

Updates

August 03, 2022

Illinois Expands Bereavement Leave

Illinois Governor JB Pritzker signed Senate Bill 3120 into law on June 9, 2022. The law significantly amends the state's Child Bereavement Leave Act, now named the [Family Bereavement Leave Act](#) (FBLA). The FBLA expands leave to cover the bereavement of an employee's family member as well as certain pregnancy, fertility, and adoption-related events such as miscarriages, stillbirths, failed in vitro fertilization procedures, and failed adoption agreements. The law goes into effect on January 1, 2023.

The FBLA is part of a growing national trend of recognizing pregnancy loss and related events as a qualifying reason for leave.

Expanded Qualifying Events

The Child Bereavement Leave Act was enacted in 2016 and required employers to provide 10 days of unpaid leave annually to employees grieving the death of a child. The FBLA expands qualifying events under the law to include the bereavement of any "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. The FBLA also requires employers to provide leave for pregnancy, fertility, and adoption-related events listed below.

Beginning January 1, 2023, employees may use up to 10 days of unpaid bereavement leave to do the following:

- Attend the funeral of a covered family member.
- Make arrangements necessitated by the death of a covered family member.
- Grieve the death of a covered family member.
- Be absent from work due to a following event:
 - An unsuccessful round of intrauterine 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.
 - A stillbirth.

Bereavement leave must be completed within 60 days after the date on which the employee receives notice of the qualifying event listed above. An employee must provide the employer with at least 48 hours advance notice of their intention to take bereavement leave unless providing notice is not reasonable and practicable.

Reasonable Documentation for Bereavement Leave Requests

Employers may, but are not required to, instruct employees to provide reasonable documentation when requesting leave under the FBLA. Employers may not require employees to identify which category of event the leave pertains to as a condition of obtaining leave under the FBLA.

In the event of a death of a covered family member, reasonable documentation includes a death certificate, published obituary, or written verification of death, burial, or memorial services.

Reasonable documentation for covered events related to pregnancy, adoption, surrogacy, and fertility includes a form provided by the Illinois Department of Labor (IDOL) to be filled out by a healthcare practitioner.

The FBLA Is Part of a Growing National Trend

Illinois is the latest in a recent series of jurisdictions passing legislation to provide bereavement leave related to pregnancy loss and related events. Notably, this trend is not limited to only Democratic or Republican-controlled legislatures.

In September 2021, the city of Pittsburgh, Pennsylvania, passed a policy guaranteeing three days of paid bereavement leave, including the termination of pregnancy as a qualifying event. Boston, Massachusetts; Portland, Oregon; and Waterloo, Iowa, passed similar policies in September and October 2021. At the state level, Utah passed a law in March 2022 providing three days of paid bereavement leave in the event of a miscarriage or stillbirth. Similar legislation is pending in Kentucky and the state of New York, as well as in the U.S. House of Representatives and U.S. Senate.

The trend will likely continue given the increased public discourse on reproductive healthcare in the aftermath of the U.S. Supreme Court's recent decision in *Dobbs v. Jackson Women's Health Organization*.

Takeaway for Employers

The FBLA goes into effect on January 1, 2023. As such, employers should update Illinois bereavement leave policies to ensure compliance with the FBLA.

The authors wish to acknowledge Summer Associate Katy Pokorny's contributions to this Update.

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