Office of the Registrar of Regulations,
Legislative Council,
State of Delaware

DEPARTMENT OF LABOR

DIVISION OF INDUSTRIAL AFFAIRS

Statutory Authority: 19 Delaware Code, Section 1114 (19 **Del.C.** §1114)
19 **DE Admin. Code** 1328

FINAL

ORDER

1328 Rules Regulating Deductions from Wages for Wage Payment and Collection

SUMMARY OF EVIDENCE

1. Title 19, Section 1114 of the Delaware Code authorizes the Department of Labor ("Department") to establish, amend and repeal regulations necessary for the internal administration of the Department and for the proper conduct of any necessary hearings before the Department or its agents and in relation to the administration and enforcement of the Wage Payment and Collection Act (the "Act") and the Division of Industrial Affairs (the "Division").

2. The Department's purpose in proposing the regulations was to clarify the types of activity which fall under the wage payment statute, modify investigative procedures, provide the scope of the circumstances under which the Department shall hold administrative hearings, and the conduct of those hearings themselves. The Division will administer the Act in accordance with these regulations.

3. Notice of the proposed regulation was published in the April 1, 2026 edition of the Delaware Register of Regulations.

4. The Department invited a period of 30 days until May 1, 2026, for written comments from the public.

FINDINGS OF FACT AND CONCLUSION

1. The public was given notice and an opportunity to provide the Department with comments in writing to the Department.

2. The Department did not receive any comments concerning the proposed amendments.

3. The Department has the authority to promulgate rules and regulations clarifying specific statutory sections of its statute pursuant to 19 **Del.C.** §1114.

4. The Department reviewed the proposed regulations as required by 29 **Del.C.** §10118(b)(3) and has determined that any assessment of the impact of the proposed regulation on the State's resilience to climate change is not practical for this regulation.

DECISION AND ORDER

1, For the forgoing reasons, the Department adopts the final regulation for publication. The effective date of this Order shall be 10 days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 7th day of May, 2026.

Department of Labor
LaKresha Moultrie, Secretary of Labor

1328 Rules Regulating Deductions from Wages for Wage Payment and Collection

1.0 Authority

Pursuant to 19 **Del.C.** Ch. 11, the Department of Labor, State of Delaware, hereby promulgates this regulation to implement the provisions of 19 **Del.C**. §§1101 *et seq*, Wage Payment and Collection Act. This regulation supersedes the Rules Regulating Deductions from Wages for Wage Payment and Collection (adopted February 1, 1979).

2.0 Administration

2.1 The Wage Payment and Collection Act assigns the Department of Labor the responsibility for administering and enforcing wage payment requirements. The Secretary of Labor delegates these duties to the

Administrator of the Office of Wage and Hour Enforcement within the Division of Industrial Affairs, which ensures wage laws are followed and wages are paid according to law.

2.2 Enforcement responsibility includes the conducting of investigations regarding compliance with the law; settling, adjusting and adjudicating, by informal means, cases involving the payment of wages; coordinating the enforcement activities and enforcement responsibilities; and recommending the commencement of legal proceedings against those failing to comply with the law.

~~1.0~~3.0 Definitions

~~As used herein:~~The following words and terms, when used in this regulation, have the following meaning:

"**Administrator**" means the Administrator of the Office of Wage and Hour Enforcement for the Delaware Department of Labor, Division of Industrial Affairs.

"**Cash"** means lawful money.

"**Check**" means a draft drawn on a bank and payable on demand.

~~"~~**Department**~~" means the Department of Labor or its authorized representatives.~~"**Department**" means the Department of Labor.

"Employ" means to suffer or permit to work.

~~"~~**Employee**~~" means any person suffered or permitted to work by an employer under a contract of employment either made in Delaware or to be performed wholly or partly therein.~~

~~"~~**Employer**~~" means any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee or successor of any of the same employing any person.~~

"**Gratuities**" means voluntary monetary contributions received by an employee from a guest, patron or customer for services rendered.

"**Payroll debit card**" means a card that provides an employee with the appropriate means of obtaining all wages earned in a defined pay period in a form that is the equivalent of payment by cash, check, or direct deposit.

"**Wages**" means compensation for labor or services rendered by an employee, ~~whether the amount is fixed or determined on a time, task, piece, commission, or other basis of calculation.~~ due by reason of the employee's employment, payable in legal tender of the United States or check or bank draft convertible into cash on demand at full face value, subject to deductions, charges, or allowances.

4.0 Concepts

4.1 Meal break means a period of time during a workday when an employee is relieved of all job duties to eat, usually at least 30 minutes long and often unpaid.

