

Delaware paid family and medical leave: Overview

Law & Policy Group



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Paid family and medical leave

National landscape

Fourteen states, along with **Washington, DC**, and **Puerto Rico**, have enacted laws requiring paid leave for an employee's own serious health condition or disability and — with the exception of Hawaii and Puerto Rico — for qualifying family or caregiving reasons.

Note: New Hampshire enacted a paid family and medical leave mandate for state employees in which private employers can voluntarily participate.

| Jurisdiction | Program type |
|----------------------|--|
| California | State Disability Insurance (SDI) Paid Family Leave (PFL) |
| Colorado | Family and Medical Leave Insurance Program (FAMLI) |
| Connecticut | Connecticut Paid Leave (CT PL) |
| Delaware | Delaware Paid Leave (DPL) |
| District of Columbia | Universal Paid Leave (UPL) |
| Hawaii | Temporary Disability Insurance (TDI) |
| Maine | Paid Family and Medical Leave (PFML) |
| Maryland | Family and Medical Leave Insurance (FAMLI) |
| Massachusetts | Paid Family and Medical Leave (PFML) |
| Minnesota | Minnesota Paid Leave (MPL) |
| New Jersey | Temporary Disability Insurance (TDI) Family Leave Insurance (FLI) |
| New York | Disability Benefits Law (DBL) Paid Family Leave (PFL) |
| Oregon | Paid Leave Oregon (PLO) |
| Puerto Rico | Nonoccupational Disability Insurance (SINOT) (unofficial English version) Working Mothers Protection Act (WMPA) |
| Rhode Island | Temporary Disability Insurance (TDI) Temporary Caregiver Insurance (TCI) |
| Washington | Paid Family and Medical Leave (PFML) |

Delaware PL (PFML)

Contribution and benefits snapshot



12 weeks of paid leave in a 12-month period

For birth, adoption, or foster care placement of the employee's child during the first year.

+6 weeks of paid leave in a 24-month period

For the employee's own serious health condition or to care for a family member with a serious health condition, or a military exigency.

12 weeks of paid leave combined max in a 12-month period

\$900 max weekly benefit

Weekly wage replacement amount is 80% of the employee's average gross weekly wages for the 52 weeks prior to the claim.

Rate equals 0.8% of wages

Contributions are capped at the SS max.

- Employers can charge employees up to 50% of the premium.
- Employers with between 10 and 24 employees in the state are only responsible for the parental leave premium (i.e., 0.16% of wages).
- Employers with fewer than 10 employees in the state are exempt.

For 2025 and 2026, program premium costs are allocated: 0.4% for medical leave; 0.32% for parental leave; 0.08% for family leave.

Eligibility

- Employee must have worked at least 12 months (not necessarily consecutive if break in service is < 7 years) and 1,250 hours before the leave begins.
- Family member includes spouse, son, daughter, and parent, including by blood, marriage, adoption, foster care, or *in loco parentis* relationships.
- Job protection and continued health benefit rights.

Covered employers: General rules

All employers, including state and local government employers, with 10 or more employees working in Delaware.

- Employer client of professional employer organization (PEO) is the employer, not the PEO.
- Employers with 10 to 24 Delaware employees are required to provide only parental leave.
- Exemptions:
 - Employers with fewer than 10 Delaware employees
 - Federal employers
 - Seasonal operations that close to the public and do not engage in commerce for at least 30 consecutive days per year

Determining employer size

- At the start of each quarter:
 - Count every Delaware employee, regardless of length of employment or average weekly hours;
 - Subtract employees on waivers;
 - Add any employees temporarily working in another state who are reclassified as Delaware employees.
- If a quarterly employee count shows an increase above a threshold number (9 or 24), all employees will receive PFML coverages on the first day of the next quarter.
- Once a new level of coverage has been achieved, employees retain those benefits for at least the next four quarters, even if the employer's employee count falls below the threshold.
- After continuously staying below the employee threshold for four quarters, all employees lose the appropriate coverage(s) at the start of the next quarter.
- Employers must notify employees 30 days before they gain or lose any PFML coverage.

