



OVERVIEW OF THE PROGRAM, THE NEED, AND THE OPPORTUNITIES

What is the purpose of Delaware Paid Leave (Family and Medical Leave Insurance Program)?

This program helps to ensure that Delaware workers have financial support if they need to take a leave of absence from their job due to a serious health condition that impacts them or a family member, due to a family member's overseas military deployment, or after welcoming a new child to their family. It allows an employee to take paid time off, knowing they have a job to return to and that their employer can't retaliate against them for taking leave. Delaware Paid Leave goes into full effect when the program starts accepting claim applications on **January 1, 2026**. However, key milestones begin as early as **October 1, 2023**.

Doesn't the federal Family and Medical Leave Act (FMLA) already take care of this?

The FMLA of 1993 is similar to but not the same as Delaware Paid Leave. For over 30 years, FMLA has allowed an employee to take up to 12 weeks of job-protective leave with continued medical benefits, but FMLA's leave is unpaid time off. Delaware's program requires paid time off that provides employees with income-replacement payments of 80% of their average weekly income, up to \$900 per week. The reality is that FMLA is helpful only to those employees and families who can afford to take leave without pay. Throughout Delaware, many employees have FMLA benefits but simply cannot take advantage of them because they cannot afford to take unpaid time away from work. The other key difference is that FMLA is mandatory for employers with 50 or more employees, whereas Delaware Paid Leave is mandatory for employers with 10 or more employees.



Who is most in need of Delaware Paid Leave?

Currently, the majority of Delaware families need a program like this. It's recommended that a household set aside six weeks of pay for health emergencies. Even prior to the COVID pandemic, when the economy was strong, only about two-thirds of U.S. households achieved this. Post-pandemic, this statistic has worsened. About 65% of wage earners do not have that kind of "emergency fund," and according to Bankrate's 2023 Annual Savings Report, 22% of households have no savings at all. As we see it, Delaware Paid Leave represents both a need and a right of the workforce. It helps our communities thrive and makes our economy strong. Delaware workers and their families deserve support — a recourse — for staying financially healthy when dealing with a health condition, handling a military deployment, or bonding with a child.

How does Delaware Paid Leave benefit the employer?

The Delaware Department of Labor's Division of Paid Leave is fully confident this program will bring new strength to the Delaware workforce. By supporting happier, healthy employees, it fosters a more productive and loyal employee team for an employer. It also helps to create a consistently better work environment. Delaware Paid Leave offers Delaware employers a competitive advantage over states that don't have a similar program, giving employers more power to attract and retain quality employees. As New Jersey, Maryland, and Washington, D.C. are 3 of the 13 jurisdictions with a paid family medical leave program, Delaware employers will now be on equal footing when it comes to attracting and retaining the best employees in the region. With Delaware Paid Leave, there is less risk of quality talent "passing us by" for employment in another state because they have a paid leave program.

Other important advantages the Delaware Paid Leave plan offers employers (compared with private plans):

- It offers competitive pricing, which is especially important to smaller employers, who will benefit from the program's economies of scale.
- It costs less than most private plans.
- Delaware Paid Leave does not operate like a private insurance program — the cost to an employer will not go up after a claim is filed.

How many businesses and employees stand to benefit from the program?

Nearly 10,000 Delaware businesses will benefit from this program. In addition, approximately 400,000 employees will be financially supported during a health emergency, military deployment, or after welcoming a child. When accounting for employees' spouses, children, and other family members who can also benefit from paid family and medical leave, about 70% of Delawareans will be positively impacted by this program.

Has this kind of program been successful elsewhere?

Delaware Paid Leave represents landmark legislation for our state and is one of our most progressive acts in recent years. We entered this process confidently, based on our own research, knowledge, and experience. We also looked at the success several other states have had in implementing similar programs. This legislation makes Delaware the 11th jurisdiction — preceded by the neighboring jurisdictions of New Jersey, Maryland, and Washington, D.C. — to offer a paid family and medical leave program for many of its workers. New Jersey was the first to offer these types of benefits back in the late 1940s. Minnesota joined the growing list of jurisdictions requiring Paid Family Medical Leave in May 2023 and Maine became the 14th state in July 2023. Several other states are also looking to require the coverage.

