DELAWARE
Paid Leave
Family and Medical Leave Insurance Program

# Employers & Third Party Administrators ("TPAs")

# Guide to Delaware Paid Leave

## Paid Family Medical Leave ("PFML") Insurance Program

*Delaware Paid Leave requires employers to give their workers income-replacement benefits while on approved, job-protected (but unpaid) federal Family Medical Leave Act ("FMLA") leave. It serves as an insurance plan wrapped around FMLA. PFML generally follows the rules for FMLA (with a few exceptions).*

*The goal of this document is to simplify the rules and regulations for Delaware Paid Leave. As such, we are trying to stick to the "generic case" and the particular facts around your case may be different. Please contact us at (302) 761-8375 or PFML@Delaware.gov to ask us questions directly.*

*The Division of Paid Leave has created a User's Guide with screen-by-screen instructions on how to do everything that you may be required to do in Delaware LaborFirst. This document can be found at DE.gov/LaborFirst.*

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## Eligibility

Figuring out who's included in Delaware Paid Leave should be simple—but insurance rules often make things more confusing than they "should be". This section helps explain who needs to be included in the plan and who needs to make payments.

- **Employers** – The company or group that fall under the mandate to provide PFML coverage to their employees.
- **Employees** – These are the workers covered by the plan. Employee eligibility has two parts: program eligibility and benefits eligibility.

## Employer Eligibility

Before jumping into the details, let's figure out if your business needs to take part in Delaware's Paid Family and Medical Leave (PFML) program.

Some employers **are excluded from the program**. These include:

- **Federal Agencies** – The federal government, including the military, handles its own employee benefits.
    - This also includes:
        - **Railroads** like Amtrak, because they follow a different law.
        - **Tribal Governments**, as sovereign nations, tribes have the right to make their own rules for their own government employees.
- **Seasonal Businesses** – If your business closes for **30 days in a row or more**, you might not be required to join.
    - If your business performs administrative tasks while your business is "closed" (like doing payroll, cleaning or inventory), you may still qualify as "seasonal. The key is whether you are "engaged in commerce", which basically means whether you are buying or selling goods or services to the public.
    - Schools (public, private, charter, religious) are **not** considered seasonal—they **must** participate.
    - Some **farms** may count as seasonal, like those that grow crops during warm months. But year-round livestock or greenhouses operations probably don't.

- **Non-Delaware Based Businesses** – Just because a business is incorporated in Delaware doesn't mean it participates. If a company **doesn't have any employees physically working in Delaware**, it doesn't have to join.
    - What matters is **where people are actually doing the work**, not where the office is.
    - If employees live and work in Delaware (even remotely), the company might be required to join.
- **Employers with Fewer Than 10 Eligible Employees** – If you have fewer than 10 eligible employees, you don't have to participate.
    - You **can** join voluntarily, through the Delaware LaborFirst portal during open enrollment, which opens each year from **October 1 to December 1**, with coverage starting January 1 of the next year. For more information on our Small Employer Voluntary Enrollment process, please refer to the FAQ on our website (**Small Business FAQ**)

      Starting in 2026, employers with fewer than 10 employees can apply year-round to voluntarily enroll in the state's pubic plan—as long as they submit the application at least 30 days before the plan's start date. Groups that voluntarily enroll can start on either: January 1, April 1, July 1, or October 1.

    - If an employer has fewer than 10 eligible employees and they wish to use a Group PFML insurance policy, they can do so without applying to the Division of Paid Leave.
    - If you're **close to 10 employees**, you can register in Delaware LaborFirst and send a quarterly Hours & Wage report, which will help you track your Employee Count (which we'll talk about in a bit). If you have fewer than ten eligible employees, your quarterly invoice will show **$0** until you hit 10.

**Nearly every other type of employer that is physically located in Delaware must provide Paid Family Medical Leave coverage to their employees. That includes:**

- State, county, and city governments
- Public/private partnerships
- Schools (all types and levels)

- Religious and faith-based organizations
- Nonprofits
- Businesses with 10 or more employees (small, medium, or large)
- Probably yours.

But even if you're required to join, **you might not have to pay the full amount** depending on how many eligible employees you have and what type of coverage is required. We'll explain that in greater detail later.

**What If You Already Offer Similar Benefits? ("Grandfathering")**

When the law was passed, businesses already offering similar benefits could apply to keep using their plans instead of joining the state program.

- This was called "Grandfathering."
- Applications were accepted in 2023 until the deadline ended on December 31, 2023.
- If you were approved, you're exempt from the state plan until December 31, 2029 for the specific types of leave for which you applied.
- Only about 120 employers applied for Grandfathering and were approved.

**What Do Grandfathered Employers Do Until 2030?**

- If you were approved to continue using your existing PFML-comparable benefit plan for the first five years of the program, then you don't have to participate. However, you can choose to enroll in the public plan or apply to use a private plan rather than continue with your grandfathered plan.
- **In 2025**, businesses that were approved for Grandfathering can let the state know between **October 1 and December 1** if they want to leave that status and **join the state plan or switch to a new private plan** starting **January 1, 2026**.
- Starting in 2026, employers can choose to leave Grandfathering and **switch to the state plan or a private plan** four times a year—**on January 1, April 1, July 1, or October 1**—as long as they tell the state at least 30 days ahead of time.

- On January 1, 2030, grandfathered plans expire automatically, and your business will either:
    - Be enrolled in the state plan, or
    - Apply for a new private plan.

## Employee Eligibility

To figure out if an employee should be part of Delaware Paid Leave, we look at two things:

1. **Program Eligibility** – Should you be making contributions for this person?
2. **Benefit Eligibility** – Can this person get benefits if they need leave?

Generally, most people working for you will be included in the plan. But there are a few exceptions:

**Who's NOT Covered?**

- **Some government workers** – For example, "seasonal/casual" state workers are not included.
- **Independent contractors** – If someone gets a 1099 instead of a W-2, they aren't covered.
    - Be careful: misclassifying workers (calling them contractors when they aren't) can lead to penalties.
- **Business owners** – Owners can be covered *if* they get a regular paycheck (W-2) and not just a share of profits (K1).
- **Certain employees not subject to FICA** – If someone's wages don't count toward Social Security and Medicare (like some on specific immigrant visas), they're not included.
- **Clergy** – Religious Orders can choose whether clergy members count toward FICA. If not, those workers aren't included in Delaware Paid Leave either.

