Delaware Joins Trend to Provide Paid Family Leave: What Employers Need to Know

Insights
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Governor John Carney recently signed a bill making Delaware the 11th state to create a paid family leave program for eligible employees. Covered businesses will need to make payroll contributions beginning January 1, 2025, and eligible employees can take up to 12 weeks of job-protected leave starting January 1, 2026. Employers have time to prepare, but you should start planning now. What do you need to know about the new law?

Reasons for Taking Leave

Governor Carney signed the Healthy Delaware Families Act into law on May 10, establishing a statewide paid family and medical leave insurance program that will grant job-protected leave to eligible workers for the following reasons:

- To address their own serious health condition;
- To care for a family member (spouse, parent, or child) with a serious health condition;
- To bond and care for a child during the first year following birth, adoption, or foster-care placement; or
- To address a family member's military deployment.

Employees may receive up to 80% of their average weekly wages, with a maximum weekly payout of $900 in 2026 and 2027. The cap will be adjusted for inflation thereafter.

Employees who qualify for leave can take up to 12 weeks in an application year for parenting and a total of six weeks in a two-year period for their own medical care, family caregiving, or a family members' military deployment. The application year is the same 12-month period as defined by the Family and Medical Leave Act (FMLA). The maximum benefit per year is 12 weeks for all reasons combined.

Covered Employers

Your obligations under the act will depend on how many employees you have. Businesses that employed at least 25 workers in Delaware during the prior 12 months must provide job-protected leave for all parental, family, and medical leave provisions in the act. However, if you employed 10 to 24 employees during the previous 12 months, you only need to provide parental leave.

If you provide paid leave benefits that are at least as generous as the provisions under the act, however, you may be able to opt out of the state program

The new law does not apply to the federal government, businesses that employed fewer than 10 workers in Delaware during the previous 12 months, or seasonal business that completely shut down for at least 30 consecutive days a year.

Eligible Employees

Similar to the FMLA, Delaware employees are eligible for leave if they worked 1,250 hours during the previous 12-month period and have worked for you for at least a year.

Eligible employees have the right to keep their healthcare benefits while on leave and to be reinstated to their job when the leave period ends. Additionally, you could face significant penalties for discriminating or retaliating against an employee for requesting, applying for, or using family and medical leave benefits. This means you should not discipline, fire, or take any other adverse action against an employee for using leave benefits in accordance with the act.

Payroll Contributions

You can either cover the entire contribution or withhold up to 50% of the cost from employee paychecks and cover the balance. The program will be financed through a 0.8% payroll tax that includes 0.4% for medical leave, 0.32% for parental leave and 0.08% for family caregiving leave. The Delaware Department of Labor will regulate deductions, withholdings, and payments.

Start Planning

Although Delaware's payroll tax does not go into effect until January 1, 2025, you should use this time to evaluate the applicability of the act to your business and begin making any necessary adjustments. It's also important to remember that if you have employees in more than one state, you may have to comply with multiple family leave laws. As a reminder, the federal FMLA provides unpaid leave and applies only to businesses with 50 or more employees. State laws, however, may cover smaller employers, offer leave for more reasons, and cover additional family members. For example, Maryland recently passed a paid family leave law that will cover leave to care for grandparents and grandchildren. By comparison, Delaware's law will cover spouses, parents, and children.

With Delaware's payroll tax going into effect on January 1, 2025, you have plenty of time to complete a review of your current policies and consult with your Fisher Phillips attorneys to determine the right course of action. For more information about compliance with the new law, contact your Fisher

Phillips attorney, the authors of this Insight, or any attorney in our Employee Leaves and Accommodations Practice Group. Make sure you are subscribed to Fisher Phillips' Insight system to receive the most up-to-date information.

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