



**Disability Insurance Program Rules & Regulations
Substantive Changes Overview
Proposed Revisions Effective April 1, 2019**

(New Language in Purple)

A. Section 2.0 – Definitions

We are recommending a clarification to the list of “Employing Organizations” by adding “Delaware Solid Waste Authority” by name since it is neither an agency, school district, charter school, court system nor institution of higher education. We are also recommending the inclusion of a definition for “Parental Leave” to recognize the passing of HB 3 as Amended by HA 4 (parental leave).

“**Employing Organization**” shall mean the agency, school district, charter school, institution of higher education, court system or **Delaware Solid Waste Authority (DSWA)** employing claimants in a position covered by the Delaware State Employees Pension Plan pursuant to 29 Del. C. Chapter 55 who are U.S. citizens or U.S. residents actively at work for one full day on or after January 1, 2006.

“**Parental Leave**” is a law that entitles all full-time employees in the employment of the State, a reorganized school district, charter school or vocational school district for at least one year, to twelve weeks of paid leave upon the birth or adoption of a child who is 6 years of age or younger to care for or bond with the child(ren). Parental Leave runs concurrently with any rights and benefits available under FMLA and STD pursuant to §5253 of Title 29 for the birth of a child. The University of Delaware, Delaware State University, Delaware Technical Community College and Delaware Solid Waste Authority are not subject to this law.

Note: The change in name from “Delaware Technical & Community College” to Delaware Technical Community College” has been captured in the following definitions:

- Employee
- Employing Organization, and
- Less Than Twelve Month Educational Employees

B. Section 3.0 – Eligibility and Enrollment Rules

We are updating our web address to reflect SBO’s new website effective February 1, 2019 for ease of administration for readers.

3.1 Pursuant to the authority vested in the SEBC by 29 Del. C. §5210(4), §9602(b) (4) and §5255, the SEBC adopts these eligibility and coverage rules for the State of Delaware’s Disability Insurance Program (DIP). In the event of conflict between these rules and the Delaware Code, the Delaware Code takes precedence over these rules. DIP is comprised of a Short Term Disability (STD) program and a Long Term Disability (LTD) program. The Rules and Regulations contained herein are to be used in conjunction with the Short Term Disability (STD) and Long Term Disability (LTD) benefit booklets displayed on the Statewide Benefits Office website at [de.gov/statewidebenefits](http://www.ben.omb.delaware.gov/statewidebenefits).
~~<http://www.ben.omb.delaware.gov/disability/index.shtml>~~

C. Section 4.0 Short Term Disability (STD) Elimination Period

To distinguish the differences between the use of accrued annual and sick leave versus parental leave for the birthing parent for periods before disability benefits commence in the STD program, we

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are recommending the addition of clarifying language in Rule 4.1 to coordinate with language in Sections 1(d), 2(d) and 4(a) of HB 3 as Amended by HA 4.

- 4.1 Pursuant to ~~29 Del. C. §5253(a)~~ Participating employees shall be eligible to utilize earned sick leave, **annual leave, compensatory time or donated leave** for absences due to accident, illness, or injury for periods before disability benefits commence under this chapter, such that the participating employee receives 100% of creditable compensation for such periods, not to exceed the employee's sick and/or annual leave balances. ~~Employees may also utilize earned annual leave, compensatory time or donated leave for absences due to accident, illness, pregnancy or injury for periods before disability benefits commence such that the employee receives 100% of creditable compensation for such periods, not to exceed the employee's sick leave balance.~~ **Upon the birth of a child(ren), employees entitled to parental leave shall utilize parental leave for periods before disability benefits commence.** Merit employees who are injured on the job and approved for workers' compensation (WC) should not be charged with sick leave for any portion of the day of the injury, pursuant to Merit Rule 5.3.8. Non-merit employees must comply with the rules that apply to your employing organization. The date of the injury is the first day of the STD calendar day elimination period.

D. Section 5.0 STD Claim Filing Requirements

We are recommending additional language to be added to Rules 5.1 and 5.2 to remind employees that parental leave runs concurrently with any rights and benefits available under FMLA for the birth of a child and STD benefits pursuant to HB 3 as Amended HA 4. The additional language will also act as a reminder to employees and the employing organizations of the STD claim filing requirement for employees enrolled in the DIP who expect to be out of work for at least 30 calendar days.

