[COMPANY NAME: COMPANY NAME]

[COMPANY ADDRESS]

[EMAIL ADDRESS & TELEPHONE NUMBER]

[COMPANY FEIN]

DELAWARE FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM

SELF-INSURED PRIVATE PLAN FOR DELAWARE EMPLOYEES

Effective \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 202\_

Expiration \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 202\_

[COMPANY NAME]

DELAWARE FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM

SELF-INSURED PRIVATE PLAN FOR DELAWARE EMPLOYEES

Table of Contents

[I. INTRODUCTION 2](#_Toc174358097)

[II. CONTRIBUTIONS 3](#_Toc174358098)

[III. PREFUNDED CLAIM ACCOUNT 3](#_Toc174358099)

[IV. LEAVE REASONS AND DURATION 3](#_Toc174358100)

[V. NOTICE OF LEAVE BY A COVERED INDIVIDUAL 5](#_Toc174358101)

[VI. APPLYING FOR BENEFITS 6](#_Toc174358102)

[VII. AMOUNT AND PAYMENT OF BENEFITS 10](#_Toc174358103)

[VIII. COORDINATION WITH OTHER LEAVE LAWS AND COMPANY POLICIES 11](#_Toc174358104)

[IX. LEAVE AND EMPLOYMENT PROTECTION 15](#_Toc174358105)

[X. RECONSIDERATION AND APPEALS 15](#_Toc174358106)

[XI. DISQUALIFICATION FROM BENEFITS AND ERRONEOUS PAYMENTS 17](#_Toc174358107)

[XII. [Include if the Company is going to require a fitness for duty to return to work; otherwise, delete:] FITNESS FOR DUTY AT CLOSE OF MEDICAL LEAVE PERIOD 17](#_Toc174358108)

[XIII. RECORD KEEPING REQUIREMENTS 17](#_Toc174358109)

[XV. SCHEDULE OF BENEFITS 22](#_Toc174358110)

APPENDIX A – PRIVATE PLAN ADMINISTRATORS………………………………………………………………….22

[COMPANY NAME]

DELAWARE FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM

SELF-INSURED PRIVATE PLAN FOR DELAWARE EMPLOYEES

## I. INTRODUCTION

**A. This Plan is effective as of January 1, **[Year]** for a term of 12 months (52 weeks). It will be automatically renewed unless otherwise amended.**

**B. This Plan is intended to comply fully and completely with the Healthy Delaware Families Act, 19 Del. C.** § 3701 *et seq*., and its implementing Regulations, 19 Del. Admin. C. § 1401 *et seq.* (collectively, “the Act”), and will be interpreted and applied consistent with the requirements of the Act. If any provision of this Plan conflicts with or violates the Act, the Act will control.

**C.** The Company acknowledges that should there be any changes or amendments to the Act, then this Benefit Plan shall be administered consistent with the relevant changes or amendments and all claims practices will be updated to be in compliance with the new requirements. This plan must be approved annually by the Division of Paid Leave (“Division”).

D. The Division may withdraw approval of this Plan at any time for the reasons provided in 19 Del. C. § 3716(c). Upon withdrawal of approval, employees who are subject to this Plan will be enrolled in the State of Delaware’s Delaware Paid Leave Plan to avoid any lapse in coverage.

E. The Benefits under this Plan are available to all Covered Individuals employed by the Company working in Delaware as defined by the Act. A Covered Individual shall not lose any rights under the Act while participating in this Benefit Plan. A Covered Individual shall be given a copy of the Benefit Plan or have the right to examine the Plan upon request, at a reasonable time and location.

F. Additional information about the Act and Delaware’s Paid Family Medical Leave insurance program can be found at [de.gov/paidleave](http://www.labor.delaware.gov/delaware-paid-leave-is-coming).

## II. ****CONTRIBUTIONS****

The Company [COMPANY MUST CHOOSE – Insert appropriate funding method and delete method not chosen]:

[fully funds this Plan. Employees are not required to make premium contributions.] *OR*

[The Company will deduct \_\_\_\_% (May select up to 50% of the cost of the total premium) of the total cost of the premium from an employee’s paycheck. Any required contributions from employees to this Benefit Plan cannot exceed the maximum employee contributions as set forth in the Act. 19 Del. C. § 3716(a)(1)(l). Any employee contribution must be deducted from an employee’s pay at the time that it is incurred. 19 Del. Admin. C. § 1401-6.7. The amount of wages withheld for employee contributions shall not change, except on an anniversary of the effective date of the Benefit Plan, with at least 30 days’ notice to employees affected by this change. If the Company requires an employee contribution, employees will be given notice of the percentage to be deducted from their pay at the time of hire.]

