

## What is the Update?

Delaware has passed a new Family and Medical Leave Insurance Program (DE PFML), also known as the Healthy Delaware Families Act. Contributions for this program begin January 1, 2025. The benefits associated with the law become available as of January 1, 2026.

The DE PFML will provide medical and family caregiver leave (leave for an employee's own serious health condition, to care for a family member, and military exigency leave). Additionally, DE PFML provides parental leave to bond and care for a new child during the first year of birth. Employees can take a maximum of 12 weeks for parental leave in an application year (defined as the 12-month period as defined in the FMLA); the maximum number of weeks an employee can take for medical and family caregiving is 6 weeks in any 24-month period. Employees can take a maximum of 12 weeks of total paid leave in a single year (i.e. between parental, medical and family caregiving leave). The law provides job protection and continuation of group health insurance benefits. The benefit amount payable to employees will be up to 80% of their average weekly wage, up to \$900 per week. Note that wages in this case are not determined by the employee's base salary, but instead are based on FICA wages; This includes bonuses, overtime, commissions, and other such earnings. Benefits will not be payable if the employee qualifies for and is receiving worker's compensation, unemployment benefits, or personal injury protections due to an injury from an automobile accident.

The law applies to employers with 10 or more employees; however, employers with 10 to 24 employees would be subject only to the parental leave provisions of the law but can opt-in for full coverage. Aside from this, to qualify as a covered employer, these employees must be physically working in the state of Delaware. Additionally, covered employees are those with at least 1,250 hours of service with the current employer within Delaware in the previous 12-month period, and have at least 12 months of service.

Employers may require employees to use no more than 75% of paid time off prior to accessing PFML benefits. PTO usage may count toward the PFML leave balance available under the law. Additionally, if an employer allows PTO to top off PFML benefits, there must be a signed agreement with the employee. Employers may require that payments under the law be coordinated with payments made under the terms of disability or family care leave policies, however, employers must provide employees written notice of this requirement (The Larkin Company will include this written notice in our introductory letters).

Employers must approve or deny an application for benefits within five business days of their receipt of a completed application that includes documentation necessary to review the claim. The employer must notify the state within three business days of approving a claim. If an employer denies a claim, it must notify the employee of the reason for the denial. The exact process is to be determined by the state - we will provide more guidance as we receive updates.

The contribution rate for the program will be 0.8% for 2025 and 2026. Employers can deduct up to 50% of contributions from employees or pay the 0.8% themselves. The total contribution of 0.8% covers the cost of the different benefit types (medical, family and parental). To be specific:

- Medical Leave will be 0.40%
- Family Caregiver Leave will be 0.08%
- Parental Leave will be 0.32%

The Delaware Department of Labor Division of Paid Leave (the "Division") now has a [page on their website](#) devoted to "Delaware Paid Leave". You can also read the recently published [regulations](#). If you have questions or would like to set up a presentation, you can email [PFML@delaware.gov](mailto:PFML@delaware.gov). A portal opened on October 1, 2023 to allow employers to grandfather existing paid time off benefits (see section 17.5.2 of the regulations for more details).

**Update (07/26/24):** Employers will be able to set up an account using Delaware LabourFirst, as of September 1, 2024. Once an employer is registered, you will be automatically enrolled in the program if you are considered a covered employer, meanwhile smaller employers will have the option to voluntarily join. Larger employers will be able to request a private plan, if desired, from September 1, 2024 through December 1, 2024. For employers who are enrolled in the state plan, payroll deductions will begin on January 1, 2025 to contribute to the DE PFML program.

**Update (10/15/24):** The [Notice of Employee](#) rights is now available on the DE PFML website. As a reminder, the notice will need to be provided at least 30 days prior to when payroll contributions start on January 1, 2025, and can be provided electronically to an employee's work or personal email. There are other conditions as to when the notice should be provided, as well; please see our "Notice Requirements" section below for the full details.

## Handbook/Policy Updates

The law does not state any requirements for updating employer handbooks. However, you may wish to add information in your handbooks about the DE PFML as the live date of the program draws nearer. We generally recommend adding information about state leave benefits in your handbooks, even when not legally required.

Larkin Delaware - Leave Highlights	
Notice Requirements	The <a href="#">Notice of Employee Rights</a> should be provided at least 30 days prior to when payroll contributions start as of January 1, 2025. From there, notice should be provided to new hires, when an employee requests leave, and when an employer becomes aware an employee's leave may be considered a qualifying event under DE PFML. Notice can be provided electronically to an employee's work or personal email.
Larkin Action	<p>The Larkin Company will consider any law changes carefully, and update our internal resources and processes, as well as our employee leave information packets, if necessary.</p> <p>We will continue to monitor any updates regarding the law and will keep our clients updated.</p>
Further Company Considerations	N/A
Resources	<a href="#">DE SB1 Bill (DE PFML)</a> <a href="#">DE PFML Regulations</a> <a href="#">Delaware Department of Labor Website for Paid Leave</a>

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