



Delaware

Human Resources LEGAL FACT SHEET

Disclaimer: This fact sheet summarizes state laws and regulations on a variety of human resource issues for dairy farms, including wages, paystubs, deductions, child labor and more. It is not intended to provide legal advice. The fact sheet is simply an overview of select issues with a high-level explanation of key requirements for each one, with links to more information and resources throughout the document. This fact sheet does not include all legal requirements for dairies. It was created in January 2019, and while it will be periodically updated, it may not reflect the current state of the law on every topic covered. Dairies should also review the federal fact sheet because employers—depending on size—may be required to comply with some or all of the applicable federal laws and regulations as well. By using this fact sheet you understand that there is no attorney-client relationship between you and the attorneys who were involved in developing the fact sheet. This fact sheet should not be used as a substitute for competent legal advice from a licensed attorney.

ARE THERE DELAWARE STATE LAWS PERTAINING TO DAIRY FARMS ABOUT:

HIRING

TOPIC	ANSWER	DETAILS
Notice of Payday / Pay Rate ¹	YES	Employers with 4 or more employees <u>must notify each employee</u> in writing, at the time of hiring, of the rate of pay and of the day, hour and place of payment. Covered employers must also notify each employee in writing—or through a posted notice maintained in a place accessible to the employees and where they normally pass—of any reduction in the regular rate of pay, and day, hour and place of payment before making any such reduction. Employers must also notify employees in writing or by posted notice of employment practices and policies with regard to vacation pay, sick leave and comparable matters.
Reporting ²	YES	Delaware employers must report both new employees as well as re-hired or re-called employees to the <u>Delaware State Director of New Hires</u> within 20 days after the employee is hired or re-hired. New employees are those who reside or work in the state must be reported, regardless of whether they are full-time or part-time, temporary or permanent, salaried or hourly. Volunteers and other non-paid workers do not need to be reported. Re-hired or re-called employees who return to work after being laid off, furloughed, separated, granted a leave without pay, or terminated from employment must be reported. If any employee has had a 60-day gap in pay for any reason, they must be re-reported when they return to work (including seasonal workers).

WAGES

TOPIC	ANSWER	DETAILS
Payday ³	YES	Delaware employers must <u>designate regular paydays</u> and pay periods on which they shall pay all wages due to their employees. Wages must be paid at least once during each calendar month, and in lawful money of the United States or checks provided suitable arrangements are made by the employer for cashing such checks for the full amount of the wages due at a bank or other business establishment convenient to the place of employment. Employers may, upon written request of an employee, pay all wages due an employee by electronic deposit to a bank account designated by the employee.

This fact sheet contains embedded hyperlinks. If you are viewing a printed copy, please refer to the FARM website at www.nationaldairyfarm.com for the online version so that you can access the links.



WAGES

(Continued)

TOPIC	ANSWER	DETAILS
Final Pay ⁴	YES	Whenever an employee quits, resigns, is terminated, suspended or laid off, an employer must pay all wages earned by the employee on the next regularly scheduled payday. These payments may be made in the same manner as the employee was paid during his or her employment; or by mail, if requested by the employee. An employer that fails to pay wages owed without reasonable grounds for disputing them may be liable for liquidated damages in the amount of 10 percent of the unpaid wages for each day, except Sunday and legal holidays, after which the wages were due, or in an amount equal to the unpaid wages, whichever is smaller.
Overtime ⁵	YES/NO	There is no state overtime law in Delaware. Delaware law generally does not impose additional obligations beyond those required by the federal Fair Labor Standards Act (FLSA). However, Delaware law provides that any earned overtime pay must be paid by the regular payday of the corresponding pay period. If, however, the regular payday is on or before the final day of the pay period and the pay period does not exceed 16 days, the employer may delay compensation until the next pay period for the following: (1) overtime hours worked by employees; (2) employees hired or resuming employment during the pay period; or (3) part-time or temporary employees with variable working time. Please refer to the federal fact sheet for further information.
Minimum Wage ⁶	YES/NO	Delaware's minimum wage law excludes individuals employed in agriculture. However, effective January 1, 2019, the minimum wage in Delaware for covered employees is \$8.75 per hour; it will increase to \$9.25 per hour beginning October 1, 2019. Delaware has added a "Youth Rate" and a "Training Rate" that is \$8.25. The youth rate applies to workers ages 14 through 17. The training rate applies to adult workers during their first 90 days on a new job. These new categories are \$.50 less than the regular minimum wage rate.
Hours Worked	NO	Delaware's minimum wage law does not address hours worked. However, because most employees working in Delaware are subject only to the federal Fair Labor Standards Act, the definition of hours worked set forth in that law set forth in that law provides reasonable guidance. Please refer to the federal fact sheet for further information.
Reporting Time Pay	NO	This issue has not been addressed by Delaware law. Delaware courts, however, look to federal precedents, and measure the facts against the definition for working time in the FLSA. Please refer to the federal fact sheet for further information.
Taxes and Withholding ⁷	YES	Dairy farmers making payment of any wages or other remuneration taxable under the state's Personal Income Tax Act to a resident or nonresident individual whose wages or other remuneration are subject to withholding under the Internal Revenue Code must deduct taxes from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from the employee. Employers must pay Delaware Unemployment Insurance if: <ul style="list-style-type: none"> during any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of \$20,000 or more to individuals employed in agricultural labor, or for some portion of a day in each of 20 different calendar weeks whether or not such days were consecutive, in either the current or the preceding calendar year, employed in agricultural labor 10 or more individuals, regardless of whether they were employed at the same moment of time. Please also refer to Delaware Employer FAQs regarding Unemployment Insurance for further information.