## ****III. PREFUNDED CLAIM ACCOUNT****

1. **The Company has prefunded a claims reserve account with **[Insert financial institution name**] in an amount that equals or exceeds the amount required by** 19 Del. Admin. C. § 1401-17.4.7. The account balance cannot fall below the required minimum for more than 30 consecutive days.
2. ****[Delete this paragraph if the company fully funds the plan]** All premium contributions paid by an employee shall be remitted to the Company’s claim reserve account within **15** days from the date said funds were withheld from the employee’s paycheck. These funds may be used by the Company to pay any future claims.**

## ****IV. LEAVE REASONS AND DURATION****

**A. Covered Individuals are able to take paid leave and receive Plan Benefits for the following reasons and subject to the following limits:**

****Parental Leave**: Covered Individuals are eligible to take paid leave for up to **[COMPANY MUST CHOOSE]:****

****12 weeks (Parental Leave must be at least 12 weeks.) *OR*****

****\_\_\_ weeks (Insert Number of weeks. A Company may offer more generous leave benefits.)****

**weeks in an application year for the birth, adoption, or placement through foster care, or caring for a new child during the first year after the birth, adoption, or placement of that child. 19 Del. C. §§ 3702(a)(1) and 3703(a)(1).**

****Family Caregiving Leave**: Covered Individuals are eligible to take paid leave for up to **[COMPANY MUST CHOOSE]:****

****6 weeks** (**Family Caregiving Leave must be at least 6 weeks.)** ***OR*****

****\_\_\_** **weeks** **(Number of weeks. A Company may offer more generous leave benefits)****

**in a **[COMPANY MUST CHOOSE]:****

****24-month** **(Family caregiving leave must be at least 6 weeks in a 24-month period) *OR*****

****\_\_\_-month (Number of months. A Company may offer more generous leave benefits)****

**period to care for a Family Member with a Serious Health Condition. 19 Del. C. §§ 3702(a)(2) and 3703(a)(2).**

****Medical Leave**: Covered Individuals are eligible to take paid leave for up to **[COMPANY MUST CHOOSE]:****

 ****6 weeks (Medical Leave must be at least 6 weeks) *OR*****

**\_\_\_ **weeks (Number of weeks. A Company may choose to offer more generous leave benefits)****

**in a **[COMPANY MUST CHOOSE]:****

 ****24-month (Medical Leave must be at least 6 weeks in a 24-month period) *OR*****

****\_\_\_-month (Number of months. A Company may choose to offer more generous leave benefits)****

**period if they have a Serious Health Condition and are unable to perform the functions of their position. 19 Del. C. §§ 3702(a)(3) and 3703(a)(2).**

****Qualifying Exigency Leave**: Covered Individuals are eligible to take paid leave for up to **[COMPANY MUST CHOOSE]:****

****6 weeks (Qualified Exigency Leave must be at least 6 weeks) *OR*****

**\_\_\_ **weeks (Number of weeks. A Company may offer more generous leave benefits)****

**in a **[COMPANY MUST CHOOSE]:****

 ****24-month (Qualified Exigency Leave must be at least 6 weeks in a 24-month period) *OR*****

****\_\_\_-month (Number of months. A Company may offer more generous leave benefits)****

**period for qualified exigency leave. 19 Del. C. §§ 3702(a)(4) and 3703(a)(2).**

**B. Approved leave may be in the form of Continuous Leave, Intermittent Leave, or Reduced Leave Schedule.**

**C. Intermittent Leave may be taken in increments of **[COMPANY MUST CHOOSE:** \_\_\_ hour(s) ***OR*** no less than one (1) day]. **(Choice must match definition in Section XIV, Paragraph Q.)****

**D. No more than **[COMPANY MUST CHOOSE**: \_\_\_\_ ***OR*** 12**]** weeks of leave may be taken in a  **[COMPANY MUST CHOOSE:** \_\_\_ ***OR*** 12**]**-month period. **(The Act limits total leave to 12 weeks in a 12 month period. A Company may offer more generous leave benefits).****

## ****V. NOTICE OF LEAVE BY A COVERED INDIVIDUAL****

A. If possible, a Covered Individual must give the Company and Administrator not less than 30 calendar days’ notice of the anticipated start date of Plan Benefits. If the need for leave is not foreseeable or providing 30 days’ notice is not possible, then notice must be provided as soon as practicable, which means within 48 hours of the Covered Individual determining the need for Leave. 19 Del. Admin. C. § 1401-11.6.

B. The notice must provide the anticipated start time, anticipated duration, and where applicable, anticipated frequency of leave, including the duration of each occurrence of Intermittent Leave.

C. The notice to the Company and Administrator must be in the same manner as the Company typically requires a Covered Individual to communicate work availability, and absent unusual circumstances, must comply with the Company’s usual and customary notice and procedural requirements for leave.

D. A Covered Individual who takes leave for a qualifying reason must comply with the Company’s established attendance and call-in procedures applicable to the Covered Individual’s position with the Company for each absence.

E. A Covered Individual must provide notice to the Company and Administrator within 10 days after the occurrence of any event, or the foreseeability of any event, that could change the amount or duration of approved leave. This includes a request for an extension of paid family or medical leave beyond the initial approved duration.

