

AGENDA
REGULAR MEETING OF THE MAYOR AND COUNCIL
May 14, 2019
SEAFORD CITY HALL - 414 HIGH STREET

6:30 P.M. - The Electric Department to have the newly purchased bucket tuck - Truck #19 on display for the Mayor, City Council and the public.

7:00 p.m. - 8:00 p.m. - FORMAL REAL ESTATE TAX APPEAL HEARING

7:00 P.M. - Mayor David Genshaw calls the Regular Meeting to order.

- Invocation
- Pledge of Allegiance to the Flag of the United States of America.
- Executive Session - Personnel
- Changes to agenda for this meeting.
- Approval of minutes of the regular meeting on April 23, 2019.
- **Mayor Genshaw will close the Formal Real Estate Tax Appeal Hearing at 8:00 p.m.**

ALL ITEMS ON THIS AGENDA MAY OR MAY NOT BE VOTED ON.

Judge E. Scott Bradley will give the Oath of Office to Matthew MacCoy for the position of Councilman

Mayor Genshaw to hold the election for Vice-Mayor

Mayor Genshaw to appoint Council liaisons

CORRESPONDENCE:

1.

NEW BUSINESS:

1. Present for approval an extension of the City's Listing Agreement for the Ross Business Park lands with SVN-Miller Commercial Real Estate until April 30, 2020.
2. Present a report and recommendation from the Electrical Engineering RFP committee.
3. Present for approval an open-ended services contract for electrical engineering services and to assume the role of City

AGENDA

REGULAR MEETING OF THE MAYOR AND COUNCIL

May 14, 2019

Electrical Engineer for the City of Seaford from the firm of George, Miles and Buhr.

4. Present for approval a proposal for engineering services to detail the disconnection of the roof drains from the sanitary sewer system at the Seaford Volunteer Fire Department building located at 302 East King Street.
5. Mr. Charles Kistler, Executive Director of the HELP Initiative, to present information related to the Home Energy Counseling and Checkup (HEC2) program availability.
6. Mayor Genshaw to recommend the appointment of Jose Santos to the Planning and Zoning Commission.
7. Present for approval an employee policy for nursing mothers.

OLD BUSINESS:

- 1.

REMINDER OF MEETINGS & SETTING NEW MEETINGS:

1. May 21, 6:00 budget meeting #2 - Council Chambers.
2. City Offices will be closed in observance of the Memorial Day Holiday on May 27, 2019.
3. Summer Hours (7:00 a.m. - 4:00 p.m.) will begin on Tuesday May 28, 2019 for City Office and Utility personnel.
4. DEMEC Joint Council Briefing, May 22, 2019 starting at 4:00 p.m. at Dover Downs

COMMITTEE REPORTS:

1. Police & Fire - Councilman Dan Henderson
2. Administration - Councilman Orlando Holland
3. Code, Parks and Recreation - Councilman James King

AGENDA

REGULAR MEETING OF THE MAYOR AND COUNCIL

May 14, 2019

4. Public Works & WWTF - Councilwoman Leanne Phillips-Lowe

5. Electric - Councilman William Mulvaney

Mayor Genshaw solicits a motion to hold an Executive Session for the purpose of discussing personnel.

EXECUTIVE SESSION:

1. Personnel

Mayor Genshaw solicits a motion to adjourn the Executive Session.

Mayor Genshaw reopens the regular Council meeting.

Mayor Genshaw solicits a motion to adjourn the regular Council meeting.

NOTE: Agenda shall be subject to change to include or delete additional items (including executive session) which arise at the time of the meeting. (29 Del. C. S1004 (e) (3))

Date Posted: 5/7/19

Posted by: TNT

April 23, 2019

Mr. Charles Anderson
c/o City of Seaford
P.O. Box 1100
Seaford, DE 19973

Dear Charles,

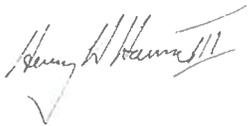
I'm writing to request an extension of our Listing Agreement for the Ross Business Park. Our current listing agreement will expire April 30, 2019.

We are excited that we finally have an initial building going on the Park Avenue property and are having more productive conversations than we have enjoyed in the past year.

Please review the attached Extension Agreement and if it is acceptable, please sign and return. If you have any questions or suggestions, please feel free to give me a call or reach out to anyone on our team.

Thank you.

Sincerely,



Henry H. Hanna, CCIM, SIOR
Council Chair Industrial Properties
SVN-Miller Commercial Real Estate

HHH:fra

cc: Trisha Newcomer

NB#2
5-14-19

April 23, 2019

City of Seaford
Mayor & Council Members
414 High Street
Seaford, DE 19973

RE: Electrical Engineering - RFP Committee Report and Recommendation

The RFP committee members respectfully submit the following report and recommendation for your consideration:

Of the three firms in attendance at the pre-proposal meeting, all firms submitted proposals on April 5th, 2019 for the above referenced solicitation. The firms were subsequently ranked based on the submitted RFP information, the criteria established by State Law, and the Delaware Association of Engineers. All of the firms submitting proposals were found to be well qualified and credible. The unique objectives necessitated by the City's needs required the firms to present innovative solutions to the outlined criteria.

The committee notes the top ranked firm presented a positive approach with regard to the outlined needs, well defined solutions to the identified problems, and demonstrated extensive experience with municipal clients.

After the above referenced review of proposals, the committee unanimously recommends the City award the Electrical Engineering contact to the firm of George, Miles & Buhr, for the required City Engineering services.

The required selection process was a complex one and all committee members agreed the process thoroughly vetted the desired electrical engineering services for the scope of work presented.

If you require additional information, feel free to contact any of the committee members.

Thank You,

RFP Committee Members:

A handwritten signature in blue ink, appearing to read "H. William Mulvaney", with a long horizontal flourish extending to the right.

H. William Mulvaney
Councilman, Electric Commissioner

A handwritten signature in blue ink, appearing to read "Bill Bennett", with a horizontal flourish.

