

# Employment Law Summary

## Delaware Paid Family and Medical Leave



*Because You're Different*

On May 10, 2022, Delaware enacted the [Healthy Delaware Families Act](#), requiring paid, job-protected family and medical leave for Delaware employees. The leave is funded by employer and employee contributions that begin **Jan. 1, 2025**. Leave benefits become available **Jan. 1, 2026**, and will provide up to 80% of workers' weekly wages.

### Covered Employers

The law applies to employers with **10 or more employees** working in Delaware. For employers with **10 to 24 employees**, only the parental leave requirements of the law apply. Furthermore, employers with fewer than 25 employees may reduce an employee's parental bonding leave by up to half for the first five years of the program. Employers must [apply](#) with the Delaware Department of Labor (Department) by Jan. 1, 2024, to elect the reduction.

The law does **not** apply to businesses that are completely closed for 30 or more consecutive days per year.

**Businesses with fewer than 10 employees may opt into** the program by applying with Department by Dec. 1, 2024. After opting in, the small business must remain opted-in for a period of at least three years. It may opt out of coverage with 12 months' notice to its employees and the Department, with the opt-out taking effect no sooner than the end of the three-year period.

Employers must use the 12-month period before contributions start on Jan. 1, 2025, for their initial count of employees, according to [regulations](#) issued by the Department

### Covered Employees

Employees are eligible for leave if they have been employed for 12 months by their current employer, worked 1,250 hours during that time and report primarily to a worksite in Delaware.

### Family and Medical Leave Benefit

#### **Amount of Leave**

Employees are eligible for a maximum of 12 weeks of family and medical leave benefits per year.

Workers receive up to 12 weeks of parental leave per year to care for a child during the first year after the child's birth, adoption or foster care placement. During the first five years of the program, employers with fewer than 25 employees may reduce an employee's parental bonding leave by up to half of the amount they are eligible for. Employers that elect this option for reduced leave must provide notice to the Department and their employees.

In addition to parental leave, workers may receive an aggregate total of up to six weeks of leave in any 24-month period for the following:

- The employee's own serious health condition that makes them unable to perform the functions of their position;
- The care of a family member with a serious health condition; and
- A qualifying military exigency.

Total combined leave is capped at 12 weeks per year per employee, and except for leave for child bonding, leave can be taken only once per 24-month period. If two parents are employed by the same employer, their combined leave for new-child bonding, caring for a family member or a qualifying exigency may be limited to 12 weeks during any 12-month period.

The law adopts the definitions of "child," "family member," "qualifying exigency" and "serious health condition" used in the federal [Family and Medical Leave Act](#) (FMLA).

### **Compensation**

Workers receive 80% of their average weekly wage up to a maximum of \$900 in 2026 and 2027, with increases thereafter linked to the consumer price index.

### **Intermittent Leave**

Leave may be taken on an intermittent or reduced schedule when medically necessary. Employees taking intermittent or reduced-schedule leave must provide the employer with prior notice of their leave schedule to the extent practicable.

### **Certification**

Employers must verify employees' parental leave status, serious health condition or qualifying exigency when they submit an application for leave.

For leave based on a serious health condition, employees must submit a certification issued by their or their family member's health care provider, as appropriate. The certification must include the following information:

- The date on which the serious health condition began;
- The probable duration of the condition;
- The appropriate medical facts within the knowledge of the health care provider regarding the condition;
- A statement of the following, as appropriate:
  - That the employee is needed to care for the family member who has a serious health condition and an estimate of the time that their care is needed;
  - That the employee is unable to perform the functions of the position;
- If the leave is to be taken intermittently or on a reduced leave schedule for the employee's planned medical treatment, the dates on which the medical treatment is expected to be given and the duration of the medical treatment; and
- If the leave is to be taken intermittently or on a reduced schedule for the family member's serious health condition, a statement that the employee's intermittent or reduced-schedule leave is necessary for the care of the family member who has the serious health condition, or that it will assist in the family member's recovery, and the expected duration and schedule of the leave.

Under certain circumstances, employers may require second and third opinions from health care providers, at their expense. Subsequent certifications may be required on a reasonable basis. Expenses for additional opinions and certifications must be borne by the employer.

Employers must require documentation demonstrating the family relationship for leave taken to care for a family member with a serious health condition.

### **Employees' Notice Obligations**

Employees must provide notice to their employers of their intention to take leave 30 days in advance, if known, or as soon as practicable.

### **Applications**

Employers approve or deny applications for leave. Applications that include all documentation necessary for review must be approved or denied within five business days of the employer receiving them. If the claim is denied, the employer must notify the covered individual of the reason for the denial. Employers must notify the Department of claim denials within three business days.

Employees may request a review of an employer's denial of their application by the Department within 60 days of the denial.

