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DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 1

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 (Three-fifths of all members
elected to each house thereof concurring therein):

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

Part V. Family and Medical Leave Insurance Program.

Chapter 37. Family and Medical Leave Insurance Program.

§ 3701. Definitions.

For purposes of this chapter:

(1) “Application year” means the 12-month period beginning on the first day of the calendar week in which an
individual is absent for a reason under § 3702 of this title.

(2)a. “Committed relationship” means a relationship in which the covered individual, and the domestic partner
of the covered individual, share responsibility for a significant measure of each other’s common welfare.

b. “Committed relationship” includes a relationship between a covered individual and the domestic
partner of the covered individual, whether of the same or different sex, which is granted legal recognition by a
State, political subdivision, or by the District of Columbia as a marriage or analogous relationship, including a
civil union.

(3) “Covered individual” means an individual who meets all of the following:

a. One of the following:

1. Has earned at least \$2,500 in wages from covered employment during the 12-month period before
submitting an application.

19 2. Is self-employed, elects coverage, and meets the requirements of § 3713 of this title.

20 b. The administrative requirements under this chapter.

21 c. Has submitted an application under this chapter.

22 (4) “Covered leave” means leave provided under this chapter.

23 (5) “Department” means the Department of Labor.

24 (6) “Domestic partner” or “domestic partnership” means an adult in a committed relationship with another

25 adult.

26 (7) “Domestic violence” means as defined under § 710 of this title.

27 (8) “Employee” means an individual employed by an employer.

28 (9)a. “Employer” means a person that employs one or more employees working anywhere in this State, or any

29 agent or employee of the person.

30 b. “Employer” does not include any of the following:

31 1. The federal government.

32 2. Except as provided under § 3718 of this title, the State, or any political subdivision of the State.

33 (10) “Family and medical leave benefits” means benefits provided under this chapter.

34 (11) “Family leave” includes leave under § 3702(a)(2), (a)(4), and (a)(5) of this title.

35 (12) “Family leave benefits” means benefits paid under § 3704 of this title and provided under § 3702(a) of

36 this title to a covered individual while the covered individual is on family leave.

37 (13) “Family member” means all of the following:

38 a. An individual to whom a covered individual stands as parent, whether through biology, adoption,

39 domestic partnership, marriage, foster care, or court order, or an individual to whom a covered individual stands in

40 loco parentis or to whom the covered individual stood in loco parentis when the individual was a minor.

41 b. A biological parent, adoptive or foster parent, stepparent or legal guardian of a covered individual or a

42 covered individual’s spouse or domestic partner, or an individual who stood in loco parentis when the covered

43 individual or the covered individual’s domestic partner was a minor.

44 c. A spouse or domestic partner of a covered individual.

45 d. A grandparent or grandchild of a covered individual or the covered individual’s spouse or domestic

46 partner.

47 e. A biological, foster, adoptive, or step sibling of a covered individual or the covered individual’s spouse

48 or domestic partner.

f. Any other individual with whom a covered individual has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship.

(14) "Fund" means the Family and Medical Leave Insurance Account Fund created under § 3716 of this title.

(15) "Health care provider" means a person licensed under federal law or law of this State to provide medical services, including a doctor, nurse, or certified midwife.

(16) "Medical leave" includes leave under § 3702(a)(3) of this title.

(17) "Medical leave benefits" means benefits paid under § 3704 of this title and provided under § 3702(a) of this title to a covered individual while the covered individual is on medical leave.

(18) "Parental leave" includes leave under § 3702(a)(1) of this title.

(19) "Parental leave benefits" means benefits paid under § 3704 of this title and provided under § 3702(a) of this title to a covered individual while the covered individual is on parental leave.

(20) "Qualifying exigency" means a need arising out of a covered individual's family member's active duty service in the United States Armed Forces, or notice of an impending call or order to active duty in the United States Armed Forces, whether that service is foreign or domestic, including any of the following needs:

a. Providing for the care or other needs of the family member's child or other family member.

b. Making financial or legal arrangements for the family member.

c. Attending counseling.

d. Attending military events or ceremonies.

e. Spending time with the family member during a rest and recuperation leave or following return from deployment.

f. Making arrangements following the death of the family member.

(21)a. "Retaliatory personnel action" means an adverse action against an employee for the exercise of, or good faith attempt to exercise, a right guaranteed under this chapter, including any threat, discharge, suspension, demotion, or reduction of hours, or report or threat to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of a family member of the employee to a federal, state, or local agency.

b. "Retaliatory personnel action" includes interference with or punishment for participating or assisting, in any manner, in an investigation, proceeding, or hearing under this chapter.