Bill Bennett
Director of Electric

A handwritten signature in black ink, appearing to read "Charles Anderson", with a large, stylized flourish.

Charles Anderson
City Manager

15213
5-14-19

May 1, 2019

■■■■
ARCHITECTS
ENGINEERS

City of Seaford
414 High Street
P.O. Box 1100
Seaford, DE 19973

400 HIGH STREET
SEAFORD, DE 19973
PH: 302.628.1421
FAX: 302.628.8350

Attn: Mr. Charles Anderson
City Manager

SALISBURY
BALTIMORE
SEAFORD

Re: City of Seaford Electrical Engineering and Rate Analysis

www.gmbnet.com

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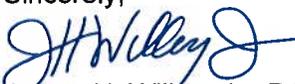
Dear Mr. Anderson:

George, Miles & Buhr, LLC (GMB) is very pleased to learn of the Evaluation Committee's decision to select us as the City's Electrical Engineering Consultant through your competitive bidding process. It is our promise to continue to provide the City of Seaford with dedicated service and quality consulting.

Included with this letter is an On-Call Services Contract for Electrical Engineering and Rate Analysis. As discussed, this general contract covers small one-time service tasks and/or emergency service requests. We will continue to use the standard GMB and City of Seaford cost-plus fixed fee billing schedule. For larger tasks, or recurrent tasks, GMB will provide a separate proposal with a detailed Scope of Work and Fee for the Task. Upon agreement on Scope and Fee, the City will issue a Purchase Order for the Task which may serve as our Notice to Proceed.

Regarding to the On-call Contract, Mr. Lex Grier, P.E. will serve as the City's main point of contact and overall Project Manager. Lex will also coordinate the individual Task Proposals for our core team including Preston Waller & Associates (PWA), and Smart Utility Management (SUM). We understand that either you, or Mr. Bill Bennett, Director of Electric for the City, may need to directly contact Mr. Jay Waller, P.E. of PWA or Mr. Chris Simms of SUM. Our team's intent is to provide the City with the required communication flexibility to handle all situations from ordinary to emergency.

We appreciate the opportunity to continue serving as part of the City of Seaford team and look forward to initiating these projects. Please feel free to contact us with any questions on the enclosed information.

Sincerely,

James H. Willey, Jr., P.E.
Managing Member/President

JAMES H. WILLEY, JR., PE
PETER A. BOZICK, JR., PE
JUDY A. SCHWARTZ, PE
CHARLES M. O'DONNELL, III, PE
W. BRICE FOXWELL, PE
A. REGGIE MARINER, JR., PE
JAMES C. HOAGESON, PE
STEPHEN L. MARSH, PE
DAVID A. VANDERBEEK, PE
ROLAND E. HOLLAND, PE
JASON M. LYTLE, PE
CHRIS B. DERBYSHIRE, PE
W. MARK GARDOCKY, PE
MORGAN H. HELFRICH, AIA
KATHERINE J. MCALLISTER, PE

JHW/mse
Enclosure

JOHN E. BURNSWORTH, PE
MICHAEL G. KOBIN, PE
VINCENT A. LUCIANI, PE
ANDREW J. LYONS, JR., PE
W. NICHOLAS LLOYD
AUTUMN J. WILLIS

May 1, 2019

■ ■ ■ ■
ARCHITECTS
ENGINEERS

400 HIGH STREET
SEAFORD, DE 19973
PH: 302.628.1421
FAX: 302.628.8350

SALISBURY
BALTIMORE
SEAFORD

www.gmbnet.com

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W. NICHOLAS LLOYD
AUTUMN J. WILLIS

City of Seaford
414 High Street
P.O. Box 1100
Seaford, DE 19973

Attn: Mr. Charles Anderson
City Manager

Re: City of Seaford Electrical Engineering and Rate Analysis
On-Call Services Contract

Dear Mr. Anderson:

In accordance with the City's selection of George, Miles & Buhr, LLC (GMB) to serve as the City Engineer for Electrical Engineering and Rate Analysis, we are pleased to submit this letter of agreement for the services identified in Sections I.A and I.B of your Request for Proposals (RFP).

SCOPE OF SERVICES AND CONTRACT ARRANGEMENTS:

This On-Call Services Contract shall cover the City's general requests related to the Scope of Work specified in the Electrical Engineering and Rate Analysis RFP. As discussed, this On-Call Contract covers small one-time service tasks and/or emergency service requests.

We will continue to use the standard GMB and City of Seaford cost-plus fixed fee billing schedule, which includes an Overhead Rate of 160% and a Fixed Fee of 13%. Our core team includes Preston Waller & Associates (PWA) and Smart Utility Management (SUM). Subconsultant costs shall be a pass-through with no mark-up.

For this Contract, Mr. Jay Waller of PWA will bill his services at \$125/hour. Mr. Chris Simms of SUM will bill his services at \$185/hour.

For larger tasks, or recurrent tasks, GMB will provide a separate proposal with a detailed Scope of Work and Fee for the Task. Upon agreement on Scope and Fee, the City will issue a Purchase Order for the Task which may serve as our Notice to Proceed.

SCHEDULE:

We propose to initiate work on this Contract immediately upon any requests from yourself, Mr. Bill Bennett, Director of Electric for the City, or other City official as you may designate. Please coordinate with Mr. Lex Grier, P.E. of GMB; or, directly contact Mr. Jay Waller, P.E. of PWA or Mr. Chris Simms of SUM in the case of emergency.

FEE:

We propose an estimated fee of \$15,000 for the first year of service under this On-Call Contract. As we move forward and better understand which Tasks are suitable for separate proposals/City Purchase Orders and which are better handled under the On-Call, we may mutually decide to renew or amend this Contract. In general, the above estimated fee covers approximately one full day (8 hours) of engineering services per month with some associated expenses expected.

We have enclosed the GMB Schedule of Hourly Rates & Expenses and General Conditions with this Contract. The City's Standard Cost-Plus billing arrangement detailed above supersedes the Hourly Rates, with Expenses being billed as noted on the Schedule.

