



Grandfathered Paid Leave Benefits

What is a grandfathered paid leave benefit?

A grandfathered paid leave benefit is an approved written private benefit that was in existence on **May 10, 2022**, and provides comparable benefits to those offered by the Delaware Paid Leave plan for any of the 4 types of leave required by the Healthy Delaware Families Act (“the Act”). By submitting a grandfathering application, an employer seeks to use their existing benefits to meet the paid leave obligations created by the Act.

What type of existing benefits can be grandfathered?

Any written benefit that is either (1) a private insurance contract plan, including captives; (2) a self-insured plan; or (3) an “Employee Handbook” policy can be grandfathered if the benefit design meets the requirements set forth in the Act.

Who is eligible to apply to have their existing paid leave benefits grandfathered?

Any employer that is required to provide Paid Family Medical Leave is eligible to apply to have their existing private paid leave benefits grandfathered.

Is grandfathering required?

No. An employer does not have to grandfather their existing private paid leave benefits. If an employer is required to provide Paid Leave and does not grandfather their existing benefits, they can either enroll in the Delaware Paid Leave plan or apply to the Division of Paid Leave to approve a new (rather than an existing) private benefit plan.

When must an employer apply to have existing private paid leave benefits grandfathered?

An employer that wants to have their existing private paid leave benefits grandfathered must apply by **January 1, 2024**. The Division of Paid Leave has created an online Grandfathering/Parental Leave Duration Application Portal (“Grandfathering/PLD Portal”) to help you through the application. The Grandfathering/PLD Portal will open on **October 1, 2023**, to give employers ample time to complete this process.

As an employer, if I do not grandfather now, can I grandfather my existing paid leave benefits program later?

Unfortunately, no. The Act provides that all grandfathering requests must be made by **January 1, 2024**.

Is there a cost to apply for grandfathering status?

No. There is no fee to apply to have existing private paid leave benefits grandfathered.

How do I apply?

Employers can apply through the Grandfathering/PLD Portal located on the Division of Paid Leave's website. Once the "Apply Today" button is selected, you are directed to log into my.delaware.gov. If you do not have a my.delaware.gov account, you will need to create one, using "for my business" or as a "third party admin" as its purpose. Once that is completed, you may see a tile entitled "Identity Proofing" along with the "DOL-PFML Grandfathering" tile. If you see the "Identity Proofing" tile, you must confirm your identity before accessing the Grandfathering/PDL Portal. Identity proofing is a security requirement of the State of Delaware to protect both the State and individual users like yourself. The Identity Proofing process makes sure you are who you say you are - and not someone pretending to be you. Identity proofing ensures that your private information is secure and there are safeguards in place to protect your data. Should you experience any difficulties with the Identity Proofing process, there is help available through my.delaware.gov. From the my.delaware.gov landing page, please select "General Application Help" and then select either the "Identity Proofing" tile to get more information about the process or "Contact Us" to open a support ticket. Once the Identity Proofing process is complete and you receive an email that your status is "clear," please sign out of my.delaware.gov completely and then sign back in. You will now be able to access the DOL-PFML Grandfathering portal.

To log in to the system, select the "DOL-PFML Grandfathering" tile. Employers will need their company's EIN and total withholding tax paid for 2022. Employers can find their Total Withholding tax paid for 2022 on Line 3 of the employer's Delaware Division of Revenue Annual Reconciliation WTH-REC form. Employers will then be asked to provide their contact information, the employer's address, contact person, business phone number, cell phone number, and email. There will be a series of simple yes/no questions, which will determine if a company's existing private paid leave benefits will be conditionally approved for grandfathering.

Please note that a record of your application will only be created once your application is fully submitted. Prior to beginning the application, make sure that you have all the required information, including a copy of your existing paid leave benefits (whether from an insurance company, from your self-insured plan, or outlined in your Employee Handbook) and a copy of your declaration page (if you have a policy from an insurance company) so that you can complete the application in one sitting. Your application will not be saved and filed until you provide the necessary information and click the "submit" button on the application page. We anticipate this application process will take less than 15 minutes.

What type of documentation must an employer provide with their application for grandfathering?

An employer must upload (1) a copy of their written benefit program (if self-insured or utilizing an insurance policy from an insurance company); (2) a copy of the declaration page (if using an insurance company); or (3) a copy of the relevant pages of an employee handbook that sets forth the employer's leave policy into the Grandfathering/PLD Portal, in either a Microsoft Word .docx or PDF format. An application for grandfathering paid leave benefits will not be approved without the appropriate supporting documentation.

Is the application self-certified?

Yes. An employer must sign and certify that the information contained in the grandfathering application is true and accurate to the best of their knowledge.

As an employee, can I report my employer for not being truthful on their grandfathering application? If so, how do I do that?

You can report any suspected misinformation to the Division of Paid Leave, using the complaint form on our website, de.gov/paidleave.

Spanish is my primary language. Is the application available in Spanish?

