

**1000 DEPARTMENT OF LABOR
1300 DIVISION OF INDUSTRIAL AFFAIRS
1320 The Office of Labor Law Enforcement**

1325 Special Employment Practices Relating to Health Care and Child Care Facilities

1.0 Introduction

The General Assembly enacted two laws, "SPECIAL EMPLOYMENT PRACTICES RELATING TO HEALTH CARE AND CHILD CARE FACILITIES" (**19 Del.C. §708** and **11 Del.C. §8563**) and "ADULT ABUSE REGISTRY CHECK" (**11 Del.C. §8564**) in order to provide a degree of protection for the "vulnerable" population in hospitals, nursing homes, child care facilities and other institutions. Together, the two laws require employers to obtain a reference check, or "service letter", and check two registries to insure that they are not hiring individuals with a past history of violent behavior in the workplace, or individuals who have engaged in abuse or neglect to adults or children in their care.

2.0 Definitions

The words, terms and phrases used in these Regulations shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.

"Child Care Facility" means any child care facility which is required to be licensed by the Department of Services for Children, Youth, and Their Families.

"Direct Access" means the opportunity to have personal contact with persons receiving care during the course of one's assigned duties.

"Health Care Facility" means any custodial or residential facility where health, nutritional, or personal care is provided for persons, including nursing homes, hospitals, home health care agencies, and adult day care facilities.

"Person Seeking Employment" means any person applying for employment in a health care or child care facility that affords direct access to persons receiving care at such a facility, or a person applying for licensure to operate a child care facility.

3.0 Service Letter

3.1 Requirements

3.1.1 No employer who operates a health care facility or child care facility shall hire any person seeking employment (as defined above) without obtaining one or more service letter(s) for that person. The employer must obtain a service letter from the person's current or most recent previous employer. In addition, if the person seeking employment was employed in a health care and/or child care facility within the past five (5) years, the employer shall also obtain a service letter from such employer(s). If the person seeking employment has not been previously employed, or was self-employed, then the employer must require the person seeking employment to provide letters of reference from two adults who are familiar with the person, but are not relatives.

3.1.2 Any temporary agency responsible for providing temporary employees to a health care facility or child care facility, when such employees qualify as "persons seeking employment" as defined in Section II. A. of these Regulations, is considered an employer and is responsible for complying with the requirements of this section.

3.2 Service Letter Form

3.2.1 The required service letter shall be a form provided by the Department of Labor, Office of Labor Law Enforcement. The service letter form shall be signed by the current or previous employer and shall be filled out by that employer. The service letter form is a checklist requiring information about the type of work performed by the employee; the duration of the employment; the nature of the employee's separation from employment; and information as to any reasonably substantiated

incidents involving violence, threat of violence, abuse or neglect by the person seeking employment.

3.3 Duties

3.3.1 Duties of the hiring employer.

3.3.1.1 Service letter(s). The employer must obtain the required service letter(s) by sending a service letter form to all of the current or previous employers named by the person seeking employment. The employer must make a "good faith" attempt to locate the current or previous employers and to obtain the service letter from such employer(s). In order to prove that the service letter form has been sent, an employer may send the form by fax, Certified Mail or other means which provides proof of mailing, transmission, delivery or receipt.

3.3.1.2 Full release from person seeking employment. The employer must obtain a signed statement from the person seeking employment wherein that person authorizes a full release for the employer to obtain information from the current and/or previous employer(s).

3.3.1.3 Complete disclosure of information from person seeking employment. The employer must obtain a signed statement from the person seeking employment attesting that the information he/she has given on the application represents a full and complete disclosure of information about his/her current and previous employment, and that all information contained in the employment application is true and complete to the best of the knowledge and belief of the person seeking employment.

3.3.1.4 Acknowledgement from person seeking employment. The employer must obtain a signed acknowledgement from the person seeking employment that he/she understands that failure to provide a full and complete disclosure is a violation of the law.

3.3.1.5 Exigent circumstances. When exigent circumstances exist, and an employer covered by this law must fill a position in order to maintain the required level of service, the employer may hire a person seeking employment on a conditional basis pending the receipt of the completed service letter(s) for that person. The continued employment of that person, however, is conditioned upon the receipt of the required service letter(s).

3.3.1.5.1 In addition, the person hired on a conditional basis must be informed in writing and shall acknowledge, in writing, that his/her continued employment is conditional and is contingent upon the receipt of the required service letter(s).

3.3.2 Duties of the person seeking employment.

3.3.2.1 Provision of necessary information. The person seeking employment must provide all of the necessary information about his/her current or past employers so that the service letter(s) can be obtained.

3.3.2.1.1 If the person seeking employment was employed by a temporary agency, he or she shall list on the employment application the temporary agency and all employers for which he or she did temporary work pursuant to such employment.

3.3.2.2 Full release. The person seeking employment must sign a statement wherein he/she authorizes a full release for the employer to obtain information from the current or previous employers.

