

DELAWARE SHRM JOINT LEGISLATIVE INITIATIVE

(DELAWARE STATE COUNCIL, DELMARVA SHRM & DE SHRM CHAPTERS)

LEGISLATIVE UPDATE

MARCH 1, 2018

1. FEATURED LEGISLATION – U.S. CONGRESS – H.R. 4219 – WORKFLEX IN THE 21ST CENTURY ACT

The Society for Human Resource Management (SHRM) worked with input from HR professionals and with Congress to help create the Workflex in the 21st Century Act, which was introduced in the House of Representatives in early November 2017.

[April 2018 Declared SHRM Legislative Month in Delaware \(control-click\)](#)

The bill, also currently known as H.R. 4219, addresses the joint concerns of flexible working arrangements and paid time off (PTO) for employees. No other current federal legislation addresses both of these concerns.

Employers will be able to comply with a single, national paid leave law instead of multiple state and local paid leave requirements if the new [federal](#) proposal becomes law. The bill would amend the Employee Retirement Income Security Act (ERISA) to include a voluntary option for qualified compensated leave and flexible workplace arrangements.

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ERISA has a mechanism that preempts qualified employee welfare benefit plans from state requirements. If enacted, the bill would define any qualified flexible workplace arrangement plan as an ERISA-qualified employee welfare benefit plan, thereby exempting employers that provide such plans from state and local paid leave requirements. However, the preemption would not extend to state and local laws mandating unpaid leave or state temporary disability insurance requirements.

To qualify as an ERISA-covered plan, an employer's plan would have to include two components: a paid leave benefit that meets the federal standard and flexible work arrangements for eligible employees.

Implementing such a plan would be voluntary. An employer would opt in by offering a workplace time off and workflex plan that is in compliance with all of the previous and updated ERISA regulations. Such plans would be applicable to both full-time and part-time employees for any employer who opts in.

Under the current version of the bill, the amount of PTO required for those who opt in depends both on the number of employees at the organization and on how long any individual employee has been with the company.

The initial proposal outlines the following paid leave minimums:

Employer Size	Days of Paid Leave Required for Employees with Five or More Years of Service	Days of Paid Leave Required for Employees with Fewer Than Five Years of Service
1,000+ employees	20	16
250-999 employees	18	14
50-249 employees	15	13
1-49 employees	14	12

These minimums could be given to employees on an accrual basis, or as a lump sum. The proposal outlines that these PTO days could be taken concurrently when an employee is on Family and Medical Leave Act (FMLA) leave, which would allow the employee to be paid during some of their (now-unpaid) FMLA time.

For a plan to be ERISA-qualified, **an employer also would have to offer at least one of the following** flexible work arrangements to each eligible employee:

- **Compressed work schedule**
- **Biweekly work program (allows non-exempt employees to work 80 hours in two weeks before overtime must be paid. Hours could vary each week)**
- **Telecommuting**
- **Job sharing**
- **Flexible scheduling**
- **Predictable scheduling**

To be eligible to participate in a flexible work arrangement, an employee will have to have been employed by the employer for at least **12 months** and worked at least **1,000 hours** during the previous 12-month period.

If implemented, this bill proposes to simplify minimum PTO rules and administration for employers working in multiple states. It does this by specifically exempting employers from having to adhere to state and local PTO rules as long as they're meeting these new federal rules (this exemption is already part of ERISA).

Watch this short video clip about Workflex in the 21st Century Act



(click on link to view) <https://youtu.be/fyqf7ZJ08jc>

2. STATE OF DELAWARE LEGISLATION OF INTEREST

House Bills

HB 96 – Wage Bargaining for State Employees <http://legis.delaware.gov/BillDetail?LegislationId=25541>

HB 110 – Recreational Use of Marijuana <http://legis.delaware.gov/BillDetail?LegislationId=25571>

HB 244 – Exempting Delaware Department of Transportation from the Prevailing Wage Act for 3 years.

<https://legis.delaware.gov/BillDetail?LegislationId=25995>

HB 293 – Replaces Current Prevailing Wage Survey Methodology, With Methodology Based on Payroll Information Currently Being Provided to the Department of Labor

<https://legis.delaware.gov/BillDetail?LegislationId=26235>

HB 299 – An Act Proposing an Amendment to Article 1 of the Delaware Constitution Relating to Equal Protection

<https://legis.delaware.gov/BillDetail?LegislationId=26248>

Senate Bills

SB 10 – Minimum Wage Increase <http://legis.delaware.gov/BillDetail?LegislationId=25378>

SB 41 – Coverage for Serious Mental Illness and Drug and Alcohol Dependency

<http://legis.delaware.gov/BillDetail?LegislationId=25773>

SB 132 – Insurance Coverage for Fertility Care Services

<https://legis.delaware.gov/BillDetail?LegislationId=25632>

SB 139 – Insurance Coverage for Obstetrical and Gynecological Services

<https://legis.delaware.gov/BillDetail?LegislationId=26219>

3. FEDERAL LEGISLATION/REGULATIONS OF INTEREST

HB 4219 – Workflex in the 21st Century Act <https://www.congress.gov/115/bills/hr4219/BILLS-115hr4219ih.pdf>

4. APRIL DECLARED SHRM LEGISLATIVE MONTH – SEE LIST OF ACTIVITES

April 10th – DE SHRM Breakfast Meeting at Christiana Hilton, Jennifer Jauffret & Lori Brewington
April 17th – DelMarVa SHRM Dinner Meeting at Dover Downs, Scott Kidner & Rep. Dan Short
April 26th – Legislative Day in Dover, Legislative Day in Dover, Day Begins at 8:00 a.m. with Tour of Delaware General Assembly, Presentations by Senator (to be determined) and **Rep. Jeff Spiegelman**, Lunch at Frazier’s, Return to General Assembly to view House/Senate in session. Details forthcoming soon.

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This publication is the result of combined efforts by members of Delaware SHRM State Council, DE SHRM and DelMarVa SHRM Chapters. Any questions or suggestions should be referred to members of the Delaware SHRM State Joint Legislative Initiative Committee. This Legislative Update is for informational purposes only. It is strongly recommended that you consult with an attorney for legal advice.