We appreciate the opportunity to continue serving the City of Seaford. Please feel free to contact me with any questions.

Sincerely,



James H. Willey, Jr., P.E.
Managing Member/President

JHW/mse

Enclosure – GMB Schedule of Hourly Rates & Expenses and General Conditions

ACCEPTED FOR CITY OF SEAFORD:

By: _____
Signature

Printed Name: _____

Title: _____

Date: _____

SCHEDULE OF HOURLY RATES & EXPENSES

HOURLY RATES
 Effective January 1, 2019

CLASSIFICATION	HOURLY RATE
Senior Project Director	\$ 175.00 - \$ 200.00
Project Director	\$ 150.00 - \$ 180.00
Senior Project Manager	\$ 125.00 - \$ 160.00
Project Manager	\$ 105.00 - \$ 135.00
Assistant Project Manager	\$ 105.00 - \$ 125.00
Senior Project Engineer/Architect/Landscape Arch	\$ 105.00 - \$ 125.00
Project Engineer/Architect/Landscape Arch	\$ 95.00 - \$ 120.00
Graduate Engineer/Architect/Landscape Arch	\$ 85.00 - \$ 115.00
Senior Designer	\$ 80.00 - \$ 120.00
Designer	\$ 65.00 - \$ 90.00
CADD Operator	\$ 60.00 - \$ 75.00
Construction Representative	\$ 80.00 - \$ 110.00
Resident Project Representative (RPR)	\$ 55.00 - \$ 100.00
Project Coordinator	\$ 65.00 - \$ 90.00
Surveyor	\$ 95.00 - \$ 125.00
Survey Crew Chief	\$ 70.00 - \$ 110.00
Survey Technician	\$ 40.00 - \$ 70.00
Administrative/IT Support	\$ 40.00 - \$ 85.00
GIS Specialist	\$ 60.00 - \$ 85.00
Senior Technician	\$ 50.00 - \$ 90.00
Technician	\$ 30.00 - \$ 50.00

EXPENSES

All items per each, unless noted.

JAW 5-1-19

Internal:

Photocopies:	
Black & White	\$ 0.20
Color	\$ 0.50
Prints/Plots:	
Black & White/Color	\$ 0.50 /s.f.
Mylar	\$ 2.00 /s.f.
Travel:	
Mileage	\$ 0.58/mile*
Subsistence (Meals & Lodging)	At Actual Cost
Overnight/Immediate Delivery	At Actual Cost
Survey Crew Rates	
2 person crew	\$ 130.00/hour
3 person crew	\$ 150.00/hour
Other:	
Electronic Media Copies/Transfers/File	\$ 300.00/file
Website Project File Sharing	\$ 1.00/MB/month
Construction Management Software	\$ 200.00/month
Surveying Equipment/Total Station Only	\$ 35.00 /day
Surveying Equipment/Total Station + GPS Unit	\$ 150.00 /day

* To be adjusted annually on January 1, in accordance with the Internal Revenue Service Directives

GENERAL CONDITIONS

(Effective July 1, 2018)

AGREEMENT

The term "Agreement" refers to the undertaking by George, Miles & Buhr, LLC ("GMB") to perform Services described in the attached Proposal and these General Conditions. The Agreement shall become effective upon acceptance by Client of the attached Proposal and General Conditions, which when acknowledged in writing, are authorization to proceed. The Agreement is between Client and GMB, and their respective partners, divisions, affiliates, members, successors and assigns, both of whom promise not to transfer or assign any interest in the Agreement without the other party's written consent. The Agreement supersedes all prior written proposals or negotiations and is conditioned upon Client's acceptance of these General Conditions. No modification of the terms of the Agreement or General Conditions shall be valid unless authorized in writing by both parties. If additional services are required by Client, GMB will provide the services when authorized in writing and documented to do so by Client.

FEES, RETAINER

Any estimate of the fees and expenses that GMB expects to incur in providing Client with services outlined in the attached Proposal is not a maximum or lump sum fee. Client understands and agrees that the final billing may be more or less than the estimate. Fees for services will be adjusted if there are changes to the scope or schedule, as defined in the Proposal including supporting drawings, schedules and exhibits. If GMB does not have an established relationship with the Client, a retainer will be requested approximating the value of services for a minimum of sixty (60) days and will be credited to the final invoice. A Schedule of Hourly Rates & Expenses is attached to and incorporated as part of the Proposal. Unless otherwise noted, all proposals are valid for a period of 90 days from the date of the proposal.

INVOICES

Invoices are due upon receipt. If an invoice is outstanding beyond thirty (30) days of the invoice date, interest will be charged at a rate of one percent (1%) per month and GMB reserves the right to stop providing services and to withdraw all permit applications. Further, if GMB has to refer any delinquent billing to an attorney for collection, Client agrees to pay GMB its reasonable attorney's fees and expenses of collection, to include, without limitation, all litigation related expenses and expert witness fees, plus 25%.

EXPENSES

Client agrees to pay GMB for internal expenses in accord with Schedule of Hourly Rates and Expenses charged for those items that are specific to the project, including, but not limited to, subcontracted consultants, permit fees, reproduction expenses, renderings, models, etc. GMB will invoice external expenses at cost plus 10%.

LIABILITY & CLAIMS

Client agrees to limit GMB's liability related to errors and omissions to an amount not to exceed the total fee for the project or GMB's available professional liability insurance coverage for that year, whichever is less. GMB will not be responsible for any liabilities arising from Client's negligent acts or errors, or from any entity whose conduct is not subject to GMB's control. Client acknowledges the inherent risks associated with construction. GMB will provide services with a standard of care exercised by licensed architects and engineers. At least 30 days prior to making any claim against GMB, Client agrees to provide GMB a Certificate of Merit issued by an architect or engineer, licensed by the state in which the project is located, specifically describing

every error or omission which the issuer believes to be a violation of the standard of care. If Client makes a claim or brings legal action against GMB for any services under this Agreement, and fails to prevail, Client agrees to pay all legal and other expenses incurred by GMB in its defense, including, but not limited to, attorney's fees, court costs, expert witness fees, etc.

