



# DELAWARE

## EMPLOYMENT LAW LETTER

Part of your Delaware Employment Law Service

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### **Delaware legislation may have big impact on small businesses**

by Lauren E.M. Russell

*Over the past several years, the Delaware General Assembly has been very active regarding labor and employment issues. We have frequently addressed employers' concerns about legislative bills, which often have unintended consequences. The legislature's most recent proposal is no different.*

#### ***Delaware Discrimination in Employment Act***

Currently pending in the General Assembly is Senate Bill (SB) 214, titled the Delaware Discrimination in Employment Act. The bill would extend Delaware's deadline to file discrimination charges from 120 days to 300 days and bring the state deadline in line with deadlines set by federal statutes, including but not limited to Title VII of the Civil Rights Act of 1964.

The legislation would have very little impact on employers with 20 or more employees because they are already subject to the federal deadlines. In fact, the bill may be helpful to those employers. The Delaware Department of Labor (DDOL) cannot review a discrimination charge if the alleged

misconduct occurred more than 120 days before the charge was filed. In that situation, the DDOL has no jurisdiction, and the charge must be referred to the Equal Employment Opportunity Commission (EEOC), which has jurisdiction over discrimination charges filed under federal statutes, including Title VII and the Americans with Disabilities Act (ADA).

As you know, the EEOC has had tremendous backlogs for years. It is not unusual for charges to sit for two years before being investigated. By contrast, the DDOL frequently resolves charges in a matter of months and almost never holds charges for longer than a year. So SB 214 may offer salvation to employers that appreciate speedy resolutions to frivolous claims.

However, SB 214 would impose a real burden on small employers. The bill would cover employers with as few as four employees. Those employers are too small to be subject to federal antidiscrimination laws and the 300-day filing deadline. Consequently, SB 214 would place an added burden on small businesses, including the costs of defending discrimination charges, while imposing no burden on large employers, which are better able to defray the costs of mounting a legal defense.

### ***Bottom line***

While legislation can move through the General Assembly with remarkable speed, SB 214 remains in the Senate Labor & Industrial Relations Committee. If your company would be negatively affected by the bill, reach out to your senator and representative to share your concerns. The General Assembly may not see the unintended consequences of employment legislation unless employers speak up.

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