Rehoboth Beach - Dewey Beach Chamber of Commerce & Visitors Center

"The Nation's Summer Capital"

REHOBOTH BEACH – DEWEY BEACH CHAMBER OF COMMERCE

RESPONSE TO PROPOSED PFLA REGULATIONS

1.0 Definition of Employer: What percentage defines an owner? – What is considered common ownership? Detailed definitions are needed here.

1.0 Average weekly wage: What does it encompass? Does it include PTO (vacation, sick time, holidays, etc.), bonus, overtime, commissions? Define what is meant by "average weekly wage".

2.2.3.1 In Loco Parentis: How does the employer certify and verify that an employee is acting "in loco parentis"? A definition is needed with examples of documents that are acceptable proof of this relationship should be provided to employers. Is this applicable only with a legal arrangement?

2.2.3.2 What is "sufficient information"? Again, this needs to be defined and specific criteria needs to be outlined. A statement from the employee is not sufficient. A legal document must be submitted.

2.3.1.2.5 This section needs to be removed completely from the regulations and the statute. How does an employer in Delaware know if a health care provider is "authorized to practice" under another country's law? This section requires the employer to conduct significant investigation and it is vague, allowing too much interpretation. THE STATUTE MUST BE CHANGED TO DELETE THIS SECTION.

2.3.1.3 Same as above with regard to the phrase, "authorized by their state to practice." How would an employer know that? Too much is being required of the employer and too much is being left to interpretation. This section should be deleted as well. THE STATUTE MUST BE CHANGED TO DELETE THIS SECTION.

2.5 Integrated Employer: This needs a detailed definition.

2.5.1 Common Ownership: The percentage of ownership (common) needs to be defined and included in the definitions section.

2.5.1.1 "Common management" needs to be defined and included in the Definitions Section.

2.6.2.8 Qualified Exigency: Leave eligibility should apply only if the exigency need is for 3 consecutive days. THE STATUTE MUST BE CHANGED TO REFLECT THIS.

2.6.2.9 "Any other event that the employer and employee agree is a qualifying exigency." Strike this section completely. It doesn't appear that "other" reasons are omitted from the regulations. THE STATUTE MUST BE CHANGED TO REFLECT THIS.

PO Box 216 · 306 Rehoboth Avenue · Rehoboth Beach, Delaware 19971

302-227-2233 · 302-227-8351 (fax) · www.Beach-Fun.com · rehoboth@beach-fun.com

Rehoboth Beach - Dewey Beach Chamber of Commerce & Visitors Center

"The Nation's Summer Capital"

3.2.1 Employer Eligibility and Employee Threshold: The burden on the employer in this section is too expansive. "During the previous 12-month period" appears that the calculations required of the employer would be constant and significant, and would require a lot of tracking. This should be determined 30 days after the end of each calendar quarter.

3.4.1 & 3.4.3 & 3.52 Employers with 10 – 24 Employees: All of these sections should be consistent and should apply at 30 days after the end of each calendar quarter. Constant tracking of employee headcount changes is much too burdensome.

3.7.1 Continuation of Waivers: If employee signs a waiver, do they still have to have the payroll deduction? When are waivers signed? How frequently are they required? There is a significant administrative burden on the employer to track changes and obtain waivers.

Waiver Forms and Reclassification Forms need to be included in the definitions section in the beginning of the regulations.

3.9.1 Recertification Standards: What exactly does this mean? The regulations must define who is considered "with direct knowledge of the event".

3.9.3 Recertification Standards: Add "within 5 calendar days" at the end of the sentence. The Division should be subject to time frame requirements.

3.10 Payment for Recertification: Change wording to read, "Should any amount for the recertification not be covered by a covered health insurance, the employee is responsible for the cost of obtaining recertification. THE STATUTE MUST BE CHANGED TO REFLECT THIS.

3.11 Documentation or Self-Certification: This section needs clarification. If a family member has a serious health issue, the employee must be responsible to provide documentation. Is this medical documentation from a health care provider? What type of documentation is acceptable? The employer should have the right to request proof of the family relationship and of the need for care, as well as proof of the medical need for the employee to have time off to care for that family member. THE STATUTE MUST BE CHANGED TO INCLUDE THAT ALL DOCUMENTATION MUST BE FROM A HEALTH CARE PROVIDER.

4.1.1.1 Parental Leave Maximum Duration: Strike this section completely. It only increases the administrative burden on the employers. At the very least, reverse the requirement to require notification to the Division if increasing from the minimum requirement of 6 weeks to 12 weeks.