Which employers are mandated to participate in the program?

All Delaware employers with 10 or more employees are required to participate in Delaware Paid Leave.

Which employers are exempt from the program?

Exceptions from the mandate include:

- Employers with 9 or fewer employees
- Federal government employers
- Seasonal operations that fully shut down for a month or more

As an employer, how do I provide paid leave benefits to my employees? What options are available to me?

An employer can provide paid leave benefits by:

- Enrolling in the Delaware Paid Leave plan;
- Using an approved private benefit plan purchased from an insurance company or administered through a self-insured plan; or
- Grandfathering an existing private paid leave benefit approved by the Division of Paid Leave as “comparable” to the Delaware Paid Leave plan (but only for the first five years of the plan).

How the Delaware Paid Leave Plan works: Who pays for the coverage?

The employer is responsible for all contributions required by the program. The contributions are based on an employee’s earnings (established by FICA rules). The rates are guaranteed through 2026 at 0.8% of wages, and component rates are available for each line of coverage. Employers can require their employees to pay up to 50% of the cost of the program.

How the Delaware Paid Leave plan works: How much does it actually pay workers?

Delaware Paid Leave offers eligible workers:

- 12 weeks of paid leave annually to bond with and care for a new child (whether through birth, foster placement, or adoption)
- 6 weeks in a 24-month period to:
 - Address one’s own serious health condition
 - Care for a family member with a serious health condition
 - Address the impact of a family member’s military deployment

If an employee is eligible and the claim is approved, the employee can receive 80% of their weekly wages, up to \$900 per week.

How the Delaware Paid Leave Plan works: What determines employee eligibility?

To be eligible, an employee must work primarily (60% of their time) in Delaware, have worked for their employer for at least 12 months, and have clocked at least 1,250 hours (about 25 hours a week) in the most recent 12 months. Part-time employees (working less than 25 hours per week) and/or those who are not expected to work for 12 months (such as students working over the summer) can co-sign, with their employer, a Waiver form to withdraw from the program. Employees on waivers will be exempt from contributions and will not be eligible for paid leave. If the conditions of their employment change, employees can be taken off waivers and join the program. Under the Delaware Paid Leave plan, the employer, utilizing the recommendation of the Division of Paid Leave’s administrative system, will make the initial decision as to whether an employee’s application qualifies for leave, the dollar amount of the benefit payment and how long the employee will be allowed to remain on paid leave.

How the Delaware Paid Leave Plan works: *What about telecommuters, hybrid workers, and returning workers?*

Normally, any employee who works more than 40% of their time outside the state of Delaware would not be eligible for benefits under this plan. However, there are two possible exceptions: (1) employees who are assigned to Delaware teams but telecommute; (2) Delaware employees who are on temporary assignment out of state. If a telecommuting or temporarily assigned employee and their employer both sign a Reclassification form, these employees can join the plan. If, at some later date, the employer and employee agree that the employee should not be part of the plan, they can sign a Declassification form to leave the plan.

How the Delaware Paid Leave Plan works: *How do I determine employee count?*

There are two important “threshold numbers” for an employer’s employee count: (1) above or below 10; (2) above or below 25. Once an employer has 10 or more eligible employees, they must provide Parental Leave benefits. Once an employer rises to 25 or more eligible employees, employers must provide employees with all the lines of paid leave coverage.

To calculate the number of eligible employees, you start by counting every single Delaware employee, regardless of how long they’ve worked for you or how many hours a week they work. Then subtract the employees on waivers. From there, add in any employees you have reclassified. That’s your number. The Delaware Paid Leave administrative system will help you keep track of your employee count.

