



**Title: Frequently Asked Questions (FAQ) for Judicial Branch Family Caregiving Leave and Qualifying Exigency Leave Policy**

**Related Policy Number: JB-HR-26-002**

**Effective Date: January 1, 2026**

**\*\*The Judicial Branch Family Caregiving Leave and Qualifying Exigency Leave Policy along with these FAQs are being issued simultaneously with the Delaware Department of Labor's (DDOL) implementation of Delaware's Paid Family and Medical Leave Insurance Program and its new LaborFirst system. As with the roll-out of any large-scale program, it is anticipated that DDOL will make changes to the program and benefit processing that will require updates to our policy and these FAQs. As such, please be aware that our policy and these FAQs are subject to change. All policy changes will be communicated to employees.\*\***

**Definitions and Acronyms**

- **Eligible Employee** means a Judicial Branch full-time or permanent part-time employee in a leave-eligible position, who (1) has worked for the State for at least 12 months or 52 weeks, and (2) has worked at least 1,250 hours during the 12-month period before the start of leave. Note: Casual seasonal employees are statutorily ineligible for FCGL and QEL.
- **DDOL** refers to Delaware's Department of Labor.
- **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.
- **FCGL** refers to family caregiving leave. FCGL is partially paid, job-protected leave authorized under the Act that an eligible employee may take to care for a child, spouse, or parent with a serious health condition.
- **Healthy Delaware Families Act (the Act)** was signed into law on May 10, 2022. The Act created the Delaware Family and Medical Leave Insurance Program, which requires most employers in Delaware to provide eligible employees with Paid Family and Medical Leave (PFML). The Act provides eligible employees

with income replacement benefits and job-protection during leave for qualifying family and medical reasons. [19 Del. C. Ch 37](#).

- **Paid Family and Medical Leave (PFML)** refers collectively to the Act's income replacement and job protection benefits for qualifying family and medical situations. The Act establishes four (4) PFML lines of coverage: (1) parental leave, (2) medical leave, (3) family caregiving leave, and (4) qualifying exigency leave.
- **QEL** refers to qualifying exigency leave. QEL is partially paid, job-protected leave authorized under the Act that an eligible employee may take for certain military-related situations when a spouse, child, or parent is on, or has been called to, covered active military duty outside the U.S, or has been notified of an impending call or order to covered active duty.

## Frequently Asked Questions

### 1. What is the Healthy Delaware Families Act ([19 Del. C. Ch 37](#))?

The Healthy Delaware Families Act (the Act) was signed into law on May 10, 2022. The Act created the Delaware Family and Medical Leave Insurance Program, which requires most employers in Delaware to provide eligible employees with Paid Family and Medical Leave (PFML). The Act provides eligible employees with income replacement benefits and job-protection during leave for qualifying family and medical reasons. For more information, please refer to the [Notice of Employee Rights under the Healthy Delaware Families Act](#) and the Judicial Branch Family Caregiving Leave and Qualifying Exigency Leave Policy.

### 2. What is Paid Family and Medical Leave (PFML)?

PFML is the Act's statutorily created income replacement and job protection benefits for qualifying family and medical reasons. The Act establishes four (4) PFML lines of coverage: Paid Family Caregiving Leave, Paid Qualifying Exigency Leave, Paid Parental Leave, and Paid Medical Leave.

Judicial Branch employees are enrolled in the Delaware Paid Leave Insurance Program (the public plan) for Family Caregiving Leave and Qualifying Exigency Leave.

For State of Delaware employees, DDOL, Division of Paid Leave approved the State's existing Paid Medical and Paid Parental Leave policies through December 31, 2029. This means that the PFML required Paid Medical Leave and Paid Parental Leave lines of coverage will be provided through the State's existing Disability

Insurance Program (DIP) - Short Term Disability (STD) Plan and the Judicial Branch's Paid Parental Leave Policy.

- To learn more about your Paid Medical Leave\* benefits, visit the Statewide Benefits Office (SBO) website at <https://dhr.delaware.gov/benefits/>, select your group, "State Agencies (including DOE)", and choose the "Disability Insurance" tile.
- To learn more about your Paid Parental Leave benefits, review the Judicial Branch's Paid Parental Leave Policy or contact your Human Resource Office.

