DELAWARE
Paid Leave
Family and Medical Leave Insurance Program

FAQs

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

How does an employer provide the required Paid Family and Medical Leave (PFML) benefits to their employees?

Employers have several different options to provide PFML benefits to their employees. Employers can:

1) Participate in the state-sponsored Delaware Paid Leave insurance program;
2) Purchase a private insurance form 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 eligible employees, has obtained a surety bond, and agrees to prefund a claims account.

After registering with Delaware LaborFirst, the shared online administrative system of the Delaware Department of Labor (DOL), employers required to provide PFML benefits to their employees must also complete their paid leave registration to be enrolled in the state-sponsored Delaware Paid Leave insurance program. Employers have the option of using an approved private insurance plan as an alternative to Delaware Paid Leave. To do so, employers must apply during the application period, between **Oct. 1 and Dec. 1** of each year.

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

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

When do I apply to use a private insurance plan instead of the Delaware Paid Leave insurance program to provide PFML benefits?

Each year, during the program's application period, which runs from **Oct. 1 through Dec. 1**, employers may apply to use or make a change to an approved private insurance plan. These applications must be made through Delaware LaborFirst, the DOL's shared online administrative system. Private insurance plan approval must be renewed on a yearly basis. Once approved, all changes will be effective on **Jan. 1** of the new year.

How do I apply to use a private plan?

If an employer has not yet done so, they will first need to register with Delaware LaborFirst and then with the Division of Paid Leave. During the application period, the employer will have the option to apply to use a private plan as an alternative to the Delaware Paid Leave insurance program. The employer needs to provide a copy of its insurance policy when applying.

How do I make a change to an existing private insurance plan to provide PFML benefits?

During the application period, the employer can make a change to their private plan through their employer account for each line of required coverage as an alternative to using the Delaware Paid Leave insurance program.

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

Employers may use both a private plan and the Delaware Paid Leave insurance program to provide the required PFML benefits. For example, an employer can purchase a Delaware DOI-approved private medical leave insurance policy from the list of approved DOI insurance carriers and use Delaware Paid Leave to provide family caregiving/qualified exigency ("QE") and parental leave benefits.

I have more than 100 eligible 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 rather than use the Delaware Paid Leave insurance program.

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

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

1) Submit their written self-insurance plan document 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 insurance program; and
3) Provide proof of a prefunded, dedicated bank account from which to pay claims in an amount as determined by the Division.

The Division has provided sample documents on its website, 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. 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 the mandated PFML benefits for their employees 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 (but the employer will still be responsible for the payment of their employees' benefits).

I would like to offer my employees more comprehensive benefits than those provided under the Delaware Paid Leave insurance program. Can I do that and still be part of Delaware Paid Leave? Can I manage this process through Delaware LaborFirst?

Yes. Employers are always permitted to offer employees better benefits than those provided under Delaware Paid Leave. Employers participating in the Delaware Paid Leave insurance program can supplement those benefits through a self-insured program, so that employees receive up to 100% of their wages. Employers who are part of Delaware Paid Leave will have **free access** to Delaware LaborFirst to manage their supplemental plans.

Delaware Paid Leave will pay out the benefits up to the schedule of benefits, while the employer will be responsible for the payment of their employee's supplemental benefits in excess of the coverage amounts provided through Delaware Paid Leave (up to 100% of the employee's wages).

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 of Paid Leave with quarterly enrollment, wages, and hours information for each employee under their plan, through Delaware LaborFirst.

However, for 2025, since your private plan will not be in effect yet, employers that have been approved by the Division of Paid Leave to use a private insurance plan or a self-insured program instead of enrolling in Delaware Paid Leave are not required to provide a quarterly hours and wage report. Your first quarterly hours and wage report for Q1 2026 will be due on **April 30, 2026.**

How will the annual renewal process work for approved private plans?

For insurance policies that are effective on Jan. 1, 2026, the renewal process will begin on **Oct. 1, 2026.** The Division of Paid Leave will contact employers who have had their insurance policy or self-insured program approved, providing a link to the Delaware LaborFirst system, where employers can provide updated information about the upcoming policy year. LaborFirst will guide you through the process.

If I was approved to use a private plan (insured or self-funded) before the December 2024 deadline, what responsibilities do I have in 2025?

If you were approved to use a private insurance policy or to set up a self-insured program to provide employees the PFML coverage required by law, then you do not need to either report your hours and wages or pay PFML contributions in 2025.

You must, however, provide your employees notice about their rights regarding your PFML program by Dec. 1, 2025. The Division has provided a sample "Notice of Employee's Rights" on its website, which can be tailored by the employer to its specific plan.

What if I do not wish to voluntarily enroll in Delaware Paid Leave but still want to provide PFML-like coverage to my employees, even though I am not required by law to provide such coverage through the Healthy Delaware Families Act?

If you choose to provide nonmandated PFML coverage to your employees, then you can do so (or not do so) in any manner you wish, without any requirement to inform, notify, or otherwise gain the approval of the Division of Paid Leave. If you wish to provide PFML-like benefits that are "above and beyond" those mandated by the Act, we applaud your generosity to your employees. However, such coverage falls outside our legal jurisdiction.

If have fewer than 25 eligible employees and you want to provide them with PFML coverage that you are not required to provide by law, then you can purchase any type of insurance policy that you wish, even from carriers that are not authorized by the Delaware Department of Insurance ("DOI") to sell Group PFML policies. However, if your group grows to the level where your company falls under the PFML mandate, then you will be required to apply to use an approved Group PFML policy. So, while it is not legally required, it may be easier to use a Delaware DOI-approved policy from the beginning.