4.2 Although 19 **Del.C.** §707(a) provides that the types of employees listed in this subsection do not have to be given a meal break of at least 30 consecutive minutes, the employer must allow the employee to eat meals at the employees' workstations or other authorized locations and to use restroom facilities as reasonably necessary. Employees covered by these exemptions must be compensated for the time spent eating at the employees' workstation and using restroom facilities.

4.3 The 30-minute break requirement does not apply when compliance would adversely affect public safety, or when there is a possibility that injury, harm, or damage could occur to any person or property if an employee were given the statutory 30-minute break.

4.4 The 30-minute meal break requirement does not apply in cases where only 1 employee performs the duties of a position. This exemption applies when there is only 1 person reasonably available to perform the duties of a position.

4.5 The 30-minute meal break requirement does not apply in cases where an employer has fewer than 5 employees on a shift at a single place of business. Place of business means a single integrated operating or functional unit at a single geographical location. This exception applies only to the shift on which fewer than 5 employees are working.

4.6 The 30-minute meal break requirement does not apply when the continuous nature of an employer's operations, including chemical production, research experiments, or health care services, that requires employees to respond to urgent or unusual conditions at all times. Likewise, employers operating consecutive, non-overlapping shifts may provide meal breaks of at least 20 consecutive minutes if employees are compensated for all meal breaks.

4.7 Any employer who discharges or in any manner discriminates against an employee because that employee has made a complaint or has given information to the Department regarding a violation of subsection 4.1, or the employee has caused to be instituted or is about to cause to be instituted any proceedings under this Section, or has testified or is about to testify in those proceedings shall be deemed in violation of this Section and be subject to an administrative penalty of not more than $1,000 for each violation.

5.0 Payment of Wages

5.1 The Act requires the payment of wages to employees in lawful money or checks payable on demand, provided suitable arrangements are made by the employer for cashing checks for the full amount of the wages due at a bank or other business establishment convenient to the place of employment.

5.2 Employers may comply with subsection 5.1 by issuing a payroll debit card which provides the functional equivalent of cash or a check. It is the employers' responsibility to effectuate a payroll debit card system which will allow full payment of wages on the employee's regular payday and without cost to the employee. Employers may use a pre-paid debit card or general payroll fund account to establish suitable arrangements for converting wages into employee's disposable income.

6.0 Gratuities

6.1 No employer, or the employer's agent or an officer or agent of any corporation, or any other person shall demand or accept, directly or indirectly, any part of the gratuities received by an employee, or retain any part of a gratuity or of any charge purported to be a gratuity for an employee.

6.2 An employer that permits patrons to pay tips by credit card or other non-cash forms of payment shall pay the tipped employee the full amount of the tip authorized by the patron and may not deduct credit card payment or other processing fees or costs that the credit card or other company may charge to the employer.

7.0 Wage Theft

7.1 Wage theft is a crime, punishable by both civil penalties and criminal charges, including a potential felony conviction for repeat offenders.

7.2 An employer may not:

7.2.1 Employ an individual without reporting the individual's employment to all appropriate government agencies and paying all applicable taxes and fees for the individual. Appropriate government agencies include the Delaware Division of Revenue, Delaware Division of Unemployment Insurance, Delaware Division of Paid Family Leave, Internal Revenue Service.

7.2.2 Fail to properly withhold state and federal taxes from an employee.

7.2.3 Fail to forward money withheld from an employee's wages to the appropriate state or federal agency within 7 days of the applicable pay period.

7.2.4 Pay an employee a wage that is less than the minimum wage established under state and federal law for the work performed.

7.2.5 Misclassify a worker as an independent contractor for purposes of avoiding wage, tax, or workers' compensation obligations.

7.2.6 Knowingly conspire to assist, advise, or facilitate a violation of this Section.

8.0 Deductions from Wages

8.1 No employer shall make any deduction from the wages of an employee, except deductions which;

8.1.1 Are made in accordance with the provisions of any law or any rule or regulation issued by any governmental agency, or

8.1.2 Are expressly authorized in writing by the employee and are for the benefit of the employee, provided that the authorization is voluntary and only given following receipt by the employee of a written notice of all terms and conditions of the payment or its benefits and the details of the manner in which the deductions are made.

8.1.3 An authorization shall be kept on file on the employer's premises for the period during which the employee is employed by the employer and for 6 years after the employment ends.