- 5.1 **Employees enrolled in the DIP are required to file an STD claim with the DIP Insurance carrier and/or Administrator if the employee expects to be out of work for at least 30 calendar days even if the employee applied for and/or is receiving lost wage benefits (i.e., Workers' Compensation) and/or parental leave, upon the birth of a child(ren).** ~~Pursuant to 29 Del.C. §5253(b)(7), o~~ Once an employee exhausts their elimination period, the employee will be deemed to have applied for benefits under this section and shall not be eligible to utilize paid **sick and/or annual** leave in lieu of application for STD. Employees not meeting the requirements noted in Section 9.0, will be deemed to have applied for benefits under this section and shall not be eligible to utilize paid **sick and/or annual** leave in lieu of application for an extension of STD benefits.
- 5.2 All employees enrolled in DIP who expect to be out of work for the length of the calendar day elimination period are required to file an STD claim in a complete and timely manner, even if the employee applied for and/or is receiving Workers' Compensation (WC) benefits, **parental leave** or Other Income Benefits defined in the STD benefits booklet per Delaware Code. Hazardous duty employees injured in the line of duty, who are employed by the Department of Corrections (or its successor agency), the Delaware Psychiatric Center (or its successor agency) who are assigned to programs for the criminally insane, the Department of Services for Children, Youth and Their Families who are assigned to work in the Division of Youth Rehabilitative Services facilities, State law-enforcement officers in the performance of their duties including State employees serving in response to imminent danger of hazardous waste material, including but not limited to the SERT Team are required to file an STD claim in a complete and timely manner if they expect to be out of work for the length of the calendar day elimination period. Employing organizations are required to provide the DIP insurance carrier and/or Administrator with the names of hazardous duty employees who are injured while performing a hazardous duty who are entitled to be paid the twelve month salary supplement pursuant to 29 Del.C. §5933 (c).

E. Section 8.0 – STD Benefit Payment

We are recommending the addition of the phrase ‘including parental leave’ as another reminder that employees are not to be paid more than 100% of pre-disability base pay from all sources from the State of Delaware.

8.8 Employees enrolled in and receiving STD compensation shall receive up to a maximum of 100% of pre-disability base pay from all sources, including parental leave. If the employee is otherwise eligible for holiday pay or a paid leave other than annual, sick, compensatory or donated leave, the employee will be granted 100% pay on the day in question without a residual. All leave supplements will be calculated on a per pay basis.

F. Section 9.0 – Leaves

For the DIP, “Employing Organizations” are defined by type of organization (i.e., agency, school district, charter school, etc.) who employ claimants in a position covered by the Delaware State Employees’ Pension Plan pursuant to 29 Del. C. Chapter 55. Because HB 3 As Amended by HA 4 excluded the Institutions of Higher Education and Delaware Solid Waste Authority, we are recommending renaming the “Merit Employees” and “Non Merit Employees” categories as shown below to broaden the scope of employees (i.e., judicial, appointed, etc.) these sections apply to.

9.1 Merit & Non-Merit Executive Branch, Elected Offices, Courts and Legislative Organization Employees

9.2 DOE, School District, Charter School and Institution of Higher Education Employees

Note: We are recommending revisions to each of the leave rules referenced below in Sections 9.1 and 9.2 to provide guidance on how to administer and pay leave for employees entitled to FMLA, parental leave, annual or sick leave, donated leave and/or compensatory time when satisfying the STD elimination period and to supplement the STD wage payment.

9.1.1 Provided the employees files their STD claim no later than the 15th calendar day from the date of disability and abides by the employing organization’s policy and procedures regarding attendance and calling out absent, the employee may continue to use available sick and/or annual leave to be paid until the STD claim is approved, if not approved by the exhaustion of the STD calendar day elimination period. Parental leave shall be used to cover the elimination period upon the birth of a child for eligible employees in lieu of earned sick or annual leave, compensatory time or donated leave until the STD claim is approved, if not approved by the exhaustion of the STD calendar day elimination period. See section 5.1 for claim filing requirements.

9.1.1.1 & 9.2.1.1 If the STD claim is not in an approved status by the exhaustion of the calendar day elimination period due to reasons outside the employee’s control, the employing organization shall have discretion to pay the employee accrued annual and/or sick leave until the employee’s STD claim is approved. If the STD claim is approved, the employing organization must reconcile the employee’s leave record.

