

In the Know Series - Labor & Employment Law Changes in Delaware

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By G. Kevin Fasic and Anthony Delcollo

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Delaware joins the ranks of states ushering in updates to employment legislation this year. Now that the first quarter is behind us, it is crucial for construction industry employers in the First State to stay informed about these changes to ensure compliance and mitigate potential risks. Here is a brief summary of some of the key updates affecting construction industry employers in Delaware.

- **Paid FMLA:** This passed and was signed a year or more ago and rolls out a major change for Delaware employers with 10 or more employees. Far too detailed to explain in depth here but suffice it to say that this creates a system similar to unemployment, where employers pay into a fund for their employees (partially paid by the employee, partially paid by the employer) and employees will eventually be able to tap the fund for qualifying FMLA events. While similar to federal FMLA the “paid” component creates a host of employer obligations.
- **Wage Theft:** This was passed a year or so ago and allows the State to pursue employers criminally for “wage theft” from their employees. To my knowledge this has not been tested yet, but our highly aggressive DOL has only to find a good test case and I’m sure we’ll see it in action.
- **Recreational Marijuana:** The bill was allowed to become law without the Governor’s signature (he opposed it and vetoed the version that passed in 2022). At present the agency tasked to administer the law is preparing draft regulations and creating the infrastructure for licensing in cultivation, testing, manufacture, and retail sale of marijuana in Delaware. Employers may still prohibit use on company property/time and conduct testing. This is distinct from medical marijuana, which has been legal here for over a decade.
- **Joint and Several Liability:** Efforts are underway in the General Assembly to make upstream contractors, prime and general contractors, liable for violations of wage and contractor registry statutes. This creates a tremendous burden on upstream contractors to “police” those working under them, even second and third (or greater) tier subcontractors.