



DELAWARE  
**Paid Leave**  
Family and Medical Leave Insurance Program

# FAQS

## *Overview of the Program, the Need, and the Opportunities*

### **What is the purpose of the Paid Family and Medical Leave Insurance Program (Delaware Paid Leave)?**

This program helps ensure Delaware workers have financial support if they need to take a leave of absence from their job due to a serious health condition that impacts them (Medical Leave) or a family member (Family Caregiver Leave); due to a family member's overseas military deployment (Qualified Exigency Leave); or after welcoming a new child to their family (Parental Leave). It allows employees to take paid time off with peace of mind—knowing that they have a job to return to and that their employer cannot retaliate against them for taking leave. Delaware Paid Leave goes into full effect when the program starts accepting claim applications on **January 1, 2026**.



### **Doesn't the federal Family and Medical Leave Act (FMLA) already take care of this?**

The FMLA of 1993 is similar to but not the same as Delaware Paid Leave. For more than 30 years, FMLA has allowed employees to take up to 12 weeks of unpaid job-protected leave with continued medical benefits. Delaware's program requires paid time off that provides employees with income-replacement payments of 80% of their average weekly wage, up to \$900 per week.

The reality is that FMLA is helpful only to those employees and families who can afford to take leave without pay. Throughout Delaware, many employees have FMLA benefits but simply cannot take advantage of them because they cannot afford to take unpaid time away from work. The other key difference is that FMLA is mandatory for employers with 50 or more employees, whereas Delaware Paid Leave is mandatory for employers with 10 or more employees.

### **Who is most in need of Delaware Paid Leave?**

Currently, the majority of Delaware families need a program like this. It's recommended that a household set aside six weeks of pay for emergencies. Many households do not have this level of savings. According to the Federal Reserve, the median amount in savings accounts per family is just \$8,000.

As of January 2024, the personal savings rate was only 3.8% of an individual's income after monthly spending and taxes per the U.S. Bureau of Labor Statistics. Two-thirds of Americans report they are living paycheck to paycheck, meaning they could not pay their bills if they became unemployed. (MarketWatch, May 23, 2024, "Survey: Almost 50% of Americans Consider Themselves 'Broke.'")

Delaware Paid Leave fills an urgent need for members of our workforce. It helps our communities thrive and makes our economy strong. Delaware workers and their families deserve support — a recourse — for staying financially healthy when dealing with a health condition, handling a military deployment, or bonding with a child.

## How does Delaware Paid Leave benefit the employer?

Just like other forms of employee benefits, Delaware Paid Leave is designed to help employers attract and retain great employees. The Delaware Department of Labor Division of Paid Leave is fully confident this program will strengthen Delaware's workforce. By supporting happier, healthier employees, it fosters a more productive and loyal employee team for an employer. It also helps to create a consistently better work environment.

Delaware Paid Leave offers Delaware employers a competitive advantage over states that do not have a similar program, giving employers more power to attract and retain quality employees. As New Jersey, Maryland, New York, and Washington, D.C., are four of the 14 jurisdictions with paid family medical leave programs, Delaware employers will now be on equal footing when it comes to attracting and retaining the best employees in the region. With Delaware Paid Leave, there is less risk of quality talent "passing us by" for employment in another state offering a paid leave program.

Other important advantages the Delaware Paid Leave plan offers employers (compared with private plans):

- It offers competitive pricing, which is especially important to smaller employers, who will benefit from the program's economies of scale.
- It costs less than most private plans.
- Delaware Paid Leave does not operate like a private insurance program—the cost to an employer will not go up after a claim is filed.

## How many businesses and employees stand to benefit from the program?

More than 6,000 Delaware businesses will benefit from this program. In addition, well over 400,000 employees will gain financial support during a health emergency, military deployment, or after welcoming a child. When accounting for employees' spouses, children, and other family members who can also benefit from paid family and medical leave, Delaware Paid Leave will help about 70% of Delawareans.

## Has this kind of program been successful elsewhere?

Delaware Paid Leave represents landmark legislation for our state. We enter this process confidently, based on our own research, knowledge, and experience. We have looked at the success several other states have had in implementing similar programs. Our legislation made Delaware the 11th jurisdiction — preceded by the neighboring jurisdictions of New Jersey, Maryland, New York, and Washington, D.C. — to offer a paid family and medical leave program for many of its workers. New Jersey was the first to offer these types of benefits back in the late 1940s. Minnesota joined the growing list of jurisdictions requiring Paid Family Medical Leave in May 2023, and Maine became the 14th state in July 2023. Several other states are also looking to require the coverage.