F. If a Covered Individual receives a Reduced Leave Schedule or Intermittent Leave, the Covered Individual may be required to submit documentation sufficient to recertify their need for leave every 90 days for claim management purposes. 19 Del. Admin. C. 1401-7.1. If a Covered Individual fails to recertify, the approval for the leave may expire.

G. Any of the notices required by this section may be given by a Covered Individual’s Designated Assistant. 19 Del. Admin. C. § 1401-12.4.

H. The failure to provide the required notices may result in delay or denial of leave and the failure to comply with the Company’s absence reporting requirements may result in discipline.

## ****VI. APPLYING FOR BENEFITS****

A. To request Plan Benefits, the Claimant or the Claimant’s Designated Assistant may apply for benefits with the Administrator up to 30 days prior to the requested leave start date. If the need for leave is unforeseeable, the Claimant must apply for benefits within 30 days after the first day leave is taken.

B. The Claimant must obtain all certifications and other documentation required by the Act to support the requested leave on the forms provided by the Administrator. 19 Del. Admin. C. § 1401-3.8.8. The Administrator will comply with all requirements and procedures in the Act. The Company may not require any further certification or proof requirements other than those set forth in the Act. **19 Del. C. 3716(a)(1)j.**

1. For Medical Leave for the Claimant’s own Serious Health Condition, the Administrator may require a Certification of Serious Health Condition from a health care provider that includes:

* Job related information including job title, regular work schedule, and essential job functions;
* Health Care Provider Name, Address, practice area/specialty, telephone number and email;
* Type of Serious Health condition, whether physical or mental:
* Inpatient Care: Requires or did require inpatient care.
* Incapacity plus Treatment: Has or will incapacitate the patient for more than 3 consecutive full calendar days AND (pick one):
* Requires 2 or more medical visits within 30 days OR
* Requires one medical visit, plus a regimen of care.
* Pregnancy: Any period of incapacity due to pregnancy or for a serious health condition involving prenatal care. List the expected delivery date.
* Chronic Conditions: Is chronic, requires treatment at least twice a year and may require period absences.
* Permanent/Long-Term: Is long-term and requires on-going medical supervision, with or without active treatment.
* Multiple Treatments: Requires multiple treatments and would lead to a period of incapacity without treatment.

• The date on which the Serious Health Condition began;

* The probable duration of the Serious Health Condition;
* A certification by the Health Care Provider that the Claimant is incapacitated form work due to the serious health condition;
* Information regarding the need for intermittent leave or reduced leave schedule, including a statement that such leave or schedule is medically necessary where the claim for benefits is for leave on an intermittent or reduced leave schedule and an estimate of the frequency and duration of leave needed; and
* Other such information as permitted by the Act and Regulations.

2. For Leave to Care for a Family Member with a Serious Health Condition:

• The name and relationship between the Claimant and the Family Member;

* Description of the care the Claimant will provide to their family member.

• A Certification from the Family Member’s Health Care Provider that the Family Member has a Serious Health Condition;

* Type of Serious Health condition, whether physical or mental:
* Inpatient Care: Requires or did require inpatient care.
* Incapacity plus Treatment: Has or will incapacitate the patient for more than 3 consecutive full calendar days AND (pick one):
* Requires 2 or more medical visits within 30 days OR
* Requires one medical visit, plus a regimen of care.
* Pregnancy: Any period of incapacity due to pregnancy or for a serious health condition involving prenatal care. List the expected delivery date.
* Chronic Conditions: Is chronic, requires treatment at least twice a year and may require period absences.
* Permanent/Long-Term: Is long-term and requires on-going medical supervision, with or without active treatment.
* Multiple Treatments: Requires multiple treatments and would lead to a period of incapacity without treatment.

• The date on which the Family Member’s Serious Health Condition began;

• The probable duration of the Family Member’s Serious Health Condition;

* A certification by the Health Care Provider that the Claimant’s Family Member is incapacitated due to a Serious Health Condition and is in need of care;
* An estimate regarding the frequency and anticipated duration of time that the Claimant is needed to care for the Family Member;
* A statement confirming the relationship between the Claimant and the Family Member; and

• Other such information as permitted by the Act and Regulations.

3. For Parental Leave:

• Document establishing parentage, such as a copy of the child’s birth certificate with parents’ names on it; documentation from a health care provider indicating birth of the child; voluntary acknowledgment with date of birth of child; or Court Order establishing parentage; or

• Document or statement from the appropriate agency confirming adoption or placement of a child through foster care.

* Type of leave (continuous, intermittent, or reduced) and duration of leave (dates, weeks, and hours) requested.
* Other such information as permitted by the Act and Regulations.

4. For Leave for a Qualified Exigency arising from a Family Member on Active Military Duty or has been notified of an impending call or Order to Active Duty in the Armed Forces:

• Name of Service Member on Covered Active Duty or Call to Covered Active Duty status;

* A copy of the Family Member’s active duty order, letter of impending activation, or other documentation documenting the impending deployment;
* Statement of the family relationship between the Claimant and the Service Member;
* The dates or period of time for which leave is required, including the frequency and duration of the leave;

• A description of the reason for qualifying exigency;

* Any available written documentation which supports the need for leave;

• Other such information as permitted by the Act and Regulations.

