

Parental bereavement leave



► Inside

Why was this law introduced?

What is parental bereavement leave?

What is statutory parental bereavement pay?

Rights on returning to work

Practical considerations for employers

Bereavement policies



Introduction

As of 6 April 2020, working parents who lose a child under the age of 18 or have a baby stillborn after 24 weeks of pregnancy have the right to take two weeks' paid bereavement leave. This Inbrief summarises the rights introduced for both leave and pay, the notice requirements and the practical implications for employers.

Why was this law introduced?

Before this new right was enacted, employers were not legally required to provide grieving parents with any paid leave. Employees only had the right to unpaid time off work to deal with an emergency, which would have included the death of a dependent.

The parental bereavement leave legislation creates two distinct rights:

- Entitlement to two weeks of Parental Bereavement Leave (PBL) - a "day one" right applicable from the beginning of employment.
- A right to payment during PBL, subject to length of service requirements - this is called statutory parental bereavement pay (SPBP).

What is parental bereavement leave?

Who can take PBL?

The law has been drafted to cover a wide range of people, including:

- A parent or intended parent of a child who has died (including surrogates).
- An adoptive parent with whom the child has been placed by a British adoption agency (provided the placement has not been disrupted or terminated).
- An adoptive parent living with a child who has been adopted from overseas and who has received official notification.
- A parent who has lived with the deceased child in their own home, with day-to-day responsibility for the child's care for the continuous period of at least four weeks prior to death - e.g. foster parents.
- Someone who is the child's "natural parent" has been allowed by court order to have contact with the child.
- The partner of any of the above.

How much leave can be taken?

Employees can take up to two weeks of PBL, with the minimum period being one week – i.e. leave can be just one week, two consecutive weeks or two separate weeks.

Parents unfortunate enough to lose more than

one child are entitled to two weeks of leave (and pay if eligible) in respect of each child. It is irrelevant whether the children died at the same time or not.

When can the leave be taken?

Parents can take the leave anytime within the period of 56 weeks starting from the date of the child's death or stillbirth. This allows for employees to take the time around difficult periods, such as the child's birthday or the anniversary of their death.

What are the notice requirements for taking PBL?

Notice requirements for taking PBL are minimal if employees request to take it within eight weeks of the child's death. The employee only needs to notify their employer that they are taking the leave before the first usual working day that they are taking as leave or, if that is not reasonably practicable, as soon as is reasonably practicable.

If employees wish to take the leave after eight weeks, they must provide notice at least one week before the leave is due to start. Leave can be cancelled or rearranged with the same degree of notice.

Employees must also provide the date of their child's death, the date they want their leave to begin, and whether they wish to take one week or two weeks' PBL.

What is statutory parental bereavement pay?

How much is SPBP?

Employees will receive the lower of £151.97 per week or 90% of their normal weekly earnings, provided they meet certain qualifying criteria.

Who is entitled?

There is both a length of service and minimum earnings requirement to qualify for SPBP. The employee must have:

- been continuously employed for at least 26 weeks (ending with the week of the child's death)
- earned at least current lower earnings limit for the past eight weeks (£120 for the 2021/22 financial year)

Employees must not carry out any work for their employer during the period for which they are claiming SPBP or be eligible for statutory sick pay.

What are the notice requirements for receiving SPBP?

An employee must give notice of the week(s) in respect of which they are claiming SPBP, either before starting the leave or within 28 days of that date. If it was not reasonably practicable to give the notice in that time it can be given as soon as reasonably practicable afterwards.

The employee also needs to provide a written statement specifying:

- the date of their child's death or stillbirth
- a declaration that they meet the qualifying conditions

Notice must be given again if an employee wishes to take the leave in separate weeks.

Rights on returning to work

Terms and conditions

As with other types of statutory family leave, an employee's terms and conditions remain unchanged during PBL, except for remuneration.

Where the employee takes leave as an isolated event, they will be entitled to return to the same job they were doing before their leave – this will apply in most cases.

If the PBL is combined with other statutory family leave (e.g. maternity leave), the employee's right is to return to the same job or, if it is not reasonably practicable for the employer to allow that, to be given another job that is "both suitable and appropriate" in the circumstances.

