# Delaware Amends Paid Family and Medical Leave Law

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On July 30, 2025, Governor Matt Meyer signed HB 128 ("the Act") into law, amending Delaware's paid family and medical leave law ("PFML"). The Act was effective immediately once it was signed into law.

## Background

Delaware's PFML law, the Healthy Delaware Families Act, requires certain employers to provide their covered employees with up to $900 per week in paid leave for parental, family caregiving, medical, and qualified military exigency leave. Contributions to the state plan began on January 1, 2025, and benefits will begin on January 1, 2026.

The Act amends several provisions of the PFML law, specifically the following:

- The coordination of an employer's other paid leave with PFML leave;
- An employer's ability to require a covered employee to use other paid time off ("PTO") prior to using PFML leave;
- The annual deadline for applying for a private plan; and
- Private plan claims documentation requirements.

**Paid Leave Coordination with PFML**

The Act clarifies that PFML is the primary payor of benefits and that an employer may offset other employer paid leave policies (e.g., short-term disability policies) based on an employee's receipt of PFML benefits. This offset must be conveyed in the terms of the policy.

**Required Use of PTO No Longer Allowed**

The law previously allowed employers to require an employee to use any accrued but unused PTO prior to receiving PFML benefits and that the use of such PTO could be counted toward the length of benefits received under PFML. This is no longer the case as the Act has amended the law so that an employer may NOT require that an employee use accrued but unused PTO prior to accessing PFML benefits. In addition, the employer and a covered employee must now agree for an employee to use accrued but unused PTO to supplement PFML benefits.

**Private Plan Application Deadlines**

If an employer wishes to comply with the PFML law by using a private plan, the law previously required the employer to annually apply to the Delaware Department of Labor ("DOL") between September 1 and December 1 of each year. The Act amends the law so that the DOL must now accept private plan applications on a rolling basis with effective dates for approved private plans now being January 1, April 1, July 1, and October 1.

**Private Plan Claims Documentation**

Employers utilizing a private plan are no longer required to provide claim documentation to the DOL unless the claim is subject to an appeal, complaint, audit, or specific inquiry from the Department.

## Employer Action

- Employers providing other forms of income replacement to employees covered under Delaware's PFML law should ensure that their policies permit them to offset these benefits by any PFML benefits received.

- Employers should review, and amend as necessary, all PTO policies to ensure that they do not require covered employees to use accrued but unused PTO prior to the receipt of PFML benefits.

- Employers should adjust as necessary any timelines for application for a private plan with the DOL.