**Work Location Matters (60% in Delaware Rule)**

Employees need to do at least **60% of their work each quarter** *physically in Delaware* to count.

- **Working in two or more states** – If someone is based in Delaware but travels to job sites elsewhere, they need to track their hours and only their Delaware hours will count towards this program.
- **Working from home** – If an employee lives outside Delaware and works from home, those hours do *not* count.
    - Example: If they work 2 days a week from home in PA and 3 days in DE, they meet the 60% rule and must be included.
    - If they only work 4 days a week and 2 are from home in PA, that's 50%—they're **not eligible**.
    - If they consistently work most of their week from another state, they'll be removed from the program.

**How This Is Tracked**

- ***Delaware LaborFirst***, our online administrative system, will track this requirement (and many others) for you. You don't need to manually track every in/out-of-state hour. The system estimates this using your wage reports.
- If a worker falls below 60% Delaware time, you'll get a note on your invoice.
- Small dips below the 60% rule (for a few months) are okay if you keep paying into the program.
- These small changes are treated like "clerical errors," not violations.

**What If an Employee Works in Another State with Its Own PFML?**

If someone works in another state with a paid leave program (like NJ or MD), Delaware will **only count their Delaware work and pay**. Those states have their own rules for how to handle multi-state workers.

**Program Eligible Employees are:**

If someone works in Delaware **at least 60% of the time** and gets a **W-2**, they are most likely program eligible. It doesn't matter how many hours they work per week or how long they've worked for you.

You need to start making contributions for them **either when they're hired** or on **January 1, 2025**—whichever comes later—unless qualify for and sign a **Waiver** (which means you're your contributions will be waived).

## Employee Benefit Eligibility

**Benefit eligibility** means an employee is allowed to **use the paid leave benefits** — to take time off and get paid under the Delaware Paid Leave program. Even if an employee isn't eligible to take paid leave yet, their employer **might still have to pay into the program** for them.

Before someone can be benefit-eligible, they must **first be considered "program eligible."** That means the worker must:

- Work for an employer that's required to participate in the program (not the federal government, railroads, tribal governments, or a business that shuts down seasonally), **and** work **at least 60% of their time in Delaware**
- Not be a **Seasonal or Casual employee** of Delaware State government
- Not earn wages that are **excluded from FICA** (a federal tax law — applies to some visa holders or clergy)
- Not be an **independent contractor** (they must receive a **W-2**, not a 1099)

If all of those apply, the employer is required to **pay contributions on the employee's behalf**.

But — and this is important — paying contributions doesn't automatically mean the employee is ready to **use** the benefit. For that, two more requirements must be met.

**FICA Requirement:**
**The Employee Must Have Worked for You for at Least 12 Months**

Before an employee can **use** their paid leave benefits, they need to have worked at your Delaware-based business for **at least one year**.

Here's how that works:

- **Once an employee hits the 12-month mark**, they keep that eligibility **as long as they stay with your company**.
- If they **switch to another employer** in Delaware, they **start over** and must work another 12 months for the new employer.
- If they **leave Delaware altogether**, the rules from their new state apply — and they **might not be covered** under a paid leave program at all.

**Rehires: What if they come back later?**

- If an employee **returns to your company within 7 years**, their earlier time worked **still counts** toward the 12 months.
- But if they've been gone for **more than 7 years**, they'll need to **start over** and work a full 12 months again.

That 7-year rule is borrowed from the federal FMLA program — the state kept it to make sure the rules for the two programs are aligned.

**What if an employer fires someone just before they hit 12 months?**

If an employee is let go right before becoming eligible, and it looks like they were **fired for using or planning to use their paid leave rights**, this could be considered **retaliation** under the Healthy Delaware Families Act.

- The state will investigate if a complaint is filed.
- If the employer is found at fault, they could face **penalties**, and the case might even be sent to the **Delaware or U.S. Department of Justice**.

**Will the system track this?**

Yes. **Delaware LaborFirst** will help employers track when an employee reaches the 12-month mark. However, it only has data starting **January 1, 2025**, so it can't count any work done before then.

**FICA Requirement:**
**The Employee Must Have Worked at Least 1,250 Hours**

To be eligible for paid leave benefits, an employee also needs to have **worked at least 1,250 hours** for your company — based on your **last 4 quarterly reports** submitted to the state.

That's about the same as averaging **25 hours a week for a full year** (not counting vacation or sick time). But the actual number of hours per week will vary based on the company's paid time off policies and the employee's actual use of their allowed paid time off.

**What counts toward the 1,250 hours?**

- Only **actual hours worked** count — not vacation, PTO, or sick leave.
- Hours worked **in any state** count (not just in Delaware), since this rule matches the federal **FMLA** standard.

If at the time of a claim, your employee isn't listed in all 4 quarterly reports (maybe they're new), the state will ask for their **start date** and calculate their hours based on that.

**Ongoing Tracking**

- Unlike the 12-month requirement, it is not "one-and-done". The state will keep looking back over the most recent 4 quarters **throughout their time** at your company.
- If an employee switches to a **different employer**, the 1,250 hours starts over. Hours **don't carry over** between jobs.

**What if they haven't hit 1,250 hours?**

- They'll **still need to pay contributions** (unless they have a Waiver).
- But they **won't be eligible for benefits** until they've worked enough hours.

**Termination Warning**

If you terminate employment **right before** an employee reaches the 1,250-hour mark — and it seems to be tied to them using or planning to use leave — that could be viewed as **retaliation**.

- The state may **investigate** and could impose **penalties**.
- In serious cases, the matter may be referred to the **Delaware or U.S. Department of Justice**.

**Will the system help with this?**

Yes. **Delaware LaborFirst** will track this for you automatically, using your quarterly Hours & Wage reports.

**Integrated Employers**

Some businesses have multiple parts or subsidiaries under different Employer Identification Numbers (EINs). These employers may either:

- **Be required** (through a court ruling), or
- **Choose voluntarily** to be treated as one business entity for Delaware Paid Leave.

This arrangement is known as being an **"integrated employer."**

**What does that mean?**

To be treated as an integrated employer, a business must pass certain legal tests. If approved, then all the employer's legal entities (with separate EINs) are **combined into one group** for:

- Calculating the total number of employees (Employee Count)
- Determining if employees are eligible for benefits

However, the employer must still **report each entity separately** for administrative tasks like wage and hour reporting.