Protection for employees

Employees are protected from suffering any detrimental treatment by reason of taking or seeking to take PBL, or because their employer believes they are likely to take it. A dismissal for such a reason will be automatically unfair.

Practical considerations for employers

Acas has published helpful guidance on dealing

with bereavement in the workplace generally, which includes best practice for managing employees' absence and return to work. In view of this, employers may wish to consider the following points:

- It is important to be aware of the lack of formality in the PBL notice rules and the fact that that notice of claiming SPBP can be given up to 28 days after starting leave.
- Consider how you can best assist employees in complying with the notice requirements. It may be sensible to have a standard form, but an employee should not be required to complete it before taking leave.
- Employers are not entitled to request a copy of the child's death certificate as evidence of the employee's entitlement.
- It is good practice to seek to keep in touch with employees who are absent to check how they are coping and offer support. Bear in mind that it is unlikely to be appropriate to discuss returning to work in the early stages of bereavement.
- Details of the death are private under data protection legislation. The employee's wishes should be observed in relation to sharing information with colleagues about the reason and nature of the leave they are taking.
- Remember that employees who lose a child after 24 weeks of pregnancy or during maternity leave, will not lose their entitlements to maternity leave and pay. Rights to paternity leave and shared parental leave (where notice of leave has been given) will generally also be maintained in these circumstances.
- Two weeks of PBL may not be enough for some employees, who may wish to take a further period of leave either as annual leave or unpaid time off.
- There is a risk of race or religious discrimination claims arising from refused requests for time off for religious observances on death. Certain religions require a set time for mourning - for example, observant Jews might need to mourn at home for seven days to "sit

shiva", while practising Muslims also have certain set mourning periods.

- Effects of grief could manifest themselves both physically and mentally, possibly resulting in a long-term condition or illness. Employers should be mindful of this in the event of a change in an employee's performance, behaviour or absence. Approach requests for time off or increased sickness leave carefully, bearing in mind the potential disability discrimination risks.

Bereavement policies

Many organisations will already have compassionate leave policies in place, which in some cases may offer more generous entitlements to paid leave for bereaved employees than under the PBL legislation. Such employers, if they have not already done so, should consider employers how to incorporate the statutory entitlements to PBL and SPBP into their policy in a clear and seamless way.

Those employers who do not currently have a formal policy should consider whether now is a good time to introduce one, incorporating the new rights discussed in this Inbrief and covering issues surrounding bereavement in the workplace more generally. Acas recommends that having a written policy in place can provide certainty and security for employees at a difficult and traumatic time.

Matters that can be usefully covered in such a policy include:

- Arrangements for informing the employer of a bereavement – to whom in the organisation; when; and who should report (e.g. a family member if the employee is unable to do so).
- Details of the statutory PBL regime (including any enhancements the employer may provide).
- The employer's policy in relation to other deaths, not covered by the PBL legislation, including any specific entitlements to leave/pay.
- The employer's approach to additional leave, if an employee needs to take longer time off than provided under the policy or statute.

- An explanation of how an employee's return to work will be managed, e.g. to be discussed with a manager, possible scope for a phased return.

More generally, when devising a policy, bear in mind the need to provide employees with as much support as possible in a sensitive way at what will be a devastating time for them.

For further information on this subject please contact:

Lucy Lewis**Partner**

+44 (0) 20 7074 8054

lucy.lewis@lewissilkin.com

Helen Coombes**Practice Development Lawyer**

+44 (0) 20 7074 8468

helen.coombes@lewissilkin.com

**LEWIS SILKIN**

5 Chancery Lane – Clifford's Inn
London EC4A 1BL
DX 182 Chancery Lane
T +44 (0)20 7074 8000 | F +44 (0)20 7864 1234
www.lewissilkin.com

This publication provides general guidance only: expert advice should be sought in relation to particular circumstances. Please let us know by email (info@lewissilkin.com) if you would prefer not to receive this type of information or wish to alter the contact details we hold for you.

© 2021 Lewis Silkin LLP