The first payment of benefits to a covered individual is made within 30 days after the employer has notified the Department of the approved claim. Subsequent payments are made every two weeks.

## Job Restoration

Employers must restore employees returning from leave to the position they held when the leave began or to a position with equivalent seniority, status, employment benefits, pay and other terms and conditions of employment, including fringe benefits and service credits.

## Continuation of Benefits

During leave, the employer must maintain any health care benefits the employee had before taking the leave. The employee must continue to pay the share of health care benefits they were required to pay before leave began.

## Employers' Notice Obligations

Employers must provide written notice of the following to their employees:

- The employee's right to family and medical leave benefits under this chapter and the terms under which it may be used;
- The amount of family and medical leave benefits;
- The procedure for filing a claim for family and medical leave benefits;
- The right to job protection and benefits continuation;
- That discrimination and retaliatory personnel actions against the employee for requesting, applying for or using family and medical leave benefits are prohibited;
- That the employee has a right to file a complaint for violations of this chapter; and
- Whether family and medical leave benefits are available to the employee through the state or an approved private plan.

The notice must be provided at the time of hire and when the employee requests covered leave or when the employer acquires knowledge that an employee's leave may be for a qualifying event. In addition, the notice must be displayed in a conspicuous place accessible to employees at the employer's place of business. It must be displayed in English, Spanish and any language that is the first language spoken by at least 5% of the employer's workforce if the poster has been provided by the Department.

## Funding

Program funding is shared equally between employers and employees via payroll contributions that the employer remits to the state. The 2025 and 2026 contribution rate is 0.4% of wages for medical leave, 0.08% for family caregiving leave and 0.32% for parental leave. Employers may, at their election, cover all or any portion of the employee portion of the contribution.

An employee and employer may file a waiver of the required payroll contributions when the employee's work schedule or length of employment with the employer is not expected to meet the requirements for eligibility for family and medical leave benefits. The waiver must be revoked if the employee later becomes eligible for leave.

The Department is charged with issuing regulations for contributions.

## Interaction With Other Leave

Covered leave that also qualifies as leave under the FMLA runs concurrently with FMLA leave and may not be taken in addition to FMLA leave.

Employers may require that family and medical leave compensation be made concurrently or coordinated with payment made or leave allowed under disability or family care leave policies provided by the employer or a collective bargaining agreement. However, the employer must provide employees with written notice of this requirement.

Employers may require the use of accrued paid time off (including vacation and sick leave) before an employee may access family and medical leave benefits. The use of accrued paid time off may count toward the total length of leave provided if the employee is not required to exhaust all paid time off.

Employers must comply with collective bargaining agreements, other laws or their own policies requiring more generous leave.

## Private Plans

Employers may apply to the Department for approval to meet their obligations under the law through a private plan. Employers must certify that their plan provides all the leave benefits of the law under the same conditions as the law provides.

Employers may provide all family and medical leave coverage through an approved private plan or may provide one or more of: medical leave coverage, family caregiving leave coverage or parental leave coverage using a private plan, and provide the remaining coverage using the state program. If the private plan is in the form of self-insurance, the employer must furnish a bond to the state. Plans that are insured must be through an "[admitted](#)" insurer under state law.

Employers that have private benefits in place on May 10, 2022, that the Department deems comparable to the benefits provided under the act may qualify as a private plan for five years, starting Jan. 1, 2025. Employers seeking to qualify as a private plan for this purpose must [apply with](#) the Department before Jan. 1, 2024.

## Prohibitions

It is unlawful for an employer to interfere with, restrain or deny the exercise or attempt to exercise any right provided by the act by an individual employed for at least 90 days. Employees who have been employed for at least 90 days may not be discriminated against because they exercised rights under the law, including:

- The right to request, file for, apply for, or use family and medical leave benefits or covered leave;
- The right to communicate to the employer or any other person or entity an intent to file a claim, a complaint with the Department or courts, or an appeal, or to testify or prepare to testify or assist in any investigation, hearing or proceeding authorized by the act;
- The right to inform a person about an employer's alleged violation of the act; and
- The right to inform an individual of the individual's rights under the act.

Furthermore, it is unlawful for an employer's absence control policy to count covered leave taken under the act by an individual employed for at least 90 days as an absence that may lead to or result in discipline, discharge, demotion, suspension or any other adverse action.

## Penalties

Employer violations of the act's requirements and nondiscrimination and nonretaliation provisions are subject to penalties of \$1,000-\$5,000 for each violation.

Violations of the act may also result in an award of lostwages and benefits, plus interest; actual monetary losses sustained (such as the cost of providing care), up to a sum equal to 12 weeks of wages; liquidated damages; equitable relief, including employment, reinstatement and promotion; and attorneys fees, expert fees and other costs.

## More Information

Contact Heffernan Insurance Brokers for more information on employee leave laws in Delaware.

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