

**AN ORDINANCE TO AMEND CHAPTER 40 OF THE CITY CODE
REGARDING PARENTAL LEAVE AND COMBINED LEAVE**

#0149

Sponsor:

**Council
Member
Bracy**

WHEREAS, on May 10, 2022, Governor John Carney signed the Healthy Delaware Families Act (“HDFA”), which requires employers with more than 25 employees to provide employees who have completed 1 year of employment with and performed at least 1,250 hours of work for the providing employer with (i) 12 weeks of paid parental leave during the first year after the birth, adoption, or placement through foster care of a child and (ii) 6 weeks of paid medical/family caregiver/qualified exigency leave in a 24-month period to address an employee’s own serious health condition, care for a family member with a serious health condition, or to address the impact of a family member’s overseas military deployment, with a maximum cumulative total of 12 weeks of paid family and medical leave benefits per year; and

WHEREAS, the City currently provides regular employees 20 days of paid parental leave within the first 4 calendar weeks immediately following the birth of a child or the adoption of a child who is 6 years of age or younger; and

WHEREAS, the City proposes to amend the City Code to comply with HDFA’s requirements regarding paid parental leave; and

WHEREAS, for the purposes of recruitment and retention, the City proposes to provide 6 weeks of paid birthing parent medical leave to employees for vaginal deliveries and eight weeks of paid birthing parent medical leave to employees for cesarian deliveries to allow for recovery after giving birth, which will not run concurrently with the 12-week paid parental leave and which will be available on the first day of employment; and

WHEREAS, in light of the 6 weeks of paid medical leave required by HDFA, the City proposes to delete the City Code provision that allows the Director of Human Resources

to grant employees who have exhausted their accrued combined leave but remain absent from work due to illness additional extensions of combined leave of up to 2 weeks at half pay; and

WHEREAS, in order to balance the operational impact of extended leaves of absence in light of HDFA's mandatory categories of leave and to discourage misuse and abuse of accrued combined leave, the City proposes to (i) reduce the maximum amount of combined leave that employees may accrue after January 1, 2026 from 240 days to 60 days and (ii) allow employees with more than 60 days of accumulated combined leave as of January 1, 2026 to retain all of their accumulated combined leave but restrict them from accruing any new days of combined leave in excess of 60 going forward; and

WHEREAS, in light of the foregoing, City Council deems it necessary and appropriate to amend Chapter 40 of the City Code as described above and as set forth below.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. Chapter 40 of the City Code is hereby amended by amending Section 40-341 thereof by deleting the stricken language and adding the underlined language to read as follows:

Sec. 40-341. - Paid parental leave; paid birthing parent medical leave.

- (a) Parental Leave. Any regular employee, as defined in section 40-6, who has completed ~~one~~ at least 1 year of service with the city within the last 7 years and has worked at least 1,250 hours for the city in the 12-month period preceding a request to take parental leave, shall, regardless of gender, be entitled to take up to ~~20 days~~ 12 weeks of paid parental leave; without use of the employee's accumulated combined leave or vacation; ~~within the first four calendar weeks immediately following the birth of his or her child or upon the adoption by the employee of a minor child who is six years of age or younger. The benefit shall commence with the first scheduled~~

~~work day on or after the birth or adoption. at any time within the first year after the birth, adoption, or placement through foster care of a child. The leave may be taken consecutively or intermittently in intervals of not less than 2 consecutive weeks.~~

(b) *Birthing Parent Medical Leave.* Any regular employee, as defined in section 40-6, who has physically given birth to a child shall, regardless of gender identity, be entitled to paid birthing parent medical leave of 6 consecutive weeks for a vaginal delivery and 8 consecutive weeks for a caesarian delivery without use of the employee's accumulated combined leave or vacation. The leave shall commence on the employee's first scheduled workday after giving birth. It shall be in addition to the paid parental leave set forth in subsection (a) and shall not run concurrently with the paid parental leave. Eligibility for this benefit shall commence on the first day of employment.