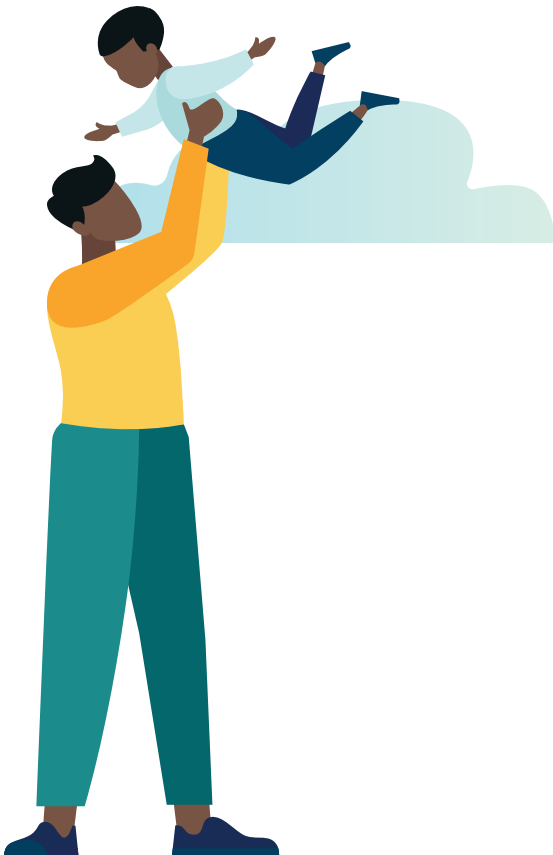
## Which employers are exempt from the program?

Exceptions from the mandate include:

- Employers with nine or fewer employees
- Federal government employers
- Seasonal operations that close to the public for a month or more.

## Which employers are mandated to participate in the program?

All employers with 10 or more Delaware-based employees are required to participate in Delaware Paid Leave by providing paid parental leave. Employers with 25 or more Delaware-based employees are required to participate in Delaware Paid Leave by providing all available coverage (i.e., parental, medical, and family caregiving/qualified exigency leave). Non-profits and faith-based employers (i.e., churches, mosques, temples, etc.) fall under the mandate to participate in the program.



## As an employer, how do I provide paid leave benefits to my employees? What options are available?

If required to provide paid leave benefits, an employer will be automatically enrolled into the Delaware Paid Leave plan upon registering with Delaware LaborFirst, the Delaware Department of Labor's new online administrative system.

Employers are also permitted to:

- Use an approved private benefit plan purchased from an insurance company; or
- Self-insure, if the employer qualifies.

## My company applied to grandfather an existing private paid leave benefit by the December 31, 2023, deadline and was approved. Do I still need to register with Delaware LaborFirst by January 1, 2025?

Whether an employer with grandfathering approval must register with Delaware LaborFirst depends upon whether all lines of required coverage were grandfathered. For example, if an employer is required to provide only Parental Leave, and obtained grandfathering approval for Parental Leave, then the employer does not need to register with Delaware LaborFirst until their grandfathering approval expires (no later than December 31, 2029) or their grandfathering status changes.

If, however, an employer is required to provide Parental, Medical, and Family Caregiving/Qualified Exigency Leave coverage, but was approved to grandfather only Medical Leave, the employer must register with Delaware LaborFirst to provide the other required coverages.

## How the Delaware Paid Leave Plan works: Who pays for the coverage?

The employer is responsible for all contributions to finance the program. The contributions are based on an employee's earnings (established by FICA rules). The rates are guaranteed through 2026 at 0.8% of wages, and there are component rates for each line of coverage. Employers can require their employees to pay up to 50% of the cost of the program through payroll deductions.

## How the Delaware Paid Leave plan works: How much does it actually pay workers?

Delaware Paid Leave offers eligible workers:

- 12 weeks of paid leave annually to bond with and care for a new child (whether through birth, foster placement, or adoption)
- Six weeks in a 24-month period to:
  - Address one's own serious health condition
  - Care for a family member with a serious health condition
  - Address the impact of a family member's overseas military deployment

If an employee is eligible and the claim is approved, the employee can receive 80% of their weekly wages, up to \$900 per week. An employee is limited to 12 weeks of leave, regardless of the type of leave, in a 12-month period.

