

LAWS OF DELAWARE  
VOLUME 85  
CHAPTER 115  
153rd GENERAL ASSEMBLY  
FORMERLY  
HOUSE SUBSTITUTE NO. 1  
FOR  
HOUSE BILL NO. 128

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO THE FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 37, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 3704. Amount of benefits.

(d) An individual filing a new claim for family and medical leave benefits shall, at the time of filing such claim, disclose whether the individual owes child support obligations. If the individual owes child support obligations, and the individual is eligible for family and medical leave benefits, the Department must notify the state or local child support enforcement agency enforcing such obligation that the individual has been determined to be eligible for family and medical leave benefits and must deduct and withhold such child support obligations from the individual's family and medical leave benefit amount.

(1) Any amount deducted pursuant to this subsection must be paid by the Department to the appropriate state or local child support enforcement agency and for all purposes be treated as if it were paid to the individual as family and medical leave benefits.

(2) This subsection applies only if the state or local child support enforcement agency makes appropriate arrangements for reimbursement for the administrative costs incurred by the Department under this subsection that are attributable to child support obligations being enforced by the state or local child support enforcement agency.

(3) Under this section, "child support obligation" includes only obligations that are being enforced pursuant to a plan described in § 454 of the Social Security Act [42 U.S.C. § 654] which has been approved by the Secretary of Health and Human Services under Part D of Title IV of the Social Security Act [42 U.S.C. § 651 et seq.].

(4) Under this section, "state or local child support enforcement agency" means any agency of a state or a political subdivision thereof operating pursuant to a plan described in paragraph (d)(3) of this section.

§ 3705. Contributions.

(l) An employer with an approved self-insured private plan under § 3716 of this title may collect contributions from employees beginning on [the effective date of this Act].

§ 3709. Coordination of benefits.

(a) (1) Covered leave that also qualifies as leave under the FMLA runs concurrently with leave taken under the FMLA and may not be taken in addition to leave under the FMLA.

(2) An employer may require that payment made under this chapter be made concurrently or otherwise coordinated with payment made or leave allowed under the terms of disability or family care leave under a collective bargaining agreement or employer policy. The employer shall give employees written notice of this requirement. Disability insurance benefits may be offset by family and medical leave benefits pursuant to the terms of a disability insurance policy.

(3) An employer may require the use of unused accrued paid time off before accessing family and medical leave benefits, and the use of accrued paid time off may count toward the total length of leave provided under this chapter, if the employee is not required to exhaust all paid time off. An employer may not require a covered individual to use unused accrued paid time off prior to a covered individual accessing family and medical leave benefits. An employer and employee may agree to use the employee's employer-provided accrued paid time off to supplement any paid family and medical leave benefits paid under this chapter. For purposes of this paragraph (a)(3) of this section, "paid time off" includes an employer's provision of vacation and sick leave.

(5) The paid family and medical leave insurance program under this chapter is the primary payor. Other available income replacement benefits must be coordinated with the paid family and medical leave benefit according to the terms of the policy or procedure governing other available benefits.

§ 3716. Private plans.

(a) (1) Except as provided under subsection (e) of this section, an employer may apply to the Department for approval to meet the employer's obligations under this chapter through a private plan. To be approved as meeting an employer's obligations under this chapter, a private plan must do all of the following:

b. Allow a covered individual to take, in the aggregate, the maximum number of weeks of covered leave in a benefit year or 24-month-period as required under § 3703(a) and ~~(d)-(c)~~ of this title.

(3) The Department must accept applications for approval of an employer's use of a private plan on a rolling basis, with effective dates of January 1, April 1, July 1, or October 1.

(h) An employer that meets its obligations under this chapter through a private plan is not required to provide claim documentation to the Department unless the claim is the subject of an appeal, complaint, audit, or specific inquiry from the Department. If an employer uses the state plan to meet its obligations under this chapter, all mandatory lines of coverage as required under this chapter must be provided by the employer through the state plan.

(i) If an employer that meets its obligations under this chapter through a private plan voluntarily elects to provide coverage for any reason listed under § 3702(a) of this title that is not a required type of coverage for that employer due to having fewer than 25 employees, all the provisions of this chapter are applicable as if the employer were a covered employer, including the right of employees to appeal under § 3711 of this title.

§ 3718. Powers of the Department.

(l) The Department must require each participant in the program to verify the participant's identity.

§ 3725. Paid leave advisory committee.

(a) The Secretary shall establish an advisory committee to review issues related to the implementation and administration of the family and medical leave insurance program established under this chapter and to review proposed statutory and regulatory amendments related to the program.

(b)(1) The advisory committee consists of 9 members appointed by the Secretary as follows:

a. A representative of the Delaware Paid Leave Division.

b. Four members who represent employees.

c. Four members who represent employers, at least one of whom represents employers that employ fewer than 25 people.