9.1.2 Pursuant to 29 Del.C. §5253(b)(4), a An employee may utilize annual leave, sick leave, compensatory time or donated leave to supplement STD benefits to equal 100% of pre-disability base pay for a maximum benefit period of 182 calendar days. Parental leave shall be used to supplement the STD benefit to equal 100% of pre-disability base pay for employees entitled to parental leave upon the birth of a child. An employee may not use accrued annual leave, sick leave or other leave in lieu of parental leave for the birth of a child(ren) and to supplement the STD benefit. The employee can chose from the following three options:

- 9.1.2.1 Except those entitled to parental leave (See Rule 9.1.1), ~~T~~the employee may choose to use their monthly annual and/or sick leave accrual consecutively starting on the first workday of the month to supplement the STD benefit with available leave until the leave is exhausted. The leave must be utilized consecutively rather than on specific dates of the employee's choosing in the month; or
- 9.1.2.2 Except those entitled to parental leave (See Rule 9.1.1), ~~T~~the employee may choose to retain their sick and/or annual leave accruals and save it for payout at the time the employee becomes a Long Term Disability (LTD) beneficiary or retires on a service pension; Parental leave shall not accrue or be donated to the Donated Leave bank or be donated to another state employee. An employee who terminates employment prior to the end of the 12 month parental leave period shall not be eligible for payment of any unused parental leave; or
- 9.1.2.3 Except those entitled to parental leave (See Rule 9.1.1), ~~T~~the employee may choose to save their sick and/or annual leave accrual for use when they return to work from STD leave. Parental leave must be used within twelve months from the date of birth.
- 9.1.3 Employee applying for STD benefits must also apply for the Family Medical and Leave Act (FMLA) and parental leave if eligible. Parental leave runs concurrently with FMLA and STD, as applicable. While on FMLA, employees may retain one week of sick and one week of annual leave. Sick and annual leave accruals that exceed the allowable one week of sick leave and one week of annual leave must be used as earned.
- 9.1.4 Except those entitled to parental leave (See Rule 9.1.1), ~~D~~donated leave may be used to pay employees during the calendar day STD elimination period. However, regardless of whether a claim was filed with the DIP insurance carrier and/or Administrator, donated leave is not to continue following the calendar day elimination period until the employee's STD claim has been approved and the employee continues to be in an STD approved status. Upon approval of the employee's STD claim and while the employee remains in an approved STD status, the employing organization may apply donated leave retroactively to supplement the STD benefit payment.
- 9.1.5 Employees on parental leave, FMLA and/or donated leave must comply with the rules that apply to those programs.
- 9.1.7 Employees on approved STD may choose to use accrued annual and sick leave earned each month in its entirety or to save the annual and sick accrual for payout upon the commencement of LTD or service pension. Upon the birth of a child, employees on approved STD are required to utilize parental leave. ~~Leaves~~ ~~Rules for~~ parental leave FMLA and donated leave take precedence.
 - 9.1.7.1 Employees who exhaust annual and sick leave accrual each month will accrue leave at 100% for the given month.
 - 9.1.7.2 Employees who decide to save their annual and sick leave accrual will accrue leave at 75% for the given month.
- 9.1.8 If the employee is in a "no pay" status during the STD elimination period, annual and sick leave accrual stops. The employee should receive annual and sick

leave accrual prorated for the portion of the month last worked and a prorated amount of **annual and sick** leave for the portion of the month in which STD benefits were received. **Parental leave shall be used to cover the elimination period upon the birth of a child and is a paid leave.**

