



Guide to the Rights of Breastfeeding Employees in Delaware

Purpose: This guide was developed to provide an overview of the laws that protect the rights of breastfeeding employees in Delaware to express breast milk during the workday. The factors that are addressed and the level of protection provided vary widely from one law to another. The chart below details the Delaware and federal laws that impact breastfeeding employees, and the protections those laws provide for each listed component. Components that are not addressed by the law are shaded in gray.

How to Use This Guide: To identify your rights as a breastfeeding employee or obligations as an employer, you must first determine which of the laws apply to you. Then compare each part of the applicable laws. If an employee is covered by more than one law, and those laws address the same component, the employee is entitled to the strongest protection available. If an employer does not provide the required accommodations, a complaint can be filed with the regulatory agency. The agency responsible for enforcement of each law and information on how to file a complaint is included in the chart.

The template was developed to address every component considered in existing state and federal workplace lactation accommodation laws. Some components may not apply to your state.

Where to Go for Help: Many breastfeeding coalitions provide support for employees and employers. See the [Breastfeeding Coalition of Delaware website](#) or visit the U.S. Breastfeeding Committee [Coalitions Directory](#) for a list of all breastfeeding coalitions.

Important Note: The information provided in this guide is not legal advice. Legal advice is dependent upon the specific circumstances of each situation. Check with a lawyer or the regulatory agency if you believe your rights have been violated.

Delaware Law:

[Delaware Code Ann. tit. 19, § 710-11. Discrimination in Employment](#)

Delaware law prohibits discrimination on the basis of sex, which includes discrimination on the basis of pregnancy, childbirth or a related condition, including breastfeeding. Reasonable accommodation" available under this subchapter may include, but are not limited to, acquisition of equipment for sitting, more frequent or longer breaks, periodic rest, assistance with manual labor, job restructuring, light duty assignments, modified work schedules, temporary transfers to less strenuous or hazardous work, time off to recover from childbirth, or break time and appropriate facilities for expressing breast milk. [Complete law text is included below the chart]

Resources:

- [State of Delaware, the Delaware Code Online:](#)
 - [Statutory language:](#) full text of Delaware Code Ann. tit. 19, § 710-11.
- [State of Delaware Department of Labor, Division of Industrial Affairs, Office of Discrimination:](#)
 - [Pregnancy Discrimination:](#) describes Delaware's pregnancy-related protections.

Federal Laws:

[Section 7\(r\) of the Fair Labor Standards Act – Break Time for Nursing Mothers Provision:](#)

(r)(1) An employer shall provide—

- A. a reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk; and
- B. a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

(2) An employer shall not be required to compensate an employee receiving reasonable break time under paragraph (1) for any work time spent for such purpose.

(3) An employer that employs less than 50 employees shall not be subject to the requirements of this subsection, if such requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business.

(4) Nothing in this subsection shall preempt a State law that provides greater protections to employees than the protections provided for under this subsection.

Resources:

- [United States Department of Labor Wage and Hour Division](#) (WHD):
 - [Statutory language](#): full text of the "Break Time for Nursing Mothers" law.
 - [Fact Sheet #73](#): includes information on general requirements, time and location of breaks, and coverage and compensation requirements under the "Break Time for Nursing Mothers" law.
 - [FAQs](#): answers many questions about the law.

[Title VII of the Civil Rights Act](#): The Pregnancy Discrimination Act, passed in 1978, amended Title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy, childbirth, and related medical conditions. In 2013, the United States Court of Appeals for the Fifth Circuit held that firing a woman because she is lactating or expressing milk is unlawful sex discrimination under Title VII of the Civil Rights Act.

Title VII states:

(a) Employer practices

It shall be an unlawful employment practice for an employer -

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(k) The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 703(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

Resources:

- [U.S. Equal Employment Opportunity Commission](#):
 - [The Pregnancy Discrimination Act of 1978](#): statutory language of amendment to Title VII of the Civil Rights Act.
 - [Pregnancy Discrimination](#): webpage detailing prohibited treatment of employees impacted by pregnancy, childbirth, or related medical conditions.
 - [Enforcement Guidance: Pregnancy Discrimination and Related Issues](#): guidance regarding the Pregnancy Discrimination Act and the Americans with Disabilities Act as they apply to pregnant workers. The Enforcement Guidance states that there are various circumstances in which discrimination against a female employee who is lactating or breastfeeding can implicate Title VII. Because lactation is a pregnancy-related medical condition, less favorable treatment of a lactating employee may raise an inference of unlawful discrimination. An employee must have the same freedom to address lactation-related needs that she and her co-workers would have to address other similarly limiting medical conditions.

