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DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 295

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO SPECIAL EMPLOYMENT PRACTICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 708, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 708. Special employment practices relating to health care and child care facilities.

(b) *Service letter*. — (1) No employer who operates a health care facility ~~and/or~~ or child care facility, or provides health, ~~nutritional~~ nutritional, or personal care in such a facility, shall hire any person seeking employment without obtaining 1 or more service letters regarding that person, provided such person has been previously employed. The service letter(s) obtained must include a service letter from the person's current or most recent previous employer. In addition, if a person seeking employment was employed in a health care facility ~~and/or~~ or child care facility within the past 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 to provide letters of reference from 2 adults who are familiar with the person, but who are not relatives of the person.

(2) For purposes of this subsection, the required "service letter" ~~shall~~ must be a form provided by the Department of Labor. The form ~~shall~~ must be signed by the current or previous employer and ~~shall~~ must contain 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 any reasonably substantiated incidents involving violence, threat of violence, abuse, or neglect, by the person seeking employment toward any other person, including any disciplinary action taken as a result of such conduct. In addition to these requirements, service letters for child care facility employment must do all of the following:

a. Ask a previous employer if they have any concerns about the employee working with children.

b. Ask a previous employer if the employee was warned, reprimanded, suspended, or discharged for any violations found in the Department of Education's Regulations for Early Care and Education and School-Age Centers.

(3) If the Office of Child Care Licensing, as part of any investigation into a child care facility, reasonably suspects or determines an employer failed to adhere to the requirements of a service letter under this section, the Office of Child Care Licensing shall notify and refer the report with any supporting evidence to the Department of Labor.

~~(3)(4)~~ Any employer who is required to obtain a service letter ~~for the purpose stated above~~ under this section shall obtain a statement signed by the person seeking employment wherein the person authorizes a full release for the employer to obtain any and all information pertaining to the facts of the person's current or previous employment.

~~(4)(5)~~ Any employer who is required to obtain a service letter ~~for the purpose stated above~~ under this section shall obtain a statement signed by the person seeking employment wherein the person attests that the information given in the application represents a full and complete disclosure of the person's 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. In addition, the application shall contain a written acknowledgment by the person that the person understands that failure to provide a full and complete disclosure of all information required under this section is a violation of paragraph (b)(9) of this section and that such failure shall result in civil penalties of not less than \$1,000 nor more than \$5,000 for such violation. Full and complete disclosure by a person seeking employment includes listing all current and previous employers contemplated in paragraph (b)(1) of this section. If the person seeking employment was employed by a temporary agency, the person shall list on the employment application the temporary agency and all employers for which the person did temporary work pursuant to such employment. Any employer who does not obtain such signed statements from such person shall be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation.

~~(5)(6)~~ Any employer who receives a written request for a service letter from any other employer ~~for the purpose stated above~~ under this section shall provide that service letter. The service letter shall be provided within 10 business days from the date the request is received. Any employer who fails or refuses to provide such service letter, or who fails to make a full and complete disclosure of information, as required, shall be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for such violation.

~~(6)(7)~~ Notwithstanding the provisions of paragraph (b)(1) of this section, when exigent circumstances exist, and an employer covered under paragraph (b)(1) of this section 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

required service letter(s). The continued employment of such person pursuant to this subsection shall be contingent upon the receipt of the required service letter(s). In addition, the person hired pursuant to this subsection shall be informed, in writing, and shall acknowledge, in writing, that the person's continued employment is contingent upon the receipt of the required service letter(s).

~~(7)~~(8) An employer covered under paragraph (b)(1) of this section shall make a good faith attempt to locate the previous employer(s) identified in the employment application of the person seeking employment and to obtain the service letter(s) from each such employer. The burden of proof to demonstrate a good faith attempt shall rest with the employer. Any such employer who hires a person seeking employment without obtaining the required service letter(s) ~~and/or~~ or who has not made a good faith attempt to obtain such service letter(s) shall be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation.

~~(8)~~(9) Any individual who falsifies such service letter or who fails to make a full and complete disclosure of all required information on the service letter shall be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation.

~~(9)~~(10) Any individual who fails to make a full and complete disclosure of past employment information on the employment application shall be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation.

~~(10)~~(11) An employer or any person acting on behalf of an employer who discloses information about a current or former employee pursuant to paragraph (b)(2) of this section is immune from civil liability for such disclosure and its consequences and may not be made the subject of any legal action for libel, ~~slander~~ slander, or defamation by the current or former employee. Further, notwithstanding any provisions to the contrary, no employer or person seeking employment who has made a good faith effort to comply with the requirements of this section shall be deemed to be liable for any violation of said provisions.

~~(11)~~(12) The Department of Labor ~~shall be~~ is the only party which can ~~seek enforcement~~ enforce of a civil penalty under this section.

SYNOPSIS

This Act strengthens the current practice of obtaining service letters for employment in child care facilities to protect children from workers who have engaged in prior acts that are prohibited by the Office of Child Care Licensing. The Act does all of the following:

1. Requires service letters used for child care facilities ask previous employers whether they would have any concerns about the employee providing care to children.
2. Requires service letters used for child care facilities ask previous employers whether the employee was ever warned, reprimanded, suspended, or discharged for any violations found in the Department of Education's Regulations for Early Care and Education and School-Age Centers.

3. Requires the Office of Child Care Licensing to report any suspected failure of an employer to adhere to the requirements of a service letter to the Department of Labor for review and possible civil penalties.
4. Clarifies the Department of Labor is the only party that can seek civil enforcement under this section.
5. Makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Gay