

Wage and Hour Laws

A State-by-State Survey

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I. OVERVIEW OF STATE LAW AND REGULATION

Delaware has only a few statutes concerning wage and hour law. These statutes are enforced through implementing regulations adopted by the Delaware Department of Labor (DE DOL). There is little case law, however, interpreting the wage and hour laws and DE DOL regulations.

All private sector employees working in Delaware are subject to the wage and hour laws administered by the DE DOL. Public employees working for Delaware, or a political subdivision of Delaware, are covered by all wage and hour laws with the exception of the Wage Payment and Collection Act.

The wage and hour statutes address the time and manner of paying wages (Wage Payment and Collection Act), minimum wages (Minimum Wage Act), meal breaks, and child labor (Child Labor Act). There is no Delaware law that addresses payment of wages at an overtime rate.

The DE DOL maintains a Web site with summaries of the statutes, and provides links to some of its regulations.¹

II. OPERATIONS AND FUNCTIONS OF STATE ADMINISTRATIVE AGENCY

A. Overview

The DE DOL administers all labor laws in Delaware.² In the wage and hour arena, this includes Delaware's Minimum Wage Act, Wage Payment and Collection Act, laws relating to meal breaks, and the Child Labor Act.

The DE DOL has the authority to promulgate regulations for the administration and enforcement of the Minimum Wage Act.³ The Act provides for judicial review of any regulation

¹DE DOL Regulations are referred to as "Reg. ____."

²19 DEL. CODE ANN. §105(a).

³*Id.* §904.

promulgated under it. Such a petition must be filed within 20 days of “notice that such regulation will affect the interested person’s business operations or employment conditions or compensation.” The standard for modifying or revoking a regulation is a finding that the petitioner has been or may be aggrieved, and the regulation is not in accordance with the law.⁴

B. Investigatory Function

Representatives of the DE DOL enjoy broad statutory authority to inspect records and collect facts relating to the enforcement of all state labor laws. This authority is only subject to the limitations that such entry be at reasonable times and conducted so as to avoid unduly hindering the conduct of business.⁵ DE DOL may, during the course of an investigation, administer oaths, take depositions, issue subpoenas, compel the attendance of witnesses, and compel the production of records.⁶

C. Exhaustion Requirements

Parties asserting violations of state wage and hour laws are not required to exhaust administrative remedies.

D. Administrative Wage Orders

This issue has not been addressed by the law in this state.

E. Adjudication

The Delaware Department of Justice, upon the request of DE DOL, is responsible for prosecuting any violation of law or regulation enforced by DE DOL.⁷

⁴*Id.* §909(a).

⁵*Id.* §107(a).

⁶*Id.* §108.

⁷*Id.* §115.

III. MINIMUM WAGE AND OVERTIME LAWS

A. Coverage

There is no Delaware statute or regulation that addresses payment of overtime. Delaware does require payment of a minimum wage of \$6.15 per hour.⁸

1. *Definition of Employee*

Employee includes any individual employed by an employer. Employees exempt from coverage include individuals:

- (1) employed in agriculture;
- (2) employed in domestic service;
- (3) employed in a bona fide executive, administrative, professional, or outside sales capacity;
- (4) employed by the United States;
- (5) who perform gratuitous services for educational, charitable, religious, or nonprofit organizations;
- (6) involved in fishing, farming, canning, or packing of aquatic animals or vegetable life;
- (7) under age 18 and employed as camp counselors by nonprofit summer camps; and
- (8) in the custody of the Department of Corrections who are involved in work release or similar programs unless employed by an employer other than the State, or a political subdivision of the state.⁹

2. *Definition of Employer*

Employer includes any individual, entity, or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.¹⁰

⁸*Id.* §902(a).

⁹*Id.* §901(5).

¹⁰*Id.* §901(4).

