




PARENTAL LEAVE POLICY AND PROCEDURE

Policy #: To be assigned.	Authority: 29 Del.C. §§ 5120, 5253 (HB 4 from 150th GA)
Effective Date: April 1, 2021	Supersedes: April 1, 2019
Application: Executive Branch Agency Employees	Signature: 

1. Policy Purpose Statement

This statement sets forth the State of Delaware’s policy and procedures for the use of Parental Leave. The State recognizes 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 employees upon the birth, lawful adoption placement, or adoption of a child six (6) years of age or younger. This policy will be in effect for eligible births, lawful adoption placements, and legal adoptions **occurring on or after April 1, 2021**.

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 six (6) years of age or younger, 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 Emergencies declarations occurring during a week when Parental Leave is taken will not extend the Parental Leave time.
- **DSCYF** – Department of Services for Children, Youth and their Families.
- **Eligible Employee** – Any full-time employee who has been employed with the State full time for at least 12 continuous months as of the date of the birth of his/her child or as of the date of the adoption of a child six (6) years of age or younger.
- **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** – 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.¹
- **Full-time** – An employee who works for an Executive Branch agency in a 37.5- or 40.0-hour work week, other State full-time status or other equivalent allowed under the Federal Labor Standards Act and approved by the State.
- **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.²
- **Multiple Births/Adoptions** – More than one infant born from the same pregnancy; more than one child six (6) years of age or younger adopted on the same adoption date.
- **Parent** – An employee who is the legal parent of a newborn, a newly adopted placement, or newly adopted child six (6) years of age or younger as it appears on a legal document.
- **Parental Leave** – 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 lawful placement for adoption six (6) years of age or younger.
- **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 of a child of the employee, or upon the adoption by the employee of a child six (6) years of age or younger. 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 or adoption. 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.
- b. It is unlawful for an employer to interfere with, restrain, or deny the exercise of any right provided for the use of Parental Leave.³

¹ 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.

² 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.

³ House Bill No. 3 as amended by House Amendment No. 4 will be effective April 1, 2019 as 29 Del.C. §§ 5120, 5253.

- 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 six (6) years of age or younger that is legally adopted or lawfully placed for adoption by an eligible employee;
 - To cover the elimination period in the State's STD program, if eligible, upon the birth of a child(ren);
 - To supplement the State's STD benefit, if eligible, not to exceed 100% of an employee's creditable compensation⁴ following the birth of a child.
 - 2) Employees are eligible for 12 weeks of paid Parental Leave for a lawful adoption placement or for a legal adoption for the same child(ren) within the timeframe specified.
 - 3) Parental Leave may be requested in one continuous period of time (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 5.1⁵. 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, each eligible employee is entitled to 12 calendar weeks of Parental Leave.
 - 6) Multiple births or adoptions do not increase the length of Parental Leave.

⁴ "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.

⁵ 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 or adoption of a child.
 - 8) In the event that the employee requires leave before the actual birth or adoption due to medical reasons or to fulfill legal adoption 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 or adoption.
- 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 or adoption 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 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 or adoption 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 or adoption of a child within thirty (30) days of the birth or adoption 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 acknowledgement 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

- a. In the event of multiple births or adoptions (e.g., the birth or adoption of twins) occurring as one event, the length of Parental Leave remains 12 calendar weeks for that multiple birth or adoption.
- b. Employees are not eligible for 12 weeks of paid Parental Leave each for a lawful adoption placement and for a legal adoption of the same child(ren).
- c. Surrogate mothers and sperm donors are excluded from coverage under this policy.
- d. Adoption of a child older than six (6) years of age is excluded from coverage under this policy.
- e. An employee may not use Parental Leave to cover an absence resulting from an administered disciplinary suspension.
- f. An employee is not eligible for paid Parental Leave for the placement of foster care children.

7. Dissemination And Training

- a. 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 within 60 days.
- b. 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

- a. The agency human resources representative shall:

- 1) Record into PHRST: the date of birth or adoption, 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.
- 2) Record in PHRST the employee's start date, duration, and end date of Parental Leave.
 - b. 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 Administrator: Employee Engagement Administrator
- Website: [DHR - Employee Engagement](#) (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.