INSTRUMENTS OF SERVICE

All work products, including those in electronic form, prepared by GMB and GMB's consultants are Instruments of Service for use solely with respect to this project. The Client shall be permitted to authorize Contractor, Subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the work. Any unauthorized use of the Instruments of Service shall be at the Client's sole risk and without liability to GMB and GMB's consultants. No alterations shall be made to the Instruments of Service by the Client and/or any representative of the Client without the written permission of GMB and GMB's consultants. Copies of electronic media, if requested and approved, will be invoiced to the Client and due upon receipt.

APPROVALS

GMB has no control over governments and their agencies in granting approvals. Therefore, GMB cannot guarantee the timeframe for, or the cost of services incidental to, obtaining approvals from governments or governmental agencies. If the type or level of services as originally defined are revised or changed during our assignment, the fee for our services from that point forward will be subject to negotiation.

TERMINATION/SUSPENSION OF WORK

Client or GMB each may terminate the Agreement with fifteen (15) calendar days written notice; Client agrees to pay for all services provided by GMB up to the date of termination. Project delays and suspension of the project for more than 30 days, may result in additional cost to resume work. Client agrees to pay such costs before work resumes if said delays are attributable to the Client.

CONSTRUCTION SAFETY

Client agrees to require general or subcontractor to indemnify, defend and hold GMB harmless against claims arising from unsafe site conditions.

CONSTRUCTION ESTIMATES

GMB has no control over the cost of labor, materials, equipment and services provided by others or over the contractor's methods of determining prices and does not warrant or guarantee construction estimates.

CONSTRUCTION SCHEDULES

GMB has no control over the means, methods and techniques of construction employed by contractors, the timing of government approvals or the delivery of materials and equipment. The Client agrees that any construction schedule prepared by GMB is approximate and will not be the basis for a claim.

HAZARDOUS MATERIALS

Client agrees to defend, indemnify and hold GMB harmless for any and all liabilities, claims, costs and expenses, including, but not limited to, litigation expenses, attorney's fees, and expert witness fees, which relate in any way to the presence of any hazardous or toxic materials on the project.

GOVERNING LAWS; VENUE

The Agreement shall be interpreted in accordance with the laws of the State of Maryland. The venue for any dispute arising out of the Agreement shall be, at the sole discretion of GMB, the Circuit Court for Wicomico County, Maryland or the federal courts within the State of Maryland.

NB#4
5-14-19

ELECTRONIC PROPOSAL

••••

ARCHITECTS
ENGINEERS

400 HIGH STREET
SEAFORD, DE 19973
PH: 302.628.1421
FAX: 302.628.8350

SALisbury
PAuLinaDRE
SEAFORD

www.gmbnet.com

••••

DATE: March 25, 2019 GMB NO:
TO: City of Seaford RE: Fire Department Roof
414 High Street Drain Disconnect
Seaford, DE 19973 Seaford, Delaware
ATTN: Charles Anderson

PROJECT DESCRIPTION:

Disconnect roof drains from sanitary sewer system.
Rework membrane roof to direct runoff to scuppers/
downspouts for discharge to grade.

SCOPE OF WORK:

1. Survey and measure existing roof and prepare Existing Conditions plan showing drains, scuppers, parapets, HVAC equipment, etc.
2. Develop design concept for replacement of roof and redirection of runoff to new scuppers/downspouts to allow disconnection of existing roof drains from the sanitary sewer system.
3. Prepare Front Elevation showing existing/proposed downspouts.
4. Prepare Roof Plan and Details including roof cricket layout, parapet modifications and downspout details. Prepare Roof Specifications.
5. Assist City with Invitation for Bids, bid review and Contractor selection.

ACCEPTED FOR THE OWNER:

BY: _____
Signature Printed Name

DATE: _____ TITLE: _____

TELEPHONE NO: _____ EMAIL: _____

If acceptable, please print this form, sign, FAX to 302.628.8350 and mail the original. Thank you

6. Meetings: Estimated fee includes one (1) meeting to review the design concept and one (1) presentation to City Council.

7. Exclusions:

- a. Hazardous Materials Testing
- b. Cost Estimating
- c. Design of Structural repairs not otherwise noted in the Scope
- d. Meetings not otherwise noted in the Scope

FEE ESTIMATE: Estimated Fee: \$10,220

CONTRACT TERMS: GMB will bill in accordance with the GMB Hourly Rate Schedule effective January 1, 2019 and General Conditions effective July 1, 2015.

SUBMITTED BY: Judy A. Schwartz, P.E.

ACCEPTED FOR THE OWNER:

BY: _____
Signature Printed Name

DATE: _____ TITLE: _____

TELEPHONE NO: _____ EMAIL: _____

If acceptable, please print this form, sign, FAX to 302.628.8350 and mail the original. Thank you

GENERAL CONDITIONS (Effective July 1, 2015)

AGREEMENT

The term "Agreement" refers to the undertaking by George, Miles & Buhr, LLC ("GMB") to perform Services described in the attached Proposal and these General Conditions. The Agreement shall become effective upon acceptance by Client of the attached Proposal and General Conditions, which when acknowledged in writing, are authorization to proceed. The Agreement is between Client and GMB, and their respective partners, divisions, affiliates, members, successors and assigns, both of whom promise not to transfer or assign any interest in the Agreement without the other party's written consent. The Agreement supersedes all prior written proposals or negotiations and is conditioned upon Client's acceptance of these General Conditions. No modification of the terms of the Agreement or General Conditions shall be valid unless authorized in writing by both parties. If additional services are required by Client, GMB will provide the services when authorized in writing and documented to do so by Client.