	State: Delaware Code Ann. tit. 19, § 710-11	Federal: Break Time for Nursing Mothers Law	Federal: Title VII of the Civil Rights Act
Eligible Employees	All employees of employers with 4 or more employees within the State, including the State or any political subdivision or board,	Nursing mothers who are employees covered by the Fair Labor Standards Act (FLSA) and not exempt from FLSA overtime pay requirements.	Title VII protects employees of private and state and local government employers with 15 or more

	State: Delaware Code Ann. tit. 19, § 710-11	Federal: Break Time for Nursing Mothers Law	Federal: Title VII of the Civil Rights Act
	department, commission or school district thereof.	Important note: if an employer is not covered by the FLSA, its employees may still be covered if the employee's own duties meet certain interstate commerce requirements.	employees, labor organizations, employment agencies, and apprenticeship and training programs. Title VII also applies to employees in the federal sector.
Are Employers Required to Have a Policy on Breastfeeding Employees?			No policy is required under Title VII. However, if an employer allows employees to take breaks, change their schedules, or use sick leave for routine doctor appointments and to address non-incapacitating medical conditions, then it must allow female employees to change their schedules or use sick leave for lactation-related needs under similar circumstances. Or, if an employer freely permits employees to use break time for personal reasons, it would violate Title VII to deny break time for expressing breast milk.
Frequency of Milk Expression Breaks	Reasonable accommodations available under this Code include break time for expressing breast milk. It is a violation for an employer to fail or refuse to make reasonable accommodations to the known limitations related to the pregnancy, including breastfeeding, of an applicant for employment or employee.	As frequently as needed by the nursing mother. The frequency of breaks needed to express breast milk will likely vary.	
Length of Time for Milk Expression Breaks	Reasonable.	Reasonable. The duration of each break will likely vary.	
Duration of Milk Expression Breaks	No limit.	1 year after the child's birth.	
Space Requirements	Appropriate facilities for expressing breast milk.	A place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk. The location provided must be functional as a space for expressing breast milk. If the space is not dedicated to the nursing mothers' use, it must be available when needed in	

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		order to meet the statutory requirement. Of course, employers may choose to create permanent, dedicated space if they determine that is the best way to meet their obligations under the law.	
Pay Requirement		Unpaid , unless concurrent with paid breaks . If a nursing employee is not completely relieved from duty during a break to express breast milk, the time must be compensated as work time.	
Are Employers Required to Notify Employees of Their Rights?	Employers must provide notice of the right to be free from discrimination in relation to pregnancy, childbirth, and related conditions, including the right to reasonable accommodation to known limitations related to pregnancy, childbirth, and related conditions.		Employers are required to post the "EEO is the Law" English poster . <i>Note: This notice does not specifically address the rights of breastfeeding employees.</i>
Requirements for Employees			
Exemption	Employer must demonstrate that the accommodation would impose an undue hardship on the operation of the business. Undue hardship means an action requiring significant difficulty or expense when considered in light of factors such as: the nature and cost of the accommodation; the overall financial resources of the employer; the overall size of the business of the employer with respect to the number of employees, and the number, type and location of its facilities; and the effect on expenses and resources or the impact otherwise of such accommodation upon the operation of the employer.	All employers covered by the FLSA , regardless of the size of their business, are required to comply with this provision. However, employers with fewer than 50 employees are not subject to the FLSA break time requirement if the employer can demonstrate that compliance with the provision would impose an undue hardship. Whether compliance would be an undue hardship is determined by looking at the difficulty or expense of compliance for a specific employer in comparison to the size, financial resources, nature, or structure of the employer's business.	
Milk Storage			
Does Unpaid Break Time Impact Full Time Status and/or Eligibility for Health Insurance?			
Is Unpaid Break Time Expressly Separated from Paid Leave or Paid Time Off?			