Yes. Once you log in to the Grandfathering/PLD Portal, which can be found on the Division of Paid Leave's website, you will have the option of changing the language to Spanish. Locate the profile bubble in the upper-right corner, which contains your initials. Click on the bubble and, from the drop-down list, select "Profile." Scroll to the bottom of your User Profile. In the box entitled "User preferences," locate the "Language" drop-down. Click on the "Language" drop-down and select "Spanish." Once you have selected "Spanish," click the "Refresh to see changes" button located below the "User preferences" box. The application should now be in Spanish.

Mi idioma principal es español. ¿La solicitud está disponible en español?

Sí. Una vez que inicie sesión en el portal para solicitud de exenciones y PLD (Grandfathering/PLD), que se puede encontrar en el sitio web de la División de Licencia con Goce de Sueldo, tendrá la opción de cambiar el idioma a español. Localice el botón de perfil en la esquina superior derecha, que contiene sus iniciales. Haga clic en la burbuja y, en la lista desplegable, seleccione "Profile" (perfil). Desplácese hasta la parte inferior de su perfil de usuario. En el cuadro titulado "User preferences" (preferencias de usuario), busque el menú desplegable "Language" (idioma). Haga clic en el menú desplegable "Language" y seleccione "Spanish" (español). Una vez que haya seleccionado "Spanish", haga clic en el botón "Refresh to see changes" (actualizar para ver los cambios) ubicado debajo del cuadro "User preferences". La solicitud ahora debería estar en español.

Does an employer have to grandfather an existing paid leave benefit?

No. You are not required to grandfather an existing paid leave benefit. You can continue providing benefits as you have until the mandates in the Act begin. If you choose not to grandfather your existing paid leave benefits, and you are required to offer Paid Family Medical Leave, you can provide this benefit by either enrolling in the Delaware Paid Leave plan beginning **January 1, 2025** (when mandatory contributions start), or obtaining private plan approval that meets ALL requirements of the Delaware Paid Leave plan. You can apply for private benefit plan approval from **September 1 through December 1, 2024**. This private benefit plan approval differs from a grandfathered benefit in that the private benefit plan must meet ALL requirements of the Delaware Paid Leave program, rather than just being "comparable" to the Delaware Paid Leave program. The ability to use a grandfathered "comparable" paid leave benefit is only available at the onset of the Delaware Paid Leave program and must be applied for no later than **January 1, 2024**.

Is an employer required to have existing paid leave benefit coverage for all four types of leave for their private benefit to be grandfathered?

No. An employer is not required to have existing paid leave benefit coverage for all four types of leave mandated by the Act to apply for grandfathering approval. An employer can select, through the Grandfathering/PLD Portal, the type(s) of leave for which they are seeking approval. An employer can apply for just one type of leave or for all types of leave. For administrative purposes, Family Caregiving Leave and Qualified Exigency Leave are grouped together and must be taken as one offering.

What criteria are used to determine if private paid leave benefits will be approved for grandfathering?

A private paid leave benefit will be approved if:

- (1) the written benefit was in place as of May 10, 2022;
- (2) the cost to **the employee** to participate in the private benefit is not more than what the cost would be for the employee to participate in the Delaware Paid Leave plan, which is currently 0.4% of an employee's gross wages (0.2% for Medical; 0.04% for Family Caregiving / Qualified Exigency; and 0.16% for Parental); and
- (3) the existing private paid leave benefit is comparable to what is offered in the Delaware Paid Leave plan.

What is a “comparable” paid leave benefit?

To be considered “comparable,” the existing private paid leave benefit must offer benefits that are within 10% of the Delaware Paid Leave plan's benefits for the 3 components of the existing plan design: benefit percentage, maximum benefit, and benefit duration. In addition, the employee's share of the cost of the existing private paid leave benefits cannot be more than the employee's share of the cost of the Delaware Paid Leave plan, the private paid leave benefits must provide for coordination of benefits, and the private paid leave benefit must have similar eligibility rules to that of the Delaware Paid Leave plan.

What is the “benefit percentage”?

The Delaware Paid Leave plan provides employees with a wage replacement benefit in an amount equal to 80% of an employee's average gross weekly wage. For example, if an employee's average weekly wage is \$500, they would receive a payment of \$400 under the Delaware Paid Leave plan, while on approved leave. For an existing paid leave benefit to be approved for grandfathering purposes, it must pay a wage replacement benefit of at least 72% of an employee's average gross weekly wage. In this same example, the payment to the employee while on approved leave would need to be at least \$360.

What is the “maximum benefit”?

The Delaware Paid Leave plan provides that an employee cannot receive more than \$900 per week while on leave, regardless of their actual income. For a private paid leave benefit to be approved for grandfathering purposes, its maximum allowable benefit cannot be less than \$810 per week. The private benefit can offer the employee more than the maximum allowed under the Delaware Paid Leave plan.

What is the “benefit duration” for Medical, Family Caregiving, or Qualified exigency leave?

The Delaware Paid Leave plan allows 6 weeks of leave in a 24-month period when leave is taken for a serious medical issue, family caregiving, or a qualified exigency. For an existing private plan leave benefit to be approved for grandfathering, it must offer at least 5.4 weeks, or 27 days, of leave for Medical, Family Caregiving, or Qualified Exigency Leave.