FEES, RETAINER

Any estimate of the fees and expenses that GMB expects to incur in providing Client with services outlined in the attached Proposal is not a maximum or lump sum fee. Client understands and agrees that the final billing may be more or less than the estimate. Fees for services will be adjusted if there are changes to the scope or schedule, as defined in the Proposal including supporting drawings, schedules and exhibits. If GMB does not have an established relationship with the Client, a retainer will be requested approximating the value of services for a minimum of sixty (60) days and will be credited to the final invoice. A Schedule of Hourly Rates & Expenses is attached to and incorporated as part of the Proposal. Unless otherwise noted, all proposals are valid for a period of 90 days from the date of the proposal.

INVOICES

Invoices are due upon receipt. If an invoice is outstanding beyond thirty (30) days of the invoice date, interest will be charged at a rate of one percent (1%) per month and GMB reserves the right to stop providing services and to withdraw all permit applications. Further, if GMB has to refer any delinquent billing to an attorney for collection, Client agrees to pay GMB its reasonable attorney's fees and expenses of collection, to include, without limitation, all litigation related expenses and expert witness fees, plus 25%.

EXPENSES

Client agrees to pay GMB for internal expenses in accord with Schedule of Hourly Rates and Expenses charged for those items that are specific to the project, including, but not limited to, subcontracted consultants, permit fees, reproduction expenses, renderings, models, etc. GMB will invoice external expenses at cost plus 10%.

LIABILITY & CLAIMS

Client agrees to limit GMB's liability related to errors and omissions to an amount not to exceed the total fee for the project or GMB's available liability insurance coverage for that year, whichever is less. GMB will not be responsible for any liabilities arising from Client's negligent acts or errors, or from any entity whose conduct is not subject to GMB's control.

Client acknowledges the inherent risks associated with construction. GMB will provide services with a standard of care exercised by licensed architects and engineers. At least 30 days prior to making any claim against GMB, Client agrees to give GMB a Certificate of Merit issued by an architect or engineer, licensed by an architect or engineer, licensed by the state in which the project is located, specifically describing every error or omission which the issuer believes to

be a violation of the standard of care. If Client makes a claim or brings legal action against GMB for any services under this Agreement, and fails to prevail, Client agrees to pay all legal and other expenses incurred by GMB in its defense, including, but not limited to, attorney's fees, court costs, expert witness fees, etc.

INSTRUMENTS OF SERVICE

All work products, including those in electronic form, prepared by GMB and GMB's consultants are Instruments of Service for use solely with respect to this project. The Client shall be permitted to authorize Contractor, Subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the work. Any unauthorized use of the Instruments of Service shall be at the Client's sole risk and without liability to GMB and GMB's consultants. No alterations shall be made to the Instruments of Service by the Client and/or any representative of the Client without the written permission of GMB and GMB's consultants. Copies of electronic media, if requested and approved, will be invoiced to the Client and due upon receipt.

APPROVALS

GMB has no control over governments and their agencies in granting approvals. Therefore, GMB cannot guarantee the timeframe for, or the cost of services incidental to, obtaining approvals from governments or governmental agencies. If the type or level of services as originally defined are revised or changed during our assignment, the fee for our services from that point forward will be subject to negotiation.

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CONSTRUCTION SAFETY

Client agrees to require general or subcontractor to indemnify, defend and hold GMB harmless against claims arising from unsafe site conditions.

CONSTRUCTION ESTIMATES

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CONSTRUCTION SCHEDULES

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HAZARDOUS MATERIALS

Client agrees to defend, indemnify and hold GMB harmless for any and all liabilities, claims, costs and expenses, including, but not limited to, litigation expenses, attorney's fees, and expert witness fees, which relate in any way to the presence of any hazardous or toxic materials on the project.

GOVERNING LAWS; VENUE

The Agreement shall be interpreted in accordance with the laws of the State of Maryland. The venue for any dispute arising out of the Agreement shall be, at the sole discretion of GMB, the Circuit Court for Wicomico County, Maryland or the federal courts within the State of Maryland.

SCHEDULE OF HOURLY RATES & EXPENSES

HOURLY RATES

Effective January 1, 2019

CLASSIFICATION	HOURLY RATE
Senior Project Director	\$ 175.00 - \$ 200.00
Project Director	\$ 150.00 - \$ 180.00
Senior Project Manager	\$ 125.00 - \$ 160.00
Project Manager	\$ 105.00 - \$ 135.00
Assistant Project Manager	\$ 105.00 - \$ 125.00
Senior Project Engineer/Architect/Landscape Arch	\$ 105.00 - \$ 125.00
Project Engineer/Architect/Landscape Arch	\$ 95.00 - \$ 120.00
Graduate Engineer/Architect/Landscape Arch	\$ 85.00 - \$ 115.00
Senior Designer	\$ 80.00 - \$ 120.00
Designer	\$ 65.00 - \$ 90.00
CADD Operator	\$ 60.00 - \$ 75.00
Construction Representative	\$ 80.00 - \$ 110.00
Resident Project Representative (RPR)	\$ 55.00 - \$ 100.00
Project Coordinator	\$ 65.00 - \$ 90.00
Surveyor	\$ 95.00 - \$ 125.00
Survey Crew Chief	\$ 70.00 - \$ 110.00
Survey Technician	\$ 40.00 - \$ 70.00
Administrative/IT Support	\$ 40.00 - \$ 85.00
GIS Specialist	\$ 60.00 - \$ 85.00
Senior Technician	\$ 50.00 - \$ 90.00
Technician	\$ 30.00 - \$ 50.00

EXPENSES

All items per each, unless noted.

