

AN EMPLOYER'S GUIDE TO RETHINKING BEREAVEMENT POLICIES FOR A MODERN APPROACH TO WELL-BEING

Insights
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Now more than ever, employers are focusing on the mental health and well-being of their employees, recognizing that allowing them time for self-care is a key component of work-life balance. Losing a loved one is one of the most challenging times for employees, and employers often show support in the following days and weeks by providing resources to help them deal with their grief. But what should you include in a bereavement policy? Due to changes in the law and a shift in the way modern businesses manage their workforce, it could be time for you to rethink your approach to bereavement leave and related benefits. Regardless of the level of assistance you are able to provide, developing a clear policy that highlights employee resources and benefits can go a long way with your employees. Here's an overview of the recent workplace trends regarding bereavement leave laws, policies, and best practices – and a recap of your legal obligations.

Updating Policies to Reflect the Modern Era

Often times, businesses will provide either paid or unpaid bereavement leave after the death of an immediate family member. Some companies, however, are looking to offer more and are developing robust policies to help employees through an emotional time. Doing so could help you stand out from your competitors when it comes to employee satisfaction and retention.

The benefits you offer will depend on many factors, including your industry, business environment, workplace culture, and budget. Moreover, as you develop your policy,

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you should recognize that every employee handles grief differently and may have unique needs as they process their loss, make funeral arrangements, and focus on their mental health and well-being. Here are some aspects you may decide to cover in your policy:

- **Broad Coverage:** What loved ones will your policy cover? Some policies cover only immediate family members, while others include broader relationships and possibly even close friends and other non-familial ties. Be sure to clearly define who is covered. You may also consider providing more time off for immediate family (such as a spouse or child) than other relationships.
- **Pregnancy-Related Grief:** The loss of a pregnancy can be devastating, whether as the result of a miscarriage, chemical pregnancy, failed in vitro fertilization (IVF), or other cause. Many employers now recognize the impact of such losses and are adding them to their bereavement policies.
- **Paid Time Off:** While not all employers are able to offer a significant amount of paid time off, providing some amount of PTO can help employees focusing on coping with their grief and handling any funeral, estate, and financial matters arising from the loss of a loved one. Many companies offer three to seven paid workdays, but the amount of PTO may vary based on the relationship to the employee, as noted above.
- **Flexible Work Arrangements:** Consider allowing employees to work remotely, reduced or different hours, or alternate shifts as they mourn, travel, attend to family needs, and make funeral arrangements.
- **Pet Bereavement:** Coping with the loss of a beloved pet can be traumatic. Moreover, employees may need to make emotional final arrangements during business hours. Consider giving employees time to attend to these arrangements and to grieve their furry (or scaly or feathered) companions as well as their human ones.
- **Employee Assistance Program (EAP) and Grief Counseling:** Many employers offer EAP services to help workers manage issues they encounter in their personal lives, including grief, stress, family matters, and work-life balance. You may want to remind employees in your bereavement policy and follow-up communications that

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these services are available to help them in their time of need.

- **Documentation Considerations:** You should carefully decide whether to ask employees for documentation of their need for bereavement leave. Note that many employers are moving away from requesting a death certificate or other verification and are trusting employees to determine their need for leave. You may, however, want to ask employees with attendance issues or recent disciplinary action to provide verification. Be sure that your policy is clear, fair, and consistently applied. If you decide to ask for verification, consider asking for documentation that is easy to obtain, like an obituary or funeral announcement.