Covered employees: General rules

All individuals primarily working in Delaware pay into the program

- “Primarily” means earning at least 60% of an employee’s wages in Delaware each calendar quarter.
- Includes full-time, part-time, collectively bargained employees, and school employees.

Two exceptions

1. Employees assigned to Delaware worksite but telecommuting from homes outside of Delaware; and
2. Delaware employees on temporary assignment out of state.

These employees can be covered by signing a reclassification form available on PFML portal (see [User Guide](#)).

Excluded individuals

- Individuals with wages not reported on a W-2 (e.g., independent contractor) or not subject to FICA
- Federal government workers, railroad workers, and employees of Tribal Governments
- State of Delaware employees in a casual/seasonal position covered under [29 DE Code § 5903\(17\)a](#)
- Department of Education employees who are in a casual/seasonal position that would be covered under 29 DE Code § 5903(17)a, or in an equivalent casual/seasonal position with an entity covered by State employee benefits

Eligibility for benefits

Covered employees with at least 12 months tenure and at least 1,250 hours of service in the most recent 12 months, both with the current employer.

- The 12-month requirement does not need to be consecutive as long as the break in employment is not more than seven years.
- Work hours determined under FMLA legal standard; excludes time not actually worked, paid/unpaid leave, vacation, holidays, furlough, sick leave, FMLA leave, or other time off.
- Hours of service include hours of service in any state (similar to FMLA).
- If an employee moves to a different Delaware-based employer, the 12-month period and 1,250-hours-of-service eligibility requirements reset for the new employer.

Covered employees: Waivers

Contributions can be waived for employees hired to work on a short-term basis (less than 12 months) or less than 25 hours per week and not expected to become eligible for benefits.

Waivers

- Must be signed by employer and employee if premium obligation is shared.
 - If employer pays the full premium, only employer must sign the waiver.
- Must be completed through PFML portal (see [User Guide](#)).
- Must be filed with the Division of Paid Leave (DPL).
 - If private plan, employer, carrier, or TPA must retain the waiver and make it available to the DPL upon request.

Change in status

- Must be completed through PFML portal.
- If employer removes employee from a waiver, employer will owe back premium (both employer and employee share) for the most recent 12 months (or for the period the employee was on waiver, whichever is shorter).
- If employee on waiver exceeds the eligibility threshold, waiver will be revoked.
 - Public plan employers will be responsible for premium contributions (employer and employee share) plus interest for the most recent 12 months (or for the period the employee was on waiver, whichever is shorter) and possibly penalties.
 - Private plan employers that fail to remove employee from waiver before employee reaches PFML eligibility thresholds will be responsible for paying PFML benefits and penalties.

Employee counts and quarterly reports

- Completed waiver removes employee from employer's employe count.
- Employees on waivers must still be included in employer's quarterly hours and wage reports.

Covered employees: Reclassification

- Employers may reclassify an employee who **primarily reports for work at a worksite in another state** as working primarily in Delaware through the duration of that individual's tenure at the out-of-state worksite.
- Employees who are **subject to another state's PFML program** may not be reclassified as an employee for purposes of the Delaware program.
- A reclassification shall be **signed by both the employee and employer**.
- Reclassification remains **valid until the employer declassifies** the employee.
- An employee covered by a **reclassification is included in employee counts for** purposes of determining employer size.



Program funding

Initial contribution rate (2025–2026) is 0.8%; rate subject to change beginning in 2027.

Employer payroll contributions assessed against wages paid up to the Social Security taxable wage max.

- Large employers can charge up to 50% of the premium to employees.
- Small employers with fewer than 10 employees are exempt (and employees are not covered).
- Small employers with 10 to 24 employees (and their covered employees) are required to pay premiums for parental leave only (i.e., 0.32% of wages).

Note: Small employers voluntarily offering lines of coverage not otherwise required must cover the entire contribution rate.