C. An Application for Plan Benefits will not be considered complete until all required information and documentation has been received by the Company, including the required documentation from a relevant healthcare provider.

D. Once an Application is completed, the Administrator will promptly examine each claim for Plan Benefits and, based upon the facts and information available, approve or deny the Application. The Administrator will notify the Claimant, in writing, whether the Application for Plan Benefits is approved or denied within 5 days of receipt of a completed Application. 19 Del. Admin. C. § 1401-4.3.

1. If the Claim is approved, the Notice will include, at a minimum, the amount of the benefit payment; to whom the benefit is payable; payment method; address where the payment to be mailed, if applicable; the date payment is to begin and the expected payment end date, if known. 19 Del. Admin. C. § 1401-4.3.7.

2. If the Claim is denied, the Notice will, at a minimum, state the reason for the denial of benefits, identify the specific law or section of the policy that was the basis for the denial, state the documentation that was relied upon for the denial, identify the information or documentation necessary, if any, to perfect the claim for benefits, and will inform the Claimant when and how to apply for supplemental review or appeal of the determination. Plan Benefits will not be paid until an application is approved. 19 De. Admin. C. § 1401-4.3.8.

E. If a Claimant has not provided all requested information within 30 days after the application is filed with the Administrator, the Application will be “denied due to lack of documentation” and the Administrator will take no further action on it. The Administrator will notify the Claimant 10 days prior to any such claim closure and will describe what information and documentation that the Claimant needs to submit to keep the Application open. 19 Del. Admin. C. § 1401-12.5.5. If the required information is submitted within 60 days from the date the claim was “denied due to lack of documentation,” the Administrator will reopen and process the claim as if the information was timely submitted.

## VII. AMOUNT AND PAYMENT OF BENEFITS

A. Benefits under the Plan are payable at [Company must choose: 80% of the Covered Individual’s Average Weekly Wage from the Company *OR* \_\_\_% of the Covered Individual’s Average Weekly Wage from the Company (must be at least 80%)].

B. For leave under the Plan, the maximum weekly benefit is [Company must choose: $900.00 *OR* a Covered Individual’s Average Weekly Wage *OR* $\_\_\_\_\_ (must be at least $900.00 during the period of January 1, 2025 to December 31, 2027. Beginning January 1, 2028, the maximum weekly benefit will be adjusted for inflation based upon the Consumer Price Index for all Urban Consumers, Philadelphia-Camden-Wilmington Metropolitan area. 19 Del. C. § 3704(a(3))

C. The Company will make the first payment of Plan Benefits to a Covered Individual within 30 days after the claim is filed, and subsequent payments will be made at least every 2 weeks thereafter. 19 Del. C. § 3703(e). There is no waiting period on the payment of leave benefits. Benefits begin to accrue on the date leave is first taken.

D. If some or all awarded leave is for a duration of less than a week, the benefit amount will be prorated based on the portion of work missed for the week.

E. Benefits will end when the Covered Individual is no longer eligible for paid family and medical leave, no longer has a qualifying reason for leave, or has completed the maximum period of leave under the Plan.

F. Should this Benefit Plan be terminated, a Covered Individual’s approved leave will continue and benefits paid until the Covered Individual is no longer eligible for paid family and medical leave, no longer has a qualifying reason for leave, or has completed the maximum period of leave under the Plan.

G. Benefits payable to a Covered Individual cannot be assigned unless such assignment is required by operation of law, such as child support or a court-ordered wage garnishment. Benefits owed, but unpaid, at the time of a Covered Individual’s death shall be paid to the Covered Individual’s estate.

## VIII. COORDINATION WITH OTHER LEAVE LAWS AND COMPANY POLICIES

A. This Plan does not diminish the rights, privileges, or remedies of a Covered Individual under a collective bargaining agreement, Company policy, or employment contract; or the Company’s obligation to comply with a collective bargaining agreement, Company policy, employment contract, or any law, as applicable, that provides greater leave than provided under this Plan.

B. Plan Benefits, Workers’ Compensation and other State and Federal Law Benefits.

1. A Covered Individual applying for Plan Benefits due to their own Serious Health Condition must disclose whether their Serious Health Condition was caused by or otherwise related to a workplace injury or illness or an automobile accident. 19 Del. Admin. C. § 1401-1.0.

2. A Covered Individual must notify the Company and Administrator if they receive temporary Workers’ Compensation benefits, Personal Injury Protection benefits under an automobile policy, or benefits from any other State or Federal program during a period of Plan Benefits. 19 Del. Admin. C. § 1401-1.0.

3. If a Covered Individual is absent from work due to a workplace injury or illness, due to injuries sustained in an automobile accident, or receives benefits from any other State or Federal program for this absence, the Covered Individual is not permitted to receive Plan Benefits. Temporary Workers’ Compensation benefits, Personal Injury Protection benefits under an automobile policy, or benefits from any other State of Federal program are the Covered Individual’s sole and exclusive remedy.