How the Delaware Paid Leave Plan works: *What happens when my employee count changes?*

The general rule is that coverages are easy to gain and hard to lose. Within 30 days of reaching a threshold number of 10 or 25, an employer must provide the required coverages. Once a new level of coverage has been achieved, employees will retain those benefits for at least the next 12 months, even if the employer’s employee count falls below the threshold number. Only after continuously staying below the employee threshold number for over 12 months will the employer be allowed to drop the now-no-longer required coverage(s). The Division’s administrative system will help you track your company’s number of eligible employees and advise you as you approach and/or exceed the threshold numbers.

How the Delaware Paid Leave Plan works: *How are claims approved and paid? What if they’re denied?*

The Delaware Department of Labor will issue payments to the employee from a fund created by the plan contributions. Benefit payments will be paid out every other week. As part of the claim adjudication process, if the employer denies an employee’s claim, the administrative system will issue the worker a detailed explanation of why the claim was denied. Reasons for a denial could include a lack of required weekly work hours; an insufficient number of months working for the employer; or coverage being requested for an individual who is not the employee, their child, their spouse, or their parent (e.g., a parent-in-law or sibling). A claim may also be denied because the employee’s health care provider did not complete the necessary forms within 30 days as required. The Delaware Department of Labor is dedicated to working with our state’s health care providers to help avoid this.

How the Delaware Paid Leave Plan works: *After enrolling, what are the employer's responsibilities?*

With assistance from the Delaware Paid Leave administrative system, the employer will be responsible for administering the program, which includes:

- Determining employee eligibility
- Calculating the correct contribution amount
- Managing the claims adjudication process to verify if an employee's application for leave is justified under the plan
- Tracking an employee's weekly in-state hours and wages.

May an employer opt out of the Delaware Paid Leave Plan by using a private benefit plan?

Yes. Employers with 10 or more employees may opt out of the Delaware Paid Leave plan if they purchase a private plan that provides the same or better benefits as the state plan. The private plan can be either an admitted carrier's approved insurance plan or a self-insured program (backed by a surety bond). Employers who wish to use a private benefit plan to offer paid leave benefits to their employees must obtain the Division's approval and opt out of the Delaware Paid Leave program on a yearly basis. The first opt-in/opt-out period is **September 1 through December 1, 2024**.

Can small employers (with 10 to 24 employees) temporarily reduce the duration of their employees' Parental Leave?

Yes. Small employers with 10 to 24 employees can temporarily reduce the maximum number of weeks of Parental Leave from the standard 12 weeks to between 6 and 11 weeks. This must be done by **January 1, 2024**, through the Grandfathering/Parental Leave Duration (PLD Application Portal. Please refer to the Parental Leave Term FAQs for more information about this process, [here](#).

If an employer already has a paid leave benefit in place, what criteria do they need to meet to stay with this plan instead of enrolling in the Delaware Paid Leave plan or a new private benefit plan?

It's possible for an employer to grandfather their existing paid leave benefits and continue to use them for five years, provided the benefits offered are comparable to the Delaware Paid Leave plan. To qualify, the benefits must (1) be in writing; (2) have been in effect since May 10, 2022; and (3) be similar to those benefits provided under the Delaware Paid Leave plan. Employers may apply to grandfather their existing benefits to cover some or all the lines of coverage required under the mandate. The Division of Paid Leave has a Grandfathering/PLD Portal that will provide an instant determination of whether your existing benefits qualify for grandfathering. It will walk you through a series of simple "yes/no" questions, much like an online income tax program, and ask you to upload written benefit documents directly to the Grandfathering/PLD Portal. Based on your responses, the portal will provide a "conditional approval" to allow you to grandfather your existing paid leave benefits. Final approval will be provided once the Division of Paid Leave reviews the written benefit documents that you provided with your application. The Grandfathering/PLD Portal will be

open from **October 1, 2023**, to **January 1, 2004**. This will be your only opportunity to extend your company's existing paid leave benefits. After that time, an employer will have to either enroll in the Delaware Paid Leave plan or provide paid leave coverage through a new private benefit plan that meets or exceeds all requirements of the mandate. Find the Grandfathering/PLD Portal [here](#). Find the Grandfathering FAQs [here](#).