\* Employees hired prior to January 1, 2006, who waived coverage in the State of Delaware's DIP, as well as employees in a position covered by the Revised Judicial Pension Plan, are not enrolled in the DIP. These employees should contact their [Human Resources Office](#) for details about their disability pension benefits.

### **3. What is Family Caregiving Leave (FCGL)?**

FCGL is partially paid leave to care for a child, spouse, or parent with a serious health condition. For FCGL, "child," "spouse," and "parent" are defined consistent with their definition under the FMLA. [19 Del. C. § 3701](#); [29 CFR 825.102 -- Definitions](#); [29 USC Ch. 28](#).

- Child refers to a biological, adoptive, step or foster child, a legal ward, or a child of a person standing "in loco parentis" under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that leave is to commence.
- Spouse means a husband or wife. Husband or wife refers to the other person with whom an individual entered into marriage, as defined or recognized under state law for purposes of marriage in the state in which the marriage was entered into or, in the case of a marriage entered into outside of any state, if the marriage is valid in the place where entered into and could have been entered into in at least one (1) state, including same-sex marriage.
- Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a child. This term does not include parents-in-law.

### **4. What is Qualifying Exigency Leave (QEL)?**

QEL is partially paid leave available to address certain situations when a spouse, child, or parent is on, or has been called to, covered active military duty outside the United States, or has been notified of an impending call or order to covered active duty.

Covered active duty for members of the Regular Armed Forces is duty during deployment to a foreign country. Covered active duty for the National Guard and Reserves is duty during deployment to a foreign country under a call or order to active duty in a contingency operation. Deployment to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States. It also includes deployment to international waters.

Situations that qualify for QEL are: (1) short-notice deployment, (2) military events and related activities, (3) childcare and related activities, (4) counseling, (5) financial and legal arrangements, (6) rest and recuperation, (7) post-deployment activities, (8) certain parental care needs, and (9) other situations that the state and employee agree will qualify. For more information on qualifying exigencies, refer to [29 CFR 825.126](#).

For QEL, “child,” “spouse,” and “parent” are defined consistent with their definitions under the FMLA. [19 Del. C. § 3701](#); [29 CFR 825.102 -- Definitions](#); [29 USC Ch. 28](#).

- Child refers to a person of any age who is the employee’s biological, adopted, step, or foster child, a legal ward, or a child for whom the employee stood “in loco parentis.”
- Spouse means a husband or wife. Husband or wife refers to the other person with whom an individual entered into marriage, as defined or recognized under state law for purposes of marriage in the state in which the marriage was entered into or, in the case of a marriage entered into outside of any state, if the marriage is valid in the place where entered into and could have been entered into in at least one (1) state, including same-sex marriage.
- Parent means a biological, adopted, step or foster father or mother, or an individual who stood in loco parentis to the employee when the employee was a child. This term does not include parents-in-law.

#### **5. Are paid parental leave and paid medical leave required under the Act?**

Yes, paid parental leave and paid medical leave are required under the Act. Eligible employees will continue to access these paid leave benefits through the existing Judicial Branch Paid Parental Leave Policy and the State’s Disability Insurance Program (DIP) - Short Term Disability (STD). These existing programs have been approved (grandfathered) by DDOL through December 31, 2029.

Note: Employees hired prior to January 1, 2006, who waived coverage in the State of Delaware’s DIP, as well as employees hired into a position covered by the Revised Judicial Pension Plan, are not enrolled in the DIP. For individuals covered

under the Revised Judicial Pension Plan, benefits will be provided consistent with the Judicial Pension Plan (which has also been grandfathered by DDOL).

**6. How do I know if I am eligible for FCGL or QEL benefits?**

You may be eligible for FCGL or QEL if you are experiencing a qualifying event, and you meet all of the below requirements:

- Are a full-time or permanent part-time Judicial Branch employee (casual seasonal employees are not eligible);
- Have worked for the State for at least 12 months (or 52 weeks) in a leave-eligible position (this time need not be continuous); and
- Have worked at least 1,250 hours in the 12 months before your leave starts. Note: Per the Act and consistent with FMLA, the 1,250 hours of service are hours actually worked and does not include time off for vacation, illness, holidays, or any other type of paid or unpaid leave.