4. A Covered Individual’s failure to disclose to the Administrator or the Company either a workplace illness or injury or the receipt of temporary Workers’ Compensation benefits, an automobile accident injury or the receipt of Personal Injury Protection benefits, or other State or Federal Law Benefits related to an injury or illness that is the basis for receipt of Plan Benefits may constitute grounds for disqualification of Plan Benefits.

5. A Covered Individual may apply for and receive Plan Benefits if the Covered individual is receiving permanent Workers’ Compensation benefits for an illness or injury that occurred prior to and is unrelated to the serious health condition for which they are currently seeking Plan Benefits.

C. Plan Benefits and Company-Provided Paid Time Off.

1. A Covered Individual [Company must choose: will *OR* will not] continue to accrue Company-Provided Paid Time Off during a period of Plan Benefits.

2. A Covered Individual [Company must choose: is *OR* is not] be required to use or exhaust any accrued, unused vacation leave, sick leave, or other paid time off prior to receiving Plan Benefits.

[If Company requires use of paid time off prior to receiving benefits, add the following: However, the Covered Individual is not required to use more than [Company must choose: \_\_\_ % (not to exceed 75%)] of the Covered Individual’s accrued unused paid time off at the time leave is taken prior to receiving Plan Benefits.] 19 Del. Admin. C. § 1401-10.1.

*OR*

[If Company does not require use of paid time off prior to receiving benefits, add the following: If a Covered Individual voluntarily uses their paid time off before accessing Plan Benefits, any time off does not count against the Covered Individual’s total duration of family and medical leave under this Plan.]

3. [Company must choose:]

[Pursuant to a written agreement with the Company, a Covered Individual may use the any accrued Company-Provided Paid Leave as a supplement to Plan Benefits in an amount not to exceed the difference between the Covered Individual's Wage Replacement Benefits and the Covered Individual's Average Weekly Wage. Combined benefits cannot be higher than 100% of the Covered Individual’s Average Weekly Wage. If a Covered Individual receives both Plan Benefits and Company-Provided Paid Leave for the same hours absent, any Company-Provided Paid Leave in excess of the difference between the Covered Individual's Wage Replacement Benefits and the Covered Individual's Average Weekly Wage may be considered an overpayment.]

*OR*

[A Covered Individual may not use any accrued Company-Provided Paid Leave as a supplement to Plan Benefits. If a Covered Individual receives both Plan Benefits and Company-Provided Paid Leave for the same hours absent, any Company-Provided Paid Leave for the same hours absent may be considered an overpayment.]

4. If there is such an overpayment, then:

a. The Company may recoup the overpayment by any legal means;

b. The Company must replenish the Covered Individual's bank of accrued Company-Provided Paid Leave, including paid sick leave, in an amount equal to the amount recouped as an overpayment.

D. Plan Benefits and Company-provided Health Care Benefits.

1. The Company will maintain a Covered Individual’s health care benefit during periods of Plan Benefits if said health care benefit is in existence at the time the Covered Individual starts leave. 19 Del. Admin. C. § 1401-8.2.

2. The Covered Individual, however, is obligated to pay their share of the cost of the health insurance premium to the Company as the Covered Individual did prior to taking approved leave. 19 Del. Admin. C. § 1401-8.2.2.

3. Failure to pay the required share of the health insurance premium may result in the Covered Individual’s loss of coverage. 19 Del. Admin. C. § 1401-8.2.4.

4. If health insurance coverage lapses because a Covered Individual has not made the required premium payments, upon the Covered Individual’s’ return from leave, the Company must restore the Covered Individual to the same coverage/benefits that the Covered Individual would have had, including family or dependent coverage, if leave had not been taken and the premium payment(s) had not been missed.

a. A Covered Individual may not be required to meet any qualification requirements imposed by the Company’s health insurance plan including any waiting period, open enrollment period, or passing a medical examination to obtain reinstatement of coverage.

b. If a Company fails to restore the Covered Individual’s health insurance upon their return to work, the Company may be liable for benefits lost by this failure, for other actual monetary losses sustained as a direct result of this failure, and for equitable relief tailored to the harm suffered by the Covered Individual.

5. If the Company pays any part of the Covered Individual’s share of their health insurance premium while a Covered Individual is on Leave, the Company may recover those funds paid on behalf of the Covered Individual by any legal means.

E. Plan Benefits and Short-Term Disability Policies. [This section should be deleted if the Company does not have STD insurance policies.]

1. Plan Benefits [Company must choose: will *OR* will not] run concurrent with or otherwise coordinated with payment made or leave allowed under the terms of the Company’s Short-Term disability policy.

If STD/LTD runs concurrently with PFML use the following, otherwise delete:

2. The Company will provide notice to a Covered Individual that Plan Benefits run concurrent with the Company’s Short-Term disability policy. The Company must notify the disability plan administrator of any concurrent Plan Benefits received by the Covered Individual. The Covered Individual is not permitted to receive a combined wage replacement amount in excess of the Covered Individual’s average weekly earnings. 19 Del. Admin. C. § 1401-10.3. Any monies received from this Plan in excess of the Covered Individual’s average weekly earnings will be considered an overpayment of Plan Benefits. 19 Del. Admin. C. § 1401-10.3.