3.3.2.3 Complete disclosure of information. The person seeking employment must provide complete and full disclosure of information, and must sign a statement in which he/she attests that information given in his/her application represents a full and complete disclosure of information about his/her current or previous employer and is true and correct to the best of his/her knowledge and belief.

3.3.2.4 Acknowledgement. The person seeking employment must sign an acknowledgement that he/she understands that failure to provide a full and complete disclosure of employment information is a violation of the law.

3.3.2.5 Acknowledgement when hired on a conditional basis. When the person seeking employment is hired on a conditional basis, he/she must acknowledge in writing that his/her employment is conditional and contingent upon the receipt of the service letter(s).

3.3.3 Duties of the employer receiving the service letter form.

3.3.3.1 Completion of service letter form. The employer must complete the service letter form, providing complete and truthful information about the person named on the service letter form. The law, specifically 19 **Del.C.** §708(b)(10), provides that a person who discloses information about a current or former employee on a service letter form is immune from civil liability for such disclosure.

3.3.3.2 Return of the service letter form. The employer receiving the service letter form must complete and return the service letter to the hiring employer within ten (10) business days from the date the request was received.

4.0 Child Abuse Registry Check

4.1 Requirements.

4.1.1 No employer who operates a health care facility or child care facility shall hire any person without requesting and receiving the results of a Child Abuse Registry check for that person. The Child Abuse Registry check shall relate to substantiated cases of child abuse or neglect reported after August 1, 1994. The results of the Child Abuse Registry check shall be obtained from the Child Abuse Registry as established by 16 **Del.C.** §905.

4.1.2 Any temporary agency responsible for providing temporary employees to a health care facility or child care facility, when such employees qualify as "persons seeking employment" as defined in Section I. A. of these Regulations, is considered an employer and is responsible for complying with the requirements of this section.

4.2 Duties

4.2.1 Duties of the hiring employer.

4.2.1.1 Full release from person seeking employment. The employer must obtain a signed statement from the person seeking employment wherein that person authorizes a full release for the employer to obtain the information provided pursuant to the Child Abuse Registry check.

4.2.1.2 Obtaining the Child Abuse Registry check. The employer must contact in writing the Department of Children, Youth, and Their Families to request and receive the Child Abuse Registry check.

4.2.1.3 Exigent Circumstances. When exigent circumstances exist and an employer covered by this law must fill a position in order to maintain the required level of service, the employer may hire a person seeking employment on a conditional basis after the employer has requested a Child Abuse Registry check. The continued employment of that person, however, is conditioned upon the receipt of the Child Abuse Registry check. Any person hired on a conditional basis must be informed in writing, and must acknowledge in writing that his/her employment is conditional and contingent upon the receipt of the Child Abuse Registry check.

4.2.2 Duties of the person seeking employment.

4.2.2.1 Provision of necessary information. The person seeking employment must provide any and all necessary information so that the Child Abuse Registry check can be completed.

4.2.2.2 Full Release. The person seeking employment must sign a statement wherein he/she authorizes a full release for the employer to obtain the information provided pursuant to the Child Abuse Registry check.

4.2.2.3 Acknowledgement when hired on a conditional basis. When the person seeking employment is hired on a conditional basis, he/she must acknowledge in writing that his/

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her employment is conditional and contingent upon receipt of the Child Abuse Registry check.

4.2.3 Regulations and Procedures

4.2.3.1 Specific Regulations and procedures for the Child Abuse Registry check shall be promulgated by the Department of Children, Youth, and Their Families.

5.0 Adult Abuse Registry Check

5.1 Requirements

5.1.1 No employer who operates a health care facility or child care facility shall hire any person without requesting and receiving an Adult Abuse Registry check for that person. The Adult Abuse Registry check shall relate to substantiated cases of adult abuse or neglect. The Adult Abuse Registry check shall be performed by the Department of Health and Social Services/Division of Services for Aging and Adults With Physical Disabilities.

5.2 Duties

5.2.1 Duties of the hiring employer.

5.2.1.1 Full release from person seeking employment. The employer must obtain a signed statement from the person seeking employment wherein that person authorizes a full release for the employer to obtain the information provided pursuant to the Adult Abuse Registry check.

5.2.1.2 Obtaining the Adult Abuse Registry check. The employer must contact the Department of Health and Social Services/Division of Services for Aging and Adults With Physical Disabilities to request and receive the Adult Abuse Registry check. The employer may contact that Division by telephone.

5.2.1.3 Exigent circumstances. When exigent circumstances exist and an employer covered by this law must fill a position in order to maintain the required level of service, the employer may hire a person seeking employment on a conditional basis after the employer has requested an Adult Abuse Registry check. The continued employment of that person, however, is conditioned upon receipt of the Adult Abuse Registry check. Any person hired on a conditional basis must be informed in writing, and must acknowledge in writing that his/her employment is conditional and contingent upon the receipt of the Adult Abuse Registry check.