**What happens when employees move between subsidiaries?**

Normally, if an employee moves from one part of a company to another (for example, from Chevy to Buick in General Motors), they will have to **start over** on the 12-month work requirement.

But if the employer is treated as an integrated employer, we look at the employees' hours & wages for any subsidiary of "General Motors" as a single entity (rather than separately for "Chevy" and "Buick"):

- The employee's time **continues to count** as if they never left.
- This makes it easier to track benefit eligibility across the entire organization.

**What if our company wants this designation?**

Right now, Delaware LaborFirst **doesn't yet support integrated employers** in the system. But:

- The Division of Paid Leave is working on an update to include this feature.
- In the meantime, employers who want to be treated as integrated can **tell the Division**, and the system will use a temporary "workaround" using its TPA tools to help administer your subsidiaries more easily.

## Employee Classes

Employee Classes allow employers to group employees based on valid and practical factors—such as:

- **Work location**
- **Job title**
- **Employment status**

These classes **must not be discriminatory**, meaning they **cannot be based on**:

- Race or ethnicity
- Religion
- Age
- Any of Delaware's 13 legally protected categories

The **Division may review** how these classes are defined to make sure that they comply with the state's anti-discrimination laws.

**How They Help Employers:**

- Employers can use Employee Classes to:
  - Organize staffing and plan coverage
  - Track contribution costs
  - Apply different benefit setups for different groups of employees

**Examples of Benefit Differences:**

- Employers might provide:
  - Basic public plan to the **Staff**
  - Top-up plan (up to $2,000/week) to **Associates**
  - Unlimited top-up plan to make **Partners** whole

- Each **Employee Class is identified** in Delaware LaborFirst by the **percentage of contributions paid by the employer**.
- On the **quarterly Hours & Wage Report**, each employee's **"Employer Contribution Percent"** shows which class they fall into.

## Waivers

This question comes up a lot: “Why should an employer have to pay into the program for someone who can’t even use the benefits?”

That’s a fair point, and that’s exactly why the program allows for something called a **Waiver**.

**What’s a Waiver?**

A waiver is a mutual agreement between the employer and the employee that says: “This employee isn’t likely to meet the minimum requirements to qualify for benefits, so we won’t pay into the program for them.”

This might apply if the employee is:

- A **temporary worker** — only working for a short time (like a summer job or a two-month project);
- A **limited employee** — working fewer than 25 hours per week (like weekend shifts or a few hours after another job).

In both cases, both the employer and the employee understand from the start that this job is **not expected** to meet either of these requirements:

- The **12-month** employment requirement
- The **1,250 hours** worked in the most recent 52 weeks requirement

**But how do you prove intent?**

Intent is tricky—we get that. But most employers talk with new hires about the terms of their employment. If you both agree on the job’s limits early on, that helps make the case. The Division will accept a **freely signed waiver** as good enough evidence of that intent.

**How do I complete a Waiver?**

The  Waiver can be accessed from the PFML Account/Division page of the employer’s account. Employers will use the **Delaware LaborFirst** system to:

1. Enter the employee's info.
2. Fill out the Waiver  request.
3. Let the system generate the document.

If your employees share the cost of the program (through paycheck deductions), LaborFirst will **email the Waiver directly to the employee** using the email address you provide.

The system uses a secure third-party tool called **S-Sign**. Here's how it works:

- The employee gets an email from LaborFirst_Notifications@Delaware.gov.
- They click the link and sign the form online.
- Once signed, the form is **automatically sent back** to the Division.
- LaborFirst's system will instantly update the employee's record and **save a copy** of the signed form in the employer's account.

- **If the employer pays the full cost of the program**
  If the employer covers the entire cost themselves (meaning the employee doesn't pay anything), then **no signature is needed** from the employee.

  As soon as the employer submits the Waiver, LaborFirst will **automatically update the employee's status** in the system.

**If the employee is under 16**
If the employee is **under 16** and a signature is required because the employee is paying part of the cost then a **parent or legal guardian must sign** the Waiver on their behalf.

- **When a Waiver takes effect**
  Once the Waiver is signed by the employee (if sharing the cost of the program) or submitted by the employer, the employer **no longer has to pay contributions** for that employee.

  The Waiver takes effect **retroactively**, starting from:

  - The employee's **hire date**, or

- The **start of the quarter** when the Waiver was submitted (whichever is earlier).

**Special rule during program rollout:**
Any Waiver submitted by **September 30, 2025** will be backdated to **January 1, 2025**, even if the employee started working later.

**Reporting requirements still apply**
Even though the employee is on a Waiver, the employer must **still report that employee's hours and wages** every quarter.

Why? Because the system (Delaware LaborFirst):

- **Tracks how close** the employee is to hitting the 12-month or 1,250-hour thresholds;
- At this time, the invoice provides a listing of how many hours each employee on Waivers has worked to help employers track whether or not an employee should be taken off their wavier. **An enhancement to the system is being designed that will provide a warning** if the employee is within 75% of either milestone; and
- Even considers the **seven-year employment gap rule** in its tracking (Note: LaborFirst can't track data from **before January 1, 2025**).

But here's the catch:
Since reports are submitted **after the end of each quarter**, the warnings may come **too late.** So, while the Division offers tools to help, **it's ultimately the employer's responsibility** to keep track of an employee's Waiver status and eligibility.

Your **payroll provider**, **HR software**, or **benefits consultant** may also be able to help.

- **Why this matters**
  Jobs and schedules change. A part-time hire might become full-time. A seasonal role might turn into a permanent one. It's **very easy for someone on a Waiver to quietly cross the eligibility line** without notice.

That's why LaborFirst's system tries to catch these changes—and as long as the employer **removes the Waiver voluntarily** (before the employee becomes eligible), there are:

- **No penalties**
- **No interest charges**

## Removal of Waivers

Employers should try to remove employees from Waivers **before** they become eligible for benefits, especially in two common situations:

- **If you receive a warning** from the Division that the employee is close to meeting either:
  - the **12-month** employment mark, or
  - the **1,250-hour** work threshold.
- **If the employee's job has changed significantly**, like:
  - switching to a full-time schedule, or
  - consistently taking on more hours than originally agreed upon.

