



DELAWARE

EMPLOYMENT LAW LETTER

Part of your Delaware Employment Law Service

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LEGISLATION

Legislature done with Dover

by Molly DiBianca and Lauren E.M. Russell

Now that the 2013-14 legislative session is over, we can report on what got done.

Employment protection for the disabled

The Delaware General Assembly passed and the governor signed an amendment to the Delaware Persons with Disabilities Employment Protections Act (DPDEPA) that changes the definition of "employer." The definition has been adjusted to bring the DPDEPA in line with the Delaware Discrimination in Employment Act (DDEA), which applies to any employer with four or more employees in the state of Delaware. The change broadens the scope of the DPDEPA, which used to be nearly identical to the Americans with Disabilities Act (ADA).

Delaware has also passed legislation "relating to the removal of insensitive and offensive language." According to the synopsis, the bill is part of a national movement — known as People First Language (PFL) legislation — intended to "promote

dignity and inclusion for people with disabilities." PFL requires that when describing an individual, the person comes first and the description of the person comes second.

For example, when using PFL, terms such as "the disabled" would be phrased "persons with disabilities." This language emphasizes that individuals are people first and that their disabilities are secondary. From the employment law context, this is an outstanding initiative. It is far easier to do (or say) the right thing when we know what the right thing is. Legislation like this, which makes clear what is (and is not) the right thing to say, is always helpful.

When dealing with employees, what matters is what the employee is doing (or failing to do) with respect to her job — not that she is "in a protected class." Start off by addressing what actually matters. Everything else, including a discussion about potential accommodations, will follow if and when it's appropriate.

Record-keeping obligations

The governor has also signed legislation related to the safe destruction of documents containing personal identifying information. The bill is effective January 1, 2015, and requires that commercial entities take all reasonable steps to destroy a consumer's personal identifying information within the business's custody and control when the information is no longer to be retained. Destruction includes shredding, erasing, or otherwise destroying or modifying the personal identifying information to make it entirely unreadable or indecipherable through any means.

Personal identifying information includes but isn't limited to a consumer's first name or first initial and last name in combination with any one of the following: a signature, date of birth, Social Security number, passport number, driver's license number, insurance policy number, or financial information (such as a credit card number).

There are exceptions for federally regulated financial institutions, healthcare organizations

subject to the Health Insurance Portability and Accountability Act (HIPAA), consumer reporting agencies subject to the Fair Credit Reporting Act (FCRA), and governmental bodies.

Violation of the statute carries stiff penalties, including triple damages.

Bottom line

Delaware employers should be aware of the expansion of the DPDEPA and their new record-keeping obligations. While compliance with the DPDEPA shouldn't be onerous — most employers already comply with its provisions — the record-keeping requirements are a different story.

As we noted in the June 2014 issue of Delaware Employment Law Letter (see "Dealing with Dover, part 2" on pg. 1), the legislation isn't a model of clarity and leaves a lot of questions about how it will be applied to Delaware businesses. Until the courts provide additional guidance, you are well-advised to carefully review your document security.

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