~~(b)~~ (c) The leave under subsections (a) and (b) shall run at the same time as the employee's approved leave under the Family Medical Leave Act, 29 U.S.C.S. §§ 2601 et seq. ("FMLA").

~~(e)~~ (d) The employee must apply and be approved for FMLA leave prior to qualifying for and taking the leave benefit provided under subsections (a) or (b).

~~(d)~~ (e) Without regard to the leave under subsections (a) and (b), the employee shall be eligible to apply to take any remaining FMLA leave balance using accumulated combined leave, vacation, or unpaid leave as approved in accordance with the city personnel code and the city human resources policy manual.

~~(e)~~ (f) When holidays with pay (as defined in section 40-332(a)) and days when the city is closed by executive order of the mayor fall within the 20 days time periods of paid leave listed in subsections (a) and (b), they shall not serve to extend the leave under subsections (a) and (b).

~~(f)~~ (g) The leave under subsections (a) and (b) shall apply only to births, or adoptions, ~~(six years of age or younger)~~ or foster placements that take place on or after July 1, 2016 January 1, 2026.

~~(g) The leave under subsection (a) shall apply to each biological parent and each adoptive parent, regardless of the gender of the parent.~~

SECTION 2. Chapter 40 of the City Code is hereby amended by amending Section 40-301 thereof by deleting the stricken language and adding the underlined language to read as follows:

Sec. 40-301. - Same - Combined leave payout.

- (a) Elected service members who are removed from office and appointed service members who are terminated for cause shall ~~have no claim not be eligible for accumulated to receive~~ a combined leave payout as set forth in subsection (b).
- (b) Upon leaving employment with the city, ~~Eligible~~ members of the elected or appointed service, or the estates of such employees who die while employed by the city, ~~and~~ who have accumulated between 30 and 100 days of combined leave will receive a combined leave payout of \$40.00 per day for each day of accumulated combined leave. Eligible ~~Employees~~ who have accumulated between 101 and 240 days of combined leave will receive a combined leave payout of \$50.00 per day for each day of accumulated combined leave.

SECTION 3. Chapter 40 of the City Code is hereby amended by amending Section 40-334 thereof by deleting the stricken language and adding the underlined language to read as follows:

Sec. 40-334. - Combined leave.

- (b) Paid combined leave shall be earned by all regular employees from the commencement of regular employment, but may not be used or paid until an employee has completed ~~three~~ 3 months of continuous regular employment. Upon the recommendation of the commissioner or the department head and with the approval of the director of human resources, combined leave may be credited for time worked as a limited service employee up to a maximum of 90 calendar days, if followed immediately by employment in the classified service.

(c) Eligible employees shall earn paid combined leave at the rate of ~~one~~ 1 day for each calendar month of continuous service, provided that the employee has worked and/or been on paid vacation and/or combined leave for at least 13 working days of the month. The leave shall be credited on the 13th working day of each month and may be accumulated up to a maximum of ~~240~~ 60 days. Combined leave shall be earned based on the employee's regular work schedule; no additional combined leave shall be earned through performance of overtime work. The accumulation schedule for all eligible employees is as follows:

<i>Number of Years Employed</i>	<i>Rate of Accumulated Combined Leave Per Month</i>	<i>Yearly Maximum Accumulated Combined Leave</i>	<i>Total Maximum Accumulated Combined Leave</i>
1 st	1 day	12 days	12 days
2nd	1 day	12 days	24 days
3rd	1 day	12 days	36 days
4 th	1 day	12 days	48 days
5 th	1 day	12 days	60 days
6th	1 day	12 days	72 days
7th	1 day	12 days	84 days
8th	1 day	12 days	96 days
9 th	1 day	12 days	108 days
10 th	1 day	12 days	120 days
11th	1 day	12 days	132 days
12th	1 day	12 days	144 days
13th	1 day	12 days	156 days
14th	1 day	12 days	168 days
15th	1 day	12 days	180 days
16th	1 day	12 days	192 days
17th	1 day	12 days	204 days
18th	1 day	12 days	216 days
19th	1 day	12 days	228 days
20th	1 day	12 days	240 days