F. Plan Benefits and the FMLA. Leave taken pursuant to this Plan that also qualifies as leave under the federal Family and Medical Leave Act runs concurrently with leave taken under the federal Family and Medical Leave Act, 29 U.S.C. § 2601 *et*. *seq.*; 19 Del. C. § 3709(a)(1).

## IX. LEAVE AND EMPLOYMENT PROTECTION

1. Any Covered Individual who takes approved leave will be entitled, upon return from leave, to be restored by the Company to the position they held when the leave began, or to an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment. 19 Del. C. § 3707(a); 19 Del Admin. C. § 1401-8.1.
2. A Covered Individual is [Company must choose: is *OR* is not]: entitled to the accrual of any seniority or employment benefits during any period of leave.
3. All provisions regarding Leave and Employment protection set forth in the Act and its accompanying Regulations (e.g., 19 Del. Admin. C. § 1401-8.0 *et seq.*) are incorporated herein.

D. An aggrieved individual under this section may bring a civil action in a court of competent jurisdiction. 19 Del. C. § 3707(d)-(g).

## X. RECONSIDERATION AND APPEALS

A. A Claimant may appeal the following:

1. The Administrator’s failure to issue a decision on the Covered Individual’s application for Plan Benefits within 5 days of receiving a completed application;

2. An Adverse Determination of a claim for Plan Benefits;

3. The failure to pay or a delay in paying the full amount of the approved claim;

4. The closure of a claim based on the determination that the claim was not properly filed;

5. A disqualification from Plan Benefits; or

6. The identification and/or collection of an overpayment.

B. Reconsideration requests may be filed with the Plan Administrator. 19 Del. Admin. C. § 1401-12.7.5. The request for reconsideration must be submitted in writing. The Covered Individual is encouraged to use the form provided by the Administrator. [The Company inserts here its address, website, and/or other information regarding where and how to file the appeal.]

C. Requests for reconsideration must be filed with the Administrator within 10 days of the Covered Individual’s receipt of notice of an adverse determination.

D. Reconsideration requests must specifically identify the event being appealed, the date of that event, and a summary of the basis for reconsideration. The Administrator will review and make their final determination within 10 days of receipt of the Covered Individual’s appeal.

E. Covered Individuals may then appeal the Administrator’s final decision by requesting Division review of the claim through the Division’s online administrative portal, LaborFirst. A request for Division review must be submitted to the Division within 60 days of the Administrator issuing their initial decision, if no reconsideration filed, or their final decision if reconsideration was filed by the Covered Individual, whichever is later. 19 Del. Admin. C. § 1401-12.7. Information regarding how to file an appeal to the Division can be found on the Division of Paid Leave’s website: [de.gov/paidleave](http://www.labor.delaware.gov/delaware-paid-leave-is-coming).

F. A Covered Individual or the Company may appeal the Division’s decision to the Family and Medical Leave Insurance Appeal Board (“Appeal Board”). 19 Del. Admin. C. § 1401-13.1. This appeal must be filed within 30 days from the date of the Division’s determination. Information regarding how to file an appeal to the Appeal Board can be found on the Division of Paid Leave’s website: [de.gov/paidleave](http://www.labor.delaware.gov/delaware-paid-leave-is-coming).

G. In the event of a request for Division Review or Appeal to the Appeal Board, the Company or its Administrator shall furnish to the Division or Appeal Board all documents submitted by the Claimant and those relied upon by the Administrator to make their claim decision.

## XI. DISQUALIFICATION FROM BENEFITS AND ERRONEOUS PAYMENTS

A. A Covered Individual that willfully makes a false statement or misrepresentation regarding a material fact in order to obtain Plan Benefits or has willfully failed to report a material fact in order to obtain Plan Benefits, will be disqualified from receiving paid family and medical leave benefits for 3 years after the effective date of the disqualification and the Company may seek repayment of Plan Benefits paid. 19 Del. C. § 3712(a). This disqualification from plan benefits may also disqualify a Covered Individual from benefits under the Act. A Covered Individual may appeal this finding to the Appeal Board within 15 days from the date they received notice of disqualification from the Company.

B. Disqualification decisions will be based on the Company’s and Administrator’s good faith conclusion that the Covered Individual willfully made a false statement or misrepresentation regarding a material fact, or willfully failed to report a material fact, to obtain Plan Benefits.

C. If Plan Benefits are paid erroneously or as a result of a willful misrepresentation, or if a claim for Plan Benefits is rejected after benefits are paid, the Administrator may seek repayment of benefits from the Covered Individual by any means permitted under Delaware and federal law, or pursuant to agreement between the Company and the Covered Individual. A Covered Individual may appeal this finding to the Appeal Board within 15 days from the date they received notice of overpayment from the Company.