8.2 Whenever there is a substantial change in the terms or conditions of the payment, including any change in the amount of the deduction, or a substantial change in the benefits of the deduction or the details in the manner in which deductions shall be made, the employer shall, as soon as practicable, but in each case before any increased deduction is made on the employee's behalf, notify the employee prior to the implementation of the change.

8.3 Notwithstanding the foregoing, employee authorization for deductions under this Section may also be provided to the employer pursuant to the terms of a collective bargaining agreement.

~~2.0~~9.0 Shortage Deductions

~~2.1~~9.1 Cash ~~and/or~~or inventory shortages may not be deducted from an employee's pay in any case. Any written agreement permitting an employer to make ~~such~~ deductions is in violation of ~~§1107.3~~19 **Del.C.** §1107(3) of the ~~Wage Payment and Collection Act~~ Act.

~~2.2~~9.2 ~~These regulations~~This regulation also will apply to shortages incurred as a result of failure to follow proper credit card, check cashing, or accounts receivable procedures.

~~3.0~~10.0 Cash Advances and Charges for Goods or Services

~~3.1~~10.1 If a cash advance or charges for goods or services are to be repaid through payroll deductions, both the employer and the employee must sign a written agreement specifying the amount of the advance or the value of the goods or services, the repayment schedule, and the method of repayment.

~~3.2~~10.2 No ~~such~~ agreement shall provide for a repayment schedule of more than 15% of an employee's gross wages per pay period.

~~3.3~~10.3 If, upon termination, an employee owes an amount greater than 15% of gross wages, that amount may be withheld from the employee's final compensation, but only if ~~such~~ an arrangement was included in the original

agreement.

~~4.0~~11.0 Damaged Property

A financial loss suffered by an employer due to damage to the employer's property or to that of a customer or client may not be deducted from an employee's pay in any case. Any written agreement permitting an employer to make ~~such~~ deductions is in violation of ~~§1107.3~~19 **Del C.** §1107(3) of the ~~Wage Payment and Collection Act~~ Act.

~~5.0~~12.0 Return of Employer's Property

~~5.1~~12.1 In no case shall an employer withhold all or part of the final compensation due an employee while the employer awaits return of property in the possession of the employee. Any written agreement which permits ~~such~~ withholding is in violation of ~~§1107.3~~19 **Del C.** §1107(3) of the ~~Wage Payment and Collection Act~~ Act.

~~5.2~~12.2 An employer may request that a deposit be paid on a particular piece of ~~property~~ property, but ~~such~~ a deposit may not be deducted from the employee's wages without the employee's written consent. If the deposit is to be paid out of the employee's wages, the full deduction must be made by the first regular payday following the issuance of the property to the employee.

~~5.3~~12.3 A deposit must be returned to the employee along with any financial compensation, provided the employee has returned the property on which the deposit was paid.

~~5.4~~12.4 If property is returned after all other final compensation has been paid, the deposit on the property must be given to the employee immediately upon return of the property, if possible, but in no case later than the next regular payday.

13.0 Records

13.1 Every employer must keep the records required by 19 **Del.C.** Chs.9 and 11.

13.2 The required records shall be maintained and preserved for at least 3 years at the place or places of employment or at a central location where records are customarily maintained.

13.3 In the event that an employer violates 19 **Del.C.** §1108(c) and any regulations issued under that section of the Delaware Code, resulting in a lack of a complete record of an employee's hours worked or wages owed, the employee's production of credible evidence and testimony regarding the amount or extent of the work for which the employee was not compensated in compliance with the requirements under the Act shall be sufficient to create a rebuttable presumption that the employee's records are accurate. A presumption shall be rebutted only if the employer produces evidence of the precise amount or extent of work performed or evidence to show that the inference drawn from the employee's evidence is not reasonable.

14.0 Civil Investigations

14.1 Civil investigations must proceed like all other administrative investigations. In no event shall a civil investigation be opened solely for the collection of evidence of a crime.

14.2 Procedures for Initiating Civil Investigations

14.2.1 The Department shall open a civil investigation when:

14.2.1.1 It receives a written complaint filed by any employee or any interested party; or

14.2.1.2 On its own motion, determines to initiate an investigation.

14.2.2 The Department shall complete its investigation as promptly as possible.

14.2.3 The Department shall coordinate with other state agencies where appropriate. All divisions and units of the Department shall cooperate with any investigation.

14.2.4 Written notification shall be sent to the target that the facts developed in the investigation might constitute violations of criminal laws. The notification shall warn the target that the civil investigation could lead to criminal charges against them by stating: "The information you give may be used against you in any federal, civil or subsequent criminal proceeding brought by the Delaware Department of Labor or any other agency".

