



PARENTAL LEAVE POLICY AND PROCEDURE – Statewide	
DHR-STW-Policy #: DHR-STW-409.2	Authority: 19 Del.C. §§ 3701-3704; 29 Del.C. §§ 5120, 5253
Effective Date: January 1, 2025	Revision Date: January 1, 2025
Supersedes: May 30, 2024, April 1, 2021; April 1, 2019	Signature:
Application: Executive Branch Agencies	

### 1. Policy Purpose Statement

This statement sets forth a mindful approach to the State of Delaware’s policy and procedures for the use of Parental Leave. The State recognizes and respects the importance of maintaining a healthy workforce and providing economic stability for employees during initial caring for and bonding with children. This leave benefit will assist the State in retaining its current workforce and attracting new employees to public service.

### 2. Scope

This policy applies to eligible full-time and part-time employees who are caring for a child during the first year following the child’s birth, lawful adoption placement, adoption, or initial placement through foster care.

### 3. Definitions and Acronyms

- **Adoption** – Legal adoption confirmed by a decree or lawful adoption placement confirmed by an adoption agreement or other acceptable written verification of a child, here and after, adoption shall refer to legal adoption and lawful adoption placement.
- **Calendar Week** – An employee’s regularly scheduled hours within the seven (7) day period that does not include overtime. Holidays or Severe Weather Conditions and Emergency declarations occurring during a week when Parental Leave is taken will not extend the Parental Leave time.
- **Child** - A “son” or “daughter” 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>
- **DSCYF** – Department of Services for Children, Youth and their Families.
- **Eligible Employee** – 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

<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.

have worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave.

- **Family and Medical Leave Act (FMLA)** is a Federal law that entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.
- **Foster Care** – 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.<sup>2</sup>
- **In loco parentis** – Standing in place of a parent. The FMLA regulations define in loco parentis as including those with day-to-day responsibilities to care for and financially support a child.
- **Lawful Adoption Placement** - The selection of an approved family for the child; the arrangement for the child’s move into an adoptive home; or the relocation of the child with an adoptive family performed only by the DSCYF or a licensed agency or an authorized agency.<sup>3</sup>
- **Multiple Births/Adoptions/Foster Placements** – More than one infant born from the same pregnancy; more than one child adopted or fostered on the same date.
- **Parent** – an employee who is the biological, adoptive, step, or foster parent, or someone who stands *in loco parentis* to the child. Standing *in loco parentis* means a person is in the role of a parent. Parents-in-law are not included in the definition of “parent”.<sup>4</sup>
- **Parental Leave** – Up to 12 calendar weeks of paid leave for the purposes of caring for or bonding with a newborn or caring for or bonding with a newly adopted child or new adoption or initial foster placement.
- **Short-Term Disability (STD)** – A State program that entitles employees enrolled in the Disability Insurance Program (DIP) with partial income replacement for up to 182 calendar days should the employee become disabled due to a covered accident, sickness or pregnancy.

#### 4. Policy

- a. The State of Delaware provides up to 12 calendar weeks of paid Parental Leave to eligible employees upon the birth, lawful adoption placement, adoption or initial placement through foster care of a child and is caring for the child during the first year after the birth, adoption, or placement of the child Parental Leave under this policy runs concurrently with the Family and Medical Leave Act (FMLA) and Short-Term Disability (STD) benefit, as applicable. The entitlement to Parental Leave shall expire at the end of the 12-month period beginning on the date of such birth, adoption, or initial placement through foster care. An employee who terminates employment prior to the end of the 12-month period shall not be eligible for payment of any unused Parental Leave.

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<sup>2</sup> 13 Del C. § 2302 (9) “Foster parent” means an individual or 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.

<sup>3</sup> 13 Del. C. § 901. Definitions. (14) “To place” includes any of the following activities, each of which may be performed only by the Department, a licensed agency or an authorized agency: The selection of an approved family for the child; the arrangement for the child’s move into an adoptive home; or the relocation of the child with an adoptive family.