**7. FCGL and QEL benefits only apply to 100% full-time employees, or are permanent part-time employees also eligible?**

FCGL and QEL benefits apply to Judicial Branch full-time and permanent part-time employees in leave-eligible positions, who have worked for the State for at least 12 months or 52 weeks, and who have worked at least 1,250 hours during the 12-month period before the start of leave. Casual seasonal employees are statutorily ineligible for FCGL and QEL.

**8. Are casual seasonal employees eligible for FCGL or QEL benefits?**

No, casual seasonal employees are statutorily ineligible for FCGL and QEL benefits.

**9. How do I apply for FCGL and QEL?**

To request leave you must follow your Court's or agency's policies for requesting leave. This includes providing notice to your employer at least 30 days before your need for leave. If providing advanced notice is not possible, notify your employer as soon as possible. Additionally, beginning January 1, 2026, you must file a claim for FCGL or QEL benefits using the DDOL's online administrative system, Delaware LaborFirst. You will be able to access LaborFirst through the LaborFirst Claimant Portal tile, which will be available on your my.delaware.gov webpage beginning January 1, 2026.

- If your claim is for FCGL, LaborFirst will provide the steps you need to take to obtain a certification of your family member's serious health condition from the patient's health care provider. Although you do not have to share a medical diagnosis with your employer, you must provide enough information in your claim so that your employer can determine whether your requested

leave qualifies under the Act. You also may be required to provide to your employer documentation verifying your familial relationship.

- If your claim is for QEL, you may be required to provide to your employer documentation verifying a qualifying exigency and your familial relationship with the service member.

**10. Can my family member's health care provider charge me a fee for completing the Certificate of Serious Health Condition through LaborFirst?**

Yes, at this time the health care provider can charge you a fee for completing the Certificate of Serious Health Condition through LaborFirst. However, once DDOL's Health Care Professional's portal is operational, health care providers will no longer be able to charge you a fee. This is because once the portal is operational, health care providers will be able to receive payments from DDOL.

**11. How many weeks can I receive FCGL (or QEL) benefits?**

Under the Act, if you are an eligible employee, you may receive up to six (6) weeks of FCGL or QEL benefits in a 24-month period.

**12. Can I receive up to six (6) weeks of FCGL benefits and six (6) weeks of QEL benefits in a 24-month period?**

Yes, FCGL and QEL are independent leave types. If you experience two (2) events in a 24-month period, one that would trigger FCGL and another that would trigger QEL, you may qualify for up to twelve (12) weeks of income replacement benefits. Please note that eligibility will be determined for each request. To be eligible, you must meet all of the following requirements for each request:

- Are a full-time or permanent part-time Judicial Branch employee (casual seasonal employees are not eligible);
- Have worked for the State for at least 12 months (or 52 weeks) in a leave-eligible position; and
- Have worked at least 1,250 hours in the 12 months before your leave starts. Note: The 1,250 hours of service are hours actually worked and does not include time off for vacation, illness, holidays, or any other type of paid or unpaid leave. The use of other leave will impact an employee's number of hours worked.

**13. Do I have to take the leave all at one time?**

No. You may use the leave in one block of time. Alternatively, when medically necessary and supported by the required health care provider certification, such leave may be taken intermittently in separate blocks of time or on a reduced schedule by working less hours each day or week.

For reduced schedule leave, you and your employer must work out a weekly work schedule for the weeks of approved reduced leave that comply with the health care provider's certification. DDOL will pay the benefit out based on the percent of reduction in the employee's work schedule.

For intermittent leave, you must follow your employer's normal policies and procedures for taking sick days off. Intermittent leave under the Act must be taken in increments of no less than a full day. The employer will update Delaware LaborFirst to indicate which days were taken for intermittent leave. LaborFirst will pay out a day's benefit payment for each day of intermittent leave taken. LaborFirst will also track the number of intermittent days approved for use, the number of intermittent days used, and the remaining number of intermittent days available.