(22) "Safe leave" means an absence necessary due to domestic violence, a sexual offense, or stalking, if the absence is to allow the covered individual to do any of the following or assist the covered individual's family member to do any of the following:

a. Relocate or take steps to secure an existing home due to the domestic violence, sexual offense, or stalking.

b. Prepare for or participate in any civil or criminal legal proceeding related to or resulting from the domestic violence, sexual offense, or stalking, including to obtain legal services to prepare for or participate in the legal proceeding.

(23) "Secretary" means the Secretary of the Department.

(24) "Sexual offense" means as defined under § 710 of this title.

(25) "Stalking" means as defined under § 710 of this title.

(26) "Serious health condition" means both of the following:

a. As defined under 29 U.S.C. § 2611(11).

b. Access to and repair of a mobility device that is necessary for a covered individual to perform the functions of the covered individual's position.

(27)a. "Wages" means all remuneration received from an individual's employer, including all of the following:

1. Salary

2. Commissions.

3. Bonuses.

4. Dismissal payments.

5. Holiday pay.

6. Back pay awards.

7. The reasonable cash value of all remuneration in any medium other than cash, which is to be estimated and determined under regulations adopted by the Department.

b. "Wages" includes the reasonable amount of gratuities customarily received by an individual in the course of the individual's work from a person other than the individual's employer, which is to be estimated and determined under regulations adopted by the Department.

§ 3702. Eligibility for benefits; serious health condition; certification or documentation of leave.

(a) Beginning one year after the start of contributions under § 3705 of this title, but no later than April 1, 2024, and subject to subsection (c) of this section, family and medical leave benefits are payable to an individual who is a covered individual and meets one of the following:

(1) Because of a birth, adoption, or placement through foster care of a child, is caring for the child during the first year after the birth, adoption, or placement of the child.

(2) Is caring for a family member with a serious health condition.

(3) Has a serious health condition that makes the covered individual unable to perform the functions of the covered individual's position.

(4) Has a qualifying exigency.

(5) Has a need for safe leave.

(b) In applying and construing serious health condition, consideration must be given to the application and construction given to serious health condition under the federal Family and Medical Leave Act, 29 U.S.C Chapter 28.

(c)(1) The Department or an approved private plan under § 3717 of this title may require that a request for leave based on a serious health condition under paragraph (a)(2) or (a)(3) of this section be supported by a certification issued by the health care provider of the covered individual or of the family member of the covered individual, as appropriate. The covered individual shall provide, in a timely manner, a copy of the certification to the the Department or an approved private plan under § 3717 of this title.

(2) A certification required under paragraph (c)(1) of this section is sufficient if it includes all of the following:

a. The date on which the serious health condition commenced.

b. The probable duration of the condition.

c. The appropriate medical facts within the knowledge of the health care provider regarding the condition.

d. A statement of the following, as appropriate:

1. For purposes of leave under paragraph (a)(2) of this section, a statement that the covered individual is needed to care for the family member who has a serious health condition and an estimate of the time that the covered individual needs to care for the family member.

2. For purposes of leave under paragraph (a)(3) of this section, a statement that the covered individual is unable to perform the functions of the covered individual's position.

e. If the leave is to be taken intermittently or on a reduced leave schedule under § 3706 of this title for planned medical treatment, the dates on which the medical treatment is expected to be given and the duration of the medical treatment.

f. If the leave is to be taken intermittently or on a reduced leave schedule under § 3706 of this title for purposes of leave under paragraph (a)(2) of this section, a statement that the covered individual's intermittent

138 leave or leave on a reduced leave schedule is necessary for the care of the family member who has the serious
139 health condition, or will assist in the family member's recovery, and the expected duration and schedule of the
140 intermittent leave or reduced leave schedule.

141 g. If the leave is to be taken intermittently or on a reduced leave schedule under § 3706 of this title for
142 purposes of leave under paragraph (a)(3) of this section, a statement of the medical necessity of the intermittent
143 leave or leave on a reduced leave schedule and the expected duration of the intermittent leave or reduced leave
144 schedule.

145 (3)a. If the Department or an approved private plan under § 3717 of this title has reason to doubt the validity
146 of a certification provided under this subsection, the Department or private plan may require, at the expense of the
147 Department or private plan, that the covered individual obtain the opinion of a second health care provider designated
148 or approved by the Department or private plan concerning any information certified under this subsection. A health
149 care provider designated under this paragraph (c)(3)a. may not be employed on a regular basis by the Department or
150 private plan.