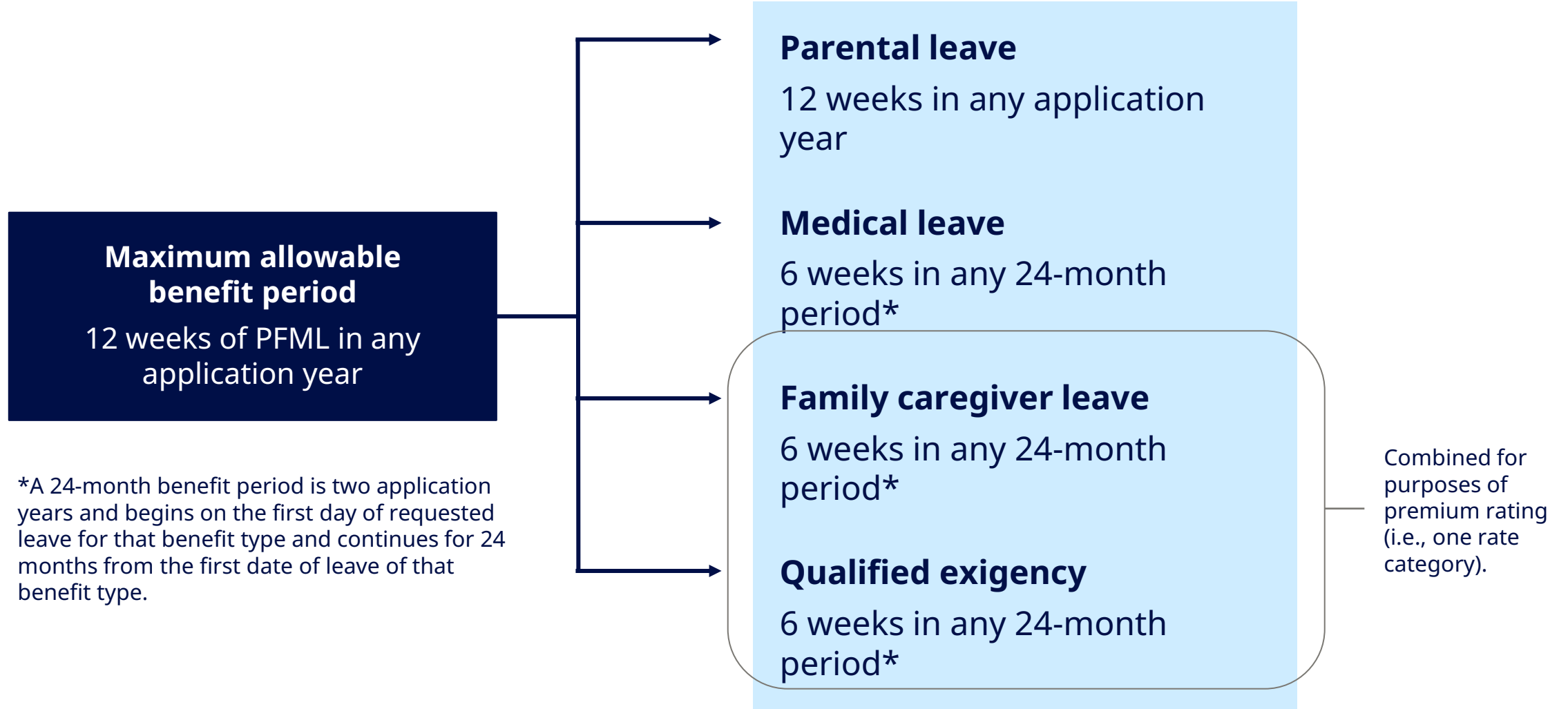


Wages subject to premium contributions

- FICA wages earned within Delaware.
 - Gross earnings, including salary, wages, tips, bonuses, commissions, taxable fringe benefits, sick and vacation pay, certain pre-tax salary reductions, etc.
 - Premiums are calculated on gross earnings, before federal income tax, state income tax, and FICA taxes are deducted.
- Contributions to the public program are not required while an employee is on PFML.