<sup>4</sup> Per FMLA, if an employee has multiple children born or placed on the same day, this is considered a single event.

- b. It is unlawful for an employer to interfere with, restrain, retaliate against or deny the exercise of any right provided for the use of Parental Leave.
- c. An agency may take disciplinary action, up to and including termination, against an employee who uses Parental Leave for purposes other than those set forth in this policy.
- d. Leave Eligibility Provisions
  - 1) Parental Leave shall be used for the following reasons:
    - To care for or bond with a newborn child of an eligible employee;
    - To care for or bond with a child that is legally adopted or lawfully placed for adoption by an eligible employee;
    - To care for or bond with a child who is initially placed in foster care, or before placement to prepare;
    - To cover the elimination period in the State's STD program, if eligible, upon the birth of a child(ren); or
    - To supplement the State's STD benefit, if eligible, not to exceed 100% of an employee's creditable compensation<sup>5</sup> following the birth of a child.
  - 2) Employees are eligible for up to 12 weeks of paid Parental Leave for a lawful adoption or initial foster placement or for a legal adoption for the same child(ren) within the timeframe specified. For eligible employees who are employed part-time, the maximum number of daily hours the employee is eligible to receive will be determined on a pro-rata basis.
  - 3) Parental Leave may be requested in one continuous period of time (up to 12 calendar weeks) or may be requested in two (2) weeks of continuous time (2-week time periods). Parental Leave may be approved in two (2) consecutive calendar-week time periods. One or more 2-week time periods may be requested and approved (e.g., four (4) weeks, six (6) weeks, eight (8) weeks, etc., of Parental Leave). The 2-week time periods may be consecutive or nonconsecutive. Parental Leave shall be charged as a full day regardless of the daily number of hours used, worked or necessary to supplement STD benefits.
  - 4) Parental Leave runs concurrently with FMLA and STD, as applicable, in accordance with the State's Disability Program Rules and Regulations 5.1<sup>6</sup>. An employee shall be eligible for Parental Leave even if the employee has exhausted his/her FMLA time consistent with the law covering FMLA. If an employee becomes eligible for FMLA while on Parental Leave, the employee must apply for and use FMLA.
  - 5) In the event that two employees of the State of Delaware are eligible for Parental Leave for the same birth, or adoption, or initial foster placement, each eligible employee is entitled to up to 12 calendar weeks of Parental Leave.
  - 6) Multiple births, adoptions, or placements in foster care do not increase the amount of Parental Leave.

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<sup>5</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>6</sup> STD Claim Filing Requirements 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). 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.

- 7) An employee may not use accrued sick leave, annual leave or other leave in lieu of Parental Leave for the birth, adoption or foster placement of a child or to extend their parental leave upon its exhaustion.
  - 8) In the event that the employee requires leave before the actual birth, adoption or placement in foster care, due to medical reasons or to fulfill legal adoption or placement obligations, other available leaves shall be utilized in accordance with the Merit Rules or non-Merit agency leave policy.
  - 9) Parental Leave shall not accrue or be donated to the Donated Leave Bank or be donated to another state employee.
  - 10) Parental Leave expires 12 months from the date of the birth, adoption, or foster placement.
  - 11) Parental leave is not payable for less than one workday of covered leave.
- e. At the conclusion of Parental Leave, 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).

