately demonstrated by the employee.</p> <p>Another exception to the at-will rule may arise out of an implied covenant of <b>good faith and fair dealing</b>. For example, a Delaware resident successfully sued his employer after demonstrating that the employer induced him to enter into an employment contract without telling him that it intended to replace him as soon as a qualified candidate</p>

## Category

## Guidelines

could be found. In another case, a wrongful discharge was found when it was demonstrated that a supervisor falsified the employee's performance records for the purpose of persuading the employer to fire the employee.

## Workplace Safety

Delaware does not have a federally approved safety and health program, but the state DOL offers assistance to employers in voluntary compliance with federal **Occupational Safety and Health Administration standards**. OSHA is responsible for setting health and safety standards and enforcement in the state.

## Drug Testing

Delaware's drug-testing law only applies to public employment.

Under the Delaware Medical Marijuana Act, the doctor-recommended medical use of marijuana is permitted by patients suffering from serious medical conditions. However, employers are not required to allow patients to be impaired at work and may prohibit the possession of marijuana in the workplace.

## Workers' Compensation

Workers' compensation coverage is mandatory for almost all employment in Delaware. Domestic and casual employees earning less than \$750 in three months from one household, contractors, subcontractors (considered employers), and farm laborers are excluded from coverage.

### Insurance

Every employer required to secure workers' compensation coverage must file evidence of the employer's financial ability to pay with the DOL. Employers may self-insure or purchase insurance from a private insurance carrier. Subject to approval by the Office of Workers' Compensation in the DOL Division of Industrial Affairs, an employer and its employees may enter into an agreement for the payment of compensation, benefits, or insurance in lieu of the compensation and insurance provided under the workers' compensation law.

Every employer subject to the workers' compensation law must keep records of employment-related injuries. **A record of injury must be sent to the department within 10 days of the employer learning of the injury.**

## Benefits

**Medical and funeral benefits are paid from the first day of injury.** However, no compensation is paid for any injury that does not prevent an employee from earning full wages for a **period of three days**. Compensation will begin on the fourth day of incapacity after an injury. **If incapacity extends for seven days, including the day of injury, compensation will be paid for the first three days as well.**

Employees are not entitled to recover compensation if the employee is injured as a result of his or her intoxication. Employees are also prevented from recovering compensation if the injury is the result of the **employee's deliberate and reckless indifference to danger, willful intention to bring about injury, or willful failure or refusal to use a reasonable safety device to perform a statutory duty**. The burden of proof is on the employer.

## Notice

If notice of an injury is not given within 90 days of the injury, no compensation is due until notice is given or until the employer has knowledge of the injury.

Within 15 days after receipt of knowledge of a work-related injury, the employer or its insurer must provide written notice to the department of the date the alleged accident occurred, whether the claim is accepted or denied, and if denied, the reason.

Medical expenses must be paid within 30 days unless the employer or its insurer provides written notice to the claimant or claimant's attorney that the expenses are contested.

## Study Questions

21. Lisa was injured while working at DelaCo. Due to her injury, she was absent from work for six days. Under Delaware's workers' compensation law, Lisa will be compensated for missed wages for the entire time she was out of work.
  - a. True
  - b. False
22. Jerry was hurt on the job working for DelaCo. Jerry was drunk when the injury occurred. Jerry was performing his duties when he was struck by lightning. Will workers' compensation cover Jerry's injury?
  - a. Yes
  - b. No
23. Lisa has been prescribed medical marijuana by her doctor. Select the statement that is true.
  - a. Lisa has the right to use medical marijuana on her employer's premises.
  - b. Lisa does not have the right to use medical marijuana on her employer's premises.



## Answer Key to Study Questions

1. b

2. a

3. a

4. b

5. b

6. b

7. b

8. b

9. a

10. a

11. a

12. d

13. a

14. b

15. b

16. b

17. b

18. b

19. b

20. b

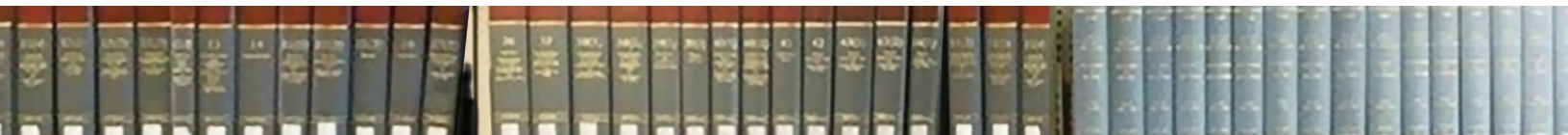
21. b

22. a

23. b







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