

May 23, 2022

DELAWARE PASSES MANDATORY PAID LEAVE LAW

On May 10, 2022, Delaware Governor Carney signed the Healthy Delaware Families Act establishing a mandatory paid leave program, making Delaware the eleventh state to enact such a program. Contributions towards the program will begin on January 1, 2025. Benefits will be available starting January 1, 2026.

The available benefits under this program are keyed to employer size. At companies with more than 25 employees, employees are eligible for all leave types available under the new rules. At companies with 10 to 24 employees, employees are only eligible for parental leave. At companies with fewer than 10 employees, none of the benefits created by this program are mandated, but employers may “opt in” to participation.

To be eligible for benefits, an individual must be employed by the company for a full 12-month period before taking leave and must have completed 1,250 hours of work in the 12-month period preceding their leave. Program benefits include job protection and payments up to 80% of the covered employee’s average weekly wage. Total benefits are capped at \$900/week for 2026 and 2027, and indexed thereafter. The benefit is available for the following reasons:

- To care for a child during the first year after the birth, adoption, or placement through foster care;
- To care for a family member with a serious health condition;
- Due to a serious health condition that makes the covered individual unable to perform the functions of their job; or
- Due to a “qualifying exigency” as defined by the FMLA.

Such benefits are available for up to 12 weeks in the applicable year for parental leave and a maximum of 6 weeks in any 24-month period for medical and family caregiver leave.

Program benefits will be made available through a new Family and Medical Leave Insurance Account Fund. Contributions to this Fund in the form of a 0.8% payroll tax for employers with greater than 25 employees will begin on January 1, 2025. This contribution amount drops to .32% for employers with 10 to 25 employees that elect to only provide for parental leave. Employers have the option to pass on up to 50% of the new payroll tax to employees or make the contributions in full on their behalf. Employers may also elect instead to opt out if they have an established paid leave program that offers comparable benefits. All such private plans require approval from the Delaware Department of Labor.



We will continue to monitor the implementation of this new program in Delaware and bring you updates as they become available.

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