

**DELAWARE APRIL 2019 LEGISLATIVE UPDATE
(DELAWARE SHRM STATE COUNCIL, DELMARVA SHRM & DE SHRM CHAPTERS)**

1. Delaware SHRM State Council, DE SHRM and DeMarVa SHRM Chapters are proud to announce our 2nd Annual Legislative Day in Dover



Join us for a field trip to Dover! We'll tour Legislative Hall, chat with our legislative representatives over lunch and then sit in on the afternoon Legislative Session.

When: Thursday, May 16, 2019
9:00 A.M. - 5:00 P.M.

Where: Legislative Hall
11 Legislative Avenue
Dover, Delaware 19901
United States

Contact: info@deshrm.org

Online registration is available until: 5/13/2019 @ <https://www.deshrm.org/events/EventDetails.aspx?id=1181409>

Agenda

- 09:00 A.M. Tour Legislative Hall, Dover
- 10:15 A.M. Discussion with Senator David P. Sokola (D) in the Dover Library
- 11:30 A.M. Lunch with Representative Lyndon D. Yearick (R) at Frazier's Restaurant
- 01:00 P.M. Picture with Governor Carney
- 02:00 P.M. Observe the General Assembly Session

DETAILS

Legislative Hall

The Delaware Legislative Hall is the state capitol building of Delaware located in the state capital city of Dover on Legislative Avenue. It houses the chambers and offices of the Delaware General Assembly. Legislative Hall is a Georgian Revival colonial structure of handmade brick and it has an 18th century style interior.

Representative Lyndon D. Yearick

Representative Yearick brings 20 years of business experience to Legislative Hall. His background is diverse, ranging from housing and banking to healthcare and education. He holds a master's degree in Business Administration from Penn State University and is a former small business owner. He has also worked as a public-school educator, mentoring

local elementary school students, and serving on advisory committees for both the Caesar Rodney and Polytech school districts. He serves District 34.

Senator David P. Sokola

Senator Sokola has served in the chamber for over 20 years, having first been elected in 1990. Sokola received his B.S.P.E. from the University of Delaware and is the senior lab technician at the DuPont Experimental Station. He represents District: 8 (Newark/Hockessin).

Delaware General Assembly

Today's Delaware General Assembly carries on the proud tradition of constituent service and easy accessibility to the People which has sustained us for more than three centuries.

2. The U.S. Department of Labor Proposes New Overtime Rule

On March 7, 2019, the U.S. Department of Labor (DOL) announced its highly-anticipated proposal for a new overtime rule in its Notice of Proposed Rulemaking: Overtime Update (NPRM). This proposal would raise the overtime salary threshold required to qualify for the Fair Labor Standard Act's "white collar" exemption from \$23,660 to \$35,308 per year. The weekly threshold salary level will increase from \$455 to \$679. The new proposed threshold is about \$12,000 lower than the Obama administration's prior proposed overtime threshold. Eligibility for overtime is also based on meeting certain job duties tests.

The proposal also increases the total annual compensation requirement for "highly compensated employees" from the currently-enforced level of \$100,000 to \$147,414 per year. Additionally, the DOL plans to propose updated salary levels every four years to update the salary threshold, which would require notice-and-comment rulemaking.

If the new overtime rule is implemented, employers may use nondiscretionary bonuses, commissions and incentive payments that are paid annually or more frequently to satisfy up to 10 percent of the standard salary level.

There will be a 60-day public comment period. The DOL stated that it will consider all timely comments in developing a final rule, which is estimated to take effect in January 2020.

3. The EEOC'S Latest Proposed Regulations

The United States Equal Employment Opportunity Commission (EEOC) issued proposed regulations that were published in the February 22 edition of the Federal Register. For the most part, the proposed regulations simply make "official" what the agency has been doing for years. But they contain a few interesting substantive provisions, too.

Substantive Proposals

Time for filing in "deferral" states. In a proposed change that would probably be helpful to employers and charging parties in "deferral" states, the EEOC would clarify the time allotted for filing a discrimination charge in these states.