#### **14. How much will I be paid while on approved FCGL or QEL?**

You will receive 80% of your average weekly FICA wages, up to \$900 per week. FICA wages are your gross wages minus pre-tax, Plan 125 deductions. Plan 125 deductions are those available under Delaware's Cafeteria Benefits Plan. These deductions include those related to medical, dental, and vision benefits, Health Care Flexible Spending Accounts (HCFSA), and Dependent Care Flexible Spending Accounts (DCFSA). Your annual FICA wages may be lower than your annual salary.

Payments will be issued directly from DDOL, Division of Paid Leave either through direct deposit to your bank account or to a pre-paid debit card. DDOL has stated that there are no fees paid by the employee associated with the pre-paid debit card. When you apply through LaborFirst, you will make the election regarding how you wish to receive payment.

You are permitted to supplement the DDOL payment with available and accrued leave up to 100% of your average weekly wages. To do so, you must apply for such leave through the applicable leave policy, and you must meet the eligibility requirements of such leave at the time of making the request. Please note your average weekly wages will include any hazard duty supplement.

#### **15. When will DDOL, Division of Paid Leave pay my FCGL or QEL benefits?**

DDOL, Division of Paid Leave will begin paying your benefit as soon as possible after DDOL approves your claim; however, such payment will not be earlier than your qualifying event or requested start date.

**16. How will I receive payment for FCGL or QEL from DDOL, Division of Paid Leave?**

You will receive payments directly from DDOL to your bank account, if you have provided your bank account information at the time of filing. If you do not provide your bank account information, you will receive a pre-paid debit card from DDOL with your payment loaded on it.

**17. Are FCGL and QEL payments received from DDOL considered taxable earned income?**

Yes, FCGL and QEL payments are considered taxable earned income. As part of the application process, LaborFirst will ask you if you wish to withhold state and federal taxes from your benefit payments. If you decide to have taxes withheld from your benefit payment, DDOL will withhold at 10% for federal taxes and 3% for state taxes. A 1099 form will be sent to anyone who has received FCGL/QEL benefits in the prior year.

**18. Can I supplement my FCGL or QEL benefits with accrued leave?**

Yes, you are encouraged to use your available accrued annual leave, sick leave, or compensatory time to supplement your FCGL or QEL payments. However, you are not required to use your accrued leave to supplement your FCGL or QEL payments.

Please talk with your HR representative about the possible effects of not supplementing versus supplementing your FCGL/QEL benefits. For example, supplementing may allow you to cover your benefit premiums and maintain your leave time as pension eligible.

Please note you may need to supplement more than 20% of your base compensation given the \$900 weekly cap on FCGL and QEL benefits or because of a difference between your base compensation and your FICA wages, which DDOL uses in its calculations. Your HR Office will determine the amount of accrued leave that would be necessary for you to receive 100% of your average weekly wages. This calculation will be done after HR receives notification from DDOL about your approved weekly payment.

**19. What happens to my benefits while I am on approved FCGL or QEL?**

You remain responsible for your share of premiums and the State will continue to pay the State share of the premiums. Pre-tax deductions (for example, pension, medical, dental, vision, flexible account) are taken out first from any supplemental paycheck you may receive, and no partial deductions are taken. Please check with your HR Office for specifics on your share, current deductions, options regarding the



payment of your share, ability to adjust elections, and to supplement with accrued leave.

**20. What if I do not have enough money in my paycheck to cover my healthcare benefit premiums while on FCGL or QEL?**

If there is not enough salary to deduct your share of the premiums, you may waive coverage or submit payment for the premiums directly to your HR Office. If you are on FCGL/QEL and FMLA, there is a 30-calendar day grace period to submit the premium payments. If you are not on concurrent FMLA, payment is due by the 1<sup>st</sup> day of each month for coverage to continue.