	State: Delaware Code Ann. tit. 19, § 710-11	Federal: Break Time for Nursing Mothers Law	Federal: Title VII of the Civil Rights Act
Are Employers Required to Consider Providing Additional Accommodations for Breastfeeding Employees?	Additional accommodations available under this subchapter may include, but are not limited to, acquisition of equipment for sitting, more frequent or longer breaks, periodic rest, assistance with manual labor, job restructuring, light duty assignments, modified work schedules, temporary transfers to less strenuous or hazardous work, and time off to recover from childbirth.		
Discrimination/ Retaliation	Delaware law prohibits discrimination on the basis of sex, which includes discrimination on the basis of pregnancy, childbirth or a related condition, including breastfeeding. Unlawful employment practices include: - To fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to compensation, terms, conditions or privileges of employment because of such individual's sex (including pregnancy); or (3)a. For any employment-related purpose, fail or refuse to treat an employee or applicant for employment that the employer knows or should know is affected by pregnancy as well as the employer treats or would treat any other employee or applicant not so affected but similar in the ability or inability to work, without regard to the source of any condition affecting the other employee's or applicant's ability or inability to work; c. Deny employment opportunities to a job applicant or employee, if such denial is based on the need of the employer to make reasonable accommodations to the known limitations related to the pregnancy of an employee or applicant for employment;	It is a violation for any person to discharge or in any other manner discriminate against an employee who files a complaint or cooperates with the investigation of a complaint.	Firing a woman or taking other adverse employment action against her because she is lactating or expressing milk is unlawful sex discrimination. An employer may not discriminate against an employee because of her breastfeeding schedule. Women breastfeeding and lactating must be able to take breaks as other employees who take breaks for other medical or personal reasons. Employers are prohibited from firing, demoting, harassing or otherwise retaliating against an employee because she has complained of discrimination or participated in an employment discrimination proceeding.

	State: Delaware Code Ann. tit. 19, § 710-11	Federal: Break Time for Nursing Mothers Law	Federal: Title VII of the Civil Rights Act
	d. Require an applicant for employment or employee affected by pregnancy to accept an accommodation that such applicant or employee chooses not to accept, if such applicant or employee does not have a known limitation related to pregnancy or if such accommodation is unnecessary for the applicant or employee to perform the essential duties of her job; f. Take adverse action against an employee in the terms, conditions, or privileges of employment for requesting or using a reasonable accommodation to the known limitations related to the pregnancy of the employee.		
Protection from Harassment	Harassment by managers, co-workers, or others in the workplace because of sex (including pregnancy) is prohibited.		Employers are required to provide a work environment free of harassment based on pregnancy, childbirth, or related medical conditions, including breastfeeding.
Agency Responsible for Enforcement	Delaware Department of Labor, Office of Anti-Discrimination .	U.S. Department of Labor, Wage and Hour Division .	U.S. Equal Employment Opportunity Commission .
How to File a Complaint	A charge may be filed in person at the Delaware Department of Labor office in Milford or Wilmington within 120 days of the alleged unlawful employment practice or its discovery. Complete the Discrimination Intake Form to begin the investigation process.	File a complaint by calling the WHD toll-free at 1-800-487-9243 or visiting www.dol.gov/whd . You will then be directed to your nearest WHD office for assistance.	You may file a charge of employment discrimination at the EEOC office closest to where you live, or at any one of the EEOC's 53 field offices . You may call 1-800-669-4000 or visit the EEOC website for more information on filing a charge and filing deadlines. Important Note: Federal sector employees have a different complaint process .
Is the Agency Required to Monitor and Compile Enforcement Reports?			Yes.
Sanctions for Non-Compliance	Superior Court shall have the authority to provide the following relief, including but not limited to: a. Order the respondent to cease and desist or modify its existing employment policies;	An employee whose rights are denied can file a complaint with the Wage and Hour Division, which can go to court to obtain an order requiring the employer to comply. In addition, any employee who is	Remedies may include reinstatement, compensatory damages, punitive damages, back pay for lost wages where someone has been terminated, and requiring

