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Delaware Mandates Paid Family Leave Starting in 2026: 5 Steps to Help Employers Prepare for the Transition

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The authors discuss a new Delaware law that guarantees paid parental, medical and military leave for private-sector workers.

With Governor John Carney's signature, Delaware recently became the 11th state to guarantee paid parental, medical, and military leave for private-sector workers. Given the size and scope of the initiative, employees will not be able to take advantage of the paid leave benefits until January 1, 2026.

The Healthy Delaware Families Act ("Act") will require covered employers to provide eligible employees with up to 12 weeks of paid parental leave and up to six weeks of paid medical or military leave. The six weeks of paid medical leave may be used for the eligible employee's own serious health condition or the serious health condition of a family member.

Unlike the federal Family and Medical Leave Act ("FMLA"), which provides for up to 12 weeks of unpaid leave, the Act provides eligible Delaware employees with 80 percent of their weekly wages – capped at a maximum of $900 per week.

To be eligible for the paid leave benefits, the employee must:

- Work for a covered employer;

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- Primarily report to a worksite in Delaware;
- Be employed by the covered employer for at least 12 months; and
- Work at least 1,250 hours for the employer in the preceding 12 months.

Employees who primarily report to a worksite outside of the state of Delaware are not entitled to benefits.

Employers with fewer than 10 employees are not covered by the Act, while those with 10 to 24 employees are required to provide only the 12-week parental leave benefit. Employers with 25 or more employees must provide the 12-week parental leave benefit as well as the six-week medical and military leave benefit. Covered employers that have their own approved comparable leave benefit plans may be exempted from the requirements the Act.

When evaluating whether an employer meets the 10 or 25 employee headcount threshold, the Act sets forth that it only counts employees that meet the paid leave eligibility requirements or are reasonably expected to meet the requirements. Seasonal and part-time employees (working less than 1,250 hours) do not count towards the headcount threshold.

In order to fund the paid leave benefits, covered employers will initially be taxed a maximum of 0.8 percent of their payroll – 0.32 percent for parental leave, 0.40 percent for personal medical leave, and 0.08 percent for caregiver and military leave. This tax takes effect January 1, 2025 – one year before employees are able to utilize the benefits. Employers must remit their contributions to the Department on a quarterly basis, or face a penalty of at least $1,000 for each violation. Employers with 25 or more employees may deduct half of the contribution – or 0.4 percent – from each covered employee's paycheck or pay the entire 0.8 percent themselves.

While the state's paid leave program benefits will not be available to employees until 2026, there are actions employers can take now to ensure compliance with the new legislation.

DETERMINE WHETHER YOU ARE – OR WILL BE – A COVERED EMPLOYER

Unlike the FMLA, the Act covers employers with fewer than 50 employees. Employers should evaluate their status as a covered employer as of today, but also project their headcount growth/contraction over the next few years. Employers that are on the cusp of the 10 or 25 covered employee threshold should operate with the expectation that the Act will apply.

DETERMINE WHETHER YOUR CURRENT POLICIES ALLOW YOU TO OPT OUT OF THE STATE PROGRAM

Employers that already have a leave plan that's comparable to or exceeds the benefits in the Act may not need to participate. Employers should carefully review the legislation to determine if their benefits plan meets the opt-out requirements. Employers who plan to opt out of the state leave program must first apply for approval from the state.

IDENTIFY "COVERED" EMPLOYEES

The Act requires covered employers to provide written notice to each eligible employee regarding their right to leave benefits and the procedure for filing a claim for benefits. Employers should identify the employees that will be entitled to benefits under the Act and be prepared to provide them with the appropriate notices.

CONSIDER BUDGETARY AND STAFFING NEEDS

Depending on the size of an employer's workforce and its payroll, the 0.8 percent tax may have an outsized impact. As a result, employers should budget accordingly. Likewise, employers should prepare for a potential increase in the frequency and duration of employee leaves. As noted by the bill's primary sponsor, Sen. Sarah McBride (D-Wilmington), employees often do not take time off because they cannot afford the loss of income. Since the Act provides employees with income during their leave, employees may be more inclined to utilize paid leave to take care of themselves and their loved ones.

TRAIN MANAGEMENT TO PREVENT INTERFERENCE AND RETALIATION CLAIMS

As with the FMLA, employers cannot interfere with, restrain, or deny a person the right to exercise or attempt to exercise any right afforded by the Act. Employers should take care to familiarize themselves with the Act's requirements and train their managers to avoid discriminating or retaliating against an employee for exercising their rights under the law.