B. Minimum Wage

1. Minimum Wage Rate

Effective October 1, 2002, the minimum wage under the Delaware Minimum Wage Act is \$6.15 per hour. The Delaware Act is, however, tied to the Fair Labor Standards Act in that, if the federal minimum wage exceeds \$6.15 per hour, the state minimum wage shall be equal to the federal minimum wage.¹¹

2. Credits/Offsets Against the Minimum Wage

a. Tip Credit

The rate of \$2.23 per hour applies to employees in occupations where tips in excess of \$30 per month are customarily and regularly received.¹² Tips are the property of the employee.¹³

i. Service Charge. Employers may establish a service charge that is the property of management if clear and conspicuous notice (type of at least 18 point on the placard, or 10 point or larger on all other notices) is given to the customer indicating all or part of the service charge is the property of management. In the absence of such notice, the service charge is the property of the primary direct service employee.¹⁴

ii. Pooling Tips. Employees may establish a system for sharing or pooling tips among direct service employees so long as the employer does not require or coerce employees to agree to such a system. Where more than one employee provides personal service to the same customer, the employer may require that such employees establish a tip pooling system not to exceed 15 percent of the tips received by the primary direct service employees.¹⁵

¹¹*Id.* §902(a).

¹²*Id.* §902(b).

¹³*Id.* §902(d)(1).

¹⁴*Id.* §902(c)(4).

¹⁵*Id.* §902(d)(2).

b. Meals and Lodging

This issue has not been addressed by the law in this state.

c. Payments for Uniforms and Tools

This issue has not been addressed by the law in this state.

C. Overtime Pay

This issue has not been addressed by the law in this state.

1. Payment Based on Workweek or Workday

This issue has not been addressed by the law in this state.

2. Calculation of the Rate at Which Overtime Is Paid

This issue has not been addressed by the law in this state.

D. Exemptions

1. General Overview of Exemptions

The exemptions to the minimum wage requirements are generally partial exemptions such as those for disabled workers or apprentices. In addition, there are a large number of occupations that are not covered by the minimum wage requirements.¹⁶

a. FLSA Exemptions Adopted

Individuals employed as bona fide professional, executive, administrative or outside sales employees are not covered by the minimum wage law.¹⁷

¹⁶See Section III.A.1., *supra*.

¹⁷19 DEL. CODE ANN. §901(5).

b. Primary Duty Test

This issue has not been addressed by the law in this state.

2. *Administrative Exemption*

Delaware's minimum wage does not apply to employees employed as bona fide administrative employees.¹⁸

3. *Professional Exemption*

Delaware's minimum wage does not apply to employees employed as bona fide professional employees.¹⁹

4. *Executive Exemption*

Delaware's minimum wage does not apply to employees employed as bona fide executive employees.²⁰

5. *Computer Professional Exemption Test*

This issue has not been addressed by the law in this state.

6. *Salaried Basis Test*

This issue has not been addressed by the law in this state.

7. *Agricultural Exemption Test*

Employees employed in agriculture are not covered by Delaware's minimum wage law.²¹

8. *Motor Carrier Exemption*

This issue has not been addressed by the law in this state.

¹⁸*Id.*

¹⁹*Id.*

²⁰*Id.*

²¹*Id.*

9. *Outside Sales Exemption*

Delaware's minimum wage does not apply to employees employed as bona fide outside sales employees.²²

10. *Other Exemptions*

a. Disabled Workers in Sheltered Workshops

Employers of individuals working in not-for-profit workshops carrying out a rehabilitation program for disabled workers may apply for a certificate of exemption from the minimum wage requirements. The certificate provides for a lower individual minimum wage for disabled workers.²³

b. Disabled Workers in Competitive Employment

Employers of individuals working in for-profit industries may apply for a certificate authorizing the employment of such individuals as trainees, for a period not exceeding 90 days, at wages lower than the minimum wage, but not less than 50 percent of the wages paid to nondisabled workers for the same type, quality, and quantity of work. Such certificates are issued upon a showing the special minimum wage is necessary to avoid curtailment of the trainee's opportunities for employment, and the earning or productive capacity of the worker is impaired by age of disability.²⁴

c. Employment of Apprentices

The DE DOL may permit the employment of learners and apprentices at wage rates lower than the minimum wage rate if the DE DOL deems it necessary to prevent curtailment of opportunities for employment. The apprenticeship program must provide training in a skilled trade, and the apprentice must receive a progressively increasing schedule of wages aimed at

²²*Id.*

²³*Id.* §905; Reg. 905.1-905.14.