**What happens when you remove a Waiver**

- Once you remove an employee from Waivers, the employer has to **pay back the contributions** that would have been owed while the employee was on a Waiver.
- This is done through the **"Removal of Waiver" form**, which is located in the employee's record on Delaware LaborFirst (under the **blue "Smart Link"** in "Action Items").
- The system will calculate how much is owed.
- **Good news:**
  If the Waiver is removed **before** the employee crosses either eligibility threshold (12 months or 1,250 hours), the employer **won't be charged any penalties or interest**—as long as they pay the amount owed promptly.

- The idea here is that both employers and the State should **celebrate** employees who move into full-time or longer-term roles, not penalize them.

**Best practice for employers**

Because even short-term or part-time workers might stay longer than expected, it's smart for employers to **set aside some of the waived contributions in a reserve fund**. That way, if the Waiver is removed or revoked later, the employer has the funds ready to cover it. But, this is not a requirement of the program, it is completely up to the employer if they wish to set money aside for this risk.

**How payroll deductions work**

- Employers **can only deduct PFML contributions** for the current pay period. They **cannot go back** and deduct for earlier periods the employee worked.
- That's why **only the employer** needs to approve the Removal of Waiver form—there's no employee signature required.
- However, the employer **must notify the employee** that they are now officially covered and eligible for PFML benefits.
  (You can find the **Notice of Employee Rights** on the Division's website.)
- Delaware LaborFirst will track the due contributions for you once the Waiver is removed.

## Revocation of Waivers

There are times when the Division of Paid Leave—not the employer—will step in and **revoke an employee's Waiver**. Here's how that works:

**Step 1: Early Warning**

- If an employee on Waivers is getting close to becoming benefit-eligible, **the employer will get a heads-up** in their next Invoice from Delaware LaborFirst.
- Specifically, you'll be warned when:

    - The employee has worked **9 months** (which is 75% of the 12-month requirement), **and/or**
    - Has worked **937 hours** (which is 75% of the 1,250-hour requirement) in the last 12 months.

**Step 2: No Immediate Action by the Division**

- The Division **won't remove the Waiver just yet** because the employee might:
    - Be working extra hours temporarily (like during a busy season), or
    - Leave their job before hitting the full eligibility mark.

**Step 3: Automatic Revocation**

- However, if the **next quarterly report** shows that the employee **has crossed** either threshold:
    - The Division will **automatically remove the employee from Waivers** without needing employer action.
    - Both the employer and the employee will get a notification from the system saying they are now **back in the program**.

**Step 4: Paying Past Contributions**

- Once a Waiver is revoked, Delaware LaborFirst will calculate any **missed contributions** going back to:
    - **Either** the date the Waiver was originally signed,
    - **Or** 12 months before that date—whichever is earlier.
- **Simple Interest** will be applied to the back premium at a rate of **1.5% per month**, based on the usual rules of the Department of Finance.
- Any **penalties** owed will be listed on the employer's next quarterly Invoice.

**Misuse of Waivers**

- If the Division **sees a pattern** of employers using Waivers **too often or inappropriately**, they may investigate.

- Investigations can also be triggered by **employee complaints**.
- If abuse is confirmed, the Division can issue **penalties**, and in serious cases, they may **refer the matter to the Delaware Department of Justice**.

## Reclassification

This is available for employees who don't work most of their hours in Delaware (specifically, less than 60% of the quarter). Normally, this means they wouldn't be covered by PFML. However, in some cases, they **can still be included** in the program.

**Who can be reclassified?**

Employees can be reclassified **if they still have strong ties to Delaware**, such as:

- They plan to return to work in Delaware in the future, **or**
- They work remotely but are part of a **Delaware-based team**

Reclassification is **not** for employees who have **no connection** to Delaware and just want to be part of the plan.

**Eligible Situations**

An employee may be reclassified if they are:

- Already enrolled and switch (or plan to switch) to a work-from-home setup that would that put them  under the 60% requirement;
- A **new hire** who works 100% from home **in another state** but is still part of a Delaware-based team; or
- An existing employee who is **temporarily assigned** to work out of state.

**Important:** Employees in states that already have their own mandatory PFML programs **cannot** be reclassified into Delaware's program.

**How Reclassification Works**

- **Both the employer and employee must agree** and sign the Reclassification request.
- To complete the Reclassification request, select the **Smart Link** in the **Action Items** section of the employer's **PFML Account/Division page** under the Action Items section.
- By both parties signing the Reclassification, they agree to participate in the Delaware Paid Leave program even though their participation is not mandated.
- Once approved, the employee is treated as covered under Delaware Paid Leave—even though they wouldn't normally qualify.
- Their contribution amount will be based on **their full FICA wages**, both inside and outside of Delaware.

## Declassification

Declassification is when the employer ends a previously agreed upon Reclassification. Unlike Reclassification (which both the employer and employee agree to), Declassification only requires the employer's approval.

The employer submits a **Declassification request** through the employee's record in the Delaware LaborFirst system. Once submitted:

- The employee is officially removed from the Delaware Paid Leave program.
- No more contributions are required for that employee.
- The employee is no longer eligible to receive benefits under the program.
- Once the process is completed, both the employer and employee are notified by the system.

## Notices

The Act requires **employers** to notify their employees under specific circumstances. Here's a breakdown of when and what must be communicated:

Gain or Lose a Line of Coverage

- If your **Employee Count increases**, and that change causes your business to **gain coverage lines** under PFML, you must notify your employees **within 30 days** of the new hire who triggered the change.
- If your **Employee Count drops** and **stays below the threshold** for **4 consecutive quarterly Hours & Wage reports**, you must:
    - Notify employees at least 30 days before the employees are set to **lose certain coverage lines**.
    - If the Employee Count stays below the threshold number (either 10 or 25) for the rest of the 5th quarter, they will lose their coverage(s) at the start of the next quarter.

Employer/Employee Contribution Split

- Employers are **allowed** to have employees pay up to **50%** of the program cost through payroll deductions.
- The Division assumes most employers will **split costs 50/50**.
- If you, as an employer, decide to have employees contribute **less than 50%**, you're required to **notify them** of this lower contribution rate.