Internal:

Photocopies:	
Black & White	\$ 0.20
Color	\$ 0.50
Prints/Plots:	
Black & White/Color	\$ 0.50 /s.f.
Mylar	\$ 2.00 /s.f.
Travel:	
Mileage	\$ 0.580mile*
Subsistence (Meals & Lodging)	At Actual Cost
Overnight/Immediate Delivery	At Actual Cost
Survey Crew Rates	
2 person crew	\$ 130.00/hour
3 person crew	\$ 150.00/hour
Other:	
Electronic Media Copies/Transfers/File	\$ 300.00/file
Website Project File Sharing	\$ 1.00/MB/month
Construction Management Software	\$ 200.00/month
Surveying Equipment/Total Station Only	\$ 35.00 /day
Surveying Equipment/Total Station + GPS Unit	\$ 150.00 /day

* To be adjusted annually on January 1, in accordance with the Internal Revenue Service Directives



NB H₅
5-14-19

Scope of Work for Home Energy Counseling and Checkup (HEC²)

PROJECT SUMMARY:

This Statement of Work (SOW) identifies deliverable services HELP Initiative, Inc. (HELP) will implement for Franklin Energy Services, LLC (Franklin) in the Delaware Sustainable Energy Utility (DESEU) Home Energy Counseling and Checkup (HEC²) Program, (Program). This Program was designed to empower the economically vulnerable and diverse Delaware population by providing access to high-quality energy efficiency education, products and services. Energy educators will be at the front line of this program.

The HEC² Program has four pathways to scale:

1. Partnerships
2. Tailored Workshops
3. Pop-up Counseling Centers
4. In-Home Energy Counseling and Checkups

In partnership with HELP, Franklin looks to bring HEC² deeper into DESEU serviced communities. Between Franklin's outreach and the partnership with HELP and other community organizations, Franklin will hold workshops and Pop Up events at locations around the State. Delawareans will learn about energy conservation in their home and about other programs that can meet their energy needs, such as DNREC's Weatherization Program or the DESEU's Assisted Home Performance Program. Additionally, the Energy Advisors & Outreach Specialist will be advocates for people in need. Most importantly, the workshops and Pop-Up Centers will be a gateway to In-Home energy counseling. Franklin will use the Home Energy Checkup (HEC) model to bring tailored energy education based on an energy checkup of the home. Here, there will be a walkthrough checkup that's purpose will be to identify opportunities for comfort and energy savings; report of the findings with recommendations; resources and referral services; and, immediate energy savings assistance through direct install measures, such as LED lights and low flow faucet aerators.

Working collaboratively with Franklin, HELP will target the participation units in the table below

Figure 1 Program Participation Table:

No.	Participation Unit	Year 1 Through 6/30/2019	Year 2 7/1/2019 to 6/30/2020
2.1	Tailored Workshops	8	24
2.2	Pop-Up Energy Center Locations	8	30
2.3	In-Home Energy Counseling and Checkup	60	150
	Energy Savings Kits	160	480



DESCRIPTION OF PROGRAM AND SERVICES:

2.1 TAILORED WORKSHOPS

Energy Conservation Workshops will remain a primary delivery and client outreach method for the Program in a group setting. Workshops will be tailored to the attendees. Workshops will generally be sixty (60) minutes long, with an interactive format. The purpose of the workshops will be to:

- 2.1.1 Provide energy (and energy efficiency) education
- 2.1.2 As part of the education, offer a DIY tutorial component (e.g. how to caulk a window, or “what does an air leak feel like”)
- 2.1.3 Provide an overview of the available financial support Programs in the state, including:
 - Home Energy Counseling
 - Replace Repair Heaters and Conserve Energy- First State Community Action Agency
 - LIHEAP (Low Income Home Energy Assistance Program)
 - Delaware Weatherization Assistance Program
 - Stand by me
 - Milford Housing Development Corp
 - DE Electric Co-op Beat the Peak
 - SHARING- Chesapeake Utilities Emergency Energy Recipient Program
- 2.1.4 Offer the opportunity to schedule a 1-on-1 “Pop-Up Center appointment” for energy counseling and if applicable, energy advocacy and energy-related referrals.
- 2.1.5 Offer the opportunity to schedule an In-home Check-up, wherein the client will receive energy counseling and if applicable, energy advocacy and energy-related referrals in their home.
- 2.1.6 When an event is approved by Franklin, provide free energy savings kits along with energy education support materials (kits will be limited to one per household). Kit items could include (but not limited to):
 - 2 LED Lamps
 - Bathroom Aerator
 - Nightlight (Energize Delaware Branded)
 - HEC² Specific Collateral Piece (Smaller card)
 - Energize Delaware Branded Bag

2.2 POP-UP ENERGY CENTER LOCATIONS

The primary purpose of the Pop-Up locations will be to offer 1-on-1 “appointments” and complete client intake, (i.e. energy counseling and if applicable, energy advocacy and energy-related referrals).

Franklin may request that HELP Team members support Pop-up client services. These services streamline the intake process; specifically, the requirements around income. Typically, the intake



process is performed digitally using tablets to capture all intake information. This will allow clients to sign documents and the Outreach Specialist to quickly upload intake information into the online database.

2.2.1 Client Intake

The Intake will take approximately 20-45 minutes depending on the need(s) of the client. The process for client intake will be:

- Intake Application
- Energy Counseling
- Energy-related Referrals (if applicable)
- Energy Advocacy (if applicable)

2.2.2 Intake Application

The program will service clients at 80% below median income (low-moderate income). Once the income requirement is confirmed, the Outreach Specialist will complete a brief intake form of basic household information on the tablet and will be able to digitally capture the necessary documents, including:

- Photo ID for the applicant
- At least (1) or more utility bills (paper form or screenshot of online account)
- Proof of income (pay stub or W2) or Proof of benefit (Social Security, SSI, TANF, GA, WIC, and/or food stamps award letter). Please note, Franklin will not be storing sensitive data (e.g. W2 or SS number), but instead Franklin will perform a documentation review for income eligibility, like the documentation review process Franklin completes under the AHPwES Program.

2.2.3 Energy Counseling

Energy Counseling is designed to make clients aware of the need to reduce home energy needs—and perhaps the need for future energy assistance. The Outreach Specialist will be encouraged to work with clients in compliance with a case management approach toward empowerment (and self-sufficiency) with an energy conservation emphasis.

