



## *Use of Private Insurance to Provide Paid Family and Medical Leave Benefits*

### **How does an employer provide the required paid Family and Medical Leave benefits to their employees?**

Employers have several different options to provide paid Family and Medical Leave benefits (PFML) to their employees. Employers can:

- 1) participate in the state-sponsored Delaware Paid Leave plan;
- 2) purchase a private insurance plan approved by Delaware Department of Insurance (“DOI”) from an insurance carrier authorized to do business in the State of Delaware; or
- 3) self-insure, if the employer has at least 100 employees, has obtained a surety bond, and agrees to prefund a claims account prior to **January 1, 2026**.

Upon registering with Delaware LaborFirst, the new online administrative system of the Department of Labor (DOL), employers required to provide PFML benefits to their employees will be automatically enrolled in the state-sponsored Delaware Paid Leave plan. Employers have the option of using an approved private insurance plan as an alternative to the Delaware Paid Leave plan. To do so, employers must apply by **December 1, 2024**. Delaware LaborFirst goes live **September 1, 2024**.

### **Does the private insurance plan have to offer the same benefits as those provided by the Delaware Paid Leave plan?**

At a minimum, a private insurance plan must provide at least the same benefits offered by the Delaware Paid Leave plan. A private insurance plan can always offer more generous benefits than are required by the Healthy Delaware Families Act.

### **When do I apply to use a private insurance plan instead of the Delaware Paid Leave plan to provide paid Family and Medical Leave benefits?**

Beginning **September 1, 2024**, and continuing through **December 1, 2024**, employers may apply to use an approved private insurance plan through Delaware LaborFirst, the DOI’s new online administrative system. Private insurance plan approval must be renewed on a yearly basis.



## How do I apply to use a private insurance plan to provide paid Family and Medical Leave benefits?

Employers will first need to register with Delaware LaborFirst. Once registered, you will have the option, through your employer account, to apply to use a private insurance plan for each line of required coverage as an alternative to the Delaware Paid Leave plan.

## If I decide to use a private insurance plan, do I have to provide all lines of coverage through a private plan? Or can I provide one line of coverage through a private plan and participate in the Delaware Paid Leave plan for another?

Employers may use both a private plan and the Delaware Paid Leave plan to provide the required Family and Medical Leave benefits. For example, an employer can purchase a private Medical Leave insurance policy from the list of approved DOI policies and can use the Delaware Paid Leave plan to provide Family Caregiving and Parental Leave benefits.

## I have more than 100 employees and would like to self-insure. How do I apply to self-insure?

Employers first need to register with Delaware LaborFirst. Once registered, you will have the option, through your employer account, to apply to self-insure in lieu of using the Delaware Paid Leave plan.

## What are the requirements for an employer to self-insure?

In addition to having at least 100 employees, to self-insure, an employer must:

- 1) submit their written self-insurance plan to the Division of Paid Leave (Division) for review and approval;
- 2) provide a surety bond to the State in an amount equal to one year of total contributions that would have been paid by the employer had they participated in the Delaware Paid Leave plan; and
- 3) submit a written acknowledgement that they will establish a prefunded, dedicated bank account from which to pay claims in an amount as determined by the Division by January 1, 2026.

The Division has provided sample documents on its website, [de.gov/paidleave](https://de.gov/paidleave), to assist employers who apply to self-insure. Employers will find sample self-insured plan documents, a surety bond and calculation instructions, and an acknowledgement of the requirement to establish a prefunded claims account. During the application process, the employer will upload these documents into Delaware LaborFirst.



## How do I administer my self-insured program?

Employers who are approved to self-insure their employee's required PFML benefits must comply with all the rules and regulations of the PFML insurance program. Employers may build their own compliant administrative system or hire a third-party administrator (TPA) to administer their plan. In addition, the DOL will allow self-insured employers to use Delaware LaborFirst to administer their self-insured plan at no charge! Employers using a self-insured plan will have free access to Delaware LaborFirst to manage their plan.

## I would like to offer my employees richer benefits than those provided under the Delaware Paid Leave plan. Can I do that and still be a part of the Delaware Paid Leave plan? Can I manage this process through Delaware LaborFirst?

Yes. Employers are always permitted to offer employees richer benefits than those provided under the Delaware Paid Leave plan. Employers participating in the Delaware Paid Leave plan can "top up" the benefits provided by the state plan so that their employees receive up to 100% of their wages. Employers who are part of the Delaware Paid Leave plan will have free access to Delaware LaborFirst to manage their top-up plans.

## Does using a private plan (either insured or self-insured) relieve me of my quarterly reporting requirements?

No. Employers with approved private plans (either purchased through an insurance carrier or self-insured) must still provide quarterly reports to the Division with weekly enrollment, wages, and hours information for each employee under their plan, through Delaware LaborFirst.