## How the Delaware Paid Leave Plan works: How do I determine employee count?

There are two important "threshold numbers" for an employer's employee count: (1) above or below 10; and (2) above or below 25. Once an employer has 10 or more eligible employees, they must provide Parental Leave benefits. Once an employer rises to 25 or more eligible employees, employers must provide employees with Parental, Medical, and Family Caregiving/Qualified Exigency Leave benefits.

To calculate the number of eligible employees, you start by counting every single Delaware employee, regardless of how long they have worked for you or how many hours a week they work. Then subtract the employees on waivers. From there, add in any employees you have reclassified. That's your number. The Department of Labor's administrative system, Delaware LaborFirst, will help you keep track of your employee count.

## How the Delaware Paid Leave Plan works: What determines employee eligibility?

To be eligible, an employee must work primarily in Delaware (60% of their time or more), have worked for their employer for at least 12 months, and have at least 1,250 hours of service (about 25 hours a week) in the most recent 12 months. Part-time employees (working less than 25 hours per week) and those who are not expected to work for 12 months (such as students working over the summer) can submit a Waiver form to withdraw from the program, signed by the employee and employer. Employees on waivers will be exempt from contributions and will not be eligible to take paid leave. If the conditions of employment change so that the employee becomes eligible for benefits, then the employee and employer must revoke the waiver and join the program.

Under the Delaware Paid Leave plan, the employer, using the recommendation of the Division of Paid Leave's administrative system, Delaware LaborFirst, will make the initial decision as to whether an employee's application qualifies for leave, the dollar amount of the benefit payment, and how long the employee will be allowed to remain on paid leave.



## How the Delaware Paid Leave Plan works: What about telecommuters, hybrid workers, and returning workers?

Normally, any employee who works more than 40% of their time outside the state of Delaware would not be eligible for benefits under this plan. However, there are two possible exceptions: (1) employees who are assigned to Delaware teams but telecommute from their homes outside of Delaware; and (2) Delaware employees who are on temporary assignment out of state. If a telecommuting or temporarily assigned employee and their employer both sign a Reclassification form, these employees can join the plan. If, at some later date, the employer and employee agree that the employee should not be part of the plan, the employer can file a Declassification form for this employee to leave the plan.

## How the Delaware Paid Leave Plan works: What happens when my employee count changes?

The general rule is that coverages are easy to gain and hard to lose. Within 30 days of reaching a threshold number of 10 or 25, an employer must provide the required coverages. Once a new level of coverage has been achieved, employees will retain those benefits for at least the next 12 months, even if the employer's employee count falls below the threshold number. Only after continuously staying below the employee threshold number for more than 12 months will the employer be allowed to drop the now-no-longer required coverage(s). The Division's administrative system, Delaware LaborFirst, will help you track your company's number of eligible employees and notify you as you approach and/or exceed the threshold numbers.

## How the Delaware Paid Leave Plan works: After enrolling, what are the employer's responsibilities?

With assistance from the Department of Labor's administrative system, Delaware LaborFirst, the employer will be responsible for administering the program, which includes:

- Determining employee eligibility
- Tracking an employee's weekly in-state hours and wages
- Calculating the correct contribution amount
- Managing the initial claims adjudication process to verify if an employee's application for leave is justified under the plan

## How the Delaware Paid Leave Plan works: How are claims approved and paid? What if they're denied?

Based upon the information provided by the employee and the employer, Delaware LaborFirst, the Division's administrative system, will advise the employer as to whether the claim should be approved, the amount of the weekly benefit, and the length of leave. The Delaware Department of Labor will issue payments to the employee from a fund created by plan contributions. The employer will not need to pay the employee while out on approved leave. Benefit payments will be paid out every other week. As part of the claim adjudication process, if the employer denies an employee's claim, the administrative system, Delaware LaborFirst, will issue the worker a detailed explanation of why the claim was denied.

Reasons for a denial could include a lack of required weekly work hours; an insufficient number of months working for the employer; or family caregiving coverage being requested for an individual who is not the employee, their child, their spouse, or their parent (e.g., a parent-in-law or sibling). A claim may also be denied because the employee's health care provider did not complete the necessary forms within 30 days as required. If the claimant's or family member's health care provider provides the forms after 30 days, the application can be reopened.