²⁴19 DEL. CODE ANN. §905; Reg. 905.15-905.27.

paying the apprentice at least 50 percent of the journeyman's rate over the period of the apprenticeship.²⁵

d. Special Minimum Wage for Student-Learners

Employers of student-learners receiving instruction in an accredited school who are employed on a part-time basis pursuant to a vocational training program may apply for a certificate authorizing payment of wages lower than the minimum, but not less than 85 percent of the minimum wage. Such certificates are granted if deemed necessary to prevent curtailment of opportunities for employment. The application must demonstrate the process by which the student-learner will be engaged in training on the job. The student learner must be at least 14 years of age, and the number of hours of instruction and work may not exceed 40 hours a week.²⁶

E. Calculation of Hours Worked

1. On-Call Time

This issue has not been addressed by the law in this state.

2. Meal Periods/Rest Periods

Employers must provide an unpaid meal break of at least 30 consecutive minutes to employees who work 7½ or more consecutive hours. The break must occur after the first 2 hours of work and before the last 2 hours of work.²⁷

Professional employees employed by Delaware school districts are exempt from the meal break requirement if they work directly with students. Written agreements between employees and employers, or collective bargaining agreements, may provide for deviation from the meal break requirement.

²⁵19 DEL. CODE ANN §906; Reg. 906.1-906.11.

²⁶19 DEL. CODE ANN §906; Reg. 906.12-906.22.

²⁷19 DEL. CODE ANN §707.

In addition, exemptions may occur where:

- (1) Compliance would adversely affect public safety;
- (2) Only 1 employee may perform the duties of a position;
- (3) An employer has fewer than 5 employees on a shift at a single place of business (in which case the exemption applies only to that shift); or
- (4) The continuous nature of an employer's operations, such as chemical production or research experiments, requires employees to respond to urgent or unusual conditions at all times, and the employees are compensated for meal break periods.²⁸

Employees subject to these exemptions must be permitted to eat meals at their work stations, use restroom facilities as reasonably necessary, and receive compensation for time spent using restroom facilities, as well as time devoted to eating meals.²⁹

3. Preliminary/Postliminary Work

This issue has not been addressed by the law in this state.

4. Travel Time

This issue has not been addressed by the law in this state.

5. Other Work Time Issues

This issue has not been addressed by the law in this state.

IV. TIMING, PLACE, AND MANNER OF PAYMENTS

The Delaware Wage Payment and Collection Act (the Wage Payment Act) governs when and how wages must be paid and

²⁸*Id.* §707(a).

²⁹DE DOL, Rules Relating to Exemptions from Meal Break Requirement, para. II.

what may be withheld from wages, and establishes remedies and penalties for violations of the Wage Payment Act. Unlike other Delaware wage and hour laws, a well-developed body of case law assists in the interpretation and application of the Wage Payment Act.

A. Designated Paydays

1. Coverage

The test to determine whether an individual is an employee covered by the Wage Payment Act is whether:

- (1) the individual or the employer retained control of the means and method of doing the work;
- (2) the individual is taxed like an employee; and
- (3) other benefits consistent with a standard employment contract were provided.³⁰

The Wage Payment Act does not apply to employees of the United States, the state of Delaware, or any political subdivision thereof.³¹

“Wages’ means compensation for labor or services rendered by an employee, whether the amount is fixed on a time, task, piece, commission, or other basis of calculation.”³² A nonrecurrent enterprise appreciation bonus does not constitute wages.³³ Severance pay is not wages under the Act.³⁴ Payments due a physician who voluntarily left employment at a medical group and agreed to receive four annual payments were held to be wages rather than severance pay.³⁵ Fringe benefits

³⁰Rypac Packaging Mach. Inc. v. Coakley, C.A. No. 16069, 2000 WL 567895 (Del. Ch. May 1, 2000).

³¹19 DEL. CODE ANN. §1101(a)(3)&(4).

³²*Id.* §1101(a)(2).

³³Compass v. American Mirrex Corp., 72 F. Supp. 2d 462 (D. Del. 1999).

³⁴Department of Labor ex rel. Commons v. Green Giant Co., 394 A.2d 753 (Del. Super. 1978).

