

Employee Benefit Plan Review

Jurisdictions Expanding Leave for Bereavement and Pregnancy-Related Losses

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As of January 1, 2023, many employees in Illinois became eligible for expanded bereavement leave. Whereas Illinois law previously provided for leave following the death of a child, the new Illinois Family Bereavement Leave Act (the Act) allows for leave in connection with the death of additional family members and also losses associated with certain pregnancy-, fertility-, and adoption-related events. Under the Act, employees are eligible for up to 2 weeks of unpaid bereavement leave per event and up to 6 weeks of unpaid bereavement leave during a 12-month period.

This article elaborates on the new Illinois law and provides a summary of analogous developments in other jurisdictions.

WHAT IS REQUIRED OF EMPLOYERS UNDER THE ACT?

The Act requires employers with 50 or more employees to provide 2 weeks, or 10 work days, of unpaid leave to employees grieving the death of a “covered family member” or for certain pregnancy-, fertility-, or adoption-related events.

In the event of more than one qualifying event in a 12-month period, employers must

provide up to 6 total weeks of unpaid leave during the 12-month period.

What Are Qualifying Events Under the Act?

Death of a “Covered Family Member”

Under the Act, a “covered family member” is defined as an employee’s

- Child;
- Stepchild;
- Spouse;
- Domestic partner;
- Sibling;
- Parent;
- Mother-in-law;
- Father-in-law;
- Grandchild;
- Grandparent; and
- Stepparent.

An employee is eligible for leave to:

- Attend the funeral of a covered family member;
- Make arrangements necessitated by the death of a covered family member; and
- Grieve the death of a covered family member.

Pregnancy-, Fertility-, or Adoption-Related Events

An employee is eligible to be absent from work due to:

- A miscarriage;
- An unsuccessful round of intra-uterine insemination or of an assisted reproductive technology procedure;
- A failed adoption match or an adoption that is not finalized because it is contested by another party;
- A failed surrogacy agreement;
- A diagnosis that negatively affects pregnancy or fertility; or
- A stillbirth.

WHAT IS REQUIRED OF EMPLOYEES UNDER THE ACT?

Employees must provide their employer with at least 48 hours advance notice of their intent to take leave unless doing so is not reasonable and practicable and must complete their bereavement leave within 60 days of receiving notice of the qualifying event.

CAN EMPLOYERS REQUEST PROOF OF A QUALIFYING EVENT?

The Act allows employers to require that employees provide reasonable documentation of the qualifying event entitling them to bereavement leave.

In the event of the death of a “covered family member,” the Act indicates that reasonable documentation may include a death certificate; a published obituary; or written verification of death, burial, or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution, or government agency.

For leave resulting from pregnancy-, fertility-, or adoption-related events, the Act indicates that reasonable documentation may include

a form provided by the Illinois Department of Labor to be filled out by a healthcare practitioner or documentation from the adoption or surrogacy organization certifying that the employee experienced a qualifying event. For leave resulting from pregnancy-, fertility-, or adoption-related events, an employer may not require that an employee identify which event qualifies them for leave.

HOW DOES THE ACT RELATE TO FEDERAL FMLA LEAVE?

All employers covered by the federal Family and Medical Leave Act (FMLA) must comply with the leave requirements of the Act. For an employee to be entitled to leave under the Act, the employee must also qualify as an eligible employee under the FMLA. Accordingly, the employee must have 12 months of employment at the covered employer and at least 1,250 hours worked over the past 12 months.

Moreover, the Act does not require that employers provide an employee leave that exceeds the amount of leave permitted by the FMLA. Therefore, if an employee has already taken all of his or her eligible FMLA leave in 12-month period, the employee is ordinarily not eligible for additional leave under the Act during that period. Of course, nothing prohibits an employer from providing more leave than is required by law.

WHAT ARE THE PENALTIES FOR NONCOMPLIANCE WITH THE ACT?

An employee who believes their rights under the Act have been violated may, within 60 days after the date of the last event constituting the alleged violation, file a complaint with the Illinois Department of Labor or a civil action. Employers that are found to have violated the Act may be subject to civil penalties, including a \$500 penalty for a first offense and penalties of up to

\$1,000 for subsequent offenses. A court may also order equitable relief to redress a violation or to enforce the Act.

WHAT ABOUT OTHER STATES AND LOCALITIES?

Illinois is not the only state to recently amend or consider amending its bereavement leave laws.

In California, for example, employees are now eligible under certain circumstances for up to 5 days of unpaid bereavement leave upon the death of a family member, including a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law. This law became effective January 1, 2023.

In Pittsburgh, Pennsylvania, similarly, a recent law makes city employees eligible for up to 3 days of paid bereavement leave, including for the termination of a pregnancy. This law became effective September 22, 2021.

Similar legislation is pending in other jurisdictions. In New York, for instance, state assembly bill AB5231-B would provide paid leave following “any pregnancy outcome,” including recovery from a stillbirth, a miscarriage, or an abortion.

In Kentucky, moreover, house bill 21RS HB 284 would require employers to provide three days of paid bereavement leave to parents following a miscarriage or stillbirth in the third trimester.

On the federal level, the Parental Bereavement Act of 2021, alternatively called the Sarah Grace-Farley-Kluger Act, would entitle an eligible employee to up to 12 workweeks of leave during any 12-month period for the death of a child.

TAKEAWAYS

Employers should review their leave policies to ensure compliance with the new Illinois Act and any other laws in the locations in which they have employees. Multistate employers subject to overlapping

laws can consider developing a single policy that would comply with all of the bereavement-related laws in the jurisdictions in which they operate. 🌐

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