Notice of Employee Rights

- A digital copy of this notice is available at **DE.gov/PaidLeave**.
- You must give this to all **eligible employees**:
    - **At least 30 days before** the **claims window opens** (January 1, 2026);
    - When **a new employee is hired**;
    - When **an employee requests leave;** or
    - When you believe an employee might **qualify for PFML leave** due to a life event which might trigger one of the four types of coverage.

All these notices will be found on the Division's webpage for employers to download. All notices can be sent **electronically**, to either:

- The employee's **work email**, or
- Their **personal email**.

Employers should **keep copies** of these emails in case there are **disputes** over whether or not the notice was sent in time.

## PFML Coverages & Private Plans

Delaware Paid Family Medical Leave (PFML) isn't just one benefit — it's a bundle of related coverages, based on the federal **FMLA (Family and Medical Leave Act)**, which has been around for over 30 years.

### What FMLA Covers

If an employer has **50 or more employees**, FMLA requires them to offer up to **12 weeks of job-protected, unpaid leave** for:

- **Parental Leave** – Time off in the first year to bond with a new child (through birth, adoption, or foster care).
- **Medical Leave** – For an employee's own serious health condition or injury.
- **Family Caregiver Leave** – To care for a seriously ill or injured **child, spouse, or parent**.
- **Qualified Exigency Leave** – To handle issues related to a family member's **military deployment overseas**.

Delaware Paid Leave follows the same process as FMLA:
If a claim is for Medical or Family Caregiver leave, the employer will rely on the **healthcare provider** to decide if the condition qualifies and how long the leave should be, and the healthcare provider will also set the duration and the type of the employee's approved leave.

### Which Employers Must Provide Which Coverage?

Not all employers are required to offer every type of PFML coverage. Whether they must provide it depends on their **Employee Count**.

### How Your Employee Count is Calculated

Delaware LaborFirst calculates your official count each quarter, using your **Hours & Wage Report**. Here's how:

1. **Start with** all employees who work **60% or more of their hours in Delaware**.
2. **Subtract** employees with signed **Waivers**.

3. **Add** any employees who have been **Reclassified**

Employee Count is only **measured at the beginning of each quarter**, not continuously. This helps keep the program simpler to manage.

**How LaborFirst Determines Who Counts**

Each quarter, the system will check:

- Employees with **zero weeks worked** → **not counted**
- Employees who worked **all possible weeks** in the quarter → **counted**
- Employees who worked **some but not all weeks** in the quarter:
    - If they **were listed last quarter** → **counted**
    - If they **were not listed last quarter** → **not counted**

This approach creates a fair and consistent snapshot of your workforce at the start of each quarter. The required coverages provided by each employer depends on their Employee Count.

| **Employee Count** | **Required Coverages** |
|---|---|
| Fewer than 10 Employees | The employer is not required to provide any PFML coverage (but may voluntarily enroll in some or all of the lines of PFML coverage). |
| Between 10 and 24 Employees | Only required to provide Parental Leave (but can voluntarily enroll in the Medical and/or Family Caregiver/QE lines of PFML coverage). |
| 25 or more Employees | Employers must provide their employees with all the PFML coverages |

Two **thresholds** matter:

- **10 employees** → gain **Parental Leave**.
- **25 employees** → gain **Medical** and **Family Caregiving Leave**, in addition to the **Parental Leave** that they are already required to be provided.

As the Employee Count rises above a Threshold Number, the group gains additional types of coverage. As it falls below these Threshold Numbers, the group loses types of coverage.

**Rules for Gaining or Losing Coverage**

The general rule is that coverages are **easy to gain and difficult to lose**. However, these changes in coverage are not immediate.

- You **gain** coverage at the **first day of the next calendar** after you cross a threshold.
- You **lose** coverage **only after staying below the threshold for 5 consecutive quarters** (about 15 months total).

Employers must notify employees **30 days before** any coverage change.

**Ways Leave Can Be Taken**

Under FMLA, leave can be used in 3 ways:

1. **Consecutively** – Take time off all at once. The employee leaves work on a certain date and returns on a predetermined date.
2. **Reduced Schedule** – Work fewer hours/days for a period.
3. **Intermittent Leave** – Take time off in small chunks (like a few hours or days). This allows the employee to visit a healthcare professional or some other approved reason for themselves or a close family member.

**How Delaware PFML Handles This**

- **Parental Leave** – Employers **can choose to require** it to be taken **consecutively**.
- **Medical and Family Caregiving Leave** – A **healthcare provider (HCP)** must approve reduced or intermittent leave. The HCP specify a **percent reduction** in schedule (e.g., 50% work time = benefits paid at 50%). If the HCP allows the employee to use a reduced leave schedule, then the number of days of approved leave will increase based on the reduction in the schedule/benefits. If the HCP reduces their hours by 50%, then they get twice as many weeks of leave to make them even.

We don't need full schedule details—just the approved percent reduction. The exact work schedule (which days and which hours are worked by the employee while they are on reduced leave schedule) is between the employee and employer.

**Intermittent Leave Monitoring**

Employees using intermittent leave must certify/swear the time (for Medical leave) medically necessary or (for Family Caregiver leave) unavoidable. HCPs **don't approve each individual day**, but the program may audit usage if abuse is suspected.

**Returning to Work Early**

We don't recommend returning to work early unless the HCP clears it. If the employee returns to work before they are medically able to do the duties of their job, they may worsen their condition. This could lead to more time off, which (this time) could be past their maximum paid benefit duration. However, we can also not stop employees from returning to work earlier than they "should". If the employee is planning on returning to work before their approved leave has expired, our system can handle that process. Or, if the employee needs more time than originally approved, they can ask for an extension from their HCP.

**Differences/Similarities Between PFML and FMLA**

- Under **FMLA and PFMLA**, you can care for **spouses, children, and parents**—**not** siblings or in-laws.
- Delaware's PFML program follows FMLA **closely**, with some differences because PFML provides **paid** benefits.
    - Example: **Intermittent PFML leave must be taken in full-day blocks**. While FMLA's unpaid time can be taken in increments of a single hour.
- PFML benefits are **shorter in duration** than FMLA leave.
    - **Both run at the same time so must be used** concurrently.
    - Example: If someone uses up PFML but still qualifies for FMLA, they can continue unpaid leave under FMLA. Or if an employee uses 6 weeks of Paid Medical Leave (PFML) for something like a heart attack, and then a year later needs time off again—say for surgery after breaking their leg—they **can't use more PFML** if those 6 weeks already used were within the last **24 months**, since PFML has a **2-year limit** for that type of leave.