³⁵Manley v. Associates in Obstetrics & Gynecology, P.A., C.A. No. 00C-049-JOH, 2001 WL 946489 (Del. Super. July 27, 2001).

that constitute “health, welfare or retirement” benefits are not wages.³⁶ Holiday pay is not included in the definition of wages under the Act.³⁷

A prime contractor is liable for payment of wages, exclusive of liquidated damages, to employees of its subcontractors in the event the subcontractor fails to make payment.³⁸

Unless otherwise specified in writing by the employer, the DE DOL generally treats vacation pay as a form of compensation covered by the Wage Payment Act. Sick leave, on the other hand, is not normally viewed as compensation. Employers, however, are free to adopt or choose not to pay vacation and/or sick leave, so long as such policies do not discriminate on the basis of protected status.

2. *Applicability*

Wages must be paid on the regular payday designated by the employer. The regular payday must be at least once a month.³⁹ If the regular payday falls on a nonworkday, payment shall be made the preceding workday.⁴⁰ If an employee is not present on the regular payday, payment shall be made by mail if requested by the employee, or on the next regular workday the employee is present.⁴¹

Wages must be paid within 7 days of the close of the pay period in which the wages are earned.⁴² If the regular payday is within the pay period, and the pay period does not exceed 16 days, the employer may delay until the next pay period payment of wages for:

- (1) overtime;
- (2) employees hired or resuming employment during the pay period; and

³⁶State ex rel. Lawrence v. American Ins. Co., 559 A.2d 1247 (Del. Supr. 1989).

³⁷GMC v. Local 435 of Int'l Union, 546 A.2d 974 (Del. Supr. 1988).

³⁸19 DEL. CODE ANN. §1105.

³⁹*Id.* §1102(a).

⁴⁰*Id.* §1102(b).

⁴¹*Id.* §1102(c).

⁴²*Id.* §1102(b).

- (3) part-time or temporary employees working irregular hours.⁴³

Benefits or wage supplements must be provided within 30 days after such payments are required to be made. Such amounts include, but are not limited to, reimbursement for expenses, health, welfare or retirement benefits, and vacation, separation, or holiday pay.⁴⁴

Payment must be in cash or a check that may be cashed at a bank convenient to the place of employment.⁴⁵

B. Payments to Hourly and Salaried Employees

1. Coverage

See Section IV.A.1., *supra*.

2. Applicability

See Section IV.A.2., *supra*.

C. Payments to Commissioned Employees

1. Coverage

A year-end commission, bonus, or incentive compensation constitutes wages under the Act.⁴⁶ See also Section IV.A.1., *supra*.

2. Applicability

See Section IV.A.2., *supra*.

⁴³*Id.*

⁴⁴*Id.* §1109.

⁴⁵*Id.* §1102(a).

⁴⁶SOCA Indus., Inc. v. Bracken, 374 A.2d 263 (Del. Supr. 1977); Seitz v. Siegfried Group, LLP, C.A. No. 99C-12-025CHT, 2001 WL 1198941 (Del. Super. Oct. 2, 2001).

D. Payments to Deceased Employees

1. Coverage

See Section IV.A.1., *supra*.

2. Applicability

An employer may make payment of up to \$300 of wages due a deceased employee upon demand and, in the absence of actual notice of the pendency of probate proceedings, without requiring letters testamentary of administration, in the following order of preference:

- (1) the parent, guardian or custodian of surviving children under 21 years of age, in equal shares;
- (2) surviving spouse;
- (3) surviving children 21 years of age and older, in equal shares; and
- (4) parents, in equal shares, or survivor.⁴⁷

E. Payments to Terminated Employees

1. Coverage

See Section IV.A.1., *supra*.

2. Applicability

The Delaware Wage Payment and Collection Act requires that an employee voluntarily or involuntarily terminated for any reason must receive wages the next regularly scheduled payday either through the usual pay channels, or by mail, if requested by the employee.⁴⁸

⁴⁷19 DEL. CODE ANN. §1106.

⁴⁸*Id.* §1103(a).

F. Prohibitions Against Deductions or Refunds to the Employer

1. Coverage

Same as Section IV.A.1.