(d) Eligible employees who have accrued more than 60 days of accumulated combined leave as of January 1, 2026 shall be entitled to retain the total number of days of accumulated combined leave that they have accrued as of January 1, 2026. Such employees shall be entitled to receive a combined leave payout upon leaving employment with the city for all days of accumulated combined leave as set forth in subsection (j) for members of the classified service and section 40-301 for members of the elected service and appointed service, with the exception of members who are

removed from office, terminated for cause, or terminated for gross misconduct. In accordance with subsection (c), such employees may not accrue any new days of accumulated combined leave in excess of 60 days after January 1, 2026.

~~(d)~~ (e) Combined leave shall not be taken in advance of being earned. If an employee does not have sufficient combined leave credits to cover a period of absence, payroll deduction for the time lost shall be made for the period of absence in compliance with the Fair Labor Standards Act; provided, however, that earned vacation time may be used for this purpose if the employee so elects.

~~(e)~~ (f) Sick leave and family leave shall be granted under the following conditions to eligible employees:

(1) Sick leave shall be granted to employees who are incapacitated from the performance of their duties by non-work-related sickness or injury; or a serious medical condition as defined by the Family and Medical Leave Act or for medical, dental or optical examination or treatment; or when, due to exposure to contagious disease, the presence of the employee at the workplace would jeopardize the health of others.

(2) Family leave shall be granted to employees who have an immediate family member who is afflicted with a serious medical condition as defined in Family and Medical Leave Act that requires the care and attendance of the employee. For purposes of family leave, “immediate family” shall mean the employee’s mother, father, spouse, son, daughter, including sons or daughters by birth, lawful adoption, stepchildren, foster children, and those minor children for whom the city employee is acting in loco parentis.

~~(f)~~ (g) In order to receive paid combined leave, eligible employees must comply with the following conditions. Employees who take time off, but do not comply with following conditions will not be paid for time off:

(1) Employees must report off by notifying their immediate supervisor(s) prior to their regularly scheduled starting time on each day they are absent or as otherwise required by department policy.

(2) A physician’s statement certifying the medical justification for an employee’s absence will not

regularly be required, but will be required for absences of ~~three~~ 3 or more consecutive working days, upon the employee's return to work.

- (3) If an employee is absent from work due to personal illness or the illness of an immediate family member and expects to be away from work more than ~~nine~~ 9 consecutive working days, no later than the tenth day of such absence the employee must submit a doctor's certificate to his or her immediate supervisor, together with a written indication of the anticipated length of absence. All doctor's certificates shall be forwarded to the medical dispensary and will become a part of the employee's medical record.
- ~~(g)~~ (h) Approved sick leave and/or family leave shall be documented by the responsible commissioner or the department head upon forms prescribed by the director of human resources, which shall be forwarded to the human resources department for the employee's personnel file or confidential medical file, as appropriate. The commissioner or department head shall maintain complete and accurate leave records. Records of combined leave accumulated and taken shall be available to the employee.
- ~~(h)~~ (i) Any eligible employee who exhausts his/her accumulated combined leave and who is suffering from an extended illness, is required to use all of his or her accrued vacation time, with the exception of ~~one~~ 1 week which may be retained at the employee's discretion.
- ~~(i)~~ (j) ~~If the employee exhausts his/her accrued sick and vacation time (with the exception of one week, as provided above) and remains absent from work because of illness, the director of human resources may grant additional combined leave upon the employee's request with good cause and the recommendation of the department head/commissioner. Any single extension shall be limited to two work weeks at one-half pay.~~
- (j) Except as otherwise provided in ~~this chapter~~ section 40-301, an eligible employee who leaves employment with the city, or the estate of such an employee who dies while employed by the city, ~~and~~ who has accumulated between 60 and 100 days of combined leave, will be eligible to receive a combined leave payout of \$40.00 per day for each day of accumulated combined leave. Eligible employees who have accumulated

between 101 and 240 days of combined leave will be eligible to receive a combined leave payout of \$50.00 per day for each day of accumulated combined leave. For the purpose of this subsection, no employee who has been terminated from employment for gross misconduct shall be eligible ~~or have a claim for~~ to receive a accumulated combined leave payout as set forth above.