What is the “benefit duration” for Parental Leave?

The Delaware Paid Leave plan allows 12 weeks of leave in a 12-month period when leave is taken for the birth, adoption, or foster care placement of a child during the first year after the birth, adoption, or placement of that child. For an existing private benefit to be approved for grandfathering, it must offer at least 10.8 weeks, or 54 days, of Parental Leave.

- The only exception to this requirement is if a small employer (those with 10 to 24 employees) elects to temporarily reduce the length of Parental Leave as part of the Grandfathering/PLD application process. If a small employer elects to temporarily reduce Parental Leave, the length of leave cannot be less than 6 weeks, or 30 days.

What is the cost of the Delaware Paid Leave plan?

The contribution rates under the Delaware Paid Leave plan are 0.4% of an employee’s wages for Medical Leave, 0.08% of an employee’s wages for Family Caregiving / Qualified Exigency Leave, and 0.32% of an employee’s wages for Parental Leave. Combined, these rates equal 0.8%. An employee’s share of the cost of the existing paid leave benefit cannot be more than 0.4% of the employee’s wages (maximum 50-50 split of the contribution rate under the Delaware Paid Leave plan) if an employer is seeking to grandfather all lines of coverage.

Who is a “covered individual” or an “eligible employee” under the Delaware Paid Leave plan?

To be a “covered individual” or an “eligible employee” under the Delaware Paid Leave plan, the individual must be employed primarily in Delaware (meaning 60% of their hours were worked physically in Delaware) for 12 months and must have worked at least 1,250 hours for that employer within the previous 12 months. These are the only requirements under the Delaware Paid Leave plan to be a “covered individual” eligible for benefits. To be approved for grandfathering, an existing paid leave benefit may not have any additional eligibility requirements.

How long does grandfathering an existing private benefit last?

Once an existing paid leave benefit is approved for grandfathering, it can be used by an employer for a period of 5 years, until **December 31, 2029**. At that time, the employer will be required to either enroll in the Delaware Paid Leave plan or have an approved private benefit plan that meets all requirements of the Delaware Paid Leave plan in place.

If an employer's grandfathered benefit is approved, does an employer still make contributions to the Delaware Paid Leave plan beginning January 1, 2025?

No. An employer that has an approved grandfathered benefit will not be required to make any contributions to the Delaware Paid Leave plan, as long as the approved private benefit is in effect.

Can an employer make changes to or replace an existing paid leave benefit that has been approved for grandfathering?

An employer may make changes or replace a benefit that has been approved for grandfathering, provided the changes improve the benefits offered to employees (i.e., the benefit now pays 90% of the employee's average weekly wage rather than 72% of the employee's average weekly wage) and the revised or replacement benefit has been approved by the Division of Paid Leave prior to the change going into effect.

I might be under 10 (or 25) employees now, but that number could easily grow in the next few months. What if I am not sure how many employees my company will have when the Delaware Paid Leave Plan becomes effective?

There is no penalty for applying for and receiving approval to grandfather your existing paid leave benefits. If, based upon the number of employees you have at the time the program goes into effect, you find you are not required to offer the paid leave benefits that you already grandfathered in, you will not be required to provide those benefits just because you filled in the application and were conditionally approved.

Can I apply and be conditionally approved for grandfathering but decide later to discontinue my existing benefits?

Yes. You do not have to use a conditionally approved existing paid leave benefit. Up until the day before contributions are assessed for the Delaware Paid Leave plan, you can still notify the state that you wish to join this plan. The last day to use a private plan (insured or self-insured) in lieu of the Delaware Paid Leave Plan is **December 1, 2024**. Either of these options is available if you later choose to not use your grandfathered benefits.

If an employer offers different benefits based upon employee class (for example, one type of medical leave benefit for hourly employees and a different type of medical leave benefit for salaried employees), can the employer still apply for grandfathering?

Yes, an employer can apply for grandfathering but would need to apply separately for each benefit and answer the grandfathering application questions specifically for that class of employees. When completing the application, an employer should upload a statement identifying the class of employees to which the benefit applies.

Why would I not want to grandfather an eligible existing paid leave benefit?

Grandfathering your existing paid leave benefit may seem to be the best way to go (and for many employers, it very well could be), but it isn't necessarily so. This is especially true if you are thinking of grandfathering one line of coverage while joining the Delaware Paid Leave plan for others. You will then have two different programs to manage rather than just one. In some instances, you may think about keeping your current short-term disability plan (the terms of are similar to the Act's medical leave coverage), but if you keep your short-term disability policy, you may then also have to deal with an insurance carrier for that line of coverage. You will still need to provide the same hour and wage information to the Delaware Paid Leave program each quarter, even if using a private plan. Utilizing a private plan for paid leave benefits does not alleviate this requirement. For many employers, it may be administratively easier to simply join the Delaware Paid Leave plan for all lines of paid leave coverage.