2. Applicability

The Act prohibits an employer from withholding or diverting any portion of wages unless:

- (1) the employer is required or permitted to do so by state or federal law;
- (2) the deductions are for health care; or
- (3) the employee signed an authorization for deductions for a lawful purpose accruing to the benefit of the employee.⁴⁹

Controlling regulations make it clear cash and/or inventory shortages may not be deducted from wages. Any written agreement to the contrary is in violation of the Wage Payment Act.⁵⁰

A cash advance, or charges for goods or services, may only be repaid through payroll deduction if the employer and employee sign an agreement identifying the amount of the advance or value of goods or services, the repayment schedule, and the method of payment. The repayment schedule shall not provide for a repayment schedule in excess of 15 percent of an employee's gross wages per pay period. If such an employee is terminated owing an amount greater than 15 percent of gross wages due, the amount owed may be withheld from the final paycheck if the agreement permitting such deductions so provides.⁵¹

⁴⁹*Id.* §1107.

⁵⁰WP 2.

⁵¹Reg. WP 3.

A loss suffered by the employer due to damages to property (the employer's or a customer's property) may not be deducted from an employee's pay even if there is an agreement permitting such deductions.⁵²

V. PAYMENTS IN ADDITION TO MINIMUM WAGE AND OVERTIME (E.G., MANDATORY LEAVE, CERTAIN PREMIUM PAYS, AND SHIFT DIFFERENTIALS)

A. Working on Holidays

This issue has not been addressed by the law in this state.

B. Reimbursement for Uniforms or Tools

An employer shall not withhold an employee's, or former employee's, wages until such time as the employee returns the employer's property.⁵³

An employer may request a deposit be paid on property. The deposit shall not be deducted absent the employee's written consent. Any such deposit paid from the employee's wages must be paid in full by the first regular payday following the employee's receipt of the property. If property subject to the deposit is returned to the employer, the deposit must be returned to the employee no later than the next payday.⁵⁴

C. Mandatory Leave

This issue has not been addressed by the law in this state.

⁵²Reg. WP 4.

⁵³Reg. WP 5.

⁵⁴*Id.*

D. Other Mandatory Payments

This issue has not been addressed by the law in this state.

VI. PROHIBITIONS ON HOURS WORKED

This issue has not been addressed by the law in this state.

VII. OCCUPATIONS WITH SPECIAL RULES**A. Homework**

This issue has not been addressed by the law in this state.

B. Public Sector Employment

The Delaware Wage Payment Act does not apply to employees of the United States, the state of Delaware, or any political subdivision of the state.⁵⁵

The state may deduct from a state employee's salary such sum(s) an employee directs by written authorization. In addition, the state may deduct for employee health, life, and dental insurance premiums.⁵⁶

Saturday is statutorily designated as a legal holiday throughout the year for all state employees, except state police, employees of the Department of Safety, and employees assigned to rotating shift work. For employees of the Department of Safety, Saturday is a holiday except for the last two Saturdays of each quarter.⁵⁷

⁵⁵19 DEL. CODE ANN. §1101(3).

⁵⁶29 DEL. CODE ANN. §5106.

⁵⁷*Id.* §5104.

C. Occupations Requiring Work Permits

This issue has not been addressed by the law in this state.

VIII. CHILD LABOR ACT

A. Coverage

Delaware's Child Labor Act applies to all employers who employ children under the age of 18.⁵⁸

Employment of children in the following situations is not subject to the requirements of the Act:

- (1) children receiving industrial education furnished by the United States, the state of Delaware or any municipality, if the education is approved by a school board or committee or other duly constituted public authority;
- (2) children performing nonhazardous work as ordered by family court as a condition of probation;
- (3) nonhazardous farm work;
- (4) domestic work performed at a private home;
- (5) work performed for a business owned by a parent, or one legally standing in the place of a parent, in a nonhazardous occupation;
- (6) work performed by nonpaid volunteers in a charitable or nonprofit organization with the written consent of a parent, or one legally standing in the place of a parent;
- (7) caddying on a golf course;
- (8) delivery of newspapers to the consumer;
- (9) employment of a graduate of an accredited school in a hazardous occupation in which a course of study has been completed, but only to the extent the hazardous occupation would otherwise be prohibited;

⁵⁸19 DEL. CODE ANN. §502(1).