WAGES

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TOPIC	ANSWER	DETAILS
Pay Stub ⁸	YES	<p>Delaware employers with 4 or more employees must furnish to each employee at the time of <u>payment a statement</u>, either on the check, or by a separate slip, or electronically, so long as the electronic statement is in a form capable of being retained by the employee, showing:</p> <ul style="list-style-type: none"> • <i>the wages due,</i> • <i>the pay period for which the wages are due, and</i> • <i>the total amount of deductions, separately specified, which have been made from the wages due, provided such statement shall, for an employee who is paid at an hourly rate, show the total number of hours for the said pay period.</i> <p>Where the statement is furnished electronically, an employee may request that the statement be provided in written form on a separate slip.</p>
Deductions and Allowances ⁹	YES	<p>No employer may withhold or divert any portion of an employee's wages unless:</p> <ul style="list-style-type: none"> • <i>the employer is required or empowered to do so by state or federal law; or</i> • <i>the deductions are for medical, surgical or hospital care or service, without financial benefit to the employer, and are openly, clearly and in due course recorded in the employers' books; or</i> • <i>the employer has a signed authorization by the employee for deductions for a lawful purpose accruing to the benefit of the employee, except that the Delaware Department of Labor, upon finding that it is acting in the public interest, may, by regulation, prohibit such withholding or diverting for such purpose.</i>
Bonuses ¹⁰	NO	<p>The <u>Delaware Wage Payment and Collection Law</u> does not specifically address the payment of bonuses or commissions. The law, however, mandates that wages earned by the employee shall become due and payable by the employer on the next regularly scheduled payday. Accordingly, employers should follow any written policy they have about paying bonuses as a best practice.</p> <p>A nondiscretionary bonus is one where the amount and criteria for getting the bonus are announced in advance. For example, performance goals (like meeting somatic cell count goals) that workers know about in advance. Discretionary bonuses are ones that are not announced in advance, not expected by the employee and not an incentive for the employee. For example, when the farm reaches a certain financial goal and decides to give all employees a bonus.</p>

WORKING CONDITIONS

TOPIC	ANSWER	DETAILS
Bathrooms ¹¹	YES	<p>The <u>State of Delaware Milk Code</u> has adopted the United States Department of Health and Human Services' Grade "A" Pasteurized Milk Ordinance. The PMO specifies that dairy farms have one or more toilets that are conveniently located, properly constructed, properly operated, and maintained in a sanitary manner.</p>
Rest and Meal Breaks ¹²	YES	<p>Employers must give employees who work for 7.5 or more consecutive hours a <u>meal break of 30 minutes</u> (which can be unpaid). The break must be given some time after the first two hours of work and before the last two hours. This law does not apply if:</p> <ul style="list-style-type: none"> • <i>compliance would adversely affect public safety;</i> • <i>only one employee may perform the duties of the position;</i> • <i>the employer has fewer than five employees on a shift at a single business location (in which case the exemption applies only to that shift); or</i> • <i>the continuous nature of an employer's operations, for example chemical production or research experiments, requires employees to respond to urgent or unusual conditions at all times, and the employees are compensated for their meal break periods</i>
Labor Relations ¹³	YES	<p>It is the declared policy of the State of Delaware to encourage a harmonious and cooperative relationship between employers and their employees by allowing private sector labor organizations and employers to enter into union security agreements to the full extent allowed under the National Labor Relations Act. Please see federal fact sheet for further information.</p>