5.2.2 Duties of the person seeking employment.

5.2.2.1 Provision of all necessary information. The person seeking employment must provide any and all necessary information so that the Adult Abuse Registry check can be completed.

5.2.2.2 Full release. The person seeking employment must sign a statement wherein he/she authorizes a full release for the employer to obtain the information provided pursuant to the Adult Abuse Registry check.

5.2.2.3 Acknowledgement when hired on a conditional basis. When the person seeking employment is hired on a conditional basis, he/she must acknowledge in writing that his/her employment is conditional and contingent upon receipt of the Adult Abuse Registry check.

5.2.3 Regulations and Procedures

5.2.3.1 Specific Regulations and procedures relating to the Adult Abuse Registry check shall be promulgated by the Department of Health and Social Services.

6.0 Enforcement

6.1 Complaint

6.1.1 Any person may file a complaint with the Office of Labor Law Enforcement alleging a violation of any provision of these laws. The complaint shall be in writing, and shall set forth the specifics of

any alleged violation. The complaint shall be directed to the Administrator of the Office of Labor Law Enforcement.

- 6.1.2 Upon receipt of the complaint, the Administrator of the Office of Labor Law Enforcement will assign the complaint to an investigator.

6.2I Investigation

- 6.2.1 The Office of Labor Law Enforcement may serve notice to the employer informing them of the complaint and requiring proof of compliance with the provisions of these laws. Evidence that may be requested to establish whether an employer has complied with the provisions of these laws includes, but is not limited to, the following:

6.2.1.1 Service letter(s) for each employee hired after January 1, 1998 (or proof that the employer has made a good faith attempt to obtain such service letter(s)).

6.2.1.2 Verification from the Department of Services Children, Youth and Their Families/Division of Family Services that the employer has requested and/or received the required check of the Child Abuse Registry as required by 11 **Del.C.** §8563.

6.2.1.3 Verification from the Division of Services for Aging and Adults with Physical Disabilities that the employer has requested and/or received the required check of the Adult Abuse Registry as required by 11 **Del.C.** §8564.

6.2.1.4 Copies of all statements and acknowledgements signed by the person seeking employment.

6.2.1.5 Application forms, personnel records or any other related documents.

6.3 Determination

- 6.3.1 Upon completion of the investigation, the Office of Labor Law Enforcement will determine whether a violation has occurred. The Office of Labor Law Enforcement may issue a notice requiring corrective action and may notify the Department of Services for Children, Youth and Their Families/Division of Family Services and/or the Department of Health and Social Services/Division of Services for Aging and Adults With Physical Disabilities. Such notice will give a specified date on which compliance is required.

- 6.3.2 Upon proof that corrective action has been taken, the Office of Labor Law Enforcement may issue a warning letter or may forward the matter to the Department of Justice for further legal action.

7.0 Violations and Penalties

7.1 Violations of the law shall include the following:

7.1.1 Failure by the hiring employer to obtain the service letter(s) or make a good faith attempt to do so;

7.1.2 Failure by the hiring employer to obtain the required statements and acknowledgements from the person seeking employment;

7.1.3 Failure by the hiring employer to request and receive the Child Abuse Registry check (information about this violation will be forwarded to the Department of Services for Children, Youth and Their Families/Division of Family Services);

7.1.4 Failure by the hiring employer to request and receive the Adult Abuse Registry check (information about this violation will be forwarded to the Department of Health and Social Services/Division of Services for Aging and Adults With Physical Disabilities);

7.1.5 Failure by the person seeking employment to provide complete and full disclosure of all information regarding current or previous employers;

7.1.6 Failure by the person seeking employment to provide a full and complete disclosure of any information necessary to obtain the Child Abuse Registry check and the Adult Abuse Registry check (information about this violation will be forwarded to the appropriate agency);

7.1.7 Failure by the person seeking employment to sign the required statements and acknowledgements;

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7.1.8 Failure by the employer receiving a service letter form to provide full and complete disclosure about the person seeking employment;

7.1.9 Failure by the employer receiving a service letter form to complete and return the service letter form.

7.2 Penalties

7.2.1 Violations of any of the provisions of these laws may result in civil penalties of not less than \$1,000 nor more than \$5,000.

8.0 Severability

If any of the provisions of 19 **Del.C.** §708, 11 **Del.C.** §8563, 11 **Del.C.** §8564, or these Regulations, or any portion thereof or the application or method of implementation is held invalid, the remainder of the laws and these Regulations shall not be affected by such holding and shall remain in full force and effect.

9.0 Subsequent Modification of Regulations

The Secretary of Labor may, upon his/her own motion or upon the written request of any member of the public setting forth reasonable grounds therefore, revoke or modify these regulations, after an opportunity has been given to members of the public to present their views on the proposed changes. These regulations shall take effect ten (10) days after publication in the Delaware *Register of Regulations*.

Darrell J. Minott, Secretary of Labor

Approved and adopted this 9th day of January, 1998.