- (10) hazardous work performed by nonpaid volunteers 14 years of age or older of a volunteer fire department or volunteer rescue squad who have completed or are taking a course relating to fire fighting or rescue; and
- (11) any child over the age of 14 years employed in any nonhazardous occupation in any facility used for the purpose of canning or preserving, or preparation for canning or preserving, perishable fruits and vegetables.⁵⁹

B. Children Under 14 Years of Age

No child under the age of 14 may be employed or permitted to work.⁶⁰

C. Children Under 16 Years of Age

Children under 16 years of age are not permitted to work:

- (1) before 7:00 a.m. or after 7:00 p.m. (except from June 1 through Labor Day, during which time the child is permitted to work until 9:00 p.m.);⁶¹
- (2) during the school day;⁶² and
- (3) more than
 - (a) 4 hours on any day when school is in session;
 - (b) 8 hours on any day when school is not in session;
 - (c) 18 hours in any week when school is in session for 5 days;
 - (d) 40 hours in any week when school is not in session;
 - (e) 6 days in any week; or
 - (f) 5 hours continuously without a nonworking period of at least one-half hour.⁶³

⁵⁹*Id.* §502(2) and DE DOL Delaware Child Labor Law Handbook, as amended October 31, 1998 (DE DOL Handbook).

⁶⁰19 DEL. CODE ANN. §505.

⁶¹*Id.* §506(e).

⁶²*Id.* §506(a)(1).

⁶³*Id.* §506(d) and DE DOL Handbook.

Hours worked in a work-study or student-learner program when school is normally in session shall not be counted in calculating the permissible hours of work.⁶⁴

Children under the age of 16 shall not be employed or permitted to work in, about, or in connection with:

- (1) Any employment during the prescribed school day;
- (2) Any occupation prohibited by the United States Secretary of Labor pursuant to the provisions of the Fair Labor Standards Act [29 U.S.C. §201 et seq.];
- (3) The operation, cleaning or adjusting of any power-driven machinery, appliances or tools, other than office machinery and food or beverage dispensing machines where the moving parts are not exposed to the operator;
- (4) Meat slicers;
- (5) Deep fat fryers;
- (6) Steamers and pressure cookers used in the preparation of food;
- (7) Boilers;
- (8) Stripping and sorting tobacco;
- (9) Construction or demolition projects;
- (10) Tunnels or excavations;
- (11) Mines, quarries or borrow pits;
- (12) Coal breakers or coke ovens; or
- (13) Any other occupation which, following a public hearing by the [DE DOL], the Secretary deems to be injurious to the health, safety, welfare or morals of the minor.⁶⁵

The prohibitions listed above do not apply to (1) enrollment in a work-study, student-learner or similar program where the employment is part of the course of study, and the employment is procured and supervised by a school district; or (2) the practice of farm labor with adult supervision.⁶⁶

D. Children Under 18 Years of Age

Children under 18 years of age shall:

⁶⁴19 DEL. CODE ANN. §506(f).

⁶⁵*Id.* §506(a).

⁶⁶*Id.* §506(c).

- (1) not spend more than 12 hours in a combination of school hours and work hours per day;⁶⁷
- (2) have at least 8 consecutive hours of nonwork, nonschool time each 24-hour day; and⁶⁸
- (3) Not be employed or permitted to work more than 5 hours continuously without a nonworking period of at least one-half hour.⁶⁹

A child under the age of 18 shall not be employed or permitted to work in, about, or in connection with:

- (1) Any occupation prohibited by the United States Secretary of Labor pursuant to the provisions of the Fair Labor Standards Act [29 U.S.C. §201 et seq.];
- (2) Blast furnaces;
- (3) Docks or wharves, other than marinas where pleasure boats are sold or serviced;
- (4) Railroads;
- (5) The erection and/or repair of electrical wires;
- (6) Distilleries where alcoholic beverages are manufactured, bottled, labelled, wrapped or packaged;
- (7) The manufacturing of dangerous or toxic chemicals or compounds;
- (8) Any other occupation which the Secretary deems injurious to the health, safety, welfare or morals of the minor;
- (9) Any occupation as a pilot, firefighter, or engineer on any vessel or boat engaged in commerce; or
- (10) Any occupation as a messenger for a telegraph, telephone or messenger company in the distribution, delivery, collection or transmission of goods or messages before 6:00 a.m. or after 10:00 p.m. or any day in any town or city having a population of over 20,000 persons.⁷⁰

The prohibitions listed above shall not apply to (1) a minor under 18 years of age enrolled in a work-study, student-learner, apprenticeship, or similar program where the employment is part of the course of study, and the employment is procured and

⁶⁷*Id.* §507(c).