Premium payments and wage reports must be submitted quarterly by employers participating in the public plan; employers with private plans must submit wage and hour reports quarterly; all submissions made through Delaware LaborFirst.

Benefit duration



Definitions

Family member

- Parent, child, and spouse
 - “Parent” defined by FMLA (29 USC § 2611(7))
 - “Child” (meaning son or daughter) and “spouse” defined by FMLA (29 CFR § 825.102)
- Does not include siblings, parents-in-law, domestic partners, designated individuals, or any other relations not



Serious health condition

Illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a healthcare provider

As defined by FMLA (29 CFR §§ 825.113 et. seq.)

Application year

The 12-month period of leave measured forward as defined by FMLA (29 CFR § 825.200(b))

- Applies to employers in the public plan and employers with an approved private plan
- Other three methods of determining the 12-month period under FMLA not available for purposes of DE PFML (i.e., calendar, fiscal, measured backward)



Reduced schedule and intermittent leave

Family and medical leave

- Reduced schedule or intermittent leave permitted when medically necessary.
- Employers may request recertification once every 90 days.

Parental leave

Reduced schedule or intermittent leave permitted only if allowed by the employer.

Minimum duration of leave on an intermittent schedule

One full workday

- Note that FMLA allows intermittent leave in periods of whole weeks, single days, hours, and smaller increments (29 CFR § 825.205).
- Under FMLA, employers must allow employees to use leave in the smallest increment of time allowed for other forms of leave, as long as it is not more than one hour.



Weekly benefit amount

The weekly benefit amount is 80% of the individual's average weekly wage, up to the maximum weekly benefit amount.



Individual average weekly wage. Average weekly wages for the 4 completed calendar quarters immediately preceding the submission of the claims application.

Maximum weekly benefit. \$900 in 2026 and 2027.

- Adjusted annually thereafter by the percentage growth in the Consumer Price Index for All Urban Consumers (CPI-U), Philadelphia-Camden-Wilmington metropolitan area
- Delaware DOL to announce new maximum applicable each Jan. 1 by the previous Dec. 1

Reductions. Weekly PFML benefits may be reduced for child support withholdings, up to 50% of the weekly benefit amount.

Disqualifications. Individuals receiving temporary disability workers' compensation benefits, personal injury benefits due to an auto accident, or unemployment benefits are not eligible for DE PMFL benefits.

Claim application process

Employees must provide 30 days' advance notice if leave is foreseeable, or as soon as practicable if leave is not foreseeable.



Employers participating in the public plan will receive an advisory notice from the DPL regarding approval or denial of the claim. The employer makes the final decision. Self-insured employers can use Delaware LaborFirst to administer their self-insured private plan.

Appeals

- Employees of employers participating in the public plan and employers with self-insured private plans have 60 days to request DPL review a claim determination made by an employer. The DPL has 10 days to issue a determination.
- Employees of employers with insured private plans have 10 days to request review of an adverse claim determination with the carrier. If the claim denial is upheld, an appeal can be made with the Family and Medical Leave Insurance Appeal Board.

Claim administration process

Employer responsibilities



Employers, insurance carriers, or TPAs must adjudicate an employee's application to the best of their ability, per the "reasonable person" standard.

- Must determine if claim should be paid, weekly benefit amount, and duration of leave benefit "in a manner and to the extent that a reasonable person would be expected to do so."
- Must make good faith effort to assist employee in gathering all required information to make informed and reasonable decision.
- Must provide reasonable assistance to employees to properly complete all processes, including claim applications and review requests.



Public plan employers will receive an advisory notice regarding approval or denial of a claim after all required information is submitted through LaborFirst.

- Employer has 5 business days to adjudicate the claim.
- Length of approved leave shall be based primarily on the recommendation of the appropriate healthcare provider, as supported by disability industry standards and best practices.
- After claim determination is made, employer has 3 business days to communicate the decision via LaborFirst to the employee and the DPL.