151 b. If the second opinion under paragraph (c)(3)a. of this section differs from the opinion in the original
152 certification provided by the covered individual under this section, the Department or private plan may require, at
153 the expense of the Department or private plan, that the employee obtain the opinion of a third health care provider
154 designated or approved jointly by the Department or private plan and the covered individual concerning any
155 information certified under this subsection. The third opinion is final and binding on the Department or private
156 plan and the covered individual.

157 (4)a. The Department or an approved private plan under § 3717 of this title may require that the covered
158 individual obtain subsequent recertifications on a reasonable basis.

159 b. The standards for determining what constitutes a reasonable basis for recertification may be governed
160 by a collective bargaining agreement between the Department or private plan and a labor organization which is the
161 collective bargaining representative of the unit of which the covered individual is a part if such a collective
162 bargaining agreement is in effect.

163 c. Unless otherwise required by the covered individual's health care provider, the Department or private
164 plan may not require recertification more than once during a 30-day period and, in any case, may not unreasonably
165 require recertification.

166 d. The Department or private plan shall pay for any recertification that is not covered by the covered
167 individual's health insurance.

(d) The Department or an approved private plan under § 3717 of this title shall require that a request for leave based on a serious health condition under paragraph (a)(2) of this section of a family member under § 3701(13)f. of this title be supported by documentation demonstrating the nature and extent of the relationship.

(e) The Department or an approved private plan under § 3717 of this title shall require that a request for safe leave be supported by documentation from a court or mental health provider demonstrating the need for the safe leave.

§ 3703. Duration of benefits.

(a) A covered individual is eligible for a maximum of 16 weeks of family and medical leave benefits under this section in an application year.

(1) The maximum number of weeks during which parental leave benefits are payable under § 3702(a)(1) of this title in an application year is 12 weeks.

(2) The maximum number of weeks during which medical leave benefits are payable under § 3702(a)(3) of this title in an application year is 12 weeks.

(3) The maximum number of weeks during which family leave benefits are payable under § 3702(a)(2), (a)(4), and (a)(5) of this title in an application year is 12 weeks.

(b) The first payment of benefits to a covered individual must be made within 3 weeks after the claim is filed and subsequent payments must be made every 2 weeks after the first payment.

§ 3704. Amount of benefits.

(a) The amount of family and medical leave benefits is to be determined as follows:

(1) The weekly benefit must be 80% of the covered individual's average weekly wages during the 12 months preceding submission of the application, or the covered individual's average weekly wages during the time the covered individual worked if it was less than 12 months.

(2) The minimum weekly benefit may not be less than \$100 a week, except that if the covered individual's average weekly wage is less than \$100 a week, the weekly benefit must be the covered individual's full wage.

(3) The maximum weekly benefit in 2024 must be \$900. In each year after 2024, the maximum weekly benefit must increase in proportion to the annual average increase, if any, in the Consumer Price Index for All Urban Consumers, Philadelphia-Camden-Wilmington Metropolitan area that is published by the Bureau of Labor Statistics of the United States Department of Labor for the previous calendar year.

(b) Family and medical leave benefits are not payable for less than 7.5 hours of covered leave taken in 1 work week.

(c) The Department shall determine, by regulation, how benefits are to be calculated for covered individuals with more than 1 source of income.

§ 3705. Contributions.

(a) Payroll contributions are authorized to finance the payment of benefits under this chapter.

(b) Beginning on a date determined by the Department between January 1, 2023, and April 1, 2023, for each employee, an employer shall remit to the Fund contributions in the form and manner determined by the Department.

(1) The contribution rate for medical leave benefits is as follows:

a. For 2023 and 2024, the contribution rate for medical leave benefits is 0.4%.

b. For 2025, and each calendar year after 2025, the Department shall set the contribution rate for medical leave benefits based on sound actuarial principles. The Department may not set the contribution rate higher than the rate necessary to obtain a total amount of contributions equal to 125% of the medical leave benefits paid during the immediately preceding calendar year plus an amount equal to 100% of the cost of administration of the payment of those benefits during the immediately preceding calendar year, less the amount of net assets remaining in the fund as of December 31 of the immediately preceding calendar year.