An appeal process is available for employees who believe their claim was improperly denied. First, the employee can ask the Division of Paid Leave to review their claim. If the employee is not satisfied with the Division of Paid Leave's review, there are additional levels of appeal available. During the appeal process, the Division of Paid Leave will defend the program's decision to deny the claim, rather than the employer.



## May an employer use a private benefit plan rather than the Delaware Paid Leave plan?

Yes. Employers with 10 or more employees may purchase an admitted carrier's approved insurance policy that provides the same or better benefits as the state plan. Employers with 100 or more employees also have the option to self-insure (a surety bond and dedicated prefunded claims account are required). Employers who wish to use a private benefit plan to offer paid leave benefits to their employees must obtain the Division's approval on a yearly basis. The first private plan application period is **September 1 through December 1, 2024**.

## What happens if an employer does not comply with the mandate?

If Delaware employers with 10 or more employees fail to register with the Division of Paid Leave on Delaware LaborFirst, they will face penalties issued by the Delaware Department of Labor. The Division of Paid Leave — an entity created specifically to oversee and ensure the success of the program — is responsible for issuing these penalties. The Division of Paid Leave will strictly enforce the requirements of the program through ongoing monitoring of all Delaware employers and activities related to enrollment compliance. Penalties will be issued to employers who do not register with the Division of Paid Leave.

## What support is available to help employers navigate their responsibilities and remain compliant?

As a new state office created specifically to ensure the success of the program, the Division of Paid Leave is here to support Delaware employers of all sizes. Your success is our success, and we are poised to provide employers and employees all the support they need to leverage the benefits of the program. One of the most exciting tools we have is an online administrative system, Delaware LaborFirst, that puts everything you need in one convenient place — at your fingertips, 24/7. LaborFirst supports employers and their HR professionals, third-party administrators, employees, health care providers, and insurance companies. Support includes:

- Eligibility guidance
- Weekly hours and earnings tracking
- Contribution calculation tools
- Claims adjudication advice
- Potential to have some payroll systems automatically and directly exchange data with our administrative system

In addition to the online administrative system, the Division of Paid Leave has:

- A step-by-step process that allows you to comply with the program within a manageable time frame
- Tools that will make it easy and efficient for you to get started and keep the program moving forward
- People available to answer your questions, discuss your concerns, and provide all the guidance you need, 24/7/365





## Getting started: What are the important dates for the program?

### September 1, 2024

- Employer registration begins. Once registered, required employers are automatically enrolled in Delaware Paid Leave.
- Employers can apply to use private insurance plans as an alternative to the State plan.
- Small employers not required to provide paid family and medical leave benefits can voluntarily enroll in Delaware Paid Leave.

### December 1, 2024:

- Deadline for employers to apply for approval of a private insurance plan as an alternative to the State plan.
- Deadline for small employers to voluntarily join the State plan.

### January 1, 2025:

- All employers with 10 or more employees must register with LaborFirst.
- Employers with 10 or more employees that do not provide the mandated benefits either through the Delaware Paid Leave plan or an approved private plan will face penalties.
- The Department of Labor will assess contributions to the Delaware Paid Leave plan.
- Employers who share the cost of the plan with their employees will begin deducting employee contributions from their employees' paychecks.
- Employers' quarterly contributions are collected retroactively, 30 days after each quarter ends, on the same schedule as Delaware Department of Labor Division of Unemployment Insurance.

### April 30, 2025:

- Employers first Hour & Wage Report is due to the Division of Paid Leave.
- The first contribution payment is also due to the Division of Paid Leave.

### January 1, 2026:

- First day employees can submit a claim for paid leave.

Even though Delaware Paid Leave will not go into full effect until **January 1, 2026**, it's important to realize that now is the time for employers to begin to prepare their businesses and workers.

## Where can I get more information and support?

The Division of Paid Leave is here to help ensure employers and employees leverage all the benefits of the program, in a process that is effective, easy, and efficient! If you have any questions, at any time, you can email [PFML@Delaware.gov](mailto:PFML@Delaware.gov) or visit the Delaware Paid Leave website at [de.gov/paidleave](https://de.gov/paidleave).

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The Division of Paid Leave is available **24/7/365**.  
Call **(302) 761-8375**.