## **5. Procedures**

- a. To apply for Parental Leave, an eligible employee shall:
- 1) Notify and discuss with the employee's immediate supervisor and human resources representative verbally or in writing his/her request for Parental Leave at least thirty (30) days in advance of the birth, adoption or initial foster placement of a child. When thirty (30) days' notice is not possible, the employee must provide this notice as soon as practicable.
  - 2) Complete the Parental Leave Request Form, the FMLA Forms, and initiate the STD claims process, as applicable. If a two (2) week time period leave is requested, a planned schedule is to accompany the request and supervisor approval is required on the Parental Leave Request Form. Submit completed forms to the employee's agency human resources representative.
  - 3) Notify the employee's supervisor and agency human resources representative verbally or in writing upon the birth, adoption or foster placement of a child. If notified verbally, written request must follow. This obligation is for both parents if both are covered employees under this policy.
  - 4) Request absence from work in accordance with agency procedure.
  - 5) Provide legal documentation of birth, adoption, or foster placement of a child within thirty (30) days of the birth, adoption or foster placement or as soon as it becomes available to employee's human resources representative. The name of a legal parent must appear on the birth certificate, a legal document establishing paternity, adoption agreement or other legal document establishing lawful adoption placement or legal adoption. Situations where a legal document cannot be provided at the time of birth or adoption, or within the required timeframe or a reasonable time, thereafter, leave approval will be considered on a case-by-case basis. 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. The legal documents provided shall show the date of birth or date of adoption, age of child at the time of adoption, and the name of the parent(s).

- 6) Provide further notification to the employee's agency human resources representative of any changes to his/her approved schedule or intended return to work date.
- b. Failure to comply with procedures listed in this section may result in delay or denial of Parental Leave.
- c. The agency human resources representative shall:
  - 1) Communicate available leave options with the employee within seven (7) business days of receiving notice or a request for Parental Leave.
  - 2) Provide the requesting employee acknowledgment of the Parental Leave request and initial approval, if applicable, within seven (7) business days of receipt.
  - 3) Keep the employee's supervisor apprised of any revisions in a Parental Leave request.

## **6. Exclusions or Exceptions**

- In the event of multiple births adoptions or foster placements (e.g., the birth adoption or foster placement of twins) occurring as one event, the length of Parental Leave remains up to 12 calendar weeks for that multiple birth or adoption.
- Employees are not eligible for the up to 12 weeks of paid Parental Leave for each lawful adoption or each foster placement or for each legal adoption of the same child(ren).
- Surrogate mothers and sperm donors are excluded from coverage under this policy.
- An employee may not use Parental Leave to cover an absence resulting from an administered disciplinary suspension.
- Casual Seasonal employees hired under Del.C. § 5903(17)a. are excluded from this policy.

## **7. Dissemination and Training**

- Agency human resources shall provide current employees a review of this policy and procedure and shall provide employees who are new to their respective agencies a review of this policy and procedure as part of their orientation.
- Employees must read and acknowledge receipt of this policy in the Delaware Learning Center, or if not applicable by other means, within 30 days of notification.

## **8. Data Reporting**

- The agency human resources representative shall:
  - Record into PHRST: the date of birth, adoption or foster placement, regardless of whether the child is enrolled under the State of Delaware Group Health Insurance Program; employee's duration of Parental Leave including intermittent dates.
  - Record in PHRST the employee's start date, duration, and end date of Parental Leave.
- The Department of Human Resources shall submit an annual report to the General Assembly and the Governor on the Parental Leave program.

**9. Associated Policy/Regulations/Information**

- [Family and Medical Leave Act \(FMLA\)](#)
- [Disability Insurance Program Rules & Regulations](#) (Short-Term Disability)
- [GHIP Eligibility and Enrollment Rules](#) (Group Health Insurance Program)
- [Pregnant Workers Fairness Act Policy and Procedures](#)

**10. Appendices and Forms Associated with this Policy**

- [Parental Leave Request Form](#)
- [Parental Leave Frequently Asked Questions](#) (FAQs)

**11. Policy Owner**

- Division Name: Division of Talent Management
- Policy Owner: Employee Engagement Administrator
- Website: [DHR - Employee Engagement \(delaware.gov\)](https://delaware.gov)

*This policy is not intended to create any individual right or cause of action not already existing and recognized under State or Federal law. If there is a conflict with, i.e., the law or regulation and this policy, the law and/or regulation govern.*