The counseling process will include:

- A few home survey questions
- Review of the client's energy bills
- Financial discussion about current energy bills and effects of reducing their energy bills
- Possible referral to financial counseling nonprofit or advocacy group (that has the tools to more appropriately teach how to budget, pay off debt, and start saving toward long-term goals)

2.2.4 Energy-related Referrals

The Outreach Specialist will use available resources to offer the client referrals to energy-related programs that could assist them with an energy-related burden. Below is a list of some commonly available programs:

- The HEC² program's In-Home Energy Counseling (see below)



- Replace Repair Heaters and Conserve Energy- First State Community Action Agency
- LIHEAP (Low Income Home Energy Assistance Program)
- Delaware Weatherization Assistance Program
- Stand by me
- Milford Housing Development Corp
- DE Electric Co-op Beat the Peak
- SHARING- Chesapeake Utilities Emergency Energy Recipient Program

2.2.5 Energy Advocacy

The Outreach Specialist will discuss any other barriers or concerns the client has with their electric bill, other energy bills and/or utility provider. Through partnerships with the various utilities, the Outreach Specialist will contact the utility (with the client's permission) to assist with the client's account. This could include discussing delinquencies, disconnects, and/or requests for more information, budget billing or creating payment plan arrangements.

2.3 IN-HOME ENERGY COUNSELING AND CHECKUP

The HELP Team will work with clients to encourage Program participation. Participants may be eligible for an In-home Check-up if their income level is at or below the maximum annual income as approved by DESEU. The HELP Team will perform and manage a simplified income verification process.

Services performed during an In-home Check-up appointment include (but are not limited to), the following items:

2.3.1 Scheduling

The In-home Check-up will be available by request or appointment online during a workshop, or with the Outreach Specialist during a "Pop Up Center" appointment. The HELP Team will verify residence is in Delaware and client is a single family (considered one to four-unit residence) or eligible Downtown Development District property.

2.3.2 Installation of energy-saving measures

With the client's permission, the Energy Advisor will install up to \$100 worth of energy-saving measures in the client's home at no cost to the client. Franklin will provide a Direct Install Measure (DIM) price list for each item installed.

- LED lamps
- Bathroom Aerator
- Kitchen Aerator
- Showerheads
- Water heater pipe insulation (installed on hot water pipe for 4 feet from water heater)
- Optional: Smart Thermostat (w/ co-pay)

2.3.3 Walk-through Checkup



The Energy Advisor, whom is BPI-Credentialed, will perform a walk-through Checkup of the home to identify energy efficiency opportunities in the client's home.

The Energy Advisor will:

- Explain the program and checkup process
- Provide an explanation of direct installed measures
- Provide one-on-one client education on energy efficiency upgrade opportunities,
- Identify any Health & Safety barriers and make appropriate recommendations to be addressed
- Educate clients on applicable energy efficiency and/or financing programs that are available in the State to increase statewide Program adoption
- Provide emailed or printed energy efficiency recommendations and installation summary
- Assess the condition of the following items:
 - Insulation levels
 - Air leakage
 - Heating & cooling systems
 - Windows & doors
 - Lighting & appliances
 - Water heating equipment

2.3.4 Discussion of findings

After the walk-through, the Energy Advisor will provide 1-on-1 support to the client, including all of client intake processes discussed previously (under the *Pop-Up Energy Center Locations heading*). The Energy Advisor will also review the important findings and recommend improvements customized to the house and need of the client.

The counseling session will also include any recommended programs and financial products or loan programs that may enable the client to address any needed improvement areas. In this respect, the Energy Advisor will promote and provide an overview, of appropriate financial support Programs in the State, specific to the needs of the individual and premise location, including (but not limited to):

- Energize Delaware Assisted Home Performance with ENERGY STAR Program
- Replace Repair Heaters and Conserve Energy- First State Community Action Agency
- LIHEAP (Low Income Home Energy Assistance Program)
- Delaware Weatherization Assistance Program
- Stand by me
- Milford Housing Development Corp
- DE Electric Co-op Beat the Peak
- SHARING- Chesapeake Utilities Emergency Energy Recipient Program

NB# 7
5-14-19



The City of Seaford

Breastfeeding Support Policy

Adopted by Mayor and Council: xx/xx/2019
Effective: June 1, 2019

PURPOSE:

In recognition of the well documented health advantages of breastfeeding for infants and mothers, the City of Seaford provides a supportive environment to enable breastfeeding employees to express their milk during work hours. This includes a company-wide lactation support program administered by the Human Resources Department.

POLICY:

In accordance with the Fair Labor Standards Act employees who are nursing will be provided with reasonable unpaid breaks to express breast milk as frequently as needed for up to one year after the birth of a child. The City of Seaford will provide a place for the break, other than a bathroom, that is shielded from view and free from intrusion. Employees will not be retaliated against for exercising their rights under this policy.

IMPLEMENTATION:

Company Responsibilities

Breastfeeding employees who choose to continue providing their milk for their infants after returning to work shall receive:

- **Milk Expression Breaks**
Breastfeeding employees are allowed to breastfeed or express milk during work hours using their normal breaks and meal times. For time that may be needed beyond the usual break times, employees may use vacation, AT leave or use unpaid leave.
- **A Place to Express Milk**
A private room (not a toilet stall or restroom) shall be available for employees to breastfeed or express milk. The room will be private and sanitary, located near a sink with running water for washing hands and rinsing out breast pump parts, and have an electrical outlet. If employees prefer, they may also breastfeed or express milk in their own private offices, or in other comfortable locations agreed upon in consultation with the employee's supervisor. Expressed milk can be stored in the general City of Seaford refrigerators or in the employee's personal cooler.
- **Breastfeeding Equipment**
The employee is responsible for providing the necessary equipment for milk expression during working hours.

- **Education**
Please refer to the following website <https://www.womenshealth.gov> for prenatal and postpartum breastfeeding classes and informational materials.
- **Staff Support**
Supervisors are responsible for alerting pregnant and breastfeeding employees about the City's worksite lactation support program. It is expected that all employees will assist in providing a positive atmosphere of support for breastfeeding employees.

