



PARENTAL LEAVE FAQs	
<b>Policy #:</b> DHR-STW-409.2-Q	<b>Authority:</b> 19 Del. C. §§ 3701-3704; 29 Del.C. §§ 5120, 5253
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The content in these Frequently Asked Questions (FAQs) applies to State of Delaware (State) Executive Branch cabinet agency employees. Other employers of State personnel may choose to adopt the [Parental Leave Policy](#) as well as the provisions in these FAQs. Non-cabinet agency personnel should contact their supervisor to determine whether their employer has adopted these provisions. Employees should direct questions or concerns to their supervisor or Human Resources representative.

**1. What is the purpose of Parental Leave (PL)?**

The State of Delaware (the State) recognizes the importance of maintaining a healthy workforce and providing economic stability for employees during initial caring for and bonding with children.

**2. When can I take PL?**

Employees who meet the eligibility criteria can take up to 12 calendar weeks of paid parental leave during the first 12 months following the birth, legal adoption, lawful adoption placement, or initial placement through foster care of a child . The 12 weeks may be taken continuously, or you may request a two-week time period of PL, subject to the agency’s approval.

**3. What is the definition of a child?**

**A child, for the purpose of PL**, is defined as a “son” or “daughter” who is a biological, adopted, step or foster child, a legal ward, or a child of a person standing “in loco parentis” under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that leave under the FMLA is to commence<sup>1</sup>.

**4. Does this only apply to 100% full-time employees or are part-time employees also eligible to take PL?**

PL applies to full-time and part-time employees in a leave eligible position, is not a casual seasonal employee, who has worked for the State for at least 12 months or 52 weeks and have worked at least 1,250 hours during the 12-month period immediately preceding the commencement of leave.

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<sup>1</sup> Per U.S. Department of Labor, in order for a parent to take FMLA leave for a child who is 18 years of age or older, the son or daughter must: (1) have a disability, as defined by the Americans with Disabilities Act, at the time the leave is to commence; (2) incapable of self-care because of the disability; (3) have a serious health condition, and (4) need care because of the serious health condition.

**5. I am a school district employee out on PL. I applied for and was offered a position in an Executive Branch Agency. Will I be able to utilize my remaining PL if I accept the position?**

Employees transferring from a State of Delaware school district to an Executive Branch Agency who are currently out for PL will have their prior service reviewed to determine eligibility under this policy. This would also be true if the transfer occurs before the birth date, legal adoption date, or lawful adoption or initial foster placement date.

**6. I am an employee of the Delaware Technical Community College or the Delaware State University out on PL. I applied for and was offered a position in an Executive Branch Agency. Will I be able to utilize my remaining PL if I accept the position?**

Employees transferring from the Delaware Technical Community College or the Delaware State University who are currently out for PL will have their prior service reviewed to determine eligibility under this policy. This would also be true if the transfer occurs before the birth date, legal adoption date, lawful adoption, or initial foster placement date.

**7. Can PL be taken prior to the birth, legal adoption, lawful adoption or foster placement?**

In the event that the employee requires leave before the actual birth, legal adoption, lawful adoption, or initial foster placement due to medical reasons or to fulfill legal adoption or foster obligations, other available leave shall be utilized in accordance with the Merit Rules or non-Merit Agency leave policy. An employee may not use accrued sick leave, annual leave or other leave in lieu of PL for the birth, legal adoption, or lawful adoption or initial foster placement of a child.

**8. Will my benefits be affected if I take PL?**

While on approved PL, the State will continue to pay eligible employees, the employer portion of your elected benefits and deduct the employee share from your paycheck, as normal. Eligible employees will continue to earn service credit and retirement contributions, as normal. Annual and sick leave accruals also will continue, for eligible employees.

**9. Will my employment status be affected if I take PL?**

At the conclusion of PL, the State shall restore the eligible employee to the same or equivalent position, barring any unforeseen circumstances unrelated to the employee's taking leave (i.e., workforce reduction).

**10. If I am approved for PL for a birth, legal adoption, lawful adoption, or initial foster placement, will my child be covered on the State's health care plans?**

In order for your child to be covered under the State's health care plans, the child must be eligible and enrolled, and all the State's requirements must be met.

**11. In the case of two State employees becoming parents together, can they stagger their leave?**

In the event that two employees of the State are eligible for PL for the same birth, legal adoption, lawful adoption, or initial foster placement, each employee is eligible for up to 12 calendar weeks of PL.

**12. My spouse/partner also works for the State. Can I donate my PL so that s/he can have additional PL?**

PL cannot be donated to either an employee or to the Donated Leave Bank.