      However, under the federal FMLA program (which is **unpaid but protects the employee's job**), eligibility resets every **12 months**. So in this example, even though PFML is maxed out, the employee **might still qualify for FMLA leave**—as long as their employer has at least 50 employees.

## PFML Benefit Design

The PFML schedule of benefits are:

| | |
|---|---|
| **Parental Leave** | |
| Benefit Percent | 80% |
| Weekly Maximum Benefit | $900 |
| Maximum Duration | 12 weeks in an Application Period |
| **Medical Leave** | |
| Benefit Percent | 80% |
| Weekly Maximum Benefit | $900 |
| Maximum Duration | 6 weeks in 2 Application Periods |
| **Family Caregiving Leave** | |
| Benefit Percent | 80% |
| Weekly Maximum Benefit | $900 |
| Maximum Duration | 6 weeks in 2 Application Periods |
| **Qualified Exigency Leave** | |
| Benefit Percent | 80% |
| Weekly Maximum Benefit | $900 |
| Maximum Duration | 6 weeks in 2 Application Periods |
| **Combined Maximum Duration** | |
| For any type of Leave, no more than 12 weeks in an Application Period | |

**Combined Annual Maximum**

At first, it might seem like employees could take up to **30 weeks off each year** under PFML, since there are different types of leave. However, the **Combined Annual Maximum rule** limits total leave to **no more than 12 weeks per year**.

**Application Period Rules**

Under FMLA, employers can define a 12-month "application period" in four ways:

1. Calendar year
2. A fixed 12-month span (e.g., based on hire date or fiscal year)

3. A 12-month period **starting when leave begins** (looking forward)
4. A “rolling” 12-month period **counting backward** from the leave date

**Delaware’s Approach**

Because managing these options is difficult in a **paid** plan (confirming identities, processing payments, combating fraud, etc.), Delaware requires everyone to use the **“Looking Forward”** method—same as **12 out of 13 PFML states** (Connecticut uses the “Looking Back” method).

This change should simplify things, especially for employers who already operate in multiple states and have already likely adjusted their application period to conform to the definition used by these 12 PFML-mandated states.

## Lines of Coverage & Contribution Categories

While the federal **FMLA** program includes **four types of leave**, Delaware's **PFML** program groups them into **three lines of coverages** for rating purposes:

- **Parental Leave**
- **Medical Leave**
- **Family Caregiver / Qualified Exigency** (these two are combined into one rate category)

Each of these three categories has its own contribution rate. This gives employers **three different options** for how they can provide the required PFML benefits:

# Public Plan ("Delaware Paid Leave")

This is the **default plan**. It's essentially a state-run insurance system (via the **Division of Paid Leave**) that pays for benefits and plan expenses using the contributions paid by employers.

# Group Insurance Policy

Employers can **buy a private insurance plan**, approved by the **Delaware Department of Insurance (DOI)**, instead of using the public plan.
The first of these private PFML policies will start on **January 1, 2026**, and will be up for **renewal in the Fall of 2026**.

**Things to Know:**

- If you're an employer with **50+ employees**, you are also subject to **FMLA rules**. If you use a private PFML plan, make sure it **aligns with how you handle FMLA**. Otherwise, a claim might be **approved for one but denied for the other**. The public plan avoids the problem (except in rare occasions) because both the PFML and FMLA Leave requests are approved or denied by the employer.
- There are **limits** on how much you can ask employees to pay:
    1. No more than **half of the public plan's contribution rate**;
    2. No more than **half of the private plan's premium rate**;

3. And **no more than what the employee would've paid in total under the public plan**, even if the private plan has a broader wage base.

**Exempt Employers (1 – 9 Employees):**

If your company has fewer than ten Delaware-based eligible employees (after you remove those employees who would qualify for Waivers), then your company is excluded from the provisions of the Acts. If you fall into this category, you are free to purchase a Group PFML insurance policy and you do not need the approval of the Division of Paid Leave to do so. Your policy will likely still be required to be approved by the Delaware Department of Insurance per their regulations.

Once your company grows to ten or more Delaware-based eligible employees, you will fall under the employer mandate to provide PFML benefits to your employees. At that point, you will be required to submit an application to use a private insurance policy instead of enrolling in the state's public plan. Part of that application process will be confirming that your Group PFML insurance policy meets all the minimum requirements of the Acts.

So, if your group has fewer than ten Delaware-based eligible employees but you expect to grow to above that threshold, you are not required to provide a program-compliant policy, but it would be more administratively simple if you did purchase a Group PFML insurance policy that is approved by the Delaware Department of Insurance for that purpose. But that is entirely your decision, as we have no legal authority in this area over employers with fewer than ten Delaware-based eligible employees.

**Small Employers (10–24 Employees):**

- Group PFML insurance policies for employers with ten or more Delaware-based eligible employees must meet or exceed the minimum requirements of the Acts.
- While the **public plan only requires Parental Leave**, **your private carrier might require you to include all three types**.
- Even if this happens, **you still can't charge employees more** than they would pay under the public plan, which is **up to half of 0.32% of wages (or 0.16%)** for just Parental Leave.

**Additional Carrier Requirements:**

- Your private insurer might ask you to also buy another product from their benefits lineup (like life, medical, or disability insurance). This is **their policy requirement**, **not** a Delaware Paid Leave requirement.

# Self-Insured Program

Employers can choose to **run their own PFML plan**, either by themselves or by hiring a **Third Party Administrator (TPA)** under an "Administrative Services Only" contract — if approved by the Division.

**To receive division approval, Employers must:**

- Have **more than 100 employees** or be approved based on **sufficient administrative capability** (either on their own or through a TPA) to manage a compliant PFML insurance program;
- Offer benefits **equal to or better than** what the law requires;
- Show they can afford **6 full-benefit claims per 100 employees** each year (that's $900/week × 12 weeks = **$10,800 per claim**);
- Set up a **dedicated bank account** for PFML claims with **at least half that amount** always available;
- Provide an **annually renewed surety bond**, unless you're a **government employer** (city, county, state).

**Enrollment Flexibility**

Starting in **2026** (via **HS1 to HB128**), employers can **apply to switch to a private plan at any time** — not just during an open enrollment window.