(2) The contribution rate for family leave benefits is as follows:

a. For 2023 and 2024, the contribution rate for family leave benefits is 0.08%.

b. For 2025, and each calendar year after 2025, the Department shall set the contribution rate for family leave benefits based on sound actuarial principles. The Department may not set the contribution rate higher than the rate necessary to obtain a total amount of contributions equal to 125% of the family leave benefits paid during the immediately preceding calendar year plus an amount equal to 100% of the cost of administration of the payment of those benefits during the immediately preceding calendar year, less the amount of net assets remaining in the fund as of December 31 of the immediately preceding calendar year.

(3) The contribution rate for parental leave benefits is as follows:

a. For 2023 and 2024, the contribution rate for parental leave benefits is 0.32%.

b. For 2025, and each calendar year after 2025, the Department shall set the contribution rate for parental leave benefits based on sound actuarial principles. The Department may not set the contribution rate higher than the rate necessary to obtain a total amount of contributions equal to 125% of the parental leave benefits paid during the immediately preceding calendar year plus an amount equal to 100% of the cost of administration of the payment of those benefits during the immediately preceding calendar year, less the amount of net assets remaining in the fund as of December 31 of the immediately preceding calendar year.

227 (c) An employer may deduct not more than 50% of the contribution required for an employee under subsection
228 (b)(1) of this section from the employee's wages. The employer shall remit the full contribution required under subsection
229 (b)(1) of this section to the Fund.

230 (d) An employer may deduct not more than 50% of the contribution required for an employee under subsection
231 (b)(2) of this section from the employee's wages. The employer shall remit the full contribution required under subsection
232 (b)(2) of this section to the Fund.

233 (e) An employer may deduct not more than 50% of the contribution required for an employee under subsection
234 (b)(3) of this section from the employee's wages. The employer shall remit the full contribution required under subsection
235 (b)(3) of this section to the Fund.

236 (f) Notwithstanding subsection (b) of this section, an employer employing less than 20 employees in this State
237 may not be required to pay the employer portion of premiums for covered leave.

238 (g) A self-employed individual who elects coverage under § 3713 of this title shall pay only 50% of the
239 contribution required under subsection (b) of this section on the individual's income from self-employment.

240 (h)(1) An employer with an approved private plan for medical leave benefits may not be required to remit the
241 contributions required under subsection (b)(1) of this section.

242 (2) An employer with an approved private plan for family leave benefits may not be required to remit the
243 contributions required under subsection (b)(2) of this section.

244 (3) An employer with an approved private plan for parental leave benefits may not be required to remit the
245 contributions required under subsection(b)(3) of this section.

246 § 3706. Reduced leave schedule.

247 (a) A covered individual may take covered leave on an intermittent or reduced leave schedule in which all of the
248 leave authorized under this chapter is not taken sequentially. Family and medical leave benefits for intermittent or reduced
249 leave schedules must be prorated.

250 (b) The covered individual shall provide the employer with prior notice of the schedule on which the covered
251 individual will take the covered leave, to the extent practicable. Covered leave taken under this section may not result in a
252 reduction of the total amount of leave to which an employee is entitled beyond the amount of leave actually taken.

253 (3) Nothing in this section is to be construed to entitle a covered individual to more leave than required under §
254 3703 of this this title.

255 § 3707. Leave and employment protection.

256 (a) A covered individual who has been employed by an employer for at least 120 days and exercises the covered
257 individual's right to family and medical leave benefits shall, on the expiration of the covered leave, be entitled to be
258 restored by the employer to the position held by the covered individual when the covered leave commenced, or to a position
259 with equivalent seniority, status, employment benefits, pay, and other terms and conditions of employment, including fringe
260 benefits and service credits, which the covered individual had been entitled to at the commencement of the covered leave.

261 (b) During covered leave, if the covered individual has been employed by the employer for at least 90 days, the
262 employer shall maintain any health care benefits the covered individual had before taking the leave for the duration of the
263 leave as if the covered individual had continued in employment continuously from the date the covered individual
264 commenced the leave until the date the family and medical leave benefits terminate. The covered individual shall continue
265 to pay the covered individual's share of the cost of health care benefits as required before the commencement of the leave.

266 (c) An employer who violates this section or § 3708 of this title is liable to an employee affected for all of the
267 following:

268 (1) Damages equal to all of the following:

269 a. The amount of any of the following:

270 1. Any wages or employment benefits denied or lost to the employee by reason of the violation.

271 2. In an action in which wages or employment benefits have not been denied or lost to the employee,
272 any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of
273 providing care, up to a sum equal to 16 weeks of wages or employment benefits for the employee.