Note: HR staff should refer to SBO External Procedure GHIP-011 – Employee Requirement to Pay Premiums While on Leave ([GHIP-011.pdf](#)) for guidance on notifying employees of benefit premiums due and actions to take if payment is not remitted by the due date. The procedure includes template emails for communicating with employees throughout their leave. These resources can be accessed by benefit representatives on SBO's Policies and Procedures webpage: [BenRep - Policies & Procedures](#) (please note that this site is accessible only to benefit representatives).

**21. How will being on FCGL or QEL impact pension creditable time and pension contributions?**

FCGL and QEL benefits paid through DDOL are not considered pension-creditable compensation. This is consistent with how Workers' Compensation is currently treated. Employees who supplement their FCGL or QEL benefits with accrued leave will continue to receive pension service credit for those pay periods.

**22. What happens if I am currently contributing to a DEFER account and take FCGL or QEL?**

The State Treasury has explained that supplemental income cannot be used to save for retirement through the DEFER plans. Instead, contributions to a DEFER 457b or 403b account must be deducted from *regular* State earnings. As soon as your regular earnings return to an amount that equals or exceeds your contribution rate, your contributions will start back-up. You may wish to discuss your options with your HR Office.

**23. How will I be paid if I choose to supplement my FCGL or QEL benefit?**

You will receive the leave supplement in your typical State paycheck.

**24. Can I be paid for more than six (6) weeks of FCGL if my family member is still sick?**

Consistent with the Act, you would only be eligible for up to six (6) weeks of FCGL benefits in a 24-month period. If you require additional leave to care for your sick family member, you may use available and accrued leave per the Judicial Branch Personnel Rules if you meet the eligibility criteria for such leave.

**25. Can I be paid for more than six (6) weeks of QEL if my family member is still deployed?**

Consistent with the Act, you would only be eligible for up to six (6) weeks of QEL benefits in a 24-month period. If you require additional leave, you may use available and accrued leave per the Judicial Branch Personnel Rules if you meet the eligibility criteria for such leave.

**26. How does the Act differ from the Family and Medical Leave Act (FMLA)?**

Both the Act and FMLA provide job protection for covered leave taken by eligible employees experiencing qualifying events. However, unlike FMLA, the Act provides for income replacement benefits during the approved leave period.

When an employee is approved for both FMLA leave and FCGL or QEL benefits, the leave runs concurrently. There may be situations in which an employee has depleted their FMLA time based on a prior qualifying event(s) and, nonetheless, is eligible for FCGL or QEL benefits.

**27. Can I use FCGL and QEL benefits at the same time as FMLA?**

Yes, in fact, you are statutorily required to use FCGL (or QEL) concurrently with FMLA. This means that both benefits will run at the same time. Note: There may be limited situations in which an employee has depleted their FMLA time based on a prior qualifying event and, nonetheless, is eligible for FCGL or QEL benefits.

**28. I have already used my 12 weeks of FMLA during the application year due to my own serious health condition. My father is now sick and requires my help, will I be eligible for FCGL benefits?**

It depends on whether you meet the eligibility for FCGL benefits. You may file a FCGL claim through Delaware LaborFirst. Your application will be reviewed to determine eligibility. Remember, to be eligible for FCGL you will need to meet all of the following requirements at the time of filing your request:

- Are a full-time or permanent part-time Judicial Branch employee (casual seasonal employees are not eligible);

- Have worked for the State for at least 12 months (or 52 weeks) in a leave-eligible position; and
- Have worked at least 1,250 hours in the 12 months before your leave starts.  
Note: The 1,250 hours of service are hours actually worked and does not include time off for vacation, illness, holidays, or any other type of paid or unpaid leave. Your use of other leave will impact the number of hours you will have worked in the past 12 months.

**29. Can I take FCGL or QEL and paid medical leave/short-term disability (STD) at the same time?**

No, you may not. You cannot be on FCGL or QEL at the same time as medical leave/STD. In situations where an employee personally experiences a disabling condition and they also need to care for a family member, or vice versa, the employee would need to make a choice regarding which leave to utilize.

**30. Can I take FCGL or QEL and paid parental leave or Workers' Compensation at the same time?**

No, you cannot be on FCGL or QEL at the same time as paid parental leave or Workers' Compensation.