- Applications must be submitted **at least 30 days** before the intended start date.
- Once approved, private plan coverage can begin on the **first day of the next calendar quarter**:
    - January 1
    - April 1
    - July 1

- October 1

## Top-Up and Administrative Services Only (ASO) Plans

### Purpose of Top-Up Plans

- Some employers already offer better benefits than Delaware Paid Leave (like 100% wage replacement, no weekly max).
- These employers can **continue offering those benefits** through self-funded "top-up" plans.
- The **public plan will provide the base PFML benefit**, and the **employer pays for the extra top-up amount**.
- Top-up plans can apply to **some or all employees**.

### Administration Through Delaware LaborFirst

- Employers can choose to manage top-up plans **through Delaware LaborFirst** (the state's PFML system).
- **No extra cost** to the employer for using the system.
- Benefits of using LaborFirst:
  - It simplifies administration.
  - It ensures correct benefit calculation and compliance.
  - It supports required audits more efficiently.
- Employers can **check a box** to use the ***Delaware LaborFirst*** system to administer their top-up plan. This is **optional**, but recommended to stay on track before claims open (Jan 1, 2026).

### ASO for Self-Insured Plans

- If you're approved to **self-insure**, you can also use Delaware LaborFirst to manage your plan.
- The system:
  - **Calculates and adjudicates** benefits.
  - Doesn't manage funds or pay employees directly but
  - Helps with **enrollment and eligibility tracking**.
- Employers still pay out the top-up benefits themselves.

**Plan Flexibility**

- Employers can choose:
    - **Richer benefits** than the PFML minimums.
    - **Same coverage** as the public plan.
    - **Different benefits** for different Employee Classes.

**Templates and Resources**

- The Division will offer **template documents** for:
    - Self-insured plans (with or without using Delaware LaborFirst on an "Administrative Services Only", ASO, basis)
    - Top-up benefit plans (with or without using DLF on an ASO basis)
- These templates can be tailored to the employer's needs (as long as the plan design meets or exceeds the minimum requirements of the Act).
- Available on the **Delaware Paid Leave** website.

## Contribution Rates & Calculations

### Employer Responsibility

Employers are responsible for funding **100% of the contributions** to the Paid Family and Medical Leave (PFML) program. However, the **Act allows cost-sharing**—employers can require employees to pay up to **50% of the total contribution**.

- Employers must ensure proper administration of this cost-sharing, including correct payroll deductions and accurate reporting.
- The **employer/employee contribution split can differ across Employee Classes** (e.g., different splits for full-time vs. part-time employees).

*Third-party services such as payroll providers or TPAs (Third Party Administrators) are available to help with this process, often for a fee or commission.*

### Public Plan Contribution Rates

If the employer is enrolled in the **Public Plan (Delaware Paid Leave)**, contribution rates are based on a standard structure outlined in the program materials. These rates are:

| | |
|---|---|
| Parental Leave | 0.32% |
| Medical Leave | 0.40% |
| Family Caregiver/QE Leave | 0.08% |
| **Combined** | **0.8%** |

"You Only Pay for What You Need" — **Literally**

To borrow from a certain insurance company with an emu mascot:

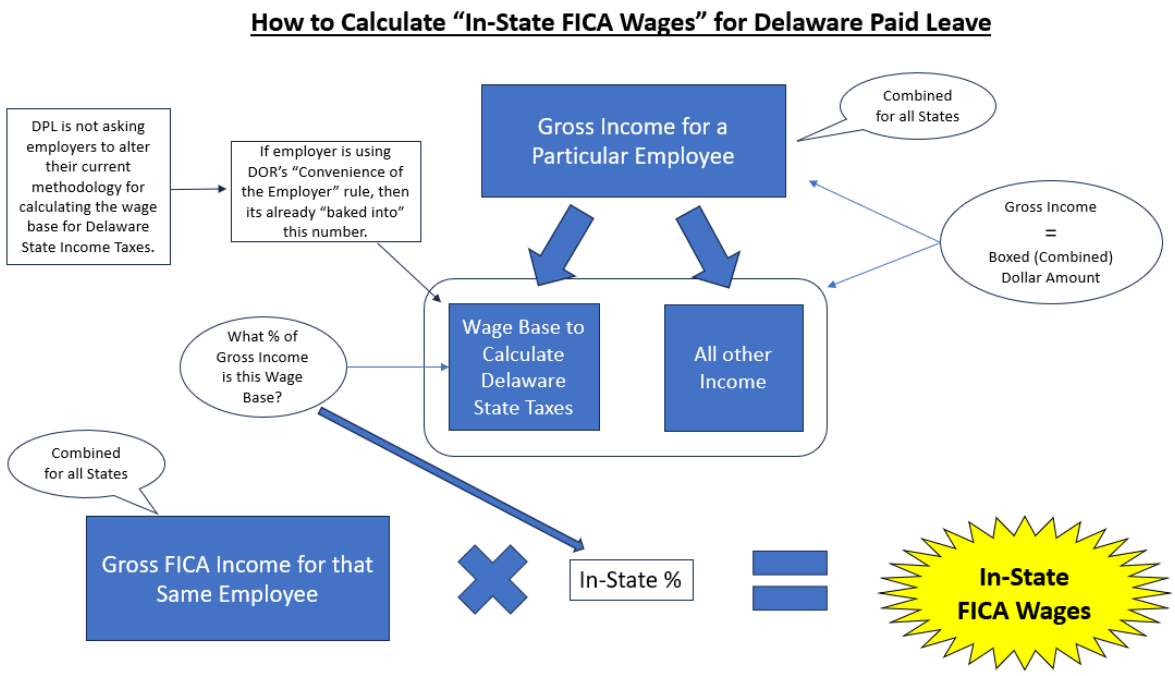
- If your business only has to offer **Parental Leave**, then you only pay **0.32%** of your employees' covered ("in-state FICA") wages.
- If you're required to offer **all types of PFML leave** (like if you have 25+ employees), you'll pay the **full 0.8%**.
- You don't pay extra for coverage your company isn't mandated to provide.

- **Delaware LaborFirst** (the state's admin system) will automatically help you calculate how much your group owes each quarter.

**FICA Wages – In-State vs. Out-of-State**

Delaware Paid Leave defines "wages" as they are defined by FICA (which is used to calculate Social Security and Medicare taxes). FICA wages include tips, bonuses, and commissions, but it excludes the wages earned by certain categories of immigrant visa holders.

