Your Employee Rights under the Healthy Delaware Families Act

What is paid leave under the Healthy Delaware Families Act?

The Healthy Delaware Families Act (Act) is a state law that provides covered individuals with wage replacement and job-protection during leave for qualifying family and medical reasons. The Act works in conjunction with the federal Family Medical Leave Act (FMLA), which allows employees to take *unpaid*, job-protected leave with continued medical benefits. Beginning January 1, 2026, Delaware workers can take *paid* job-protected *leave*. The Delaware Department of Labor, Division of Paid Leave enforces the provision of the Act.

Under the Act, Covered Individuals may take:

- up to 12 workweeks of paid leave in a 12-month period for the birth, adoption, or foster placement of a child with the Covered Individual.
- up to 6 workweeks of paid leave in a 24-month period:
    - for the Covered Individual's own serious mental or physical health condition that prevents them from working;
    - to care for the Covered Individual's spouse, child, or parent with a serious mental or physical health condition; and
    - for qualifying reasons relating to the overseas deployment of the Covered Individual's spouse, child, or parent who is a military servicemember.

A Covered Individual cannot take more than 12 weeks of leave in a 12-month period. Covered Individuals have the right to use this leave in one block of time. When medically necessary or otherwise permitted, a Covered Individual may take leave intermittently in separate blocks of time or on a reduced schedule by working less hours each day or week.

Leave under the Act is paid. Covered individuals are entitled to receive 80% of their average weekly wage while on approved leave, up to $900 per week. Average weekly wage consists of all income received from an employer including base salary, commissions, tips, and bonuses.

Am I eligible to take paid leave?

You are a covered individual eligible for paid leave if <u>all</u> of the following apply:

- You work for a covered employer;
- You have worked for your employer for at least 12 months;
- You have at least 1,250 hours of service with your employer during the 12 months before your leave ("hours of service" are hours actually worked and does not include time off for vacation, illness, or any other leave);
- You worked in Delaware for at least 60% of those 1,250 hours; and

- Your employer has at least 10 Delaware-based employees (for parental leave) or 25 Delaware-based employees (for family caregiving, medical or qualified exigency leave).

You work for a covered employer if:

- You work in Delaware for an employer (except the federal government) that has at least 10 employees; and
- Your employer's business does not close for more than 30 consecutive days in a 12-month period.

A small number of workers are not considered employees for purposes of the Act. Those individuals not covered by the Act are casual/seasonal employees working for the State of Delaware, the Department of Education, or for an entity covered by State employee benefits.

What type(s) of leave is my employer required to provide?

The type(s) of leave your employer is required to provide depends upon the number of Delaware employees your employer has.

- Employers with **1-9** covered employees are not required to provide paid family and medical leave benefits.
- Employers with **10-24** covered employees are required to provide their employees with Parental Leave.
- Employer with **25 or more** covered employees are required to provide Parental, Medical, & Family Caregiver/Qualified Exigency Leave.

Employers may choose to opt-in to the Delaware Paid Leave (DPL) insurance program to provide more benefits than required. Please visit de.gov/paidleave for more information.

How do I request paid leave?

Generally, to request leave you must:

- Follow your employer's normal policies for requesting leave;
- Give notice to your employer at least 30 days before your need for leave; or
- If providing advanced notice is not possible, notify your employer as soon as possible.

How do I know what type of paid leave insurance coverage my employer provides?

Your employer will notify you whether your paid leave insurance coverage is through the DPL insurance program or an approved private insurance plan. Private insurance plans include an employer's self-insured plan and an insurance carrier's approved plan. Depending on the type of coverage provided by your employer, benefit payments will be made through the DPL insurance program or your employer's approved private insurance plan.

If paid leave coverage is provided through the DPL insurance program, you file a claim for benefits using the Division's online administrative system, LaborFirst, a link to which can be found at de.gov/paidleave. If your claim is for paid medical leave or family caregiving leave, LaborFirst will notify your health care provider of your request for a certification of serious health condition in support of your claim. Although you do not have to share a medical diagnosis with your employer, you must provide enough information in your claim so that your employer can determine whether your requested leave qualifies under the Act. You may also be required to provide documentation verifying a qualifying exigency or your familial relationship for family caregiving, qualifying exigency, or parental leave.

If your employer provides paid leave coverage through an approved private plan, you must follow the plan's policies and procedures to file a claim.

The DPL insurance program is funded by less than 1% of an employee's weekly wages. Employers can require employees to contribute up to half of the cost, through payroll deductions beginning **January 1, 2025**. If an employer provides coverage through a private plan, it cannot cost an employee any more than what they would have paid under the DPL insurance program.

The Act does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement that provides greater family or medical leave rights.

What does my employer need to do?

Upon receipt of a completed application, your employer will decide whether you are eligible for the requested paid leave and, if eligible, the amount of your weekly benefit. If you are eligible for paid leave, your employer must:

- Maintain confidentiality of your or your family members' private medical information;
- Allow you to take job-protected time off work for a qualifying reason;
- Continue your group health insurance plan coverage while you are on leave on the same basis as if you had not taken leave. If you pay a portion of the cost of your group health insurance, you are still required to pay your portion while on paid leave; and
- Allow you to return to the same job, or a virtually identical job with the same pay, benefits, and other working conditions, including shift and location, at the time of your leave.

Your employer cannot interfere with your rights under the Act or threaten or punish you for exercising your rights under this law. For example, your employer cannot retaliate against you for requesting paid leave or cooperating with a Division of Paid Leave investigation.

Where can I find more information?

Call 302-761-8375 or visit de.gov/paidleave. If you believe your rights under the Health Delaware Families Act have been violated, you may file a complaint with the Delaware Department of Labor, Division of Paid Leave or file a private lawsuit against your employer in court.

DELAWARE
Paid Leave
Family and Medical Leave Insurance Program

What is **Delaware Paid Leave?**

This program offers paid leave to workers who have been employed at their current company for:

- At least one year, and
- Have worked at least 1,250 hours in the past year.

It's an insurance policy that provides paid leave, based on the federal Family Medical Leave Act (FMLA). Under this new program, employees will get up to 80% of their wages (up to $900 per week) for the following events:

Parental Leave

Care for a new child.
(Up to 12 weeks per year)

Medical Leave

Address your own serious illness or injury.
(Up to six weeks every 24 months)

Family Caregiver Leave

Care for a close family member with a serious health condition.
(Up to six weeks every 24 months)

Qualified Exigency

Assist while a loved one is on an overseas military deployment. (Up to six weeks every 24 months)

Employees are limited to a maximum of 12 total weeks per year for any type of leave.

Call 302-761-8375 or visit de.gov/paidleave for more information.

DELAWARE DEPARTMENT OF LABOR
Division of Paid Leave

https://de.gov/paidleave