274 b. Interest on the amount under paragraph (c)(1)a. of this section, calculated at the legal rate.

275 c. An additional amount as liquidated damages equal to the sum of the amount described in paragraph
276 (c)(1)a. of this section and the interest under paragraph (c)(1)b. of this section. If an employer who has violated
277 this section or § 3708 of this title proves to the satisfaction of the court that the act or omission that violated this
278 section or § 3708 of this title was in good faith and that the employer had reasonable grounds for believing that the
279 act or omission was not a violation of this section or § 3708 of this title, the court may reduce the amount of the
280 liability to the amount and interest determined under paragraph(c)(1)a. and (c)(1)b. of this section, respectively.

281 (2) For such equitable relief as may be appropriate, including employment, reinstatement, and promotion.

282 (d) An action under subsection (c) of this section may be maintained against an employer in a court of competent
283 jurisdiction in this State by any one or more employees for and on behalf of the employees or the employees and other
284 employees similarly situated.

(e)(1) The court in an action under subsection (c) of this section shall, in addition to any judgment awarded to the plaintiff, allow reasonable attorney fees, reasonable expert witness fees, and other costs of the action to be paid by the defendant.

(2) The court in an action under subsection (c) of this section shall award reasonable attorney fees to a defendant if the court finds the action was brought in bad faith.

(f) Except as provided under subsection (g) of this section, an action may be brought for a violation of this section or § 3708 of this title not later than 2 years after the date of the last event constituting the alleged violation for which the action is brought.

(g) In an action brought for a willful violation of this section or § 3708 of this title, the action may be brought within 3 years of the date of the last event constituting the alleged violation for which the action is brought.

§ 3708. Retaliatory personnel actions prohibited.

(a) It is unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this chapter.

(b) An employer, temporary help company, employment agency, employee organization, or other person may not take a retaliatory personnel action or otherwise discriminate against an individual because the individual exercised rights protected under this chapter.

(c) Rights protected under this chapter include the following:

(1) The right to request, file for, apply for, or use family and medical leave benefits or covered leave.

(2) The right to communicate to the employer or any other person or entity an intent to file a claim, a complaint with the Department or courts, or an appeal, or testify or prepare to testify or assist in any investigation, hearing, or proceeding under this chapter, at any time, including during the period in which the individual receives family and medical leave benefits under this chapter.

(3) The right to inform a person about an employer's alleged violation of this chapter.

(4) The right to inform an individual of the individual's rights under this chapter.

(d) It is unlawful for an employer's absence control policy to count covered leave taken under this chapter as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

(e) Protections of this section apply to an individual who mistakenly but in good faith alleges violations of this chapter.

(f) This section is to be enforced as provided in § 3707(c) through (g) of this title.

(g) This section applies only to an employee who has been employed by the employer for at least 90 days.

§ 3709. Coordination of benefits.

(a)(1) Covered leave that also qualifies as leave under the federal Family and Medical Leave Act, 29 U.S.C Chapter 28, runs concurrently with leave taken under the federal Family and Medical Leave Act and may not be taken in addition to leave under the federal Family and Medical Leave Act.

(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.

(b)(1) This chapter does not diminish an employer's obligation to comply with any of the following that provide more generous leave:

a. A collective bargaining agreement.

b. An employer policy.

c. Any other law.

(2) An individual's right to covered leave may not be diminished by a collective bargaining agreement entered into or renewed, or an employer policy adopted or retained, after [the effective date of this Act].

(3) An agreement by an individual to waive the individual's rights under this chapter is void as against public policy.

§ 3710. Notice.

(a) An employer shall provide written notice to each employee that includes all of the following:

(1) The employee's right to family and medical leave benefits under this chapter and the terms under which it may be used.

(2) The amount of family and medical leave benefits.

(3) The procedure for filing a claim for family and medical leave benefits.

(4) The right to job protection and benefits continuation under § 3707 of this title.

(5) That discrimination and retaliatory personnel actions against the employee for requesting, applying for, or using family and medical leave benefits is prohibited under § 3708 of this title.

(6) That the employee has a right to file a complaint for violations of this chapter.

(b) An employer shall provide the notice required under subsection (a) of this section as follows:

(1) On hiring of the employee.

(2) When the employee requests covered leave or when the employer acquires knowledge that an employee's leave may be for a qualifying reason under § 3702(a) of this title.