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	<p>b. Order the respondent to hire, reinstate or promote the charging party;</p> <p>c. Order the payment of compensatory damages, including but not limited to general and special damages, punitive damages when appropriate, not to exceed the damage awards allowable under Title VII of the Civil Rights Act of 1964 [42 U.S.C. § 2000e et seq.], as amended, provided that for the purposes of this subchapter, employers with 4-14 employees shall be treated under Title VII's damage award as an employer having under 50 employees; and</p> <p>d. Order the costs of litigation and reasonable attorney's fees to the prevailing party.</p> <p>(2) In any action brought by the Department for violation of the retaliation provision of § 711(f) of this title, the Court shall fine the employer not less than \$1,000 nor more than \$5,000 for each violation, in addition to any liability for damages.</p> <p>A wilful violation of the requirement to provide notice of the right to be free from discrimination in relation to pregnancy, childbirth, and related conditions, including the right to reasonable accommodation to known limitations related to pregnancy, childbirth, and related conditions is punishable by a fine of not more than \$100 for each separate offense.</p>	<p>"discharged or in any other manner discriminated against" because, for instance, he or she has filed a complaint or cooperated in an investigation, may file a retaliation complaint with the Wage and Hour Division or may file a private cause of action seeking appropriate remedies including, but not limited to, employment, reinstatement, lost wages and an additional equal amount as liquidated damages.</p>	<p>an employer to take certain actions to prevent future discrimination.</p>
Do Employees Have Private Action Rights?	Yes.	Yes.	Yes, but employees are first required to file a charge with the EEOC.
Worksite Designation Program			
Additional Resources	<p>Breastfeeding Coalition of Delaware:</p> <ul style="list-style-type: none"> • Breastfeeding in the Workplace • Making Your Workplace 	<p>Office on Women's Health: - Supporting Nursing Moms at Work: Employer Solutions</p>	<p>Equal Employment Opportunity Commission: - Guidance: Questions and Answers about the EEOC's Enforcement Guidance on</p>

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	<p>Breastfeeding Friendly</p> <p>U.S. Department of Labor Women’s Bureau: Employment Protections For Workers Who Are Pregnant or Nursing</p> <p>State of Delaware: WIC Supports Breastfeeding</p> <p>Contact your local WIC agency to request a copy of the “Knowing Your Breastfeeding Rights” brochure</p>	<p>- Business Case for Breastfeeding</p> <p>U.S. Breastfeeding Committee:</p> <p>- Resource and Referral Guide for Breastfeeding Employees and their Employers</p> <p>- Online Guide: “What You Need to Know About the “Break Time for Nursing Mothers” Law</p> <p>Especially see Online Guide sections:</p> <p>- How should you store your breast milk?</p> <p>- What are the space requirements?</p> <p>Wage and Hour Division: Family and Medical Leave Act</p> <p>Center for WorkLife Law:</p> <p>- Pregnant @ Work</p> <p>- Guide for doctors on writing work notes for nursing mothers</p>	<p>Pregnancy Discrimination and Related Issues</p> <p>- Press release: Fifth Circuit Holds Lactation Discrimination is Unlawful Sex Discrimination</p> <p>National Women’s Law Center: Fact Sheet: The Pregnancy Discrimination Act and the Amended Americans with Disabilities Act: Working Together to Protect Pregnant Workers</p> <p>American Civil Liberties Union: Federal Law and Pregnant, Post-Partum and Breastfeeding Workers</p> <p>A Better Balance: Babygate</p>

This document was developed in partnership with the Breastfeeding Coalition of Delaware. Title VII of the Civil Rights Act content is based on Equal Employment Opportunity Commission publications. Break Time for Nursing Mothers law content was reviewed by the U.S. Department of Labor, Wage and Hour Division in May 2016.

[Delaware Code Title 19, § 710-712](#)

§ 710 Definitions.

For the purposes of this subchapter:

- (1) "Age" as used in this subchapter means the age of 40 or more years of age.
- (2) "Charging party" means any individual or the Department who initiates proceedings by the filing of a verified charge of discrimination, and who preserves a cause of action in Superior Court by exhausting the administrative remedies pursuant to the provisions of § 714 of this title.
- (3) "Conciliation" for the purposes of this chapter refers to a process which requires the appearance of the parties after a full investigation resulting in a final determination of reasonable cause.
- (4) "Delaware Right to Sue Notice" for the purposes of this chapter refers to a final acknowledgement of the charging party's exhaustion of the administrative remedies provided herein and written notification to the charging party of a corresponding right to commence a lawsuit in Superior Court.
- (5) "Employee" means an individual employed by an employer, but does not include:
 - a. Any individual employed in agriculture or in the domestic service of any person,
 - b. Any individual who, as a part of that individual's employment, resides in the personal residence of the employer,
 - c. Any individual employed by said individual's parents, spouse or child, or
 - d. Any individual elected to public office in the State or political subdivision by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate

advisor with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the merit service rules or civil service rules of the state government or political subdivision.