Required employer notices

Notice of employee rights to all eligible employees

- For employers with private plans, at least 30 days before Jan. 1, 2026
- For all employers:
 - Upon hire
 - When employee requests leave
 - When an employee might qualify for PFML leave due to a life event

Notice of employee rights **may be sent electronically** via work or personal email.

Display and maintain poster in a conspicuous and accessible place in the workplace. DPL has not yet provided a sample poster.

Other notice requirements

- When employee count increases or decreases such that the business gains or loses PFML coverages
- When employer requires employees to contribute less than 50% of the premium cost



Employee notice to employer

Employee must **give notice at least 30 days before filing a leave claim when practicable.**

- When need for leave is foreseeable at least 30 days in advance and an employee fails to give timely advance notice with no reasonable excuse, employer/insurance carrier/TPA may delay coverage until 30 days after the date the employee provides notice.
- **When 30 days advance notice is not practicable** because of lack of knowledge, change in circumstances, or medical emergency, **employee must give notice as soon as practicable.**
- For reduced schedule or intermittent leave, employees must provide prior notice of the leave schedule, to the extent practicable.

Law and rules do not require written notice and do not provide notice content requirements. The DPL has not provided a sample notice.



Coordination with other benefits

Employer-provided disability, other paid leave benefits

- Employers can require DE PFML to run concurrently or otherwise coordinate with employer-provided disability or other paid leave policy.
- Employer can offset disability insurance and other employer-provided paid leave benefits by the amount and duration of DE PFML benefits.
 - Alternatively, employer-provided benefit may supplement DE PFML up to 100% of employee's average weekly wages.
- Employees must receive advanced written notice of coordination requirements and policy offsets.
- DE PFML is the primary payor; other income replacement benefits must be coordinated according to policy terms.

PTO, vacation, sick leave

- Employer can't require use of unused accrued PTO, vacation, or sick leave before employees take PFML benefits.
- Employer and employee can mutually agree to use PTO, vacation, or sick to supplement PFML benefits.

Federal FMLA

DE PFML and federal FMLA run concurrently.





“Top-up plans”

- Defined as self-funded employer-provided benefits that are better than the public plan.
- The public plan will provide the base PFML benefit, and the employer pays for the extra top-up amount.
- Employers can offer “top-up” plans to some or all employees.
- Employers can choose to manage the “top-up” plan through Delaware LaborFirst, at no extra cost to the employer.

Private plans

Employers can provide a private plan for one or more lines of coverage (parental leave, medical leave, and family caregiver + qualified exigency leave).

Employers can apply for private plan approval at any time.

- Must submit application at least 30 days before intended start date.
- Coverage must begin on the first day of the calendar quarter after approval.
 - Exceptions to the quarterly effective dates for new employers and employers whose employee count increases to 10 or more or 25 or more.

Private self-insured plans

- Only available to employers with more than 100 employees or upon approval based on sufficient administrative capacity to manage a compliant PFML program (in-house or with TPA).
- Other requirements for self-insured plans include:
 - Evidence demonstrating employer can afford six full-benefit claims per 100 employees each year (e.g., \$900/week × 12 weeks = \$10,800 per claim)
 - Dedicated bank account for PFML claims with at least half the above amount always available (claims reserve account)
 - Annually renewed surety bond (not required of city, county, or state employers)
- Self-insured private plans can use Delaware LaborFirst to manage the plan.

Private insured plans

- Employers cannot require employees to contribute more than half of the private plan's premium rate.
- Employers cannot require employees to contribute more than what the employee would've paid in total under the public plan, even if the private plan has a broader wage base.
- Small employers (10-24 employees) voluntarily providing lines of coverage in addition to parental leave can't charge employees more than 0.16% of wages (which is what they would be required to pay in the public plan).

Grandfathering plans

Grandfathering plans are comparable private plans in place before May 10, 2022.

Application window for this exception closed on Jan. 1, 2024.