**31. Will my employment status be affected if I take FCGL or QEL?**

No, at the conclusion of your FCGL or QEL, your employer will restore you to the same or equivalent position, barring any unforeseen circumstances unrelated to your taking of leave.

**32. My spouse also works for the State, how much FCGL (or QEL) leave will we be able to take for the same event?**

If you and your spouse are both employees of the State and are eligible for FCGL or QEL for the same qualifying event, you and your spouse may each take up to six (6) weeks of paid FCGL (or QEL). Each spouse will need to meet the eligibility criteria for such leave.

**33. Can I donate my FCGL or QEL to my spouse?**

You may not donate FCGL or QEL to another State employee or to the Donated Leave Bank. This is because FCGL and QEL is an income replacement benefit administered by the DDOL, Division of Paid Leave.

**34. What happens if my FCGL or QEL claim is denied?**

If your FCGL or QEL claim is denied, you may request a review by the DDOL, Division of Paid Leave within 60 days of the denial.

**35. What if I provide false information when applying for FCGL or QEL?**

Employees who knowingly provide false or misleading information to obtain FCGL or QEL benefits may be disqualified from DDOL's program for three (3) years and will face disciplinary action, up to and including termination.

**36. Am I required to pay anything for FCGL and QEL benefits?**

Yes, starting with your January 9, 2026, paycheck, you will be contributing 0.04% of your wages via automated payroll deduction. The Judicial Branch will be contributing an additional 0.04% on your behalf. For more information, please refer to the [Notice of Employee Rights under the Healthy Delaware Families Act](#).

**37. Can I opt out of coverage under the Act?**

No, the Act requires coverage for all eligible employees.

**38. What if I work remotely from another state as part of my alternative work or telecommuting arrangement?**

Even if you telecommute from another state, the State considers your work location to be in Delaware and your wages are reported in Delaware. Because of this, if you are otherwise an employee covered by the Act, you are required to pay the contribution amount. You will also be eligible to file a claim to receive FCGL and QEL benefits, regardless of whether you telecommute from another state. 19 DE Reg. 1401-2.4.2.

**39. Where can I find more information about the Act and Paid Family and Medical Leave?**

You can find more information about the Act and applicable leave options on the [Judicial Branch Employee Benefits webpage](#).

**40. If someone is on FMLA as of January 1, 2026, can they apply for FCGL or QEL benefits?**

Yes, on January 1, 2026, employees who are on FMLA for family caregiving or qualifying exigency can apply for FCGL or QEL benefits through LaborFirst. If approved, these benefits may extend past FMLA protected time. Eligibility in this situation, as in all other situations, will be determined based on the statutory criteria, including whether the employee has worked 1,250 hours in the preceding 12 months. The 1,250 hours only includes hours actually worked and does not include time the employee was out on paid or unpaid leave.

**41. My monthly child support payment is currently being withheld from my salary. Will DDOL withhold my child support payment from my FCGL or QEL benefit payment?**

You will need to check with DDOL on whether your child support is being withheld from your FCGL or QEL benefit. Section 3804(d) of Title 19 of the Delaware Code provides that when an employee files a new claim through LaborFirst the employee must disclose whether they have a child support obligation. If the employee is determined eligible for FCGL or QEL, DDOL must notify the applicable child support enforcement agency about the eligibility determination and must withhold the child support obligation from the FCGL/QEL benefit amount. State Regulations provide that any child support obligation withheld from FCGL/QEL benefits shall not exceed 50% of the weekly benefits. DDOL will transfer the withheld amount to the applicable child support enforcement agency. Because the Act contains conditions that must be met prior to DDOL withholding child support payments, each employee should check with DDOL, Division of Paid Leave regarding their individual situation. See 19 *Del. C.* § 3704(d) and 19 DE Reg. 1401-5.7.

**42. Will other monthly garnishments, including judgments, be withheld from my DDOL payment?**

No, except for child support, DDOL will not be withholding other monthly garnishments that may currently be withheld from your state paycheck.

**NOTE:** These FAQs are 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 information contained in these FAQs and law or regulations, the law or regulations, as applicable, govern.