⁶⁸*Id.* §507(d).

⁶⁹*Id.* §507(e).

⁷⁰*Id.* §507(a).

supervised by a school district; or (2) by a federal or state monitored apprenticeship program.⁷¹

E. Work Permits

Children under the age of 18 must have a verified and validated employment certificate (similar to a work permit). The employer is required to keep the certificate on file and make it accessible to the DE DOL upon request.⁷²

Such certificates are issued by the DE DOL and at junior and senior high schools throughout the state.⁷³

IX. RECORDKEEPING AND POSTING REQUIREMENTS

A. Recordkeeping

With regard to the Minimum Wage Act and the Wage Payment Act, the employer must maintain, for at least 3 years, the following records:

- (1) the name, address, and occupation of each employee;
- (2) each employee's rate of pay and the amount paid each pay period; and
- (3) the hours worked each day and each workweek by every employee.⁷⁴

With regard to the Wage Payment Act, employers of 3 or more employees must maintain payroll records for 3 years.⁷⁵

⁷¹*Id.* §507(b).

⁷²*Id.* §504(a).

⁷³*Id.* §504(b).

⁷⁴*Id.* §907.

⁷⁵*Id.* §1108.

B. Posting Requirements

A summary of the Minimum Wage Act must be posted in a conspicuous location (i.e., a location employees normally pass) at the employer's premises.⁷⁶ The DE DOL provides such a poster to employers without charge.

With regard to the Wage Payment Act, employers of 3 or more employees must:

- (1) notify employees in writing, at the time of hiring, of the rate of pay, and the day, hour, and place of payment;
- (2) notify employees in writing, or through an accessible, posted notice, of reductions in rates of pay or changes to the day, hour, or place of payment prior to the time effective date of such a change;
- (3) notify employees in writing, or through an accessible, posted notice, of vacation, sick leave, and comparable policies;
- (4) at the time of payment, furnish employees with a statement showing wages due, the pay period, itemized deductions, and, for hourly rate employees, the total number of hours worked during the pay period; and
- (5) post and maintain a summary of the Act (supplied upon request by the DE DOL without charge) in an accessible location.⁷⁷

X. ENFORCEMENT AND REMEDIES

A. Administrative Enforcement

Employees with small claims for violations of the Wage Payment Act typically lodge a complaint with the DE DOL, which conducts an investigation and makes a determination. Where

⁷⁶*Id.* §908.

⁷⁷*Id.* §1108.

reasonable grounds exist to believe there is a violation of the Wage Payment Act, the DE DOL has broad power to investigate, including entering an employer's place of business and inspecting records.⁷⁸

If the matter is not resolved at that stage, the DE DOL may initiate an action to recover the wages due. Employees may also, with or without filing an administrative complaint, initiate an action to recover wages due under the Act.⁷⁹

Interfering with or hindering the DE DOL in the performance of its duties under the Act or knowingly providing DE DOL false information is punishable by a civil penalty of not less than \$1,000 nor more than \$5,000 for each such violation.⁸⁰ The discharge or discrimination against an employee for making a complaint or giving information to the DE DOL results in a civil penalty of not less than \$1,000 nor more than \$5,000 for each such violation.⁸¹

Under the Minimum Wage Act, employers are subject to a civil penalty not less than \$1,000 nor more than \$5,000, per violation, for any of the following:

- (1) hindering or delaying the DE DOL in the performance of its duties;
- (2) refusing to admit the DE DOL to the premises or place of employment in violation of any court order;
- (3) failing to make, keep, and preserve records required under the Act, or falsifying such records;
- (4) refusing to make records available to the DE DOL;
- (5) refusing to furnish a sworn statement;
- (6) failing to post a summary of the Act or any regulations;
- (7) failing to pay the wages required by the Act; or
- (8) discriminating against any employee who complains or gives information to the DE DOL pursuant to the Act, causes or is about to cause proceedings to be

⁷⁸*Id.* §1111.

⁷⁹*Id.* §1113(a) and (b).

⁸⁰*Id.* §509(a).