15.0 Criminal Investigations

15.1 Criminal investigations shall commence upon reasonable and articulable suspicion of criminal wrongdoing.

15.2 The Department shall refer cases for criminal investigation as soon as possible upon identification of reasonable and articulable suspicion of criminal wrongdoing.

15.3 In no event shall evidence obtained in a civil investigation be used in a criminal investigation except as permitted by the Delaware Constitution, the Delaware Code, and the Delaware Rules of Evidence.

15.4 The Department shall refer criminal investigations concluded with a credible finding of criminal wrongdoing to the Department of Justice for review and prosecution.

15.5 At any point prior to the referral to the Department of Justice, the Department may close a criminal investigation and treat the matter as a civil investigation. Evidence obtained from a criminal investigation shall be used in the subsequent civil investigation and enforcement proceedings.

16.0 Duties of Employers

16.1 Every employer shall:

16.1.1 Give written notice of wage rates to each new hire.
16.1.2 Post in a prominent and accessible place at the site of the work, a legible copy of a summary of 19 **Del.C.** Chs 7, 9 and 11 issued by the Department, without charge.
16.1.3 Furnish to employees:
16.1.3.1 Rate or rates of pay, including any additional compensation related to the payment of wages.
16.1.3.2 How the employee is paid: by the hour, shift, day, week, commission, etc.
16.1.3.3 Regular payday.
16.1.3.4 A detailed statement for each pay period.
16.1.3.5 Official name of the employer and any other names used for doing business.
16.1.3.6 Address and phone number of the employer's main office or principal location.
16.1.3.7 Allowances taken as part of minimum wages, including tips, meals and lodging deductions.
16.1.3.8 Employment practices and policies regarding vacation pay, sick leave and comparable matters.
16.2 Notices must be given both in English and in the employee's primary language.

17.0 Informal Settlement Conference

17.1 The Administrator may determine that an appeal may be resolved at an informal settlement conference. Should the Administrator decide to engage in an informal settlement conference, the Administrator will offer the employer the opportunity to participate. If an employer accepts the offer to engage in a conference, the Administrator will provide the employer with written notice by providing a Notification of Informal Settlement Conference before the conference.
17.2 The notice must state that the employer's rights to the appeal process will remain unless a settlement is reached.
17.3 The notice will inform the employer that participation in the informal settlement conference is voluntary and not required under the conditions of the appeal process.

17.4 If the informal settlement conference does not result in an agreement, or there is no longer participation, the Administrator shall forward the request for a hearing to the Secretary.

18.0 Hearings

18.1 A hearing shall be held when the Department decides to impose a civil penalty. However, any party's appeal request must be received by the Department within 10 business days of the party's receipt of the final decision of the Office of Wage and Hour Enforcement.
18.1.1 For the purpose of determining "receipt," the failure to accept certified mail, combined with the lack of return of First-Class mail, shall be deemed to be sufficient notice.
18.1.2 Receipt shall be construed upon the date at which the certified mail was rejected. Failure to make a return of service shall not affect the validity of service.
18.1.3 A hearing otherwise required by this Section may be voluntarily waived at the request of the employer.
18.2. The rules of this Section shall govern the conduct of wage payment and collection hearings held by the Department.
18.2.1 Initiation of Hearing
18.2.1.1 The Secretary shall initiate a hearing by notifying the employer by registered mail that the employer is alleged to have violated the wage payment law. The notice shall give 20 days prior notice from receipt to all parties as follows:
18.2.1.2 The notice shall describe the subject matter of the proceedings;
18.2.1.3 The notice shall give the date, time and place the hearing will be held;
18.2.1.4 The notice shall cite the law or regulation giving the Department authority to act;
18.2.1.5 The notice shall inform the party of the right to present evidence, to be represented by counsel, and to appear personally or by another representative; and
18.2.1.6 The notice shall inform the parties that the Department will reach its decision based upon the evidence received;
18.2.1.7 For the purpose of determining "receipt," the failure to accept certified mail, or the lack of return of First-Class mail, shall be deemed to be sufficient notice. Receipt shall be construed upon the date at which the certified mail was rejected. Failure to make a return of service shall not affect the validity of service.
18.2.2 Conduct of Hearing
18.2.2.1 The hearing shall be conducted by the Secretary or by a hearing officer designated for that purpose by the Secretary.
18.2.2.2 In connection with a hearing, the Secretary or hearing officer shall:
18.2.2.3 Issue subpoenas for witnesses and other sources of evidence, either on the Department's initiative or at the request of any party;
18.2.2.4 Administer oaths to witnesses;
18.2.2.5 Exclude plainly irrelevant, immaterial, insubstantial, cumulative and privileged evidence;
18.2.2.6 Limit unduly repetitive proof, rebuttal and cross-examination; and

18.2.2.7 Hold prehearing conferences for the settlement or simplification of issues by consent, for the disposal of procedural requests or disputes and to regulate and to expedite the course of the hearing.

