

Here are some responses to the two questions from Friday's session. This is again just some information based on the statute, regulations, and literature provided by the Department. DANA will continue to watch the guidance emerging from the Department of Labor on these issues as well as insight on any templates/notice forms that can be tapped for employers

1. How are non-Delaware resident employees working in Delaware and resident-Delaware employees who do not work in Delaware treated for purposes of the quarterly reports?

- a. The definition of "Employee" in 19 *Del. C.* Section 3701(6) says "For purposes of this chapter, individuals primarily reporting for work *at a worksite in this State* are employees unless otherwise excluded." Thus, if we are only talking about residency (and not talking about full or part time status), the non-Delaware resident employee should count for both the numerosity requirement (i.e. do you have 10 or more employees) and for payroll deduction purposes. "Primarily" working in Delaware means 60% of their time or more.
- b. Less clear is what to do about the non-DE based worker. This is what some of the FAQ's provide on this issue:

https://laborfiles.delaware.gov/main/pfl/DDOL40327_Program_Overview_FAQs_v5.pdf
- c. "To calculate the number of eligible employees, you start by counting every single Delaware employee, regardless of how long they have worked for you or how many hours a week they work. Then subtract the employees on waivers. From there, add in any employees you have reclassified. That's your number. The Department of Labor's administrative system, Delaware LaborFirst, will help you keep track of your employee count."

2. Do organizations with fewer than 10 employees need to comply with the quarterly reporting requirement?

- a. If that organization never goes above the 10-employee threshold, they do not meet the definition of "Employer" and therefore do not need to comply with the law or issue quarterly reports.
- b. 19 *Del. C.* Section 3701(7) sets forth the definition of "Employer" and what is excluded from the definition in subpart b.: "Employer' does not include any of the following: 1. Anyone who employs less than 10 employees in this State during the previous 12 months." Note that if an Employer ever

rises above that threshold – even for a day – that Employer will be considered an Employer for the next 12 months and will need to comply, even if they do not maintain 10 or more employees throughout the entire year.