Since Delaware has its own fair employment practices agency, an individual has 300 days to file a charge instead of the usual 180 days. Under the proposed regulations, the individual in a deferral state would get only 180 days to file a charge if the state fair employment practices statute didn't apply at all to the type of discrimination being alleged. For example, if the state statute didn't prohibit discrimination based on religion, then an employee filing a religious discrimination charge with the EEOC in that state would have to file it within 180 days, not 300 days.

On the other hand, if the statute covers the general category of discrimination being claimed by the individual (for example, religious discrimination) but the individual alleges a specific type of violation that is not recognized under the state statute (for example, religious accommodation), then the individual would still get the full 300 days to file a charge on the theory that charging parties are usually lay persons and therefore should not be held to overly-technical interpretations of filing requirements.

Presumably, this proposed change would mean that, if a state statute prohibits sex discrimination but not

discrimination based on sexual orientation or gender identity, and if the individual files a charge alleging discrimination based on sexual orientation or gender identity, the EEOC would say the individual had 300 days to file the charge. This is because, in the EEOC's view, discrimination based on sexual orientation or gender identity is a form of sex discrimination.

Investigators will have authority to issue “no-cause” finding and notice of right to sue. Employers will appreciate that the proposed regulations will allow investigators – rather than directors – to issue findings of no cause and notices of right to sue. EEOC investigators are strongly encouraged to reduce their inventory of charges that are two years old or older. This proposal appears to be intended to help investigators dismiss questionable charges quickly and reduce their inventory of unresolved charges.

Names of charging parties in age cases could be withheld from the employer. There is no reference to this in the EEOC's press release or in the preamble to the proposed regulations. But the proposed regulations say that charges brought under the Age Discrimination in Employment Act can be filed by someone acting on behalf of the aggrieved party, and that the name of that individual does not have to be on the charge. Although the individual's name does have to be provided to the EEOC (just not on the charge itself) and can be shared with other governmental agencies, the individual can ask to remain anonymous, and there is nothing saying that his or her name has to be, or will ever be, disclosed to the employer.

The same provision already exists in the EEOC's regulations interpreting Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), and the Genetic Information Nondiscrimination Act (GINA). It appears that the EEOC is merely proposing to bring the ADEA into conformity with its practice under these other statutes.

Updates and Cosmetic Changes

Electronic communications. First, the proposed regulations would formally acknowledge that submission of information and documents and communications between the agency, charging parties and employers can be made electronically or digitally. Many, if not most, employers have been receiving and responding to charges through the agency's web portal and communicating with investigators via email for years.

“No-cause” does not mean the employer “won.” Second, the proposed regulations would clarify that even if the agency issues a “no cause” determination, that doesn't mean the employer “won.” The EEOC proposes cosmetic changes to the wording on its Dismissal and Notice of Rights form that the agency thinks will make this point clearer.

This proposal is also unremarkable. All a “no-cause” determination means is that the EEOC will issue a dismissal and notice of rights to the charging party. The charging party still has 90 days from receipt of the notice to file suit alleging discrimination based on the allegations in the charge, and many will continue to do so.

4. DELAWARE SHRM JOINT LEGISLATIVE INITIATIVE COMMITTEE CONTACT INFORMATION

Jacqueline Poquette, SPHR, SHRM-SCP, Delaware SHRM State Council, Legislative Affairs Director (jackie.poquette@westlakeplastics.com); Dan Bloom, SPHR, SHRM-SCP, DE SHRM, Legislative Chair (dbloom@printpack.com); Joanne Lee, Delaware SHRM State Council, Director (jlee@nksdistributors.com); Dr. Nicole Evans, DBA, SPHR, Delaware SHRM State Council Director-Elect (evansn@gbc.edu); Maria Clyde, SPHR, SHRM-SCP, Delaware SHRM State Council, Treasurer (MClyde@BHI365.com)

This publication is the result of the combined efforts of members of Delaware SHRM State Council, DE SHRM and DelMarVa SHRM Chapters. Any questions or suggestions should be referred to members of the Delaware SHRM State Joint Legislative Initiative Committee. This Legislative Update is for informational purposes only. It is strongly recommended that you consult with an attorney for legal advice.