Grandfathering plans include self-insured plans, “employee handbook plans,” new parent bonding plans and some STD plans.

- Plan may be considered “comparable” if the three main components are within 10% of the equivalent public plan components and costs employees no more than what’s required under the public plan.
 - Benefit: Employees must receive at least 72% of their average weekly wages.
 - Weekly max: Employees must be eligible for a max weekly benefit of at least \$810.
 - Duration: Employees must be eligible for at least 10.8 weeks (54 days) of parental leave; 5.4 weeks (27 days) of family caregiving leave, medical leave, and qualified exigencies.
- For parental leave, grandfathered benefit must cover birth/adoption/fostering to employee regardless of sex/gender/marital status.
- With approval, the plans can continue until Dec. 31, 2029.
- Grandfathered plan cannot be altered unless the change improves the benefit and is approved by the DPL.



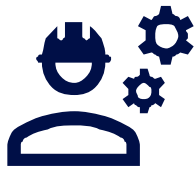
Employee rights



Health insurance

Health benefits must be continued as if the covered individual had not taken leave.

- Covered individual must continue to pay their share of the healthcare insurance premium.
- If, while on leave, any part of the covered individual's share of premium is covered by the employer, it can be recovered by any legal means.
 - If covered individual fails to return to work, employer may deduct the amount due from the employee's final paycheck.



Job protection

Covered individual is entitled to be restored to the same position they held prior to taking leave or placed in position with equivalent terms and benefits.



Other benefits

If covered individual is entitled to benefits (e.g., life insurance, pension, 401(k), vacation or sick leave, etc.) before leave, they must be available upon return from leave.



Interference, retaliation, antidiscrimination

For employees employed for at least 90 days:

- Interference, restraint, or denial of the exercise or attempt to exercise rights under the law is prohibited.
- Discrimination and retaliation against an individual exercising rights under the law is prohibited.
- No-fault absence policies may not count leave taken under the law.

All provisions of the law are subject to the state's anti-discrimination laws and regulations.

Enforcement and penalties



Civil action

- Covered individuals can file civil lawsuits against employers for violating the law.
- Civil lawsuit cannot be filed if covered individual first files a complaint with the DPL.



DPL actions

- Receive complaints of noncompliance.
- Audit employers for compliance.
- Assess civil penalties between \$1,000 and \$5,000 for each violation.



Other penalties

Violations of employee rights under the law (job protection, anti-retaliation provisions) can subject the employer to damages, interest, additional liquidated damages, appropriate equitable relief, and reasonable attorneys' fees and court costs.

Taxes on contributions and benefits

Federal taxation of benefits from public plan

- Family leave benefit payments *are considered gross income* but are *not considered wages* for federal employment tax purposes (i.e., FICA).
- Medical leave benefit payments attributable to the required employer contribution *are considered gross income* to the employee and *are considered wages* for federal employment tax purposes (starting with 2027 tax year).
- All other medical leave benefit payments *are excluded from gross income* and *are not considered wages* for federal employment tax purposes (starting with 2027 tax year).

Covered individual may elect to have the DPL withhold federal and state income tax from their benefit payment.

- If elected, federal taxes will be withheld at 10% and state taxes at 3%.
- By the end of each January, the DPL will send each claimant an accounting of the benefits amounts paid and the federal and state taxes withheld during the previous calendar year.
- Any required IRS form 1099G will be sent electronically, if the claimant consented, or by regular mail and to any other government agency as required.

For more information, see [Revenue Ruling 2025-4](#), [Notice 2026-6](#), and our GRIST, [IRS clarifies taxation of state and DC PFML contributions, benefits](#).



Contributions to public plan

- Employers in the public plan may deduct required employer PFML contribution amounts as state excise tax payments.
- Required employee contributions *are included as gross income* on Form W-2 and considered wages subject to federal employment taxes.