345 (c) An employer shall display and maintain a poster in a conspicuous place accessible to employees at the
346 employer's place of business that contains the information required under subsection (a) of this section in English, Spanish,
347 and any language that is the first language spoken by at least 5% of the employer's workforce, if the poster has been
348 provided by the Department.

349 (d) The Department may adopt regulations to establish additional requirements concerning the means by which
350 employers shall provide notice of this chapter.

351 (e) An employee shall provide notice of the employee's intention to take covered leave to the employee's
352 employer 30 days in advance, if known, or as soon practicable.

353 § 3711. Appeals.

354 (a) The process for appeals of a denial of family and medical leave benefits is as follows:

355 (1) On a determination of an individual's claim for family and medical leave benefits under this chapter by the
356 Department or an approved private plan under § 3717 of this title, the individual may appeal the determination to the
357 Department within 60 days of the issuance of the determination. The Department shall review the appeal and issue a
358 determination to the individual within 30 days of the appeal. The Department shall adopt regulations for the review of
359 an appeal under this paragraph (a)(1).

360 (2) On determination by the Department under paragraph (a)(1) of this subsection, an individual may appeal
361 the determination to the Family and Medical Leave Insurance Appeal Board established under subsection (b) of this
362 section within 30 days of the issuance of the determination. The Board shall adopt regulations for the review of an
363 appeal under this paragraph (a)(2).

364 (b)(1) There is established a Family and Medical Leave Insurance Appeal Board ("Board").

365 (2)a. The Board consists of 5 members, appointed by the Governor for a term of 6 years.

366 b. The Governor shall appoint 2 members who reside in New Castle County, 1 member who resides in the
367 City of Wilmington, 1 member who resides in Kent County, and 1 member who resides in Sussex County.

368 c. The Governor shall appoint members who represent labor, the business community, and the public.

369 d. A member of the Board may not serve as an officer or committee member of any political party
370 organization and not more than 3 members of the Board may be of the same political party.

371 (3) The Governor shall fill a vacancy on the Board during a member's term for the unexpired portion of the
372 term.

373 (4) The Governor may, at any time, after notice and hearing, remove any Board member for gross
374 inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office. For purposes of this section, a

member who is absent without adequate reason for 3 consecutive meetings or fails to attend at least half of all regular business meetings during any calendar year is deemed to be in neglect of duty.

(5) Three members of the Board constitute a quorum. A vacancy does not impair the right of the remaining Board members to exercise all of the powers of the Board.

(6) The Governor shall designate 1 member of the Board as the Chair. If the term of the Chair expires or if the Chair becomes vacant for any cause, the Governor shall designate another member as Chair.

(7)a. The Chair of the Board must be paid \$225 for each meeting attended, not to exceed 80 meetings each year.

b. Each of the other members of the Board is to be paid \$175 for each meeting attended, not to exceed 80 meetings each year.

c. The members of the Board shall devote to the duties of the members' office the time necessary for the satisfactory execution of the office.

(c) Judicial review of a decision with respect to family and medical leave benefits in a court of competent jurisdiction is permitted after a party aggrieved by the decision has exhausted all administrative remedies established by the Department.

(d) The Department shall implement procedures to ensure confidentiality of all information related to a claim filed or an appeal taken, to the maximum extent permitted by applicable laws.

§ 3712. Erroneous payments; disqualification for benefits.

(a) A covered individual is disqualified from family and medical leave benefits for 1 year if the covered individual is determined by the Department to have willfully made a false statement or misrepresentation regarding a material fact, or willfully failed to report a material fact, to obtain benefits under this chapter.

(b) If family and medical leave benefits are paid erroneously or as a result of willful misrepresentation, or if a claim for family and medical leave benefits is rejected after benefits are paid, the Department may seek repayment of benefits from the recipient. If benefits are paid due to willful misrepresentation, the Department may seek an additional penalty of up to 50% of the overpayment. The Department shall exercise its discretion to waive, in whole or in part, the amount of payments where the recovery would be against equity and good conscience.

§ 3713. Elective coverage.

(a) A self-employed individual, including a sole proprietor, partner, or joint venturer, may elect coverage under this chapter for an initial period of not less than 3 years. The self-employed individual shall file a notice of election in writing with the Department, as required by the Department. The election becomes effective on the date of filing the notice

of election. As a condition of election, the self-employed individual shall agree to supply any information concerning income that the Department deems necessary.