If we use an approved private plan, how will my employees make a PFML claim?

Employees should file a claim in accordance with your plan document. If one of your employees attempts to make a claim through LaborFirst, the system will recognize that they are covered by their employer's private plan. They will be instructed to contact their employer about how to submit a claim to their insurance carrier or the employer/TPA for a self-insured program.

However, if you have been approved to use a self-insured program and use LaborFirst to manage that program (or your supplemental benefits if using the Delaware Paid Leave insurance program), your employees can file a claim through LaborFirst.

If we use an approved private plan, how do my employees obtain a Certificate of Serious Health Condition from the patient's health care provider?

Employers that have been approved to use a private insurance policy must use their carrier's process for ensuring that the patient (either the employer themselves for a medical leave claim or the employee's family member for a family caregiver claim) has an illness or injury that meets FMLA's definition of a "serious health condition."

If the employer has been approved to use a self-insured program, they must institute their own (or use a third-party administrator's) process to determine if the patient's injury or illness meets the FMLA's definition of a "serious health condition."

However, if you have been approved to use a self-insured program and use LaborFirst to manage that program (or your supplemental benefits if using the Delaware Paid Leave insurance program), your employees can file a claim through LaborFirst, which will manage this process for you.

If we use an approved private plan, how do I file a waiver for my employees who work on a temporary (less than 12 months) or limited (less than 25 hours per week) basis? How do I manage removing my employees from waivers or reclassify (or declassify) them if I use a private plan?

Waivers allow you to "waive" your required contributions for those who are required by the Act to be enrolled in the program but are not expected to meet the Act's requirements to be eligible for claims. Private plans are required to allow employers to waive contributions for employees who meet the requirements. However, private plans are expected to create their own administrative systems, so they need to create their own processes to meet the functional requirements in the Act for the provision of waivers, removal of waivers, reclassifications, and declassifications.

However, if you have been approved to use a self-insured program and use LaborFirst to manage that program (or your supplemental benefits if using the Delaware Paid Leave insurance program), you will be able to use LaborFirst to manage the waivers and removal of waivers as well as the reclassification and declassification processes for your employees.

What protections do employees get under the Act if their employer uses an approved private plan?

Employees can fill out a complaint form (found on our website) if they feel that they are not being properly treated under the Act, and the Division of Paid Leave will investigate their complaint.

If an employee feels that a private plan incorrectly denied their claim or calculated their claim incorrectly (either underpaid the claim or ended the claim too early), the Act allows the employee to file an appeal with the PFML Appeals Board against their private plan. The employee must first complete any appeals process required by their employer's approved insurance policy or their approved program document (for self-insured programs), before they become eligible to appeal their claim or other appealable issue to the PFML Appeals Board.

What limitations are there on my ability to share the cost of the program with my employees if I am using a private plan?

The Act says that whether the employer is enrolled in Delaware Paid Leave or has a private plan, they are not allowed to charge the employee more than half the cost of the program.

For employers on Delaware Paid Leave, the limit is pretty simple:

Line of Coverage	Full Cost	50-50 Contribution Split
Parental Leave	0.32% of covered wages	0.16% of covered wages
Medical Leave	0.40% of covered wages	0.20% of covered wages
Family Caregiver/ QE Leave	0.08% of covered wages	0.04% of covered wages
All Lines of Coverage	0.80% of covered wages	0.40% of covered wages

If you have an approved private commercial insurance plan, there are three ways that the amount that you charge your employees can't be "more than half the cost of the program":

1) Can't be more than the 50-50 split amount above;
2) Can't be more than half the premium (or premium equivalent) rates; and
3) Can't cost more (in total premium or premium equivalent) than it would for the employee under Delaware Paid Leave.

The third one only comes into play if your insurance policy uses a broader definition of covered wages that what Delaware Paid Leave uses. As a state plan, Delaware Paid Leave is limited to wages earned inside the state of Delaware, while private insurance policies or self-insured plans are not under any such limitation. By using a broader definition of wages, the wage base increases, and therefore the cost per employee would increase as well. In such a case, the employee cannot be charged any more than they would have been under Delaware Paid Leave (based only on in-state FICA wages), and the employer would be responsible for the additional premiums (or premium equivalents).

Can I switch from one private insurance carrier to another during a policy year?

You will only be able to change carriers at your renewal if you apply to do so during the annual application period from Oct. 1 to Dec. 1.

If I grow to 10 or more Delaware-based eligible employees between application periods (outside of Oct. 1 to Dec. 1), can I apply to use a private plan?

Yes, you can contact our staff for assistance, through either the PFML@Delaware.gov email account or our hotline: 302-761-8375. We will be enhancing Delaware LaborFirst to create a year-round self-service system for this purpose. But until the enhancement is deployed, this application process will need to be done with Division staff assistance.

If you are approved to use a private plan midyear (because your company grew to have more than 10 Delaware-based eligible employees), you will have a shortened policy year for your first year, with your first renewal date being Jan. 1 of the next year.

Can I change back to Delaware Paid Leave?

Yes, we will allow you to join or rejoin Delaware Paid Leave at any time. You may find that the public plan is cheaper and easier to use than your private insurance policy and less risky/uncertain than self-insuring.

DELAWARE DEPARTMENT OF LABOR
Division of Paid Leave