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State Resources

Delaware

Division of Human and Civil Rights

<https://humanandcivilrights.delaware.gov>

Reviewing Your

DELAWARE

Job Offer

Federal Resources

Equal Employment

Opportunity Commission

<http://www.eeoc.gov>

Does your job offer require that you sign a non-compete agreement?

With the exception of a physicians, Delaware lacks statutes and regulations to govern non-compete agreements. As such, the enforceability of non-compete agreements in Delaware is largely determined by the courts. As discussed in the Kodiak Building Partners, LLC, v. Philip D. Adams case:

Delaware courts "carefully review" noncompete and nonsolicit provisions to ensure that they "(1) [are] reasonable in geographic scope and temporal duration, (2) advance a legitimate economic interest of the party seeking its enforcements, and (3) survive a balancing of the equities."

Additionally, 6 DE Code § 2707 (2022) governs non-compete agreements with physicians. This code specifically provides, in part, that "[a]ny covenant not to compete provision of an employment, partnership or corporate agreement between and/or among physicians which restricts the right of a physician to practice medicine in a particular locale and/or for a defined period of time, upon the termination of the principal agreement of which the said provision is a part, shall be void."

Does your salary match the salary of your co-workers?

Delaware law prohibits differential rate of pay based on gender. See 19 DE Code § 1107A. In particular, this statute provides that no employees shall be paid a wage at a rate less than the rate at which an employee of the opposite sex in the same establishment is paid for equal work on a job the performance of which requires equal skill, effort, and responsibility, and which is performed under similar workign conditions. As an exception, however, Employers can vary pay is pursuant to a differential based on another factor other than sex, such as a seniority system, a merit system, or a system which measures earnings by quantity or quality of production.

Delaware law also has a number of protections surrounding an employee's ability to discuss wages, including making it unlawful to require as a condition of employment that an employee refrain from inquiring about, discussing, or disclosing his or her wages or the wages of another employee. See 19 DE Code § 711J

Additionally, the National Labor Relations Act prohibits the rights of any employee covered by the Act to discuss wages in face-to-face conversations and written messages. While employers may have policies against the use of company equipment when using some types of electronic communications, like social media, it is still the case that policies that specifically prohibit the discussion of wages are themselves

Assuming your employment is "at will," can you negotiate for contractual protections?

It is not common to negotiate for additional contractual protections, but this is a question that should especially be reviewed for potential employees seeking executive level positions as well as positions that require an employee with specialized skills. For these situations, it is recommended to seek advice of an attorney. And further to these general factors, employees may also be able to negotiate for various job benefits, such as training opportunities. Even when it is not possible to negotiate for benefits that are governed by company-wide policies, such as perhaps retirement benefits or health benefits, it is often beneficial to compare and consider these benefits when assessing multiple job offers.

Have you properly excluded your individual inventions prior to accepting your job offer?

As an initial matter, inventor(s) are presumed to be owners of any patent rights that stem from their invention unless those patent rights have otherwise been properly assigned. See 37 CFR 1.41 Inventorship; See Manual of Patent Examination Procedure 2109 Inventorship.

With that said, it is not unusual for employers to ask employees to sign an agreement requiring employees to assign inventions created during the course or their employment to the employer. It is often beneficial for employees who have their own inventions to identify any and all inventions and other intellectual property (IP) to which they intend to retain ownership rights. It is highly encouraged to consult with a lawyer when employees are looking to negotiate a contract that involves the assignment of individual inventions.

Does your job offer require that you sign a forced arbitration agreement?

On March 3, 2022, President Biden signed into law the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021, prohibiting employers from enforcing predispute arbitration agreements and class action waivers that concern sexual harassment and sexual assault claims. As a result of this act, employers are not allowed to require claims of sexual harassment or sexual assault be brought in arbitration. Those types of claims may be brought in court, either individually or as collective or class claims, regardless of the existence of an arbitration agreement.

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