Paid family and medical leave (PFML) employer tax credit

One Big Beautiful Bill Act (HR 1) section 70304, effective 2026

Permanently extends the employer tax credit for PFML, which was first available for wages paid in 2018 and set to expire Dec. 31.

| Provision | Current law | Changes made by OBBBA |
|------------------------------------|---|---|
| Determination of tax credit | Based on wages paid to qualifying employees on leave | Adds employer option to determine credit based on premiums paid for an insured policy* |
| Eligible employer | If treated as a single employer under IRC § 52(a) and (b), then treated as a single taxpayer | If treated as a single employer under IRC § 414(b) and (c), then treated as a single employer; new exception for a “substantial and legitimate business reason” for an entity within the controlled group not providing the benefit |
| State-mandated benefits | Not taken into account in determining if the employer policy provides at least 50% wage replacement | Taken into account to determine if employer policy provides at least 50% wage replacement, but not taken into account for determining the credit amount |
| Qualifying employee | Employed at least 1 year and earning less than 60% of the highly compensated employee threshold | Employed at least 1 year (but employer can reduce this to 6 months), earning less than 60% of the highly compensated employee threshold AND customarily employed at least 20 hours per week |

*Currently eight states allow life or disability carriers to write group paid family leave policies.

For more information, see our GRIST, [IRS clarifies taxation of state and DC PFML contributions, benefits](#)

Background

[IRC § 45S](#) provides a tax credit for employers that provide PFML to all eligible employees.

Employer eligibility requirements

- Written paid leave **policy**.
- Provide at least **two weeks of paid leave** for “qualifying employees” who work full-time (and a pro-rata amount for part-time employees).
- Leave can be used for one or more federal **FMLA reasons**.
- Wage replacement is at least **50% of wages**.
- Available general business **tax credit ranges from 12.5% to 25%** of wages paid to qualifying employees on leave (or insurance premium paid).

State PFML and federal FMLA comparison

| | State PFML | Federal FMLA |
|--|--|---|
| Paid | Yes | No |
| Leave use | <ul style="list-style-type: none"> Employee's own disability Care for a family member with a serious health condition Bond with new child Handle qualifying exigency related to active military duty | <ul style="list-style-type: none"> Employee's own serious health condition Care for family member with a serious health condition Bond with new child Handle qualifying exigency related to active military duty Care for a family member who is a covered service member with a serious illness or injury |
| Eligibility | 1 year of service and 1,250 hours worked in the past 12 months | 1 year of service and 1,250 hours worked in the past 12 months |
| Job protection | Yes | Yes |
| Leave duration | <p>Up to 12 weeks of leave for child bonding in a 12-month period</p> <p>Up to 6 weeks of leave in a 24-month period for each of the remaining qualifying reasons</p> <p>Aggregate maximum 12 weeks in a 12-month period</p> | <p>Up to 12 weeks for most qualifying reasons</p> <p>26 weeks to care for a covered service member with a serious illness or injury (26-week combined max)</p> |
| Who is a covered family member? | Same as federal FMLA | Biological, adoptive, step, or foster parent, or any other individual who stood in <i>loco parentis</i> to the employee when the employee was a child; biological, adopted, foster, or step-child, legal ward, or child of a person standing in <i>loco parentis</i> , who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability; spouse |

Delaware Paid Leave Resources

State resources

- Healthy Delaware Families Act: [19 Del.C. §§105 and 3720](#)
- Regulations: [19 Delaware Admin. Code Section 1400](#) (amended on Nov. 25, 2025)
- Paid leave webpage: <https://labor.delaware.gov/delaware-paid-leave/>
- LaborFirst webpage: <https://labor.delaware.gov/laborfirst/>
- Employers & TPAs [Guide to Delaware Paid Leave](#)
- Notice of Employee Rights in [English](#) and [Spanish](#)
- Division of Paid Leave: 302-761-8375 or PFML@Delaware.gov

Mercer resources

- [State paid family and medical leave contributions and benefits](#) (February 6, 2026)
- [Delaware enacts paid family and medical leave law](#) (July 7, 2022)
- [Law & Policy Insights](#)



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