



DELAWARE

EMPLOYMENT LAW LETTER

Part of your Delaware Employment Law Service

Lauren Russell, Scott A. Holt, William W. Bowser,
and Molly DiBianca
Young Conaway Stargatt & Taylor, LLP

Vol. 21, No. 7
July 2016

LEGISLATIVE UPDATE

3 Delaware laws expand workplace protections for women

by William Bowser

Three employment-related bills recently passed the Delaware General Assembly, and all three were signed into law by Governor Jack Markell. The new laws will prohibit employers from taking action against employees for discussing their wages and discriminating against employees based on "family responsibilities" or "reproductive health decisions." Although the bills are not limited to protecting women in the workplace, that is their focus.

Wages, health decisions, and family duties

House Bill (HB) 314 would make it unlawful for an employer to discipline or otherwise discriminate against an employee for "inquiring about, discussing, or disclosing . . . her wages or the wages of another employee." The bill is based in part on the premise that women can be underpaid and not know it. The Obama administration proposed similar legislation at the federal level, but it was blocked by

a divided Congress. President Barack Obama has issued an Executive Order prohibiting federal contractors from retaliating against employees who discuss their salary and compensation.

HB 316 would make it illegal for an employer to discriminate against an individual on the basis of a "reproductive health decision." "Reproductive health decision" is defined as "a decision related to the use or intended use of a particular drug, device, or medical service, including the use of contraception or fertility control or the planned or intended initiation or termination of a pregnancy." The bill is an obvious attempt to prevent discrimination against women who plan to or have had an abortion.

HB 317 would prohibit discrimination on the basis of "family responsibilities." The term "family responsibilities" means "the obligations of an employee to care for any family member who would qualify as a covered family member under the Family and Medical Leave Act [FMLA]." Under the FMLA, "family member" means a spouse, child, or parent. The bill is based on an increase in the number of families in which both parents work and the fact that family responsibilities disproportionately fall on women. Importantly, the bill would permit employers to discipline or discharge an employee who misses time because of family responsibilities unless (1) "the employee's performance at work meets satisfactory standards" or (2) the time is protected by law (e.g., the FMLA).

Delaware would be just the third state to enact a family responsibilities law, joining Alaska and Minnesota. Although federal law doesn't directly address family responsibility discrimination, employees have successfully used Title VII of the Civil Rights Act of 1964 to address workplace discrimination based on stereotypes against caregivers, particularly mothers.

Bottom line

Although the new laws may seem, on many levels, like common sense, employers should always be aware of new grounds for litigation. From legislation we have seen from the General Assembly over the last several years, we can draw a clear

conclusion that the state of Delaware is focusing on issues involving sexual and gender equality, and employers should expect increased enforcement activity on those fronts. Managers should be trained on those issues. Also, you may want to consider undertaking a compensation review to ensure there are no latent pay inequity issues that would draw the attention of the Delaware Department of Labor (DDOL) or the Equal Employment Opportunity Commission (EEOC).

The author can be reached at wbybrowser@ycst.com.

Copyright 2016 M. Lee Smith Publishers LLC

DELAWARE EMPLOYMENT LAW LETTER does not attempt to offer solutions to individual problems but rather to provide information about current developments in Delaware employment law. Questions about individual problems should be addressed to the employment law attorney of your choice.

[Back to Results](#)

[Back to Search](#)

[Exit Search](#)