- 9.1.9 Employees remain subject to the provisions of Merit Rule 5.2.4 regarding **annual** leave carryover.
- 9.1.10 Upon the exhaustion of the maximum STD benefit period, any employee, except those entitled to hazardous duty pay as defined in 29 Del. C. §5933(c), and those working on a temporary reduced, alternate, light duty and/or part-time basis, shall no longer be an employee of the State or any of its political subdivisions provided the employee has exhausted their FLMA entitlement and/or is not FMLA eligible. Employees entitled to hazardous duty pay as defined in 29 Del. C. §5933(c) who exhaust the maximum short term disability benefit period shall no longer be an employee of the State or any of its political subdivisions at the end of their entitlement to hazardous duty pay **or parental leave**, provided the employee has exhausted their FMLA entitlement and/or is not FMLA eligible and is not working on a temporary reduced, alternate, light duty and/or part-time basis. **Upon termination of employment, the employee shall not be eligible for payment of any unused parental leave.** The employee has two options with respect to remaining accrued **sick and annual** leave only.
 - 9.1.10.1 Escrow **Sick and Annual** Leave. Prior to the commencement of LTD benefits, the employee may make written request to the employing organization to escrow accrued **sick and annual** ~~and sick~~ leave for a maximum period of six months. If the member returns to full-time State employment in a benefit eligible position for 30 calendar days within the 6 month escrow period, the member's **sick and annual** leave balances will be restored. If the member does not return to State employment in a benefit eligible position, the escrowed **sick and annual** leave will be paid to the member based on the rules in place by the member's former employing organization.
 - 9.1.10.2 Payout of **Sick and Annual** Leave. Upon the commencement of LTD benefits, the employee shall be eligible to receive a payout of accrued **sick and annual** leave based on the rules in place by the employing organization. If the member is subsequently rehired or reinstated by the State of Delaware into a benefit eligible position, the member's **sick and annual** leave balance will be zero on the date of rehire or reinstatement.
- 9.1.11 Employees who supplement the STD benefit payment with annual, sick, compensatory **time, parental** or donated leave may defer any portion of the supplement into the Deferred Compensation program. Employees may not defer any portion of the STD benefit payment to the Deferred Compensation program.
- 9.1.13 If an employee is in a no pay status during the STD elimination period, **sick and annual** leave accrual stops. The employee should receive **sick and annual** leave accrual prorated for the portion of the month they last worked and a prorated amount of **annual and sick** leave for the portion of the month in which the employee receives STD benefits. Please see DIP FAQ's, Section 6 for more information.
- 9.1.14 Merit employees accrue sick and annual leave equivalent to the total combined benefit and wage (STD, sick, **parental** or annual leave, WC, donated leave and PIP, not to exceed 100% of pre-disability earnings) paid to the employee. Please see DIP FAQ's, Section 6 for specific examples.

9.2 Non Merit and Education Employees of a School District, Charter School or Institution of Higher Education

- 9.2.1 Provided the employee files their STD claim no later than the 15th calendar day from the date of disability and abides by the employing organization's policy and procedures regarding attendance and calling out absent, the employee may continue to use available sick and/or annual leave to be paid until the STD claim is approved, if not approved by the exhaustion of the STD calendar day elimination period. Pursuant to 14 Del.C. §1333 (d), parental leave runs concurrently with any rights and benefits available under FMLA and STD pursuant to §5253 of Title 29 for the birth of a child. Parental leave shall be paid to eligible employees to cover the STD calendar day elimination period upon the birth of a child(ren) and to supplement the STD benefit.
- 9.2.2 Pursuant to ~~29 Del.C. §5253(b)(4)~~, an employee may utilize annual leave, sick leave, compensatory time, or donated leave (if applicable) to supplement STD benefits to equal 100% of pre-disability base pay for a maximum benefit period of 182 calendar days. Parental leave shall be used to supplement the STD benefit to equal 100% of pre-disability base pay for employees entitled to parental leave upon the birth of a child. An employee may not use annual leave, sick leave or other leave in lieu of parental leave for the birth of a child(ren) to supplement the STD benefit.
- 9.2.3 Employees on parental leave, FMLA and/or donated leave must comply with the rules that apply to those programs.
- 9.2.4 Upon the exhaustion of the maximum STD benefit period, any employee, except those entitled to hazardous duty pay as defined in 29 Del. C. §5933(c), and those working on a temporary reduced, alternate, light duty and/or part-time basis, shall no longer be an employee of the State or any of its political subdivisions provided the employee has exhausted their FLMA entitlement and/or is not FMLA eligible. Employees entitled to hazardous duty pay as defined in 29 Del. C. §5933(c) who exhaust the maximum short term disability benefit period shall no longer be an employee of the State or any of its political subdivisions at the end of their entitlement to hazardous duty pay or parental leave, provided the employee has exhausted their FMLA entitlement and/or is not FMLA eligible and is not working on a temporary reduced, alternate, light duty and/or part-time basis. Upon termination of employment, the employee shall not be eligible for payment of any unused parental leave. The employee has two options with respect to remaining unused accrued sick and annual leave.
- 9.2.4.1 Escrowed Sick and Annual Leave. Prior to the commencement of LTD benefits, the employee may make a written request to the employing organization to escrow unused accrued annual and sick leave for a maximum period of six months. If the member returns to full-time State employment in a benefit eligible position for 30 calendar days within the 6 month escrow period, the member's sick and annual leave balances will be restored. If the member does not return to State employment in a benefit eligible position, the escrowed leave will be paid to the member based on the rules of the member's former employing organization.
- 9.2.4.2 Payout of Sick and Annual Leave. Upon the commencement of LTD benefits, the employee shall be eligible to receive a payout

of unused accrued leave based on the rules of the employing organization.

