

# Delaware Leave Laws

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*This material is for general informational purposes only and does not constitute legal advice. For current and accurate guidance, please consult legal counsel in your jurisdiction.*

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## Paid Time Off (PTO) in Delaware

Delaware doesn't have any strict state statutes governing the PTO. It all comes down to following company policy or employment contract.

## Leave Quota

Delaware law demands 0 vacation days. Employers aren't required to provide vacation leave.

No federal or Delaware state law requires an employer to provide employees with paid or unpaid vacation time. Still, if an employer chooses to offer vacation leave to their employees, paid or unpaid, it must be in accordance with its established company policy and employment contract.

## Accrual

Accruals are not required in Delaware but are widely used by companies.

Thus, companies are free to implement their vacation accrual schedules.

Employers may lawfully cap (set the maximum of) the amount of vacation time an employee can accrue over time. This is a way of preventing an employee from accruing vacation over a certain number of hours.

An employer isn't required to pay accrued vacation leave on separation from employment if the established company policy or employer's contract are silent on the subject, unless the employer has established a practice of doing so.

## Roll Over

A Use-It-or-Lose-It policy is not forbidden. Employers aren't obligated to let their employees roll over unused leave into the following year.

A Use-It-or-Lose-It vacation policy means that an employer at the end of the year doesn't have to pay employees for unused vacation leave. Therefore, an employee loses the remaining vacation days, unpaid. Delaware has no statute governing this policy, meaning employers are free to implement it. This matter depends on the employment contract and company policy.

## Statutory Provisions Addressing Vacation Pay

No state statutes related to vacation pay.

Delaware doesn't have any state laws governing the payout of vacation time, so vacation benefits and pay result from an agreement between the employer and the employee (Del. Code Ann. tit. 19, 1109(a)).

## Payment of Accrued, Unused Vacation on Termination

No. This is not defined by law, so an employer and the policy decide on this matter.

An employer may establish a policy or contract disqualifying employees from paying for accrued, unused vacation on separation from employment, whether by quitting, discharge, or layoff.



An employer can also establish a policy or contract that disqualifies employees from receiving payment for accrued, unused vacation upon separation from employment if they fail to meet specific requirements, such as providing two weeks' notice.

An employer must pay any accrued unused vacation to an employee upon separation from employment only if its policy or contract requires it. If it does, an employer must pay the value of the accrued time within 30 days of separation.

## Payout

An employer pays if there are obligations upon separation from employment.

The screenshot shows the Vacation Tracker dashboard with a purple background. On the left, the text 'Manage All Employee Time Off In Minutes, Not Days' is displayed in white. Below this, four features are listed with checkmarks: 'Slack, Teams, and Calendar integrations', 'Custom leave rules, accruals, and public holidays', 'Compliant with Leave Laws in every location', and 'Rollout in 15 minutes, with live setup call'. A 'Start your free trial' button with a right arrow is at the bottom left. On the right, a notification for Maren Schleifer states 'Has submitted a leave request that requires your attention.' Below this is a 'Pending requests' table with three rows: 'Work from home' (2 days, Jan 24th to Jan 26th, 2025), 'Vacation' (4 days, Jan 26th to Jan 30th, 2025), and 'Sick Day' (1 day, Jan 24th, 2025). Each row has 'Deny' and 'Approve' buttons. To the right of the table is an 'Approvers' section with 'First level' and 'Second level' approvers, each with a group of avatars. Integration icons for Slack, Teams, and Google are visible in the top right corner.

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**Notification:** Maren Schleifer has submitted a leave request that requires your attention.

**Pending requests**

Request Type	Duration	Start Date	End Date	Actions
Work from home	2 days	Jan 24th 2025	Jan 26th 2025	Deny Approve
Vacation	4 days	Jan 26th 2025	Jan 30th 2025	Deny Approve
Sick Day	1 day	Jan 24th 2025		Deny Approve

**Approvers**

First level: [Avatars]

Second level: [Avatars]

## Sick Leave in Delaware

### Federal Laws – Leave Quota

Federal law requires up to 12 weeks of unpaid sick leave.

For more information, please visit [vacationtracker.io](https://vacationtracker.io)

Delaware employers must comply with the Family and Medical Leave Act (FMLA). Employers may have to provide employees with 12 weeks of unpaid leave. Employees can use this job-protected leave for severe illness, maternity or paternity leave, or if the employee needs to care for a spouse or child.

Employees are eligible for FMLA benefits only if they:

- Have worked for the employer for at least 12 months (a minimum of 25 hours per week) or have worked at least 1,250 hours over the past year
- Work at a location where the company employs at least 50 employees (within a 75-mile radius)

## Delaware State Laws

The new Healthy Delaware Families Act will begin in 2025.

At this point, no Delaware law requires private employers to provide employees with sick leave, either paid or unpaid, although many employers grant it as an essential employee benefit. However, it is necessary to remember that if sick leave is promised, an employer may create a legal obligation to grant it.

### **LATEST UPDATE:**

On May 10, 2022, Delaware Governor John Carney signed the [Healthy Delaware Families Act](#), which provides covered employees with up to 12 weeks of paid leave and benefits for specific parental, family caregiving, and medical reasons. Employer and employee contributions will fund the related Family and Medical Leave Insurance Program.