SECTION 4. Chapter 40 of the City Code is hereby amended by amending Section 40-321 thereof by adding the underlined language to read as follows:

Sec. 40-321. - Limited service - Benefits eligibility.

(a) Except as specifically provided in this article or as otherwise required by law, limited service employees shall not be eligible for city benefits.

SECTION 5. This Ordinance shall become effective on January 1, 2026.

First Reading.....December 4, 2025
Second Reading.....December 4, 2025
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2025.

Mayor

SYNOPSIS: This Ordinance amends various sections of Chapter 40 of the City Code regarding paid parental leave and combined leave. First, in order to comply with the requirements of the Healthy Delaware Families Act (“HDFA”), it amends Section 40-341 to increase the City’s paid parental leave for employees who have worked for the City for at least 1 year within the last 7 years and have performed at least 1,250 hours of work in the 12-month period preceding a request to take parental leave from 20 days within the first 4 calendar weeks immediately following the birth of a child or the adoption of a child who is 6 years of age or younger to 12 weeks at any time within the first year after the birth, adoption, or placement through foster care of a child in intervals of no less than 2 weeks. Second, it amends Section 40-341 to provide regular employees who have physically given birth 6 weeks of paid birthing parent medical leave for vaginal deliveries and 8 weeks of paid birthing parent medical leave for cesarian deliveries to allow for recovery, which will not run concurrently with the 12-week paid parental leave and which will be available on the first day of employment. Third, it amends Section 40-341 to have holidays with pay and days when the City is closed by executive order extend the duration of paid parental leave and paid birthing parent medical leave. Fourth, in light of the 6 weeks of paid medical leave required by HDFA, it deletes Section 40-334(i) that allows the Director of Human Resources to grant employees who have exhausted their accrued combined leave but remain absent from work due to illness additional extensions of combined leave of up to 2 weeks at half pay. Fifth, it amends Section 40-334 to reduce the maximum amount of accumulated combined leave that may be accrued by eligible employees after January 1, 2026 from 240 days to 60 days. Sixth, it amends Section 40-334 to permit eligible employees who have accrued more than 60 days of accumulated combined leave prior to January 1, 2026 to retain all accrued days and receive a combined leave payout for them upon leaving employment with the City but prohibits such employees from accruing any new days of combined leave in excess of 60 days after January 1, 2026. Seventh, it amends Section 40-321 because certain limited service employees might be entitled to benefits pursuant to HDFA. Finally, this Ordinance contains some minor housekeeping revisions in Sections 40-341, 40-301, and 40-334 for consistency and clarity. To the extent that any collective bargaining agreement contains provisions that conflict with this Ordinance, the applicable terms of the collective bargaining agreement shall govern.

FISCAL IMPACT STATEMENT: The direct fiscal impact of additional paid parental leave taken under HDFA is expected to be de minimis, except in the case of firefighters, whose union contract mandates minimum manning. For each firefighter taking the full parental leave available under HDFA, an estimated \$14,500 in additional overtime costs will be incurred. Based on the historical average number of firefighters who take parental leave each year, it is anticipated that the total additional overtime costs will amount to approximately \$58,500 annually.

The direct fiscal impact of additional paid birthing parent medical leave, which provides leave that is not part of HDFA for regular employees who physically give birth to a child to allow for recovery, is expected to be de minimis.

The change in the combined leave accumulation limit, which will be reduced from 240 days to 60 days, only affects non-union employees. The fiscal impact of this reduction is expected to be de minimis in the short term, as non-union employees nearing retirement will retain their existing leave balances. However, over the longer term, the City is projected to save around \$9,500 annually due to lower sick leave payouts to non-union employees when they leave employment with the City.

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