(b) A self-employed individual who has elected coverage under subsection (a) of this section may withdraw from coverage within 30 days after the end of the 3-year period of coverage, or at such other times as the Department may prescribe by regulation, by filing written notice with the Department. The withdrawal takes effect not sooner than 30 days after filing the notice.

§ 3714. Family and Medical Leave Insurance Program.

(a)(1) By January 1, 2023, the Department shall establish and administer a family and medical leave insurance program.

(2) By no later than the date specified in § 3702(a) of this title, the Department shall pay family and medical leave benefits as specified under this chapter.

(b) The Department shall establish reasonable procedures and forms for filing claims for benefits under this chapter and shall specify what supporting documentation is necessary to support a claim for benefits, including any documentation required from a health care provider for proof of a serious health condition.

(c) The Department shall notify the employer within 5 business days of a claim being filed under this chapter.

(d) The Department shall use information sharing and integration technology to facilitate the disclosure of relevant information or records so long as a covered individual consents to the disclosure as required under state law.

(e) Information contained in the files and records pertaining to a covered individual under this chapter is confidential and not open to public inspection, other than to public employees in the performance of their official duties. However, the covered individual, or an authorized representative of the covered individual, may review the records or receive specific information from the records on the presentation of the covered individual's signed authorization.

(f) The Department shall adopt regulations as necessary to implement this chapter.

§ 3715. Federal and state income tax.

The Department or an approved private plan under § 3717 of this title shall advise a covered individual filing a new claim for family and medical leave benefits, at the time of filing the claim, of all of the following:

(1) Family and medical leave benefits are subject to federal, state, and local income tax.

(2) Requirements exist pertaining to estimated tax payment.

(3) The covered individual may elect to have federal or state income tax deducted and withheld from the covered individual's payment of family and medical leave benefits.

(4) The covered individual may change a previously elected withholding status no more than once during a claim benefit year.

§ 3716. Family and Medical Leave Insurance Account Fund; establishment and investment.

(a) The Family and Medical Leave Insurance Fund is created. The Fund is in the custody of the State Treasurer. Expenditures from the Fund may be used only for the purposes of the family and medical leave benefits program under this chapter. Only the Secretary or the Secretary's designee may authorize expenditures from the Fund.

(b) Whenever, in the judgment of the State Treasurer, there is in the Fund an amount of money in excess of that amount deemed by the State Treasurer to be sufficient to meet the current expenditures properly payable therefrom, the State Treasurer may invest, reinvest, manage, contract, sell, or exchange investments acquired with the excess money in the manner prescribed by State law.

§ 3717. Private plans.

(a)(1) 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 confer all of the same rights, protections, and benefits provided to employees under this chapter, including all of the following:

a. Providing family leave to a covered individual for the reasons under § 3702(a)(2), (a)(4), and (a)(5) of this title for the maximum number of weeks in a benefit year required under § 3703(a)(3) of this title.

b. Providing medical leave to a covered individual for the reasons under § 3702(a)(3) of this title for the maximum number of weeks in a benefit year required under § 3703(a)(2) of this title.

c. Providing parental leave to a covered individual for the reasons under § 3702(a)(1) of this title for the maximum number of weeks in a benefit year required under § 3703(a)(1) of this title.

d. Allowing a covered individual to take, in the aggregate, the maximum number of weeks of covered leave in a benefit year as required under § 3703(a) of this title.

e. Allowing family leave to be taken for all purposes specified under § 3702(a)(1), (a)(2), (a)(4), and (a)(5) of this title.

f. Allowing family leave under § 3702(a)(2), (a)(4), and (a)(5) of this title to be taken to care for any family member.

g. Allowing medical leave under § 3702(a)(3) of this title to be taken by a covered individual with any serious health condition.

h. Providing a wage replacement rate during all covered leave of at least the amount required under § 3704(a)(1) of this title.

i. Providing a maximum weekly benefit during all covered leave of at least the amount specified under § 3704(a)(3) of this title.

j. Providing a minimum weekly benefit during all covered leave of at least the amount specified under § 3704(a)(2) of this title.

k. Allowing covered leave to be taken intermittently or on a reduced schedule as authorized under § 3706 of this title.

l. Imposing no additional conditions or restriction on the use of covered leave beyond those explicitly authorized by this chapter or regulations issued under this chapter.

m. Allowing an employee covered under the private plan who is eligible to take covered leave under this chapter to take covered leave under the private plan.

n. Providing that the cost to employees covered by a private plan is not greater than the cost charged to employees under the State program.