WORKING CONDITIONS

(Continued)

TOPIC	ANSWER	DETAILS
Working Hours	NO	Delaware law does not specify max hour or day requirements for adults.
Whistleblower Protection ¹⁴	YES	<p>Under Delaware’s Whistleblowers’ Protection Act, an employee cannot be discharged, threatened or otherwise discriminated against for:</p> <ul style="list-style-type: none"> • reporting to a public body a violation that the employee knows or reasonably believes has occurred or is about to occur, unless the employee knows or has reason to know that the report is false; • participating in an investigation, hearing, or inquiry held by a public body, or a court action related to the violation; • refusing to commit or assist in the commission of a violation; • reporting verbally or in writing to the employer or to the employee’s supervisor a violation, which the employee knows or reasonably believes has occurred or is about to occur; • reporting verbally or in writing to a public body, to the employer or to the employee’s supervisor a campaign finance violation, which the employee knows or reasonably believes has occurred or is about to occur.
Paid Sick and Vacation Leave	NO	Delaware law does not require an employer to provide paid sick or vacation leave.
Breaks for Nursing Mothers ¹⁵	YES	Delaware law requires employers to reasonably accommodate known limitations of a person related to pregnancy, childbirth or a related condition, including by providing break time and appropriate facilities for expressing breast milk.
Pregnancy Accommodations and Leave ¹⁶	YES	Delaware law requires employers to reasonably accommodate known limitations of a person related to pregnancy, childbirth or a related condition. Accommodations available under Delaware law 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.
Family and Medical Leave	NO	Delaware does not have any state laws mandating family and/or medical leave. Employers with 50 or more employees may be subject to the federal Family and Medical Leave Act.
Military and other Service Leave ¹⁷	YES	Reservists and National Guard members in Delaware who are called to state active duty are eligible for the same rights, privileges and protections—including leave— with respect to such member’s employment as such member would have had if called for military training under federal law protecting reservists and National Guard members. Please see federal fact sheet for military and other service leave under USERRA.
Crime Victim and Witness Leave ¹⁸	YES	<p>Delaware employers must provide leave to employees if they are:</p> <ul style="list-style-type: none"> • a crime victim; • a victim’s parent, guardian or custodian, if the victim cannot meaningfully understand or participate in the legal process because of physical, psychological or mental impairment; • a legal representative; or • unless they are a defendant, co-defendant or conspirator in the crime, the deceased victim’s: <ul style="list-style-type: none"> - spouse; - adult child or stepchild; - parent; sibling; or - qualified neighborhood or homeowner’s association if the crime involves certain illegal drug activities. <p>An employee may take leave under this law to:</p> <ul style="list-style-type: none"> • participate in preparations for criminal proceedings at the prosecutor’s request; • attend a criminal proceeding, if the attendance is reasonably necessary to protect the victim’s interests; and/or • attend a criminal proceeding in response to a subpoena.

WORKING CONDITIONS

(Continued)

TOPIC	ANSWER	DETAILS
Jury Duty Leave ¹⁹	YES	<p>Delaware employees may take leave to:</p> <ul style="list-style-type: none"> • <i>respond to a summons;</i> • <i>serve as a juror; and/or</i> • <i>attend court for prospective jury service.</i> <p>The statute does not specify an amount of leave that may be taken each year.</p>
Voting Leave	NO	Delaware law does not require an employer to allow employees time off, paid or unpaid, to vote.
School Activity Leave	NO	Delaware law does not require an employer to allow employees time off, paid or unpaid, for school activities.
Leave for Volunteer Emergency Responders ²⁰	YES	<p>Any employer with 10 or more employees must provide employees that are volunteer firefighters, members of a ladies auxiliary of a volunteer fire company, volunteer emergency medical technicians, and volunteer fire police officers leave for:</p> <ul style="list-style-type: none"> • <i>A governor-declared state of emergency lasting up to seven days.</i> • <i>A President-declared national emergency lasting up to 14 consecutive days.</i> • <i>Injuries the employee sustained when acting as a volunteer emergency responder, including responding to an emergency.</i> <p>The law does not specify how much leave should be given. However, employers may request that an employee who takes leave to respond to an emergency provide a written statement. The statement must be signed by the individual in charge of the volunteer department or another authorized individual.</p> <p>Employers cannot terminate, demote or take any other disciplinary action against an employee who takes leave to perform volunteer emergency response duties.</p>