(6) "Employer" means any person employing 4 or more employees within the State at the time of the alleged violation, including the State or any political subdivision or board, department, commission or school district thereof. The term "employer" with respect to discriminatory practices based upon sexual orientation or gender identity does not include religious corporations, associations or societies whether supported, in whole or in part, by government appropriations, except where the duties of the employment or employment opportunity pertain solely to activities of the organization that generate unrelated business taxable income subject to taxation under § 511(a) of the Internal Revenue Code of 1986 [26 U.S.C. § 511(a)].

(7) "Employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(8) "Gender identity" means a gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth. Gender identity may be demonstrated by consistent and uniform assertion of the gender identity or any other evidence that the gender identity is sincerely held as part of a person's core identity; provided, however, that gender identity shall not be asserted for any improper purpose.

(9) "Genetic information" for the purpose of this chapter means the results of a genetic test as defined in § 2317(a)(3) of Title 18.

(10) "Job related and consistent with business necessity" means the condition in question renders the individual unable to perform the essential functions of the position that such individual holds or desires. This includes situations in which the individual poses a direct threat to the health or safety of the individual or others in the workplace.

(11) "Labor organization" includes any organization of any kind, any agency or employee representation committee, group, association or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment, any conference, general committee, joint or system board or joint council so engaged which is subordinate to a national or international labor organization.

(12) "Mediation" for the purposes of this chapter refers to an expedited process for settling employment disputes with the assistance of an impartial third party prior to a full investigation.

(13) "No cause determination" means that the Department has completed its investigation and found that there is no reasonable cause to believe that an unlawful employment practice has occurred or is occurring. A no cause determination is a final determination ending the administrative process and provides the charging party with a corresponding Delaware Right to Sue Notice.

(14) "Person" includes 1 or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy or receivers.

(15) "Pregnancy" means pregnancy, childbirth, or a related condition, including, but not limited to, lactation.

(16) "Public employer" means the State of Delaware, its agencies, or political subdivisions.

(17) "Reasonable accommodation" has the meaning given this term in § 722 of this title, except that all references to disability shall instead be references to known limitations of a person related to pregnancy, childbirth, or a related condition.

Accommodations available under this subchapter may include, but are not limited to, acquisition of equipment for sitting, more frequent or longer breaks, periodic rest, assistance with manual labor, job restructuring, light duty assignments, modified work schedules, temporary transfers to less strenuous or hazardous work, time off to recover from childbirth, or break time and appropriate facilities for expressing breast milk.

(18) "Reasonable cause determination" means that the Department has completed its investigation and found reasonable cause to believe that an unlawful employment practice has occurred or is occurring. A reasonable cause determination requires the parties' good faith efforts in conciliation.

(19) "Religion" as used in this subchapter includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that the employer is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

(20) "Respondent" means any person named in the Charge of Discrimination, including but not limited to employers, employment agencies, labor organizations, joint labor-management committees, controlling apprenticeship or other training programs including on-the-job training programs.

(21) "Secretary" means the Secretary of the Department of Labor or the Secretary's designee.

(22) "Sexual orientation" exclusively means heterosexuality, homosexuality, or bisexuality.

(23) "Undue hardship" means an action requiring significant difficulty or expense when considered in light of factors such as: the nature and cost of the accommodation; the overall financial resources of the employer; the overall size of the business of the employer with respect to the number of employees, and the number, type and location of its facilities; and the effect on expenses and resources or the impact otherwise of such accommodation upon the operation of the employer.

§ 711 Unlawful employment practices; employer practices.

(a) It shall be an unlawful employment practice for an employer to:

(1) Fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to compensation, terms, conditions or privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex (including pregnancy), sexual orientation, gender identity, or national origin; or

(2) Limit, segregate or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee because of such individual's race, marital status, genetic information, color, age, religion, sex (including pregnancy), sexual orientation, gender identity, or national origin.