⁸¹*Id.* §509(c).

instituted, or testifies or is about to testify in any such proceedings.⁸²

A civil penalty claim may be filed in any court of competent jurisdiction.⁸³

B. Private Enforcement

Under the Wage Payment Act, employees may bring claims under the Act in any court of competent jurisdiction, or file a claim with the DE DOL. Relief includes the wages due, costs of the action, and attorneys' fees.⁸⁴

If there is a dispute over the amount of wages, the employer is required to pay the amount it concedes to be due. The employer shall not require the employee to release the employee's claim for additional wages as a condition of accepting partial payment.⁸⁵

In the event an employer, without any reasonable grounds for dispute, fails to pay an employee wages as required by the Wage Payment Act, such an employer is

liable to the employee for liquidated damages in the amount of 10 percent of the unpaid wages for each day, except Sunday and legal holidays, upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller. . . .⁸⁶

Liquidated damages are not assessed if the failure to pay wages occurs after the employer files a bankruptcy petition, or the employer "is unable to prepare the payroll due to a labor dispute, power failure, blizzard or like weather catastrophe, epidemic, fire or explosion. . . ."⁸⁷

⁸²*Id.* §910.

⁸³*Id.* §509(d).

⁸⁴*Id.* §911.

⁸⁵*Id.* §1104.

⁸⁶*Id.* §1103(b).

⁸⁷*Id.*

Civil penalties of \$1,000 to \$5,000 may be imposed for violating the meal period section or retaliating against an employee complaining of a violation. Claims for violations may be brought in any court of competent jurisdiction.⁸⁸

In addition to the ability to recover an amount up to double the amount of the wages in the absence of a reasonable dispute, the employee, or former employee, may also recover attorneys' fees for violations of the Wage Payment Act.⁸⁹

Employers that employ or permit a minor to work in violation of the Child Labor Act are subject to a civil penalty up to \$10,000 for each violation.⁹⁰

A civil penalty claim may be filed in any court of competent jurisdiction.⁹¹

C. Criminal Penalties

This issue has not been addressed by the law in this state.

D. Injunctions

This issue has not been addressed by the law in this state.

XI. RETALIATION

An employer that discharges or otherwise discriminates against an employee who complains to, or provides information to, the DE DOL regarding a violation of the meal breaks law is subject to a penalty of not more than \$1,000 for each violation.⁹²

Furthermore, an employer that discharges or in any other matter discriminates against an employee, because the employee engaged in protected activity under the Wage Payment

⁸⁸*Id.* §707(c).

⁸⁹*Id.* §1113(c).

⁹⁰*Id.* §509(b).

⁹¹*Id.* §509(d).

⁹²*Id.* §707(b).

Act, is subject to a civil penalty of not less than \$1,000, nor more than \$5,000 for such violation.⁹³

Under the Minimum Wage Act, employers are subject to a civil penalty not less than \$1,000 nor more than \$5,000, per violation, for discriminating against any employee who complains or gives information to the DE DOL pursuant to the Act, causes or is about to cause proceedings to be instituted, or testifies or is about to testify in any such proceedings.⁹⁴

XII. SPECIAL LITIGATION ISSUES

A. Statute of Limitations

No action for the recovery of wages shall be brought after the expiration of 1 year from the accruing of the cause of action.⁹⁵ While parties may shorten the period of limitations, a contractual attempt to extend the period violates public policy.⁹⁶

B. Rule 23 Class Actions Versus Opt-In requirements

This issue has not been addressed by the law in this state.

C. Double or Triple Damages

In the event an employer, without any reasonable grounds for dispute, fails to pay an employee wages as required by the Wage Payment Act, such an employer is

liable to the employee for liquidated damages in the amount of 10 percent of the unpaid wages for each day, except Sunday and legal holidays, upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller. . . .⁹⁷

⁹³*Id.* §1112.

⁹⁴*Id.* §910.

⁹⁵10 DEL. CODE ANN. §8111.

⁹⁶*Shaw v. Aetna Life Ins. Co.*, 395 A.2d 384 (Del. Super. 1978).

⁹⁷19 DEL. CODE ANN. §1103(b).

Liquidated damages are not assessed if the failure to pay wages occurs after the employer files a bankruptcy petition, or the employer “is unable to prepare the payroll due to a labor dispute, power failure, blizzard or like weather catastrophe, epidemic, fire or explosion . . .”⁹⁸

⁹⁸11 DEL. CODE ANN. §1103(b).