HEALTH AND SAFETY

TOPIC	ANSWER	DETAILS
Workers' Compensation ²¹	YES/NO	<p>Workers' Compensation is not required for farm or agricultural laborers and employers in Delaware, however it is good practice to obtain coverage. If an employer elects coverage, they must follow the accident reporting requirements as follows.</p> <p>Every employer to whom this chapter applies shall keep a record of all injuries, fatal or otherwise, received by employees in the course of their employment. Within 10 days after knowledge of the occurrence of an accident resulting in personal injury, a report thereof shall be made in writing by the employer to the Department of Insurance in duplicate on blanks to be procured from the Department for that purpose. The employer shall provide a copy of the report of injury to the employee upon completion of the report. Upon the termination of the disability of the injured employee, the employer shall make a supplemental report to the Department.</p> <p>The reports shall contain the name and nature of the business of the employer, the location of the employer's establishment or place of work, the name, age, sex and occupation of the injured employee and shall state the time, nature and cause of the injury and such other information as may be required for properly carrying out this chapter. The employee's copy shall contain a summary of the law as provided by the Department.</p>
OSHA	NO	Delaware is under federal OSHA jurisdiction. See the federal portion of the fact sheet for more information.
Housing ²²	YES	Delaware has regulations governing migratory agricultural labor housing and sanitation. No person shall operate a migratory agricultural labor housing camp or field sanitation/hand labor operation who does not have a valid permit issued by the Division of Public Health. The general sanitation requirements for agricultural labor housing camps can be found here .



RECORD KEEPING

TOPIC	ANSWER	DETAILS
Payroll ²³	YES	<p>Employers must keep <u>wage and hour records</u> for a period of three years, which include paystub statements showing each employee's name, address, occupation, hours of work and the pay rate and the amount of pay for each pay period.</p> <p>Additionally, every employer required to withhold tax is required to keep all pertinent records available for inspection by the Division of Revenue for a period of not less than three years from the date the annual reconciliation was filed. No particular form has been prescribed for such reports, but they should include:</p> <ul style="list-style-type: none"> • the amount and dates of all wage payments and tips reported subject to these taxes; • the names, and addresses and occupations of the employees receiving such payments; • the periods of their employment; • their social security numbers; • their income tax withholding form [Federal W-4 or W-4A]; the employer's identification number; and • the dates and amounts of deposits. <p>These records should be kept for a period of at least three (3) years after the date the taxes to which they are related become due, or the date the taxes were paid, whichever is later.</p>
Personnel Files – Employee Access ²⁴	YES	<p>Delaware employers must allow employees, upon request, to inspect their own personnel files, including records used to determine that employee's qualifications for employment, promotion, additional compensation, termination or disciplinary action. Personnel records subject to inspection include any application for employment, wage or salary information, notices of commendations, warning or discipline, authorization for a deduction or withholding of pay, fringe benefit information, leave records, employment history, including salary information, job title, dates of changes, retirement record, attendance records, performance evaluations and medical records.</p> <p>Employees are not entitled to review records relating to the investigation of a possible criminal offense, letters of reference, documents which are being developed or prepared for use in civil, criminal or grievance procedures or materials which are used by the employer to plan for future operations or information available to the employee under the Fair Credit Reporting Act.</p> <p>The employer must make the records available during the regular business hours of the office where these records are usually and ordinarily maintained, when sufficient time is available during the course of a regular business day to inspect the personnel files in question.</p> <p>The employer may require the requesting employee to inspect such records on the employee's own time. Employer's may require employees to submit a written form to request access to their personnel file. Such forms may be used only to identify who is seeking access to the files and prevent disclosure to ineligible individuals. Employers may ask the requesting employee to indicate in the written request either the purpose for which the inspection is requested or the particular parts of the employee's personnel record which the employee wishes to inspect.</p>
Unemployment Insurance ²⁵	YES	<p>Whether or not subject to paying <u>Unemployment Insurance</u> taxes, employers must retain employee wage and hours records for at least three years. The record must include each employee's name, address, occupation, hours of work and the pay rate and the amount of pay for each pay period.</p>
Workers' Compensation ²⁶	YES/NO	<p>Workers' Compensation is not required for farm or agricultural laborers and employers in Delaware, however it is good practice to obtain coverage. If an employer elects coverage, they must keep a record of all injuries, fatal or otherwise, received by employees in the course of their employment.</p>
OSHA	YES	<p>See federal OSHA recordkeeping requirements on the federal fact sheet.</p>
Federal	YES	<p>There are numerous federal rules about recordkeeping. Employers should review the federal fact sheet.</p>