What happens if an employer does not comply with the mandate?

If Delaware employers with 10 or more employees do not apply or receive approval for grandfathering, enroll in the Delaware Paid Leave plan, or opt out by the private plan deadline with an equal or better plan in place, they will face fines issued by the Delaware Department of Labor. The Division of Paid Leave — an entity created specifically to oversee and ensure the success of the program — is responsible for issuing these fines. The Division of Paid Leave will strictly enforce the requirements of the program through ongoing monitoring of all Delaware employers and activities related to enrollment compliance. Fines will be issued promptly for employers who do not enroll in the Delaware Paid Leave plan or opt out with an equal or better private benefit plan.

What support is available to help employers navigate their responsibilities and remain compliant?

As a new state office created specifically to ensure the success of the program, the Division of Paid Leave is here to support Delaware employers of all sizes. Your success is our success, and we are poised to provide employers and employees all the support they need to leverage the benefits of the program. One of the most exciting tools we have is an online Delaware Paid Leave administrative system that puts everything you need in one convenient place — at your fingertips, 24/7. This online administrative system supports employers and their HR professionals, employees, health care providers, and insurance companies. Support includes:

- Eligibility guidance
- Weekly hours and earnings tracking
- Contribution calculation tools
- Claims adjudication advice
- Potential to have some payroll systems automatically and directly exchange data with our administrative system, or to export to an Excel document and upload into our system

In addition to the online administrative system, the Division of Paid Leave has:

- A step-by-step process that allows you to comply with the program within a manageable time frame
 - Tools that will make it easy and efficient for you to get started and keep the program moving forward
 - People available to answer your questions, discuss your concerns, and provide all the guidance you need, 24/7/365
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Getting started: What dates do I need to be aware of?

- **October 1, 2023** is the day the Grandfathering/PLD Portal opens.
- **January 1, 2024** is the deadline for employers to **grandfather** their comparable existing paid leave benefits and for small employers (10 to 24 employees) to elect to temporarily reduce their employees' Parental Leave duration.
- **September 1, 2024** is the day the Opt-In/Opt-Out Portal opens.
- By **December 1, 2024**, employers wishing to use a private benefit plan to provide paid leave benefits must apply for approval to opt-out of the Delaware Paid Leave plan. Employers can also opt-in to the Delaware Paid Leave plan to voluntarily provide their employees with paid leave benefits.
- All employers with 10 or more employees must enroll in the Delaware Paid Leave plan by **January 1, 2025**, unless an approved private benefit plan is in place. Employers with 10 or more employees that do not provide the mandated benefits either through the Delaware Paid Leave plan or an approved private plan will face fines.
- Starting on **January 1, 2025**, contributions to the Delaware Paid Leave plan begin to be assessed.
 - Employers who share the cost of the plan with their employees will begin collecting employee contributions from their employee's paychecks starting **January 1, 2025**.
 - Employers' quarterly contributions are collected retroactively, 30 days after each quarter ends (on the same schedule as Unemployment Insurance). The first contribution payment is due **April 30, 2025**.
 - **January 1, 2026**, marks the first day employees can submit a claim application for paid leave.

Even though the plan will not go into full effect until **January 1, 2026**, it's important to realize that now is the time for employers to begin to prepare their businesses and workers.

Where can I get more information and support?

The Division of Paid Leave is here to help ensure employers and employees leverage all the benefits of the program, in a process that is effective, easy, and efficient! If you have any questions, at any time, you can email PFML@Delaware.gov or visit the Delaware Paid Leave website at de.gov/paidleave.



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Family and Medical Leave Insurance Program