## XII. [Include if the Company is going to require a fitness for duty to return to work; otherwise, delete:] FITNESS FOR DUTY AT CLOSE OF MEDICAL LEAVE PERIOD

A. A Covered Individual who receives Plan Benefits due to the Covered Individual’s own Serious Health Condition shall provide a certification of fitness for duty from a Health Care Provider prior to returning to work from an approved absence. Certification forms can be obtained from the Company by contacting [include Company contact info].

## XIII. RECORD KEEPING REQUIREMENTS

1. The Company is required to keep a record of all details relating to the self-insured plan, including records relating to its Claims Administrator, if any, and all claims, for a minimum period of six (6) years. This requirement also applies if a self-insured plan is terminated. The Company shall furnish these records to the Division upon request.

XIV. DEFINITIONS

**A. “Act “ means the Health Delaware Families Act (“Act”), 19 Del. C. § 3701** *et seq.*, and its implementing Regulations, 19 Del. Admin. C. **§** 1401 *et seq.*

**B. “Private Plan Administrator” or “Administrator” means all Designated Company Employee(s) or Third Party Administrators who have been engaged by the Company to administer this Plan and Benefits for Covered Individuals. See Appendix A attached hereto and incorporated herein for all Private Plan Administrators Contact Information.**

**C. “Adverse Determination” means either a complete denial of Benefits, or a determination to award a Covered Individual Benefits in a frequency or duration less than the Covered Individual requested, or a determination to award a wage replacement amount less than what the Covered Individual believes they are entitled to under the Act.**

**D. “Application Year" means the 12-month or 52 week period of leave as defined in the Family Medical Leave Act (“FMLA”) Regulations, 29 CFR § 825.200(b). See also 19 Del. Admin. C. § 1401-2.1. **[Company Name]** selects the following method to determine its 12-month or 52 week period of time to calculate leave: **[THE Company must choose: (Select the method of counting the 12-month or 52 week period that is best for your business. Delete the three options you are not choosing. The method chosen must apply to all employees.)****

**(1)“calendar year”: 12-month or 52 week period that runs from January 1 through December 31 **[RECOMMENDED]**; ***OR*****

**(2) “any fixed 12-months”: 12-month or 52 week period such as a fiscal year, a year starting on an employee’s anniversary date, or a 12-month or 52 week period required by state law; ***OR*****

**(3) “12-month period measured forward”: 12-month** **or 52 week period measured forward from the first date an employee takes family and medical leave. The next 12-month or 52 week period would begin the first-time family and medical leave is taken after completion of the prior 12-month or 52 week period; ***OR*****

**(4) “A ‘rolling’ 12-month period measured backward”: 12-month or 52 week period measured backward from the date an employee uses any family and medical leave. Under the “rolling” 12-month or 52 week period, each time an employee takes family and medical leave, the remaining leave entitlement would be the balance of the 12 weeks which has not been used during the immediately preceding 12-months or 52 week period.**]****

**E. “Average Weekly Wage" means an employee’s gross in-state FICA earnings, whether salaried or hourly (prior to any payroll deductions or withholdings) for the prior 52 weeks, divided by 52. 19 Del. Admin. C. § 1401-1.0.**

**F. “Benefit” or “Plan Benefits” means the paid family and medical leave (“PFML”) benefits provided under the terms of this Plan. 19 Del. C. § 3701.**

**G. “Claimant” means a person who has filed a claim for Plan Benefits, regardless of whether the person is a Covered Individual pursuant to 19 Del. C. § 3701(3).**

**H. “Company” means **[Company Name]**.**

**I. “Company-Provided Paid Time Off" means accrued vacation and sick leave. 19 Del. C. § 3709(a)(3).**

**J. “Continuous Leave” means one non-recurring uninterrupted period of leave.**

**K. “Covered Individual" means **[THE COMPANY MUST CHOOSE:** a person employed by the Company at the time leave is requested **OR** a person who is employed by the employer when leave is requested and has worked for the Company for at least **\_\_\_** months and for at least **\_\_\_\_** hours during the previous **\_\_\_** month period**.] [Company may provide coverage to all employees in Delaware regardless of their length of employment OR require a service requirement prior to benefits beginning. The Company may not require more than 12 months of employment with the Company or more than 1,250 hours during the previous 12-month period to be eligible. The Company may reduce the requirements to become a “covered individual” but may not increase them.]** 19 Del.C. § 3701(3).**

**L. “Designated Assistant” means a person legally authorized to make decisions regarding the Plan Benefits on behalf of a Covered Individual, as more thoroughly defined in 19 Del. Admin. C. § 1401-12.4.**

**M. “Division" means the Department of Labor, Division of Paid Leave.**

**N. “Employee” means any individual performing labor or services for the benefit of the employer who primarily reports for work at a worksite in Delaware, as more thoroughly defined in 19 Del. Admin. C. § 1401-1.0.**

**O. “Family Member” means a parent, child and spouse as defined in the Act.**

**1.Parent means the biological, adoptive, foster parent, stepparent, or legal guardian of a Covered Individual or a person who stood “*in loco parentis*” when the Covered Individual was a minor child. 19 Del. Admin. C. § 1401-2.2.3.**