For more information, please visit [vacationtracker.io](https://vacationtracker.io)

Contributions for this program will start on January 1, 2025. Employees can use the job-protected paid leave starting on January 1, 2026. The Act permits funding of benefit payments through payroll contributions from both employers and employees. Employer may deduct up to 50% of the total required contribution from covered employees' wages. Employers may also choose to pay all or a portion of the employee's contribution. No employee, however, was permitted to take more than 12 weeks of paid leave overall in a calendar year. The benefit is limited to \$900 per week or 80% of the employee's salary, whichever is less.

The Healthy Delaware Families Act (the "Act") follows the federal Family and Medical Leave Act ("FMLA") in terms of eligibility, coverage, and protections; however, some aspects of the Act differ from the FMLA.

Employees are eligible to take sick leave under the Act, as they are under the FMLA if their employer has employed them for at least a year and completed at least 1,250 service hours in the 12 months preceding the leave.

Employers with 10 or more employees in Delaware during the previous 12-month period preceding the start of the leave are subject to the Act's parental leave provisions.

Employers with 25 or more employees are also required to provide family and medical leave. Companies with fewer than ten employees aren't required to participate but could opt for the plan. The Act also completely exempts any company, regardless of size, that shuts down for 30 continuous days or more each year.

## Maternity, Paternity, FMLA in Delaware

### Federal law

12 weeks of unpaid sick leave.

The Family and Medical Leave Act (FMLA) is a federal law that requires employers to provide at least 12 workweeks of unpaid family leave time for maternity or paternity, after the birth or the adoption of a child.

For more information about FMLA, look above under the section [Sick Leave in Delaware => Federal Laws – Leave Quota](#).

The Pregnancy Discrimination Act (PDA) is a second federal law that protects pregnant mothers. This law forbids discrimination based on pregnancy in any aspect of employment, including firing, hiring, promotions, and other benefits. This applies to all businesses that have 15 or more employees.

The state government offers 12 weeks of paid maternity or paternity leave for the first twelve months after becoming a parent.

### Additional State Laws in Delaware

In addition to the Family and Medical Leave Act (FMLA) and the Pregnancy Discrimination Act (PDA), Delaware has the following laws governing Maternity and Paternity Leave:

#### Pregnancy Discrimination and Accommodation in the Workplace

Employers with four or more employees are required to make reasonable accommodations for employees who are pregnant and job applicants who have a condition related to pregnancy, including but not limited to childbirth and breastfeeding.

Employers must treat pregnant employees like they treat employees with any other type of disability.

Reasonable accommodations may include but are not limited to more frequent or prolonged breaks, periodic rest, job restructuring, light-duty assignments, a modified work schedule, time off to recover from childbirth or break time, and appropriate facilities for expressing milk.

Employees must notify their supervisor in writing of the need for accommodation, including the need for breaks or facilities to express breast milk. Notification should include the frequency and duration of breaks when feasible.

\* The New Healthy Delaware Families Act will also cover new mothers and fathers. Please go to [Sick Leave in Delaware => Delaware State Laws](#) to read more.

## Bereavement Leave in Delaware (Funeral Leave)

Employers aren't required to provide paid or unpaid bereavement leave.

There are no federal or Delaware laws that require an employer to provide employees with either paid or unpaid bereavement leave or any time off to attend a close family member's funeral. The employer may decide to provide bereavement leave for employees. In that case, they may be required to follow any bereavement policy they have in place.



## **Payout**

Bereavement leave is unpaid.

## **Jury Duty Leave in Delaware**

An employer must give employees unpaid leave for jury duty.

In Delaware, employers must provide employees with unpaid time off for reporting to jury selection or jury duty. An employer may pay employees for time served on a jury even if they are not required to, though many may require them to sign over their jury duty paycheck.

Employees who respond to jury summonses, serve on juries, or appear in court for potential jury duty cannot be fired, threatened with termination, or subjected to other forms of coercion by their employer. A victim or representative who attends or participates in preparing for a criminal justice proceeding can't be fired or disciplined by their employer.

Employees may have to show their employer the jury summons to be given the necessary leave.

## **Payout**

Jury duty leave is unpaid.

## **Military Leave in Delaware**

An employer must provide unpaid leave to military members.

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The federal Uniformed Services Employment and Reemployment Rights Act (USERRA) applies to all employers in the United States. USERRA protects members of the Army and Air National Guard who are called away from civilian jobs for federal service.

In addition to USERRA, state law gives Delaware National Guard members called to state active duty the same employment rights, privileges, and protections as they would if called for military training under federal law protecting reservists and National Guard members.

### **Payout**

Military leave is unpaid.

## **Voting Leave in Delaware**

Employers not required to provide paid or unpaid time off to vote.

Most states in the U.S. provide time for voting. Delaware is not one of them. Delaware law does not mandate that employers give their staff members paid or unpaid time off to vote.

If an employee has vacation time, their employer cannot stop them from using it to serve as election officials, provided they are not in a position of critical need. A critically needed position is one in public safety, corrections, transportation, health care, utilities, a small business employing 20 or fewer people, or one required for the business or industry to operate on election day.

### **Payout**

Voting leave is unpaid.

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