**13. What is required to prove I am a parent eligible to take PL?**

An eligible employee is required to provide legal documentation of the birth, legal adoption, lawful adoption, or initial foster placement of a child within thirty (30) days of the birth, legal adoption, lawful adoption, or initial foster placement or as soon as it becomes available. The name of a legal parent must appear on the birth certificate, a legal document establishing paternity, adoption agreement, or a legal document establishing the legal or lawful adoption, or initial foster placement. Examples of legal documents that will be considered are: a report of birth; a birth certificate; an adoption order; adoption agreement; or other document verifying lawful adoption placement, or initial foster placement. The legal documents provided shall show the date of birth, date of adoption, date of adoption placement, or date of initial foster placement, the age of child at the time, and the name of the parent(s).

**14. What if I cannot provide the legal documentation by the required deadline?**

Situations where a legal document cannot be provided at the time of birth, legal adoption, lawful adoption placement, or initial foster placement within the required timeframe or a reasonable time, thereafter, will be evaluated for approval on a case-by-case basis.

**15. Is there a limit on the number of PL periods an employee can get per year?**

Multiple births or adoptions, or lawful adoption placements, or initial foster placements from a single pregnancy or adoption or foster placement event qualify for one PL of up to 12 calendar weeks; however, if a second child is born, adopted, or placed for adoption or initially placed for foster care during the 12-month period of the first PL, you may be eligible for a second PL if you meet the eligibility criteria.

**16. If I give birth to or adopt or foster more than one child, would I be eligible for more than 12 weeks of PL?**

Multiple births, adoptions, or lawful adoption or initial foster placements from a single pregnancy or adoption or initial foster event do not increase the length of PL. PL applies to the initial placement of the foster child, not subsequent placements of the same child within the same household.

**17. Do two births and an adoption or lawful adoption or foster placement in a calendar year equal 36 weeks of leave?**

Multiple births, adoptions or lawful adoption or foster placements from a single pregnancy or adoption or foster event qualify for one PL; however, if a second child is born, legally adopted, placed for adoption, or initially placed for foster care during the 12-month period of the first PL, you may be eligible for a second PL if you meet the eligibility criteria.

**18. If I take 12 weeks of PL for a lawful adoption and then the process moves into legal adoption for the same child, would I be eligible for 24 weeks of PL?**

You would be eligible for up to 12 weeks of PL for a lawful adoption or legal adoption for

the same child during a 12-month period.

**19. The Family and Medical Leave Act (FMLA) allows me 12 weeks of unpaid leave for the birth, adoption or initial foster placement of a child. The State allows me to apply earned sick time during FMLA. Can I use PL to extend that time?**

In accordance with Delaware Code, PL shall run concurrently with FMLA and Short-Term Disability (STD), as applicable. Per the Paid Parental Leave Policy, an employee may not use accrued sick leave, annual leave, or other leave in lieu of PL for the birth, legal adoption or lawful adoption or initial foster placement of a child.

**20. If I am not eligible for FMLA, can I request and use PL?**

If you are not eligible for FMLA, you may still request and use PL; however, you must apply for and use FMLA once you become eligible if still on PL. If your eligibility for FMLA occurs after PL has begun, FMLA may extend your leave, but it does not extend your PL.

**21. What if I did not apply early in order to save my PL since I just need to apply within 30 days?**

The Paid Parental Leave Policy requires you to give your agency 30 days' notice, if possible. You may not use accrued sick leave, annual leave or other leave in lieu of PL for the birth, legal adoption, lawful adoption or initial foster placement of a child.

**22. What if I am unable to provide 30 days' notice?**

This depends on the reason why you were unable to provide the notice. If the birth of your child occurred prematurely and you meet the eligibility criteria, there should be no penalty for being unable to adhere to the procedures in the policy. The policy requires "at least thirty (30) days in advance of the birth, legal adoption, lawful adoption, or initial foster placement of the child." You may also provide notice sooner.

**23. What if I do not give 30 days' notice? May I use other available leave?**

If an employee does not provide notice at least thirty (30) days in advance, the situation will be considered on a case-by-case basis. An employee may not use accrued sick leave, annual leave or other leave in lieu of PL for the birth or adoption of a child. Failure to provide 30-day notice does not extend PL time.

**24. Can I take FMLA my first week and save my PL to take after my spouse takes 12 weeks? It would still be within the 12 months.**

PL must run concurrently with available FMLA. You may, however, request to take a block of two weeks upon the birth, legal adoption, or lawful adoption or foster placement of the child and request to utilize the 10 weeks' balance of your PL and FMLA, if eligible, later within the 12 months.