4.1.1.2 Responsibility of employer notification to employee: There needs to be one page in the regulations dedicated to a checklist outlining all notifications and actions required of employers, employees, departments, and the State, including a list and copies of the official forms to be used, both online and printable versions in a Paid Family Leave manual.

PO Box 216 · 306 Rehoboth Avenue · Rehoboth Beach, Delaware 19971
302-227-2233 · 302-227-8351 (fax) · www.Beach-Fun.com · rehoboth@beach-fun.com

Rehoboth Beach - Dewey Beach Chamber of Commerce & Visitors Center

"The Nation's Summer Capital"

4.2 Parents or Multiple Family Members: Change the wording of this section to read, 'The Division shall limit…" and "…the employee shall not take leave concurrently…" Current language says "may" in both instances.

4.2.1 Strike this section completely as this is covered under both federal and state discrimination laws.

4.3 Receipt of a Completed Application: 5 days for an employer to make decisions is not realistic. Individuals assigned to this task may be on vacation or on sick leave. This needs to be increased to 10 business days. THE STATUTE MUST BE CHANGED TO REFLECT THIS.

4.3.1 Same as above, 5 days is not realistic, and it needs to be increased to 10 business days. THE STATUTE MUST BE CHANGED TO REFLECT THIS.

4.3.4 Strike this section as it is redundant to 4.3.5.

4.3.5 The means of communication to the employee should be one only: electronic mail system. This means of communication will also apply to 4.3.6 and 4.3.8.1

4.3.7 What is an instrument? "Instrument" needs to be defined and included in the Definitions Section.

4.3.8 The State should be contacting the employee with the reason for the denial of benefits, not the employer. THE STATUTE MUST BE CHANGED TO REFLECT THIS.

ADD: 4.3.8.5 The State will provide templates on the portal for all required notices. (See 4.1.1.2)

5.1.3 Standard Benefit Calculation: The language in this section needs to be changed. Insert the underlined portion as follows. "Notice will be provided by the Division to all employers in the fund at least 90 days before any change in the benefit percentage occurs."

***There is a great deal of concern with reduction of the benefit percentage. This law was enacted and the program put into place to help employees. If you are going to allow one individual to have the ability to reduce benefits, the State is NOT fulfilling their commitment to the law to help the employees. THE STATUTE MUST BE CHANGED TO REFLECT THIS.

ADD: 5.1.4 The Division cannot increase contribution rates of the employers and employees into the fund without filing for a change by Regulation using the administrative procedures, and these rates can only be effective for a 12-month period. THE STATUTE MUST BE CHANGED TO REFLECT THIS.

6.3.7.2 Manner of Contribution: This section should match the employer's payroll cycle.

6.6 The last sentence in this section says "the employer cannot require that the employee pay their "share" of the employer's error." It needs to be changed to "the employer can require the employee to pay their share". The administrative burden these regulations place on the employers, especially small employers, is significant. If a mistake is made due to human error and must be corrected, the employee's contribution should be paid by the employee. THE STATUTE MUST BE CHANGED TO REFLECT THIS.

PO Box 216 · 306 Rehoboth Avenue · Rehoboth Beach, Delaware 19971

302-227-2233 · 302-227-8351 (fax) · www.Beach-Fun.com · rehoboth@beach-fun.com

Rehoboth Beach - Dewey Beach Chamber of Commerce & Visitors Center

"The Nation's Summer Capital"

6.11 Opting to File a Waiver: Does an employee get to opt out for any reason they so choose? Are employees able to decline this coverage? This needs to be addressed here. THE STATUTE MUST BE CHANGED TO ALLOW EMPLOYEES TO OPT OUT IF THEY SO CHOOSE.

ADD: 6.11.4 An employee can waive coverage for any reason they so choose. THE STATUTE MUST BE CHANGED TO REFLECT THIS.

6.12 Change from "within the most recent quarter" to "once every 12 months".

6.12.3 Change to "provided in writing once every 12 months" of when that situation occurs.

6.12.3 Change wording to read: "Waivers will be effective upon receipt by the employer."

ADD TO 6.14: Add the following wording at the end of the sentence, except when the employee voluntarily declines the coverage and completes the waiver. THE STATUTE MUST BE CHANGED TO REFLECT THIS.

6.15 "Instance" needs to be defined in this section and added to the Definitions Section.

7.1 Reduced Leave Schedule and Intermittent Leave: Change the time frame for recertification requests from 90 days to 30 days.

7.3 Prior Notice: Change the wording from "should" to, "The employee must provide the employer with at least…"

ADD TO 10.4.1 Coordination of Benefits: Add to the end of the last sentence: "The total benefit should not exceed the 80% coverage maximum."