HUMAN RIGHTS

TOPIC	ANSWER	DETAILS
Employment Discrimination ²⁷	YES	<p>The Delaware Discrimination in Employment Act prohibits discrimination in employment based on race, marital status, genetic information, color, age (40 and over), religion, sex (including pregnancy), sexual orientation, gender identity or national origin.</p> <p>Additionally, the Handicapped Persons Employment Protection Act prohibits discrimination against disabled persons. Employers with 15 or more employees may also be subject to federal civil rights requirements.</p> <p>It shall also be an unlawful employment practice for an employer or an employer's agent to:</p> <ul style="list-style-type: none"> • screen applicants based on their compensation histories, including by requiring that an applicant's prior compensation satisfy minimum or maximum criteria; or • seek the compensation history of an applicant from the applicant or a current or former employer.
Harassment/ Sexual Harassment ²⁸	YES	<p>The Delaware Discrimination in Employment Act prohibits harassment of a person because of their membership in a protected class. Employers with 15 or more employees may also be subject to federal civil rights requirements.</p> <p>Delaware employers with 50 or more employees must provide interactive sexual harassment training to current non-supervisory employees by December 31, 2019, and new non-supervisory employees within a year of the start of their employment. The training must cover the definition and illegality of sexual harassment, remedies and complaint processes for employees, how to contact the DOL, and retaliation. Employers must also provide sexual harassment training to existing supervisors by December 31, 2019, and new supervisors within a year of becoming supervisors. All employees must receive additional training every two years.</p>
Forced Labor ²⁹	YES	<p>Delaware law prohibits trafficking an individual if the person knowingly recruits, transports, harbors, receives, provides, obtains, isolates, maintains, advertises, solicits or entices an individual in furtherance of forced labor. A person is guilty of forced labor if the person knowingly uses coercion to compel an individual to provide labor or services, except where such conduct is permissible under federal law or state law.</p>

CHILD LABOR

TOPIC	ANSWER	DETAILS
Child Labor ³⁰	NO	<p>Delaware child labor laws do not apply to minors employed in farm work performed on a farm in a nonhazardous occupation. Federal rules apply; refer to the federal fact sheet.</p>

References

1. Del. Code Ann. tit. 19, §1108.
2. Del. Code Ann. tit. 30, §1156A, 42 U.S.C. 653A
3. Del. Code Ann. tit. 19, § 1102(a), (b).
4. Del. Code Ann. tit. 19, § 1103
5. Del. Code Ann. tit. 19, § 1102(b) (1).
6. Del. Code Ann. Tit. 19, § 901 et seq.
7. Del. Code Ann. tit. 30, § 1151; Del. Code Ann. tit. 19, § 3302.
8. Del. Code Ann. tit. 19, § 1108
9. Del. Code Ann. tit. 19, § 1107
10. Del. Code Ann. tit. 19, § 1103
11. 20 DE Reg. 985 (06/01/17).
12. Del. Code Ann. tit. 19, § 707
13. Del. Code Ann. tit. 19, § 401
14. Del. Code Ann. tit. 19, § 1703
15. Del. Code Ann. tit. 19, § 710(19)
16. Del. Code Ann. tit. 19, § 710(19)
17. Del. Code Ann. tit. 20, § 905(a)
18. Del. Code Ann. tit. 11, § 9409
19. Del. Code Ann. tit. 10, § 4515
20. Del. Code Ann. tit. 19, §§ 1801 to 1808
21. Del. Code Ann. tit. 19, § 2307(b); § 2313.
22. 16 DE Reg. 4447
23. Del. Code Ann. tit. 19, § 907 ; Del. Code Ann. tit. 19, § 1108
24. Del. Code Ann. tit. 19, § 730 et seq.
25. Del. Code Ann. tit. 19, § 907
26. Del. Code Ann. tit. 19, § 2307(b); § 2313
27. Del. Code Ann. tit. 19, § 710 et seq. ; Del. Code Ann. tit. 19 §720 et seq. ; Del. Code Ann. tit. 19 § 709B
28. Del. Code Ann. tit. 19, § 711A.
29. Del. Code Ann. tit. 11, § 787.
30. Del. Code Ann. tit. 19, § 502(2) (a).