18.2.3 The rules of evidence applied in civil cases by the courts of the State of Delaware shall not be strictly followed.

18.2.4 The Secretary or hearing officer may allow evidence not admissible under these rules of evidence where, in the Secretary or hearing officer's judgment, application of the exclusionary rule would result in unnecessary hardship and the evidence offered is of a kind commonly relied upon by a reasonably prudent person in the conduct of their affairs. Hearsay may be admissible in administrative hearings but may not constitute the sole basis for the Secretary or hearing officer's determination upon the factual issue addressed by the hearsay evidence.

18.2.5 All hearings shall be conducted in a fair, impartial, expeditious, and orderly manner.

18.2.6 The burden of proof shall be upon the Department. If the records maintained by the employer do not provide sufficient information to determine the exact amount of wages owed, the Department may make a determination based on available evidence.

18.3 A record from which a verbatim transcript can be prepared shall be made of all hearings in contested cases. Transcripts shall be made at the request and expense of the requesting party.

18.4 A party's failure to appear at a hearing that has been duly noticed shall not mandate the continuance of the hearing. At the discretion of the Secretary or hearing officer, the hearing shall proceed in the party's absence, which shall be noted on the record.

18.5 If a party, or counsel to a party, engages in conduct in violation of an order of the independent reviewer, or other disruptive conduct during an oral hearing, the independent reviewer may impose non-monetary sanctions, including the issuance of an order:

18.5.1 Excluding the party or counsel from any further participation in the hearing;

18.5.2 Striking briefs from the record;

18.5.3 Providing that certain facts shall be taken to be established for purposes of the appeal; or

18.5.4 Providing for other relief as is just and equitable under the circumstances.

18.6 Proposed Order

18.6.1 Whenever a hearing officer presides over a hearing the officer shall prepare a proposed order for the consideration of the Secretary which shall include:

18.6.1.1 A brief summary of the evidence and recommended findings of fact based upon the evidence;

18.6.1.2 Recommended conclusions of law; and

18.6.1.3 Recommended decision.

18.6.2 When the proposed order is submitted to the Secretary, a copy shall be delivered to each of the other parties who shall have 10 business days to submit in writing to the Secretary exceptions, comments and arguments respecting the proposed order.

18.7 With respect to each case, all notices, correspondence between the agencies and the parties, all exhibits, documents in testimony admitted into evidence and all recommended orders, summary of evidence and findings of all interlocutory and final orders of the agency shall be included in the agency's record of the case and shall be retained by the agency for 3 years.

18.8 Decision Final Order

18.8.1 The Secretary shall make a decision based upon the entire record of the case and upon summaries and recommendations of the hearing officer.

18.8.2 Every case decision of the Secretary shall be incorporated in a final order which shall include, where appropriate:

18.8.2.1 A brief summary of the evidence;

18.8.2.2 Findings of fact based upon the evidence;

18.8.2.3 Conclusions of law;

18.8.2.4 Any other conclusion required by the law or the Department;

18.8.2.5 A concise statement of the Department’s determination or action on the case.

18.8.3 Every final order shall be authenticated by the signature of the Secretary.

18.8.4 Every final order shall be mailed or delivered to each party, and each other person requesting it.

18.8.5 Every final order may be amended or modified by the same procedure used for the initial adoption of the order.

18.9 An informal disposition may be made of any matter set for hearing by stipulation, agreed settlement, consent order, or default.

~~6.0~~19.0 Miscellaneous Provisions

~~6.1~~19.1 Nothing in ~~these regulations~~ this regulation should be construed as preventing an employee from voluntarily reimbursing an employer.

~~6.2~~19.2 Acceptance by an employee of a disputed amount of wages will not be considered evidence that the employee has agreed to the deductions in question.

~~6.3~~19.3 The ~~Secretary of Labor~~Secretary may, at any time, upon the Secretary’s own motion or upon written request of any interested person setting forth reasonable grounds ~~therefor~~therefore, and after opportunity has been

given to interested persons to present their views, amend or revoke any of the terms of ~~these regulations~~this regulation.

~~Approved this 1st day of February, 1979~~
~~Donald P. Whiteley, Secretary of Labor~~