11.1 Notice: What notice is this section referring to? "Notice" needs to be defined here in detail, and included in the Definitions Section. (…based upon a failure by the employer to serve the notice.) This notice should also have a template provided by the State.

ALL OF SECTION 12.0 BELOW REFERS TO CHANGING FROM "EMPLOYER" TO "THE DIVISION" AND THE STATUTE MUST BE CHANGED TO REFLECT THIS.

12.5, 12.5.1, 12.5.2, 12.5.3, 12.5.4 ,12.5 Employers' Responsibilities, Adjudication, Protections: These sections need to change to "The Division" not "the employer" as this is a state program, and these are the state's responsibilities. Employers should not have responsibility when they have very little control. THE STATUTE MUST BE CHANGED TO REFLECT THIS.

12.5.6 Change the last sentence: "The Division then has 5 business days…" (not the employer).

12.6.2 Change the sentence: "The Division will then have 3 business days…" (not the employer).

12.7.3 Division Claim Review: Remove "both". It should read: "The Division is required to provide assistance. . ." The employer should not be required to assist the employee with an appeal.

Rehoboth Beach - Dewey Beach Chamber of Commerce & Visitors Center

"The Nation's Summer Capital"

12.8 Division Claims Review Determination: Remove "employer's" in the last sentence as it should be "The Division" making the determination.

12.8.1 The time frame should be extended to 10 business days.

13.13 "Delaware Rules of Evidence" needs detailed definition.

14.3 Medical Documentation: How is the Division/State actually going to enforce this requirement with the healthcare providers, requiring that they NOT charge employees to complete the forms? Will there be penalties issued to the healthcare providers as there are to the employers?

14.4 Is it legal for the Division/State to mandate that healthcare providers provide this service at no cost to the employee? Most health care providers currently charge a fee ranging from $25 to $50 to complete the federal FMLA documents.

16.1 Family and Medical Leave Insurance Account Fund: We are extremely concerned with using the fund for administrative costs when the benefits to the employees can be reduced to stabilize the fund. By reducing the benefits, the State is not providing the assistance to the employees as they were initially told / promised when the law was passed. THE STATUTE MUST BE CHANGED TO REFLECT THIS.

17.2.1 Private Plans: Change this section to read that "30 days after the end of each quarter, employers will be required to send…" The Division needs to simplify this process to make it easier for the employers as most small companies do not have HR departments.

SECTION 3723 STATES THAT 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. THE STATE ALREADY COLLECTS THE SAME DATA FOR UNEMPLOYMENT AND TAX PURPOSES SO THE RESUBMISSION OF THIS DATA IS UNNECESSARY.

THE STATUTE NEEDS TO READ "REQUIRED" RATHER THAN "ENCOURAGED."

17.4.1 Self-Insured: Why are self-insured groups required to maintain a minimum of 100 employees? What is the rationale for this decision? If the employer can provide the benefit for fewer than 100 employees, why is it not permitted if it's backed by a surety bond?

17.4.4 If the employer offers a self-insured plan, why does the Division need the information being requested for each quarter (enrollment, wages and hours)? Why would they want to have information in the system they do not need or will not use?

17.5.2 Grandfathering Plans: The deadline of January 1, 2024 is unreasonable. The date needs to be moved to April 30, 2024. Businesses have a lot to absorb. Moving the date will assist everyone to be successful. THE STATUTE MUST BE CHANGED TO REFLECT THIS.

Rehoboth Beach - Dewey Beach Chamber of Commerce & Visitors Center

"The Nation's Summer Capital"

ADD TO 19.2: In the first sentence following "compliance with the Act," add "to withholding and remittance of contributions". Then, delete the second sentence.

19.3 Powers of the Division: Change the language and time frame from, "The Division may enter and inspect an employer's premises or place of business or employment" to "The Division will arrange a mutually acceptable time for this inspection, providing at least 72 hours' notice to the employer." THE STATUTE MUST BE CHANGED TO REFLECT THIS.

21.0 Penalties: The Division should provide at least one written notice / warning before they impose the financial penalty. Also, the fines should be reduced, starting at $500 with a maximum of $2500. Many small businesses could not afford these high penalties for what would likely be human mistakes. THE STATUTE MUST BE CHANGED TO REFLECT THIS.

26.0 THE STATUTE MUST BE CHANGED TO REFLECT THIS 30 DAYS, NOT 10 DAYS AS TO THE EFFECTIVE DATE OF THE REGULATIONS.

All days in the regulations should be corrected to "business days". It is in some sections but not others.