



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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MEMORANDUM

DATE: May 8, 2014

TO: Members of the Delaware State Senate
and House of Representatives

FROM: Ms. Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: S.B. 185 (Disability-Based Employment Discrimination)

The State Council for Persons with Disabilities (SCPD) has reviewed S.B. 185 which removes an inconsistency in the Delaware Code by adopting the same definition of "employer" for all protected classes. SCPD strongly endorses the proposed legislation. Apart from SCPD, the following agencies support the legislation: Employment First Commission; Delaware Association of Rehabilitation Facilities; Disabilities Law Program; Developmental Disabilities Council; Governor Advisory Council for Exceptional Citizens; The Arc of Delaware; Epilepsy Foundation of Delaware; Easter Seals Delaware & Maryland's Eastern Shore; Mental Health Association of Delaware; Delaware Chapter of the National Multiple Sclerosis Society; Hearing Loss Association of Delaware; Freedom Center for Independent Living; and United Cerebral Palsy of Delaware. SCPD has the following observations.

First, Delaware's employment discrimination law applies to employers of 4 or more employees within the State for all protected classes (race; marital status; genetic information; color; age; religion; sex; sexual orientation; gender identity; national origin) apart from disability. Only larger employers with 15 or more employees are subject to the State disability-based employment discrimination law. The bill would bring disability into line with all the other protected classes for employment discrimination purposes. Why should disability have a different standard than all other protected classes?

Second, Delaware's neighboring states of Pennsylvania, Maryland and New Jersey have a uniform definition of employer and apply their discrimination laws consistently across all protected classes [Pa. Code – 43. P.S. §§ 952-954; Md. Code - §20-601-602; N.J. Code - §10:5-5].

Third, the bill would increase employment opportunities for people with disabilities. According to the latest U.S. Census, about 4-in-10 persons aged 21 to 64 with a disability are employed, compared with 8-in-10 persons with no disability.

Fourth, expanding competitive employment opportunities for people with disabilities is consistent with Governor Markell's National Governor's Association (NGA) initiative: *A Better Bottom Line: Employing People with Disabilities* and the Employment First Act (H.B. 319) which was signed by the Governor in July 2012.

Fifth, according to the NOLO Law website, there are 25 states plus the District of Columbia that apply their states' antidiscrimination laws to employers with 4 or more employees, with 15 of the 25 states plus the District of Columbia using a benchmark of employers with 1 or more employees in the disability context.

Sixth, based on Delaware Department of Labor statistics, SCPD deduced that the current law covering employers with 15 or more employees only covers 14.7% of all employers in Delaware. Therefore, it is estimated that the bill would cover an additional 25% of employers for a total of 39.7%. Thus, even with the legislation, Delaware would be covering less than 40% of employers in Delaware. In addition, based on the statistics, SCPD deduced that the current law covers 84.6% of employees in Delaware. Therefore, the bill would expand coverage of employees by 11.2%

Thank you for your consideration and please contact SCPD if you have any questions regarding our position or observations on this important legislation.

cc: Mr. Brian Hartman
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

SB 185 employment discrimination