(2) Members shall serve for a term of two years and may be reappointed. In the event of a vacancy for any reason, the Secretary shall make an appointment that becomes immediately effective for the remainder of the unexpired term.

(3) The representative of the Delaware Paid Leave Division shall serve as the chair of the advisory committee.

(c) The advisory committee must advise and make recommendations to the Director regarding issues related to the program, including:

(1) Implementation.

(2) Administration.

(3) Rulemaking.

(4) Financial matters.

(d) Department staff must consult with the paid leave advisory committee at least once monthly through December 31, 2028. Beginning January 1, 2029, the committee must meet at least quarterly. Meetings of the paid leave advisory committee meeting are public meetings.

§ 3726. Assignment of compensation prohibited; exemption from creditors' claims.

Except for attachments pursuant to child support obligations in accordance with § 3704 of this title, any assignment, pledge, or encumbrance of any rights to benefits which are or may become due or payable under this chapter are void. Any attempted assignment, pledge, or encumbrance of any rights to benefits which are or may become due or payable under this chapter is exempt from all claims of creditors.

§ 3727. Execution of judgments.

(a) In general. — If any person liable to pay any assessment, interest, or penalty under this title or other Title subject to this chapter neglects or refuses to pay such amount after a judgment has been obtained pursuant to § 3718 of this title, or otherwise, the Department may execute upon such judgment as provided herein.

(b) Warrants for levy and sale of property. — The Department may issue a warrant directed to the sheriff of any county of this state commanding the sheriff to levy upon and sell the personal or real property of the debtor for the payment of the

amount of the judgment and the cost of executing the warrant. The sheriff must return the warrant to the Department and pay to the Department the money collected by virtue thereof within 60 days after receipt of the warrant. A copy of the warrant must be filed with the Prothonotary and noticed on the regular judgment docket. All sales of real and personal property under authority of this section must be made pursuant to the provisions of Title 10.

(c) Garnishment of bank accounts. — The Department may issue a notice of garnishment directed to any bank, commanding said garnishee, notwithstanding the provisions of § 3502 or § 4913(b) of Title 10, to set aside, account for, and pay over to the Department on account of the debt any property owed to or held for the debtor by said bank. A copy of the notice of garnishment or an abstract thereof must be filed with the Prothonotary and the fact of the garnishment noticed on the regular judgment docket.

(d) Garnishment of wages, salaries, and other amounts due from employers. — The Department may issue a notice of garnishment directed to a person owing to or holding for an employer who is a judgment debtor any wages, salaries, money, credits and effects, contract rights, or securities. The notice of garnishment must command the garnishee to set aside, account for, and pay over to the Department on account of the judgment all property then in the garnishee's possession or which may become due to the judgment debtor by the garnishee, until the judgment and costs of execution are paid. A copy of the notice of garnishment or an abstract thereof must be filed with the prothonotary of Superior Court and the fact of the garnishment noticed on the regular judgment docket. The Department must notify the garnishee in writing when the judgment and costs have been satisfied.

(e) Duties of garnishee and penalties for failure to garnish.

(1) A person receiving a notice of garnishment under subsection (c) or (d) of this section must respond to the Department within 20 days after service of the notice, not counting the date of service.

(2) A garnishee who knowingly fails to comply with a notice of garnishment after notice and assessment under subsection (d) of this section is liable for a penalty equal to the amount the garnishee was required to set aside, account for, and pay over to the Department.

(3) Within 30 days after the date of mailing of a notice of proposed assessment of a penalty under this subsection, the garnishee may file a written protest against the proposed assessment of penalty with the Department in which the garnishee must set forth the grounds on which the protest is based. If a protest is filed, the Director of the Division of Paid Leave, as designee of the Secretary of Labor, must reconsider the proposed assessment of penalty and, if requested by the garnishee, must grant the garnishee an oral hearing before the Board under § 3711 of this title. The Board's decision is final and not subject to further appeal.

(4) A penalty under paragraph (e)(2) of this section becomes final 30 days after the mailing of the notice of proposed assessment of the penalty, except for those amounts for which the garnishee has filed a timely written protest with the Department under paragraph (e)(3) of this section.

(f) Notwithstanding § 3502 of Title 10, property, legal or equitable, wages, salaries, deposits, or moneys in banks, savings institutions, or loan associations, or other property or income of an employer owing tax assessments to the Department is not exempt from execution or attachment process issued on, or from collection of, a judgment obtained under § 3718 of this title.

Section 2. This Act is effective immediately and is to be implemented immediately, except that the Paid Leave Advisory Committee established in this Act may begin meeting at any time, but must begin meeting following the publication in the Registrar of Regulations of a notice that both of the following have occurred:

(1) The Delaware LaborFirst system is fully functional and its steering committee has been dissolved.

(2) The Secretary of the Department of Labor or the Secretary's designee has provided notice to the Registrar of Regulations that the contingency in (1) has been met.

Approved July 30, 2025