Employee Responsibilities

- **Communication with Supervisors**
Employees who wish to express milk during the work period shall keep supervisors informed of their needs so that appropriate accommodations can be made to satisfy the needs of both the employee and the City.
- **Maintenance of Milk Expression Areas**
Breastfeeding employees are responsible for keeping milk expression areas clean, using anti-microbial wipes to clean the area around it. Employees are also responsible for keeping the general lactation room clean for the next user. This responsibility extends to both designated milk expression areas, as well as other areas where expressing milk will occur.
- **Milk Storage**
Employees should label all milk expressed with their name and date collected so it is not inadvertently confused with another employee's milk. Each employee is responsible for proper storage of her milk using the City of Seaford refrigerator or her own personal storage cooler.
- **Use of Break Times to Express Milk**
When more than one breastfeeding employee needs to use the designated lactation room, employees can use a sign-in log provided in the room to negotiate milk expression times that are most convenient or best meet their needs.

NR# /
5-14-17

Fact Sheet #73: Break Time for Nursing Mothers under the FLSA

This fact sheet provides general information on the break time requirement for nursing mothers in the Patient Protection and Affordable Care Act (“PPACA”), which took effect when the PPACA was signed into law on March 23, 2010 (P.L. 111-148). This law amended Section 7 of the Fair Labor Standards Act (FLSA).

General Requirements

Employers are required to provide “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.” Employers are also required to provide “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 FLSA requirement of break time for nursing mothers to express breast milk does not preempt State laws that provide greater protections to employees (for example, providing compensated break time, providing break time for exempt employees, or providing break time beyond 1 year after the child’s birth).

Time and Location of Breaks

Employers are required to provide a reasonable amount of break time to express milk as frequently as needed by the nursing mother. The frequency of breaks needed to express milk as well as the duration of each break will likely vary.

A bathroom, even if private, is not a permissible location under the Act. The location provided must be functional as a space for expressing breast milk. If the space is not dedicated to the nursing mother’s use, it must be available when needed in order to meet the statutory requirement. A space temporarily created or converted into a space for expressing milk or made available when needed by the nursing mother is sufficient provided that the space is shielded from view, and free from any intrusion from co-workers and the public.

Coverage and Compensation

Only employees who are not exempt from section 7, which includes the FLSA’s overtime pay requirements, are entitled to breaks to express milk. While employers are not required under the FLSA to provide breaks to nursing mothers who are exempt from the requirements of Section 7, they may be obligated to provide such breaks under State laws.

Employers with fewer than 50 employees are not subject to the FLSA break time requirement if 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, and structure of the employer's business. All employees who work for the covered employer, regardless of work site, are counted when determining whether this exemption may apply.

Employers are not required under the FLSA to compensate nursing mothers for breaks taken for the purpose of expressing milk. However, where employers already provide compensated breaks, an employee who uses that break time to express milk must be compensated in the same way that other employees are compensated for break time. In addition, the FLSA's general requirement that the employee must be completely relieved from duty or else the time must be compensated as work time applies. See [WHD Fact Sheet #22, Hours Worked under the FLSA](#).

FLSA Prohibitions on Retaliation

Section 15(a)(3) of the FLSA states that it is a violation for any person to "discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee."

Employees are protected regardless of whether the complaint is made orally or in writing. Complaints made to the Wage and Hour Division are protected, and most courts have ruled that internal complaints to an employer are also protected.

Any employee who is "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.

Additional Resources

- [Request for Information on Break Time for Nursing Mothers](#), Federal Register 75: 80073-80079, (2010, December 21): This notice is a request for information from the public regarding the recent amendment to the FLSA that requires employers to provide reasonable break time and a place for nursing mothers to express breast milk for one year after the child's birth. The Department seeks information and comments for its review as it considers how best to help employers and employees understand the requirements of the law.
- [Questions and Answers about the Request for Information](#)
- [Presidential Memorandum for the Director of the Office of Personnel Management](#)
- [OPM Guidance on Nursing Mothers in the Federal Workforce](#)

- [Supporting Nursing Moms at Work: Employer Solutions](#)
- [CDC Healthier Worksite Initiative, Workplace Lactation Support Program Toolkit](#)
- [EEOC Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities](#)
- [National Conference of State Legislatures Compilation of State Breastfeeding Laws](#)
- [U.S. Breastfeeding Committee, Workplace Support and Coalitions Directory](#)
- [International Lactation Consultants Association, Worksite Lactation Support Directory](#)
- [The Surgeon General's Call to Action to Support Breastfeeding](#)

For additional information, visit our Wage and Hour Division Website:

<http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
[Contact Us](#)



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: <u>Delaware Code Ann. tit. 19, § 710-11</u>	Federal: <u>Break Time for Nursing Mothers Law</u>	Federal: <u>Title VII of the Civil Rights Act</u>
	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	

	State: Delaware Code Ann. tit. 19, § 710-11	Federal: Break Time for Nursing Mothers Law	Federal: Title VII of the Civil Rights Act
		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		<u>Unpaid</u> , unless concurrent with <u>paid breaks</u> . 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: <u>Delaware Code Ann. tit. 19. § 710-11</u>	Federal: <u>Break Time for Nursing Mothers Law</u>	Federal: <u>Title VII of the Civil Rights Act</u>
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	<p>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:</p> <ul style="list-style-type: none"> - 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 <u>discharge or in any other manner discriminate against</u> 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
	<p>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;</p> <p>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.</p>		
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: <p>a. Order the respondent to cease and desist or modify its existing employment policies;</p>	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

	State: <u>Delaware Code Ann. tit. 19, § 710-11</u>	Federal: <u>Break Time for Nursing Mothers Law</u>	Federal: <u>Title VII of the Civil Rights Act</u>
	<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>

	State: Delaware Code Ann. tit. 19, § 710-11	Federal: Break Time for Nursing Mothers Law	Federal: Title VII of the Civil Rights Act
	<p align="center">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.