**25. If I am not eligible for FMLA, can I just take annual leave that first week and then wait to start my continuous PL?**

An employee may not use accrued sick leave, annual leave or other leave in lieu of PL for the birth, legal adoption, or lawful adoption or foster placement of a child.

**26. If I go out on PL and do not qualify for FMLA until six (6) weeks later, can I continuously stay out now for the remaining six (6) weeks of FMLA?**

Eligible employees are entitled to PL, even if they are not eligible for FMLA at the start of PL. However, if an employee becomes eligible for FMLA while taking PL, that employee must apply for and use FMLA concurrently with the remainder of his/her PL. If the FMLA entitlement extends beyond the PL, the employee is entitled to his/her full FMLA.

An example using a continuous period of PL: An employee has exhausted his/her 12 weeks of FMLA and a new FMLA year does not start until December 1st. The birth, legal adoption, lawful adoption, or initial foster placement occurs on October 22nd. The employee would therefore use PL starting October 22nd; six weeks later on December 1st, if the employee is still eligible for new FMLA, this FMLA would run concurrently with PL. In this example, the employee's PL would exhaust on January 14th, but FMLA does not exhaust until five weeks later on February 23rd. During the last six weeks of FMLA, standard FMLA rules apply.

**27. Does paid PL count towards hours worked for FMLA?**

Paid PL does not count towards hours worked for FMLA. The hours count towards compensable hours for overtime calculations.

**28. If I go on bed rest during pregnancy, what leave am I eligible to use?**

If you require leave before the actual birth due to medical reasons, other available leave shall be utilized in accordance with the Merit Rules or non-Merit Agency leave policy.

**29. If I have worked for the State several times but have had a break in service, am I still eligible for PL?**

An eligible employee is defined as a full-time or part-time employee in a leave-eligible position, is not a casual/seasonal employee, who has worked for the State for 12 months or 52 weeks and have worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave. Separate periods of employment will be counted, provided that the break in service does not exceed seven (7) years.

**30. If I have a miscarriage or stillbirth, what leave am I eligible to use?**

In this situation, PL will not apply but Bereavement Leave shall be utilized in accordance with Delaware Code and the Bereavement Leave Policy, or non-Merit Agency leave policy.

**31. If my child passes just after birth, within the 12 weeks of continuous PL, what leave am I eligible to use?**

If the child passes after birth, other available leave shall be utilized in accordance with Delaware Code, the Merit Rules or non-Merit Agency leave policy. This would also be true if the child passes after birth (or adoption) within the 12 months following and the employee has a PL balance. The employee must notify his/her Agency Human Resources (HR) representative as soon as reasonable to inform them of the situation.

**32. If there is a disruption during the lawful adoption or initial foster placement, what leave am I eligible to use?**

In this situation, PL will not apply but other available leave shall be utilized in accordance with the Merit Rules or non-Merit Agency leave policy.

**33. Some employees are approved to work two jobs for the State. What is the impact if an employee returns to the second job while approved for PL?**

Merit Rules provide that employees covered by the FLSA shall be permitted to accept additional employment in another State agency with prior written consent of the affected Agencies. Overtime eligibility shall be based on the FLSA (Merit Rule 4.3). Non-merit Agencies shall follow their agency policy. The second job does not qualify for PL.

**34. If my newborn requires further medical care, will my time be designated as PL or sick leave to supplement my STD?**

The employee has the responsibility to inform his/her Agency HR representative about the situation. The HR representative will designate the leave appropriately and require documentation or information, as appropriate.

**35. If I am not the birthing parent, can I take PL in less than 12 weeks' time to attend the birth, adoption, or foster proceeding?**

Employees who meet the eligibility criteria may request to take PL in two-week time periods. Agencies have discretion over approving the schedule requested.

**36. If I get married and adopt my new spouse's child, am I eligible for PL?**

The purpose of PL is to provide economic stability for employees during initial caring for and bonding with children. In the situation described, PL would not apply.

**37. How long do I have to use PL after birth, legal adoption, lawful adoption, or initial foster placement?**

PL expires 12 months from the date of the birth, legal adoption, lawful adoption or initial foster placement.

**38. Can an employee take PL beyond 12 continuous months from birth, legal adoption, or lawful adoption or initial foster placement?**

PL expires 12 months from the date of the birth, legal adoption, lawful adoption, or initial foster placement.

**39. How do I apply for PL?**

Please refer to the [Parental Leave Policy & Procedure](#).

**40. Does an employee have to be full time and/or benefit eligible for 12 months or could a casual/seasonal employee who became full time for a total of 12 months be eligible for PL?**

The employee must have worked for the State for 12 months or 52 weeks and have worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave.