**2.Child means the biological, adoptive, or foster child, a stepchild or legal ward, a child of a domestic partner, a child to whom the Covered Individual stands “*in loco parentis*,” or a person to whom the Covered Individual stood “*in loco parentis*” when the person was a minor, who is under 18 years of age or is 18 years of age or older but is unable to care for himself due to a mental or physical disability. 19 Del. Admin. C. § 1401- 2.2.2.**

**3.Spouse means a person to whom the Covered Individual is legally married under the laws of any state, including common law or same sex marriage, as more thoroughly defined in 19 Del. Admin. C. § 1401-2.2.1.**

**P. “*In Loco Parentis*” means a legal relationship between the Covered Individual and a child, whereby the Covered Individual is responsible for the day-to-day responsibilities to care for and financially support that child. 19 Del. Admin. C. § 1401-2.2.3.1.**

**Q. “Intermittent Leave” means leave taken in separate blocks of time due to a single qualifying reason. **[COMPANY MUST CHOOSE**: Intermittent Leave can **OR** cannot be taken in increments of less than one (1) day.**]****

**R. “Health Care Provider” means as defined under the FMLA 29 CFR § 825.125 and includes a Doctor of Medicine or Osteopathy, authorized to practice medicine or surgery by the State in which the doctor practices, as well as any other person determined by the State to be capable of providing health care services, including, but not limited to, nurses, clinical social workers, emergency room personnel, and midwives. 19 Del. Admin. C. §§ 1401-1.0 and 2.3.**

**S. “Qualifying Exigency Leave" means as defined under the FMLA and is leave based on a need arising out of a Covered Individual's Family Member's active duty service or notice of an impending call or order to active duty in the armed forces. This includes providing for the care or other needs of the military member's child or other Family Member, making financial or legal arrangements for the military member, attending counseling, attending military events or ceremonies, spending time with the military member during a rest and recuperation leave or following return from deployment, or making arrangements following the death of the military member. 19 Del. Admin. C. §§ 1401-1.0 and 2.6.**

**T. “Reduced Leave Schedule” means a leave schedule that reduces a Covered Individual’s usual number of working hours per workweek, or hours per workday. A Reduced Leave Schedule is a change in the Covered Individual’s schedule for a period of time, normally from full-time to part-time. 19 Del. Admin. C. § 1401-7.0.**

**U. “Serious Health Condition” is an illness, injury, impairment, pregnancy, recovery from childbirth, or physical or mental condition that involves inpatient care in a hospital, hospice or residential medical care facility, or continuing treatment by a health care provider, as more thoroughly defined in 19 Del. Admin. C. §§ 1401-1.0 and 2.3.2.**

**V. “Wage Replacement Benefit” means the monetary weekly Plan Benefit amount described in this Plan under the section entitled “AMOUNT OF BENEFITS AND PAYMENT” and meets the minimum requirements as set forth in 19 Del. Admin. C. § 1401-5.0.**

**W. “Willful” or “Willfully” means whether the actor knew or showed reckless disregard for whether its conduct was prohibited by the Act, as defined in 19 Del. Admin. C. § 1401-1.0.**

END OF PLAN

[COMPANY NAME: COMPANY NAME]

## XV. SCHEDULE OF BENEFITS[****COMPANY MUST**** UPDATE TO REFLECT PLAN DETAILS]

|  |  |  |
| --- | --- | --- |
| Parental Leave |  |  |
|  | Benefit Percent |  | 80% of average annual weekly FICA in-state wages |
|  | Maximum Weekly Benefit |  | $900 |
|  | Maximum Leave Duration |  | 12 weeks in a 12 month period |
|  |  |  |  |
| Medical Leave |  |  |
|  | Benefit Percent |  | 80% of average annual weekly FICA in-state wages |
|  | Maximum Weekly Benefit |  | $900 |
|  | Maximum Leave Duration |  | 6 weeks in a 24 month period |
|  |  |  |  |
| Family Caregiver Leave |  |  |
|  | Benefit Percent |  | 80% of average annual weekly FICA in-state wages |
|  | Maximum Weekly Benefit |  | $900 |
|  | Maximum Leave Duration |  | 6 weeks in a 24 month period |
|  |  |  |  |
| Qualified Exigency |  |  |
|  | Benefit Percent |  | 80% of average annual weekly FICA in-state wages |
|  | Maximum Weekly Benefit |  | $900 |
|  | Maximum Leave Duration |  | 6 weeks in a 24 month period |
|  |  |  |  |
| Combined Maximum |  | No more than 12 weeks of any type of leave in a 12 month period |

APPPENDIX A

[COMPANY NAME: COMPANY NAME]

Private Plan Administrators

1. [Name, Company Name, Address, Email Address, and Telephone Number for each individual or Third Party Administrator].

2. [Name, Company Name, Address, Email Address, and Telephone Number for each individual or Third Party Administrator]