(3)a. For any employment-related purpose, fail or refuse to treat an employee or applicant for employment that the employer knows or should know is affected by pregnancy as well as the employer treats or would treat any other employee or applicant not so affected but similar in the ability or inability to work, without regard to the source of any condition affecting the other employee's or applicant's ability or inability to work;

b. Fail or refuse to make reasonable accommodations to the known limitations related to the pregnancy of an applicant for employment or employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such employer;

c. Deny employment opportunities to a job applicant or employee, if such denial is based on the need of the employer to make reasonable accommodations to the known limitations related to the pregnancy of an employee or applicant for employment;

d. Require an applicant for employment or employee affected by pregnancy to accept an accommodation that such applicant or employee chooses not to accept, if such applicant or employee does not have a known limitation related to pregnancy or if such accommodation is unnecessary for the applicant or employee to perform the essential duties of her job;

e. Require an employee to take leave under any leave law or policy of the employer if another reasonable accommodation can be provided to the known limitations related to the pregnancy of the employee; or

f. Take adverse action against an employee in the terms, conditions, or privileges of employment for requesting or using a reasonable accommodation to the known limitations related to the pregnancy of the employee.

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment or otherwise to discriminate against any individual because of race, marital status, genetic information, color, age, religion, sex (including pregnancy), sexual orientation, gender identity, or national origin or to classify or refer for employment any individual on the basis of race, marital status, genetic information, color, religion, age, sex (including pregnancy), sexual orientation, gender identity, or national origin.

(c) It shall be an unlawful employment practice for a labor organization to:

(1) Exclude or expel from its membership or otherwise to discriminate against any individual because of race, marital status, genetic information, color, age, religion, sex (including pregnancy), sexual orientation, gender identity, or national origin;

(2) Limit, segregate or classify its membership or to classify or fail or refuse to refer for employment any individual in any way which would deprive or tend to deprive any individual of employment opportunities or would limit such employment opportunities or otherwise adversely affect the individual's status as an employee or as an applicant for employment because of such individual's race, marital status, genetic information, color, age, religion, sex (including pregnancy), sexual orientation, gender identity, or national origin; or

(d) It shall be an unlawful employment practice for any employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of race, marital status, genetic information, color, age, religion, sex (including pregnancy), sexual orientation, gender identity, or national origin in admission to or employment in any program established to provide apprenticeship or other training.

(e) It shall be an unlawful employment practice for an employer, employment agency, labor union or joint labor-management committee controlling apprenticeship or other training or retraining, including on the job training programs to intentionally collect, directly or indirectly, any genetic information concerning any employee or applicant for employment, or any member of their family, unless:

(1) It can be demonstrated that the information is job-related and consistent with business necessity; or

(2) The information or access to the information is sought in connection with the retirement policy or system of any employer or the underwriting or administration of a bona fide employee welfare or benefit plan.

(f) It shall be an unlawful employment practice for any employer, employment agency, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discharge, refuse to hire or otherwise discriminate against any individual or applicant for employment or membership on the basis of such person's race, marital status, color, age, religion, sex (including pregnancy), sexual orientation, gender identity, or national origin, because such person has opposed any practice prohibited by this subchapter or because such person has testified, assisted or participated in any manner in an investigation, proceeding, or hearing to enforce the provisions of this subchapter.

(g)(1) It shall be an unlawful employment practice for any public employer to inquire into or consider the criminal record, criminal history, credit history, or credit score of an applicant for employment during the initial application process, up to and including the first interview.

(2) If an applicant is otherwise qualified, a public employer may inquire into or consider an applicant's criminal record, criminal history, credit history or credit score after the completion of the first interview.

(3) A public employer may disqualify an applicant from employment based on criminal history where the exclusion is job related for the position in question and consistent with business necessity. The public employer shall consider the following factors in its hiring decision:

- a. The nature and gravity of the offense or conduct;
- b. The time that has passed since the offense or conduct and/or the completion of the sentence; and
- c. The nature of the job held or sought.

(4) This subsection does not apply to any state, county or municipal police force, the Department of Correction, the Department of Justice, the Public Defender's Office, the Courts, or any position where federal or state statute requires or expressly permits the consideration of an applicant's criminal history.

(h) Notwithstanding any other provision of this subchapter:

(1) It shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual or for an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program on the basis of religion, genetic information, age, sex (including pregnancy), sexual orientation, gender identity, or national origin in those certain instances where religion, genetic information, age, sex (including pregnancy), sexual orientation, gender identity, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; and

(2) It shall not be an unlawful employment practice for a school, college, university or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled or managed by a particular religion or by a particular religious corporation, association or society or if the curriculum of such school, college, university or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(i) Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, marital status, genetic information, color, age, religion, sex (including pregnancy), sexual orientation, gender identity, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, marital status, genetic information, color, religion, age, sex (including pregnancy), sexual orientation, gender identity, or national origin.

