



## Another Round of Changes to Delaware's Paid Family and Medical Leave Law

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On December 1, 2025, Delaware published new regulations amending Delaware's paid family and medical leave ("PFML") law. These new regulations will impact the implementation of the PFML program which is set to begin paying benefits on January 1, 2026.

### ■ Background

Delaware's PFML law, the Healthy Delaware Families Act, requires certain employers to provide their covered employees with up to \$900 per week (for 2026 and 2027, and will be adjusted for inflation thereafter) in paid leave for parental, family caregiving, medical, and qualified military exigency leave. Contributions to the state plan began on January 1, 2025, and benefits will begin on January 1, 2026.

Employers must provide written notice to each employee of their rights at the time of the employee's hire, whenever an employee requests covered leave, or the employer has reason to believe an employee's leave is due to a qualifying event

The regulations address several provisions of the PFML law, specifically the following:

- The definition of "application year";
- The definition of "employee";
- Clarification of when employers can deduct employee contributions to the program from their pay; and
- Providing guidance for employers utilizing a self-funded private plan to meet the law's requirements regarding their claim reserve accounts

## ■ New Definition of “Application Year”

Previously, the Act defined “application year” consistent with the federal Family and Medical Leave Act (“FMLA”). The FMLA allows employers to choose amongst four different methods for determining the 12-month period during which covered employees are entitled to leave.

The regulations now specifically define the “application year” as the 12-month period beginning on the first day that an employee takes family and medical leave continuing forward for the next 12-months.

## ■ Modified Definition of “Employee”

The regulations modify the definition of “employee” so that instead of basing eligibility on where the individual physically works, it is now based on where the individual earns their wages. Under this new definition, an individual is considered an employee if they are earning at least 60% of their wages physically in Delaware each calendar quarter. Individuals primarily reporting for work, earning wages at a worksite, or telecommuting outside of Delaware are not considered “employees” under PFML unless the employer and employee agree in writing to reclassify them as such.

In addition, the regulations clarify that owners or officers of an employer that receive a Form W-2 are considered “employees” under PFML. They are eligible for benefits and subject to contribution withholding requirements.

## ■ Clarification on Deducting Employee Contributions from Wages

Employers with 10-24 employees are only required to provide paid parental leave. While not required to provide paid leave for medical, family caregiver, or military exigency leave, an employer can voluntarily opt into providing these lines of coverage. The regulations clarify that an employer that voluntarily opts into any additional line of coverage under PFML, the employer is responsible for the additional cost and cannot require employee contributions for these voluntary benefits.

## ■ Guidance Regarding the Claims Reserve Account for Self-funded Plans

Employers utilizing a self-funded private plan must prefund a claims reserve account with at least half of the required maximum benefits that a self-funded plan must be able to pay. The regulations state that this reserve account is a separate fiduciary non-interest-bearing account established for the sole purpose of paying benefits under the law. In addition, all employee and employer contributions to the private plan must be deposited into the reserves account.

Finally, the reserve account must be maintained according to sound actuarial principles and must not be over or underfunded. If employee contributions are held by the account, employers must file annual actuarial study reviews with the Division of Paid Leave. The manner of these studies will be provided by the Division of Paid Leave at a later date. Based on the results of these studies, employers may be required to make increased employer contributions or refund employee over-contributions.



## ■ Employer Next Steps

Many employers have already adopted their leave policies, so the timing of these regulations is less than ideal. Employers should promptly review their leave policies and determine whether they should adjust them according to these new regulations.

- Employers utilizing an “application year” other than measuring forward from the date PFML benefits are first received should amend their policy to ensure that they are utilizing the updated definition of “application year.”
- Employee eligibility should be modified to reflect where wages are earned.
- Employers voluntarily opting into lines of coverage should ensure that employee contributions are required only for the parental leave line of coverage.
- If a self-funded private plan is being utilized, employers should make sure they are not commingling PFML contributions, that all PFML contributions are deposited into their reserve account, and that contributions are calculation using sound actuarial principles.
- Stayed tuned for additional updates as they are released.