- 41. Do employees need to be eligible at the time of their request – 30 days out?**  
Employees must be eligible on the date of birth, legal adoption or lawful adoption or foster placement.
- 42. What if I become eligible one day after I give birth, or my child is lawfully placed for adoption or initially placed for foster care?**  
You are not eligible, as you must be eligible at the time of the birth or lawful adoption or foster placement.
- 43. What happens if a holiday falls while I am out on PL?**  
Holidays or Severe Weather Conditions and Emergency declarations occurring during a week when PL is taken will not extend the PL time.
- 44. Are there any consequences if an employee decides not to return to work after receiving the 12 weeks of PL?**  
PL is not intended to be used immediately prior to retirement, resignation or separation. An employee not returning to work after the expiration of PL without resignation may violate State regulations, State policy or non-Merit Agency leave policy.
- 45. Can I take PL in half days or hours?**  
PL shall be charged as a full day regardless of the daily number of hours used or regularly worked.
- 46. Can I use PL to supplement my STD benefit?**  
PL may be used to supplement the State's STD benefit not to exceed 100% of an employee's creditable compensation<sup>2</sup> following the birth of a child. PL shall be charged as a full day regardless of the hours needed to supplement STD benefits.
- 47. I transitioned to Long-Term Disability (LTD). Am I still eligible to take PL?**  
If you transitioned to LTD<sup>3</sup>, this is considered a break in service, and you would not be eligible unless and until after you have returned to full-time employment for 12 continuous months.
- 48. Am I eligible for PL if I am a surrogate mother or sperm donor?**  
Surrogate mothers and sperm donors do not qualify for PL.
- 49. If I am suspended as a disciplinary action, can I supplement my pay with PL?**  
An employee may not use PL to cover an absence resulting from an administered disciplinary suspension.

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<sup>1</sup> "Creditable Compensation," as defined in Title 29, § 5251(c), shall mean the base rate of compensation that the employee received on the last day of employment before the employee developed a disability

<sup>2</sup> The current statute reads, in part: "Upon the exhaustion of the maximum Short-Term Disability (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 his/her FMLA entitlement and/or is not FMLA eligible."

**50. If I requested 12 weeks of continuous PL or 2-week time period PL and it was approved, may I change my request?**

With reasonable notice to your Agency HR representative, your request to revise your original PL request will be considered.

**51. Why can I only take PL in two-week time periods?**

Two-week time periods are an option for requesting leave. This allowance is designed to provide eligible employees the flexibility to use less than 12 continuous calendar weeks; to assure that eligible employees on an Alternative Work Schedule, 14-day work periods (FLSA), compressed schedules or other flexible schedules are provided PL equitably; and for Agencies to plan operationally for employee absences.

**52. Who should I contact if I have questions about the PL benefit?**

Your Agency HR representative will be able to assist you with your questions.

**53. My request for PL was denied. Where do I appeal this?**

Please contact your Agency HR representative for clarification. If you need further assistance, please call the Department of Human Resources, Employee Engagement Unit at 866-462-8411.

**54. Will my paid PL include my recurring shift differential?**

Recurring shift differential ends when an eligible employee is out on approved PL.

**55. When is a child considered adopted for the purpose of PL?**

Finalized adoption occurs upon the issuance of the decree of adoption and the adopted child shall be considered the child of the adopting parent or parents, entitled to the same rights and privileges and subject to the same duties and obligations as if s/he had been born to the adopting parent or parents or as of the lawful adoption placement date outlined in an adoption agreement issued by a licensed agency and/or attorney.

**56. What is considered foster care for purposes of PL?**

The temporary care of a child placed in an agency-approved foster home. An individual or a couple who has been approved by DSCYF or a licensed agency to provide foster care in exchange for foster care payments provided by DSCYF or a licensed agency.

**57. Can I use PL in the stages of preparation for adoption such as required travel or visitation to another country?**

Merit Rules provide that employees who have been continuously employed on a full-time basis for at least one year at the time of application for leave may utilize accumulated sick leave to travel out of the United States for the purpose of adopting a child from a foreign country. Before the leave will be granted, employees must provide documentation that they have applied for the adoption and that the travel is required for the adoption to be approved. Once the lawful adoption placement has been finalized (issuance of an adoption agreement), the employee shall apply for PL, as appropriate.



**58. How will I get paid if I am on approved PL?**

Eligible employees on approved PL will get paid as s/he is normally paid.

**59. If my employment ends, am I entitled to the balance of my PL?**

An employee who terminates employment shall not be eligible for payment of any unused Parental Leave.