(j) Nothing contained in this subchapter as it applies to discrimination because of age or sex shall 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, provided that such policy, system or plan is not merely a subterfuge to evade the purpose of this subchapter.

(k)(1) Nothing in this subchapter shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age, and who, for the 2-year period immediately before retirement, is employed in a bona fide executive or a high policy-making position, if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit sharing, savings or deferred compensation plan, or any combination of such plans, of the employer of such an employee, which equals, in the aggregate, at least \$44,000.

(2) In applying the retirement benefit test of paragraph (k)(1) of this section, if any such retirement benefit is in a form other than a straight life annuity (with no ancillary benefits), or if employees contribute to any such plan or make rollover contributions, such benefit shall be adjusted in accordance with regulations prescribed by the Secretary, United States Department of Labor, pursuant to 29 U.S.C. § 631(c)(2), so that the benefit is the equivalent of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions are made.

(l) Nothing in this subchapter shall be interpreted to require employers to offer health, welfare, pension or other benefits to persons associated with employees on the basis as such benefits are afforded to the spouses of married employees.

(m) Nothing in this subchapter shall affect the ability of an employer to require employees to adhere to reasonable workplace appearance, grooming and dress standards not precluded by other provisions of state or federal law, except that an employer shall allow an employee to appear, groom and dress consistent with the employee's gender identity.

§ 712 Enforcement provisions; powers of the Department; administrative process.

(a) The Department of Labor is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in §§ 711, 719A, 723 and 724 of this title. In connection with the performance of its duties, the Department may:

(1) Investigate employment practices by permitting the Department to enter any place of employment at reasonable times; inspect and copy records or documents in the possession of the employer, the employment agency or labor organization; administer oaths, certify to official acts, take and cause to be taken depositions of witnesses; issue subpoenas compelling the attendance and testimony of witnesses and the production of papers, books, accounts, payrolls, documents, and records;

(2) Make, revise or rescind such rules or regulations necessary or appropriate to administer or enforce this chapter in accordance with the provisions of § 10161(b) of Title 29;

(3) Commence civil actions in Superior Court for violations of this chapter, any published regulations or for civil penalties provided herein.

(b) The Department shall have jurisdiction over all cases arising under this chapter, affording review and oversight of employment practices in Delaware. The Department shall endeavor to eliminate unlawful discrimination in employment through its administrative process set forth below. This subchapter shall afford the sole remedy for claims alleging a violation of this chapter to the exclusion of all other remedies. Upon termination of the administrative process by the Department, the charging party may institute a civil action in Superior Court of the State of Delaware pursuant to §§ 714 and 715 of this title.

(c) The administrative process requires the following:

(1) *Statute of limitation and filing procedure.* — Any person claiming to be aggrieved by a violation of this chapter shall first file a charge of discrimination within 120 days of the alleged unlawful employment practice or its discovery, setting forth a concise statement of facts, in writing, verified and signed by the charging party. The Department shall serve a copy of the verified charge of discrimination upon the named respondent by certified mail. The respondent may file an answer within 20 days of its receipt, certifying that a copy of the answer was mailed to the charging party at the address provided.

(2) *Preliminary findings and recommendations.* — The Department shall review the submissions within 60 days from the date of service upon the respondent and issue preliminary findings with recommendations. The preliminary findings may recommend:

a. Dismissing the charge unless additional information is received which warrants further investigation;

b. Referring the case for mediation requiring the parties' appearance; or

c. Referring the case for investigation.

(3) *Final determinations upon completion of investigation.* — After investigation, the Department shall issue a determination of either "reasonable cause" or "no reasonable cause" to believe that a violation has occurred or is occurring. All cases resulting in a "reasonable cause" determination will require the parties to appear for compulsory conciliation. All cases resulting in a "no cause" determination will receive a corresponding Delaware Right to Sue Notice.

(4) *Confidentiality of the Department's process.* — The Department shall not make public the charge of discrimination or information obtained during the investigation of a charge. This provision does not apply to disclosures made to the parties, their counsel, or witnesses where disclosure is deemed necessary or appropriate. Nothing said or done during and as a part of the mediation or conciliation efforts may be made public by the Department, its officers or employees or used by any party as evidence in a subsequent proceeding without the written consent of the persons concerned.

