

# EMPLOYMENT LAW SUMMARY

## Delaware Minimum Wage Laws

Federal minimum wage law is governed by the Fair Labor Standards Act (FLSA). The current federal minimum wage rate is \$7.25 per hour for nonexempt employees. The Delaware Minimum Wage Act (DMWA) complements federal law and, in some cases, prescribes more stringent or additional requirements that employers must follow. Whenever employers are subject to both state and federal laws, the law most favorable to the employee will apply.

The [Delaware Department of Labor](#) (DDOL) enforces compliance with the DMWA throughout the state. Nothing in this document is meant to interfere with, impede or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing to establish wages or other conditions of work that go above and beyond the requirements described below.

### Minimum Wage Rates

Employees in Delaware must receive wages that are at or above the state minimum wage rate. The DMWA has established the following minimum wage rate increases:

Effective date	Jan. 1, 2022	Jan. 1, 2023	Jan. 1, 2024	Jan. 1, 2025
Minimum wage rate	\$10.50	\$11.75	\$13.25	\$15

### Tipped Employee Wages

The DMWA allows employers to pay tipped employees a lower minimum wage rate. This lower tipped rate is also known as a cash wage. The DMWA allows for this lower rate because it assumes that the tipped rate, when combined with the employees' tips or gratuities, will allow employees to receive wages at or above the state minimum wage rate. The minimum cash wage payable to tipped employees in Delaware is **\$2.23 per hour**.

Employers may not take or retain any tips received by tipped employees unless an exception applies. Under certain conditions, tip pooling is permitted in an amount not to exceed 15% of the actual tips received by employees.

Tipped employees are employees who are engaged in an occupation in which they customarily and regularly receive **more than \$30 per month** in tips or gratuities. Gratuities under the DMWA are monetary contributions received directly or indirectly by an employee from a guest, patron or customer for services rendered; the customer is entirely free to determine whether to make any payment at all and, if so, the amount.

### Training and Youth Wage

The DMWA allows employers to pay new employees a minimum wage 50 cents lower than the state minimum wage rate during the first 90 consecutive calendar days of their employment.

Similarly, employers can pay youth employees (employees under the age of 18) a wage rate 50 cents lower than the state minimum wage rate.

### Employees With Disabilities

On Oct. 20, 2021, Delaware [repealed](#) a provision that enabled employers to pay wages below the state's minimum wage rate to employees who are mentally or physically disabled or both.

Until this repeal, state law allowed employers to compensate individuals with a physical or mental disability at a wage rate lower than the state's minimum wage rate. To qualify for this subminimum wage exemption, employers were first required to obtain special wage certificates. They were then required to follow all terms and conditions of these wage certificates.

Delaware has announced the state will phase out the authorization for employers to compensate employees with disabilities at subminimum wage rates. The phaseout plan is set to be completed by Jan. 31, 2024. The state legislature has charged the state's [Employment First Oversight Commission](#) with the task of creating the phaseout plan.

## Student Learners and Apprentices

Through a public hearing process, the DDOL may approve a different minimum wage rate for learners and apprentices.

## Minimum Wage Rate Exemptions

Delaware's minimum wage rate requirements do not apply to employees in certain occupations and industries. Exceptions to the state's minimum wage rate requirements include:

- Bona fide executive, administrative and professional employees;
- Employees engaged in fishing and fish processing at sea;
- Employees in agriculture;
- Employees in domestic service in or about private homes;
- Employees of the U.S. government;
- Inmates in the custody of the Department of Corrections and inmates on work release who participate in the Prison Industries programs or other programs sponsored for inmates by the Department of Corrections or other applicable Delaware law, unless the inmates are employed by an employer other than the state or a political subdivision of the state;
- Junior camp counselors (under the age of 18) employed by nonprofit summer camp programs;
- Outside commission paid salespeople; and
- Volunteer workers (for educational, religious or nonprofit organizations).

## Notice and Postings

Employers must post and maintain updated information on the state's minimum wage rate in their employees' workplaces. The DDOL has published a [model poster](#) employers may use to satisfy the posting requirement. Employers may also request a free copy of the poster from the DDOL.

## Enforcement and Penalties

The DMWA authorizes the DDOL to enforce compliance with the state's wage payment laws. As a result, the DDOL may conduct investigations and require employers to produce any necessary record or statement.

Penalties

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Employers are subject to a civil penalty of not less than \$1,000 nor more than \$5,000 if they:

- Violate the state's minimum wage laws;
- Hinder, delay or refuse to admit DDOL officials to investigate wage claims; or
- Discharge or in any manner discriminate against employees who file wage claims or testify (or are about to testify) in a proceeding to enforce compliance with Delaware's minimum wage laws.

## Employee Remedies

In addition to the civil penalty, employees (or the DDOL on behalf of employees) may file a civil lawsuit against their employers for unpaid wages. In these lawsuits, employees may recover the total amount of unpaid wages, court costs and reasonable attorney fees.

Any agreement between employers and employees to work for less than the minimum wage is invalid and provides no defense in a court of law.

## More Information

Please contact Heffernan Insurance Brokers for more information on Delaware labor and employment laws.

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