

PROCESS FOR DETERMINING EMPLOYEE EXCEPTIONS FROM PFL COVERAGE

Guidance for Employers

This document describes the process for determining which (if any) employees who are reported by employers for the purposes of the District of Columbia's Unemployment Insurance (UI) are excepted for the purposes of the District of Columbia's Paid Family Leave (PFL) program. Employers must pay the PFL tax in the amount of 0.62% of the wages paid to covered employees. Covered employees for PFL include only those whose wages are reported to the District of Columbia for the purposes of UI. Employees whose wages are not reported to the District of Columbia for UI are not covered by PFL. Employers are not required to pay the PFL tax on the wages paid to employees who are either not reported to the District of Columbia for UI or who are excepted from PFL using the process described below.

Step 1: Determination of Excepted Employees

Employers must follow these four rules in determining whether the PFL tax should or should not be paid on the wages paid to a particular employee.

Rule 1: All employees who spend all of their work time in a particular quarter for the employer in the District of Columbia and whose wages are reported by the employer to the District of Columbia for the purposes of UI are always covered by PFL with no exceptions.

Rule 2: All employees who spend at least some of their work time in a particular quarter outside of the District of Columbia and whose wages are reported by employers to the District of Columbia for the purposes of UI are presumed to be covered by PFL.

Rule 3: An employee is **covered** by PFL and cannot be excepted if the employee's work time spent outside of the District of Columbia in a particular quarter falls into **one or more** of the following categories:

1. The work performed outside of the District of Columbia was temporary (for example, there was a reasonable expectation that the employee would return to performing the employee's regular and customary work for the employer in the District of Columbia after the completion of the work outside of the District of Columbia);
2. The work performed outside of the District of Columbia was transitory (for example, the work time spent outside of the District of Columbia consisted merely of movement through another jurisdiction);
3. The work performed outside of the District of Columbia was incidental in nature (for example, the fact that the work was performed outside of the District of Columbia was not essential to the performance of the work, as in the case of teleworking);
4. The work performed outside of the District of Columbia consisted of isolated transactions (for example, the work was performed at several different locations outside of the District of Columbia with no one location being the primary location of the work).

Rule 4: An employee may be excepted from PFL coverage if:

1. The employee's work time that was spent in a particular quarter outside of the District of Columbia **does not** fall into **any** of the categories in Rule 3, **AND**
2. The employee spent more than 50% of his or her work time in that quarter for the employer in another single jurisdiction. Another single jurisdiction means another single state other than the District of Columbia.

Step 2: Documentation of Excepted Employees

If employees' work performed in a particular quarter meets the criteria given above to be excepted from coverage, the employer may submit documentation to the Department of Employment Services (DOES) requesting that the employees be excepted from PFL coverage in that quarter. **Employers must submit all of the following documentation each quarter that they are requesting employees to be excepted from PFL coverage.**

1. A cover letter signed by the employer attesting that the work performed by the excepted employees follows the rules provided in step 1. The Department of Employment Services provides a template for this cover letter.
2. The completed spreadsheet provided by DOES identifying the employees excepted from PFL. The information on the spreadsheet must include:
 - a. Employer account number;
 - b. Reporting quarter and year;
 - c. All excepted employees' first and last names; and
 - d. All excepted employees' Social Security Numbers (**Last Four Digits**).
3. The employee acknowledgement form provided by DOES signed by each excepted employee each quarter.
4. Supporting documentation demonstrating that all work time performed by all excepted employees that was performed outside of the District of Columbia follows the rules provided in step 1. Examples of such documentation include:
 - a. Contracts showing work performed outside of the District of Columbia that is clearly linked to the work performed by specific excepted employees in the quarter;
 - b. Payroll records showing the time and location of work performed by excepted employees in the quarter;
 - c. Employee timesheets showing the worksite outside of the District of Columbia where work was performed in the quarter;
 - d. Other documentation provided by the employer demonstrating that more than 50% of the excepted employees' work time in the quarter was spent at worksites outside of the District of Columbia.

Step 3: Transmittal of Documentation

Employers may submit the required documentation to DOES by including the documents as attachments in an email to the following address: PFLexceptions@dc.gov. **The following file names and file types must be used for the attachments. Submissions without the required file names or in non-approved file types will be rejected.**

1. Cover letter:
 - a. File name: "Cover letter"
 - b. File type: ".pdf" or ".jpeg"
2. Spreadsheet:
 - a. File name: "Excepted employees"
 - b. File type: ".xls" or ".csv"
3. Employee Acknowledgement
 - a. File name: "Employee acknowledgement_[number]" (If an employer decides to submit multiple separate files, each file must have the underscore and the number of the submission, starting at 01 and increasing to 99 or higher. If an employer is submitting one file, the file should be named "Employee acknowledgement_01")
 - b. File type: ".pdf" or ".jpeg" (all signed acknowledgements may be in one PDF file with multiple pages, or may be separate files for each signed acknowledgement)
4. Supporting documentation
 - a. File name: "Supporting documentation_[number]" (If an employer decides to submit multiple separate files, each file must have the underscore and the number of the submission, starting at 01 and increasing to 99 or higher. If an employer is submitting one file, the file should be named "Supporting documentation_01")
 - b. File type: ".pdf" or ".jpeg" (all supporting documentation may be in one PDF file with multiple pages, or may be separate files)

Step 4: Payment of PFL Tax

All employers requesting employee exceptions must submit payment for the full PFL tax owed on all employees reported to the District of Columbia for the purposes of UI. An employer's request to except employees from PFL will not delay the requirement to pay the full PFL tax on time for **all employees** (including those who were requested to be excepted from PFL).

Step 5: Approval and Account Crediting

After timely submission of both the required documentation and the full PFL tax owed on all employees, DOES staff will review the submitted documents and issue a determination of excepted status for the requested employees. If employees are determined to be excepted from PFL, employer accounts will be credited with the amount of PFL tax paid on the wages of the excepted employees. DOES will notify employers within sixty (60) days of the determination with respect to the employee exception request.

Important Note

DOES is working to integrate the exception process into the initial payment process. DOES will inform employers when the permanent exception process has been completed.