(5) *End of administrative process.* — In all cases where the Department has dismissed the charge, issued a no cause determination or upon the parties failed conciliation efforts, the Department shall issue a Delaware Right to Sue Notice, acknowledging the Department's termination of the administrative process. Once the Department has issued its preliminary findings pursuant to paragraph (c)(2) of this section, the Department, in its discretion, may grant a Delaware Right to Sue Notice to a charging party.

§ 713 Civil action by the Attorney General; complaint.

(a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter or subchapter III of this chapter and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the Court of Chancery by filing with it a complaint:

(1) Signed by the Attorney General (or in the Attorney General's absence the Chief Deputy Attorney General);

(2) Setting forth facts pertaining to such pattern or practice; and

(3) Requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as the Attorney General deems necessary to insure the full enjoyment of the rights herein described.

(b) The Court of Chancery shall have jurisdiction over proceedings brought pursuant to this section.

19 Del. C. 1953, § 713; [58 Del. Laws, c. 285](#); [66 Del. Laws, c. 337, § 5](#); [70 Del. Laws, c. 186, § 1](#); [74 Del. Laws, c. 356](#);

§ 714 Civil action by the charging party; Delaware Right to Sue Notice; election of remedies.

(a) A charging party may file a civil action in Superior Court, after exhausting the administrative remedies provided herein and receipt of a Delaware Right to Sue Notice acknowledging same.

(b) The Delaware Right to Sue Notice shall include authorization for the charging party to bring a civil action under this chapter in Superior Court by instituting suit within 90 days of its receipt or within 90 days of receipt of a federal Right to Sue Notice, whichever is later.

(c) The charging party shall elect a Delaware or federal forum to prosecute the employment discrimination cause of action so as to avoid unnecessary costs, delays and duplicative litigation. A charging party is barred by this election of remedies from filing cases in both Superior Court and the federal forum. If the charging party files in Superior Court and in a federal forum, the respondent may file an application to dismiss the Superior Court action under this election of remedies provision.

[74 Del. Laws, c. 356](#);

§ 715 Judicial remedies; civil penalties.

Superior Court shall have jurisdiction over all proceedings brought by the charging party pursuant to § 714 of this title. Superior Court may excuse a charging party who has complied with the compulsory conciliation provisions of this chapter from the compulsory arbitration provisions of Superior Court rule.

(1) Superior Court shall have the authority to provide the following relief, including but not limited to:

- a. Order the respondent to cease and desist or modify its existing employment policies;
- b. Order the respondent to hire, reinstate or promote the charging party;
- c. Order the payment of compensatory damages, including but not limited to general and special damages, punitive damages when appropriate, not to exceed the damage awards allowable under Title VII of the Civil Rights Act of 1964 [42 U.S.C. § 2000e et seq.], as amended, provided that for the purposes of this subchapter, employers with 4-14 employees shall be treated under Title VII's damage award as an employer having under 50 employees; and
- d. Order the costs of litigation and reasonable attorney's fees to the prevailing party.

(2) In any action brought by the Department for violation of the retaliation provision of § 711(f) of this title, the Court shall fine the employer not less than \$1,000 nor more than \$5,000 for each violation, in addition to any liability for damages.

[74 Del. Laws, c. 356;](#)

§ 716 Posting of notices; penalties.

(a) Every employer, employment agency and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, and applicants for employment are customarily posted, a notice to be prepared or approved by the Department setting forth excerpts from or summaries of the pertinent provisions of this subchapter and subchapter III of this chapter and information pertinent to the filing of a complaint.

(b)(1) An employer shall provide notice of the right to be free from discrimination in relation to pregnancy, childbirth, and related conditions, including the right to reasonable accommodation to known limitations related to pregnancy, childbirth, and related conditions, pursuant to § 711(a)(3) of this title as follows:

- a. In writing to new employees at the commencement of employment;
- b. Orally or in writing to existing employees by January 7, 2015; and
- c. Orally or in writing to any employee who notifies the employer of her pregnancy within 10 days of such notification.

(2) The notice required by paragraph (b)(1) of this section shall also be conspicuously posted at an employer's place of business in an area accessible to employees.

(c) A wilful violation of this section shall be punishable by a fine of not more than \$100 for each separate offense.