Unfortunately, as a federal law, FICA does not differentiate between which state your wages might have been earned. But, as a state program that is not authorized by any federal laws, Delaware Paid Leave can only look at FICA wages that were earned in Delaware. So, so we use the "wage base" for Delaware State Income Taxes as a guide, as illustrated below.




Since we follow FICA as the definition of wages, we also cap employer's wage bases at the **FICA Wage Limit,** just like Social Security. Each year, the FICA Wage Limit increases, for 2025 it is $176,100 and next year it will rise to $183,600. The one difference between the FICA and the PFML wage limit is that the PFML Wage Limit only "counts" wages earned in Delaware (while the FICA limit does not "notice" where the wages were earned).

**Quarterly Payment Schedule**

- Contributions are due **30 days after the end of each calendar quarter**.
- A **6-day grace period** is normally granted, but **interest (1.5%) and penalties** may apply after that.
- **Exception for 2025 Implementation Year**
    - For **Q1 and Q2 of 2025**, both payments are due on **July 30, 2025**.
    - No penalties or interest will be charged on 2025 contributions **as long as payment is received by March 30, 2026**.

**Cost Example**

For full coverage (0.8%) with a **50/50 contribution split**:

- Annual contribution for $50,000 of wages = **$400**
- Employee pays half = **$200 per year**
- This equals **~$7.70 per biweekly paycheck** (assuming 26 pay periods per year)

**Hours & Wage (H&W) Reporting**

- Employers must **submit detailed employee data** each quarter, including:
    - Demographics
    - Plan enrollment info
    - **Hours of service**
    - **In-state vs. out-of-state FICA wages**
- Can be submitted:
    - **Individually** (per employee)
    - Or by **bulk upload** using the **Hours & Wage Report**
- This data is required for:
    - Conducting **audits** of private plans
    - **Monitoring waiver eligibility**
    - Maintaining accurate records

Full technical specifications are available at the Division's website under **"Quarterly Report File Specs."**

## Quarterly Hours & Wage report

**Due Dates**

- **Standard due date:** Reports are due on the **30th day after each calendar quarter ends**.
- **Public plan employers:**
    - First report was due **April 30, 2025**.
- **Private plan employers:**
    - First report not due until **April 30, 2026**.

**Grace period for 2025 Hours & Wage reports**: No late penalties for 2025 **as long as reports are submitted by March 30, 2026**.

**Amendments**

- **Retroactive changes** (adds, drops, corrections) to the employee's hour and wage information will be allowed through an amendment process.
- **Process status:** Not yet finalized. Will be detailed in **System Release R2.3**, expected by **December 30, 2025**, in time for Q4 submissions.

**How to Submit**

You can provide employee hour and wage data:

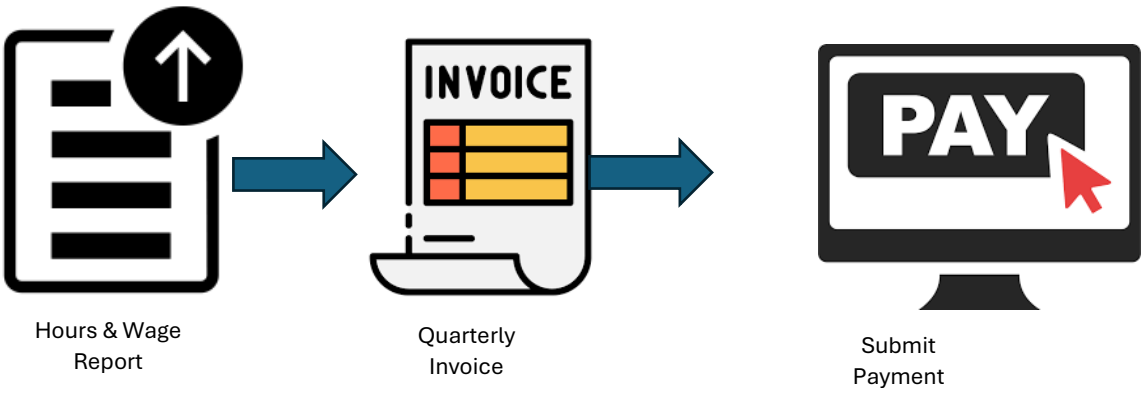
- **Individually** (employee-by-employee)
- **Bulk upload** via the Hours & Wage report format

**What Happens After Submission**

Once your employee data is uploaded:

- **Delaware LaborFirst** generates your **quarterly PFML invoice**.
- The system:
    - Identifies which employees are required to participate in the plan

- Multiplies each mandated (or voluntarily enrolled) employee's **wage base** (in-state FICA wages, or combined in-state + out-of-state wages for reclassified workers)
- Applies the relevant **contribution rate** per line of coverage
- Shows your **cost breakdown by coverage type**
- Rounds all amounts to the nearest penny (per standard rounding rules)




**Quarterly Invoice PDF**:

- A PDF version of your quarterly Invoice is **automatically saved** to your employer account once the Hours & Wage report is filed.
- As changes are made (e.g., corrections, new hires), the invoice updates in the system—but the saved PDF reflects the invoice **as it was on the due date**.

**Retroactive Changes**:

- Late updates to employee data that effect contributions may trigger **interest and/or penalties** per the state's collections rules.

**Payment Schedule**:

- Contributions due **30 days after quarter ends**
- **6-day grace period** before:
  - **1.5% interest rate** begins accruing
  - Penalties may be applied

**Payment Options**:

- **Single Filers**: Can pay through the Delaware LaborFirst portal.
- **Multi-Entity Employers / TPAs**: Use **NACHA bulk payment format** – Bulk Payment Technical Specs available online. **Bulk Payment Technical Specs**.

**Financial Management**:

- Single filer payments are processed via a separate payment processing system, Go DE. NACHA bulk payments are processed through JP Morgan Bank.
- All funds are:
    - Tracked in Delaware LaborFirst
    - Audited by the **Department of Labor**, **Department of Finance**, and possibly the **State Auditor** or **external auditors, as needed.**
    - Managed by the **Office of the State Treasurer** using standard state investment protocols. Interest earned by the PFML Trust Fund will be retained by the PFML Trust Fund and used to pay future claims and operational expenses.