- 9.2.5 Employees who supplement the STD benefit payment with annual, sick, compensatory time, parental or donated leave may defer any portion of the supplement into the Deferred Compensation program. Employees may not defer any portion of the STD benefit payment to the Deferred Compensation program.

G. Section 10 - Termination of STD Benefits

We are recommending the addition of the phrase “or parental leave” in Rule 10.1.5 to incorporate the provisions of HB 3 As Amended by HA 4 as a reminder that employees on approved parental leave may not have their employment terminated due to the exhaustion of the maximum STD benefit period and/or their entitlement to FMLA and/or hazardous duty pay as defined in 29 Del. C. §5933(c).

- 10.1.5 Upon the exhaustion of the maximum STD benefit period, any employee, except those entitled to hazardous duty pay as defined in 29 Del. C. §5933(c), shall no longer be an employee of the State or any of its political subdivisions provided the employee has exhausted their FLMA entitlement and/or is not FMLA eligible. Employees entitled to hazardous duty pay as defined in 29 Del. C. §5933(c) who exhaust the maximum short term disability benefit period shall no longer be an employee of the State or any of its political subdivisions at the end of their entitlement to hazardous duty pay or parental leave, provided the employee has exhausted their FMLA entitlement and/or is not FMLA eligible.

H. Appeals – STD Claim Determinations

We are recommending the change in our telephone number to comply with our recent SBO communication changes.

- 11.3 Pursuant to 29 Del.C. §5258, within 20 days of the postmark date of the DIP insurance carrier and/or Administrator’s determination of benefits being appealed, a claimant may file a second level appeal by filing a written petition setting forth with particularity the grounds for second appeal to the Appeals Administrator at the Statewide Benefits Office, who shall conduct an informal review, and who shall have the authority to reverse all or any part of the decision of the DIP insurance carrier and/or Administrator to deny benefits. The claimant’s written appeal should be addressed and mailed to:

Appeals Administrator
RE: DISABILITY APPEAL
Statewide Benefits Office
97 Commerce Way, Suite 201
Dover, DE 19904
Tel: 1-800-489-8933 (302) 739-8334
Fax: (302) 739-8339

I. Section 12.0 – Employee Termination

To distinguish the differences between the use of accrued annual and sick leave versus parental leave for the birthing parent, we are recommending the addition of clarifying language in Rules 12.3 and 12.4 to coordinate with language in Sections 1(d), 2(d) and 4(a) of HB 3 as Amended by HA 4.

- 12.3 Six weeks prior to the commencement of LTD benefits, the employing organization will provide the employee with Transitioning to LTD documents for the purpose of escrowing sick and annual leave accruals for a 6 month period and for benefit elections for while on approved LTD. See subsections 9.1.10 and 9.2.4 for complete descriptions of escrowing leave.

12.4 Pursuant to 29 Del. C. §5933 (c), hazardous duty employees injured while performing a hazardous duty assignment and whose injuries arose out of and in the course of performing hazardous duty are entitled to a 12 month salary supplement. Employees entitled to hazardous duty pay as defined in 29 Del.C. §5933(c) who exhaust the maximum short term disability benefit period shall no longer be an employee of the State or any of its political subdivisions at the end of their entitlement to hazardous duty pay or parental leave, provided the employee has exhausted their FMLA entitlement and/or is not FMLA eligible and the employee is not working on a temporary reduced, alternate, light duty and/or part-time basis. Upon termination of employment, the employee shall not be eligible for payment of any unused parental leave. See subsection 9.1.10 and 9.2.4 for a complete description.

J. Section 22.0 Working while Transitioning to LTD or after the exhaustion of the STD Benefit Period

We are updating DHR's current website address for ease of administration for readers.

22.1 Employees working on a temporary reduced, alternate, light duty and/or part-time basis upon the exhaustion of the maximum STD benefit period should be permitted to continue working while transitioning to LTD. All employing organizations are responsible for engaging in the ADA interactive process (~~<http://hrm.omb.delaware.gov/policies/index.shtml>~~ <https://dhr.delaware.gov/personnel/policies/>) with their employees when appropriate.