(2) For a private plan to be approved as meeting an employer's obligations under this chapter, the private plan must also comply with all of the following:

a. If the private plan is in the form of self-insurance, the employer must furnish a bond running to the State, with a surety company authorized to transact business in the State as surety, in a form as may be approved by the Department and in an amount as may be required by the Department.

b. Provide for all eligible employees throughout their period of employment.

c. If the private plan provides for insurance, the forms of the policy must be issued by an approved insurer.

(b) An employer may provide all family and medical leave coverage through an approved private plan or may provide one or more of medical leave coverage, family leave coverage, or parental leave coverage using an approved private plan and provide the remaining coverage not provided through an approved private plan using the State program.

(c) The Department may withdraw approval for a private plan granted under subsection (a) of this section when terms or conditions of the plan have been violated. The Department may withdraw approval for a private plan for any of the following:

(1) Failure to pay benefits.

(2) Failure to pay benefits timely and in a manner consistent with the State program.

(3) Failure to maintain an adequate security deposit.

(4) Misuse of private plan trust funds.

(5) Failure to submit reports to the Department as required by regulations adopted by the Department.

(6) Failure to comply with this chapter or the regulations adopted under this chapter.

(d) An employee covered by a private plan approved under this section retains all applicable rights under §§ 3707 and 3708 of this title.

(e) A denial of family, medical, or parental leave benefits by a private plan is subject to appeal to the Department and a court of competent jurisdiction in this State as provided under § 3711 of this title.

(f) The Department's denial of an employer's application under subsection (a) of this section or withdrawal of approval for a private plan under subsection (c) of this section is subject to the appeal process under § 3711 of this title.

§ 3718. Public employee coverage.

(a) For purposes of this section:

(1) "Public employee" means an employee of the State or a political subdivision of the State.

(2) "Public employer" means the State or a political subdivision of the State.

(b) For public employees, a public employer may opt-in to coverage for all public employees with 90 days' notice to the public employees and approval by a majority vote of public employees to be covered. Following opt-in by a public employer for public employees, a public employer must remain opted-in for a period of at least 3 years and may opt-out of coverage with 12 months' notice to those public employees, to take effect no sooner than the end of the 3-year period. A public employer may opt-in to coverage under this subsection for one or more of medical leave, family leave, or parental leave.

(c) For public employees who are represented by bargaining unit, the bargaining unit may, through the collective bargaining process, negotiate to opt-in to coverage on behalf of the members of the bargaining unit, when applicable under State law. A bargaining unit may negotiate to opt-in to coverage under this subsection for one or more of medical leave, family leave, or parental leave. A bargaining unit that has opted-in under this section may, under collective bargaining, opt-out as is mutually agreed on between the bargaining unit and the public employer. Nothing in this chapter prohibits an agreement to opt in to medical leave, family leave, or parental leave between the bargaining unit and the public employer or prevent a collective bargaining agreement from providing medical leave, family leave, or parental leave more generous than that provided under this chapter.

§ 3719. Reports.

Beginning in 2025, the Department shall report to the General Assembly by April 1 of each year on projected and actual program participation by purpose under § 3702(a) of this title, gender of beneficiary, premium rates, fund balances, outreach efforts, and, for family leave, family members for whom leave was taken to provide care.

§ 3720. Public education.

(a) The Department shall conduct a public education campaign to inform employees and employers regarding the availability of family and medical leave benefits.

(b) The Department may use a portion of the funds collected for the family and medical leave benefits program in a given year to pay for the public education program.

(c) Outreach information provided under this section must be available in English, Spanish, and other languages spoken by more than 5% of the state's population.

§ 3721. Sharing technology.

The Department is encouraged to use State data collection and technology to the extent possible and to integrate the family and medical leave benefits program with existing state policies.

Section 2. If any provision of this Act or the application of this Act to any person or circumstance is held invalid, the remainder of this Act or the application of the provision to other persons or circumstances is not affected.

Section 3. This Act takes effect on July 1, 2022.

Section 4. This Act is known as the "Healthy Delaware Families Act".

SYNOPSIS

This Act, the Healthy Delaware Families Act, creates a statewide paid family and medical leave insurance program. Delaware employees can access up to 12 weeks of paid family and medical leave through the State's paid leave trust fund for a qualifying event, including for the following:

- (1) To address a worker's own serious health condition
- (2) To care for a family member with a serious health condition.
- (3) To bond with a new child.
- (4) To handle safety matters for victims of domestic violence.
- (5) To address the impact of a family member's military deployment.

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