

## Anti-retaliation provision added to state's equal-accommodations law

[Editorial](#) August 19, 2019 [Anti-retaliation provision](#), [Connolly Gallagher LLP](#), [Delaware Equal Accommodations Law](#), [Tim Holly](#)



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Delaware has long had a law that often is referred to as “DEAL” — the Delaware Equal Accommodations Law. That law, in part, prohibits people from refusing, withholding from, or denying others accommodations, facilities, advantages, or privileges of a place of public accommodation, based on protected characteristics of race, marital status, creed, color, sex, disability, sexual orientation, gender identity, or national origin.

Consider the hypothetical situation of a man who consistently is permitted to shop at a store. One day, the man brings his friend to shop. But the store will not allow the friend to shop because of her national origin. The man who brought his friend objects to the treatment of his friend. The store then tells the man who brought his friend that he also cannot shop. The friend who was refused the opportunity to shop because of her national origin has long had a claim under DEAL. But the law did not expressly give recourse for the man who brought the friend.

On Aug. 20, Gov. John Carney is expected to sign a bill that passed in the Delaware General Assembly’s recent session, which will afford people like the man who brought his friend to the store in the above hypothetical a clear claim under DEAL. This is noteworthy in its own right. Also noteworthy is the care with which the amendment was drafted (where the primary sponsor was Sen. Anthony Delcollo), by wording the new anti-retaliation provision in a way that does not create an employment law issue. DEAL is in Title 6 of the Delaware Code, which is not an employment law. Employment laws, which create rights and claims for employees and duties for employers, are primarily found in Title 19.

Good order in the law matters. With ever-expanding employment laws, it is already difficult for many employers in Delaware and for companies considering doing business in Delaware to learn the universe of unique wrinkles under our law that can give rise to liability from employees.

When employment laws are scattered in a body of law, the task of assuring compliance can become even more difficult. Moreover, DEAL (in Title 6) has an administrative claims process

different from the claims process applicable for employment issues — including unlawful retaliation against employees (in Title 19).

In short, the new anti-retaliation provision of DEAL does not create a claim for an employee who is fired from employment for opposing his/her employer's practices that are in violation of DEAL. In the above hypothetical, consider that the man who brought his friend into shop also worked for the store. If the store told the man that he remained free to shop but could no longer work there, this new anti-retaliation provision would not likely be properly applied to the employment scenario. While some might opine that the amendment is flawed because it does not address the employment scenario, it is thoughtful and good draftsmanship to keep Title 6 a statute about public accommodations rather than morphing it into an employer-liability trap. If lawmakers wish to give a statutory claim to the man in the hypothetical who invited his friend to the store and who was fired but still allowed to shop, an employment-related anti-retaliation provision tied to DEAL should be included in Title 19 (not Title 6). If further revision to Title 6 is desired, a better candidate for thoughtful consideration for amendment would be the fact that the normally-protected classification of religion is glaringly omitted from the classes protected in Title 6, despite it being a protected classification for purposes of employment discrimination (in Title 19). It seems hostile to people of faith to have protection in Title 6 for people who are denied service in places of public accommodation because of things like their national origin, sex, and sexual orientation but not for those who are denied service because of their religion.

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