Reviewing State and Local Leave Laws

Although only a few states and localities have bereavement-specific leave laws, some now require you to offer such leave – and we expect more jurisdictions to follow suit in the coming years. Here are a few examples of the current bereavement leave laws that may affect your business:

- **California:** Beginning in January 2023, AB 1949 requires California employers with five or more employees to provide up to five days of unpaid leave to eligible employees for the death of a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law. This leave does not need to be taken consecutively but must be completed within three months of the death of the family member. You can read more about California’s law [here](#) and [here](#).
- **Illinois:** The [Family Bereavement Leave Act](#) — which also took effect on January 1, 2023 — requires employers that are covered by the federal Family and Medical Leave Act (FMLA) to provide up to 10 workdays of unpaid leave for eligible employees after the death of a “covered family member” — which includes an employee’s child, stepchild, spouse, domestic partner, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent. Previously, the state’s bereavement law covered only the loss of a child. The Illinois law also covers leave related to a miscarriage and other fertility-related losses.
- **Maryland:** An amendment to [Maryland’s Flexible Leave Act](#) requires private employers with at least 15 employees

to allow employees to use earned paid leave for the death of an “immediate family member,” which is defined as an employee’s spouse, parent, or child. You should note that [these terms are broadly defined](#). For example, “child” includes an adopted, biological, or foster child; a stepchild; or a legal ward.

- **Minnesota:** While Minnesota does not have statewide law requiring bereavement leave, you should check local sick-and-safe-leave ordinances. For example, [Bloomington’s law](#) (effective July 1, 2023) specifically covers bereavement leave.
- **Oregon:** The [Oregon Family Leave Act \(OFLA\)](#), which applies to employers with at least 25 employees, provides up to two weeks of leave after the death of a family member. The leave must be completed within 60 days of the employee learning about the death and counts toward the total amount of OFLA leave available to eligible employees.
- **Washington:** [Tacoma’s paid-sick-leave law covers](#) bereavement leave.

Check with your Fisher Phillips attorney for a full discussion of any such laws that could impact your operations in various states and local jurisdictions. You should also note the trend for jurisdictions to allow workers to use earned PTO for *any* reason. Be sure to review the laws in the applicable location before setting your policy.

Federal Laws May Apply in Limited Circumstances

There are also a few federal laws to consider in some bereavement-related situations.

Family and Medical Leave Act

While the federal FMLA allows eligible employees to take unpaid, job-protected leave to care for a family member with a serious health condition, it does not cover bereavement leave except in limited circumstances involving the death of a covered relative who is a military member.

But you shouldn’t automatically dismiss a request for FMLA leave from one of your employees after a death of a loved one. A grieving employee may be eligible for FMLA in certain circumstances if their grief leads to a physical or mental serious health condition.

What does the FMLA cover? Employers with at least 50 employees generally must provide eligible employees with up to 12 weeks of unpaid leave in a 12-month period for specific, qualifying reasons, including to care for their own serious health condition.

Although bereavement is not considered a serious health condition on its own, in some cases grieving the loss of a loved one may lead to depression, anxiety, or other physical or mental health challenges that could be considered a serious health condition under the FMLA. So, be sure to follow your typical policies and procedures for documenting and handling leave requests.

Notably, Congress has considered legislation in recent years to add the loss of a child to the list of reasons employees can use FMLA leave. For now, however, the loss of a loved one is not covered on its own.

Americans with Disabilities Act

Although grief following the loss of a loved one will not always be covered by the Americans with Disabilities Act (ADA), you should recognize it as a possibility. Depression, post-traumatic stress disorder, and other mental health conditions may be considered a disability under the ADA if they substantially limit a major life activity (such as walking, talking, seeing, hearing, or learning). Under the ADA, covered employers must provide reasonable accommodations to qualified employees with disabilities, unless doing so would cause an undue hardship — and a reasonable accommodation might include a leave of absence.

In sum, you should recognize that grieving employees may be eligible for leave under federal law in limited circumstances, and you should consult experienced legal counsel before taking any action.

Conclusion

By developing a thorough bereavement leave policy, you can show your support to employees and provide some much-needed guidance and relief during a difficult time. If you need assistance developing a policy, please contact your Fisher Phillips attorney, the authors of this Insight, or any member of our [Employee Leaves and Accommodations Practice Group](#). We will continue to monitor any further

developments regarding bereavement leave laws and provide updates on these and other labor and employment issues affecting employers, so make sure you are subscribed to [Fisher Phillips' Insights](#) to gather the most up-to-date information.