

State Bereavement Laws and their Impact on Employers

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Starting January 1, 2023, Illinois employers are required to provide employees with unpaid bereavement leave following the loss of a family member or planned family addition. The Family Bereavement Leave Act (FBLA) amends Illinois' Child Bereavement Leave Act of 2016 (CBLA) and adds Illinois to a short list of states (which includes only Oregon and Maryland) that require employers to provide for bereavement leave.

Illinois

Under the CBLA, an employer covered by the Family Medical Leave Act must provide an FMLA-eligible employee with up to 10 working days of unpaid bereavement leave to attend the funeral of, make arrangements necessitated by the death of, or to grieve the death of the employee's child. Employees will be eligible for the same amount of leave for the death of a "covered family member" and for the loss of a planned family addition. A "covered family member" includes a child, spouse, domestic partner, sibling, parent, parent-in-law, grandchild, grandparent, and step-parent. Covered losses beyond death include a miscarriage, an unsuccessful round of intrauterine insemination or other type of assisted reproduction, a failed adoption, a failed surrogacy, a stillbirth or a diagnosis that negatively affects fertility.

Employers can ask for reasonable documentation to support a leave request, but cannot require the employee to identify the category of event necessitating the leave.

As with the original law, employers do not have to provide employees with more unpaid leave under the FBLA than that available under the FMLA. And as with the CBLA, retaliation against an employee for taking FBLA leave is prohibited.

Oregon

Since Jan. 1, 2014, the Oregon Family Leave Act (OFLA) requires employers with 25 or more employees to provide employees up to 12 weeks of unpaid leave for family and medical purposes in a 12-month period. Employees are eligible for OFLA leave if they have worked an average of 25 hours per week for at least 180 calendar days immediately preceding the date the leave period

begins. Two weeks of OFLA must be made available for bereavement reasons, i.e. to make funeral arrangements for, attend the funeral of or grieve a family member who has passed away, for each loved one's passing in a one-year period. The total amount of bereavement leave cannot exceed the 12 weeks of leave allotted under OFLA.

OFLA bereavement leave is available for the employee's loss of a spouse, same gender domestic partner, parent, child, grandparent, and grandchild. Unlike the Illinois FBLA, OFLA does not provide for leave following the loss of planned family additions or negative fertility events.

Eligible employees may use accrued paid leave while on OFLA leave even if normally prohibited from doing so under an employer's policies. Of note, while OFLA leave and FMLA leave generally run concurrently if the leave is taken for a covered FMLA reason, because bereavement leave is not a qualifying reason for leave under the FMLA, OFLA bereavement leave does not count toward an employee's FMLA entitlement.

Employers may not retaliate against an employee for taking leave under OFLA.

Maryland

Effective Oct. 1, 2021, Maryland's Flexible Leave Act (MFLA) requires employers with 15 or more employees in Maryland to permit all employees who are primarily employed in Maryland to use their available paid earned leave to grieve the loss of an immediate family member. Under the MFLA, "immediate family member" only includes children under the age of 18, children over 18 who are incapable of self-care due to a mental or physical disability, spouses, and parents.

Notably, the MFLA does not require an employer to provide unpaid bereavement leave, nor does it specify a minimum amount of paid bereavement leave that employers must provide employees. Under the MFLA, once an employee has earned leave with pay, an employer must permit the employee to use as much of that paid leave as is available for covered bereavement purposes.

The MFLA does not extend the maximum period of leave granted to an employee under the FMLA, or limit the period of leave to which an employee is entitled under the FMLA.

Like Illinois and Oregon, the MFLA prohibits discrimination and retaliation against employees who exercise their rights..

Takeaways

Employers with the requisite number of covered employees in Illinois, Oregon and Maryland should review their handbooks, leave policies, procedures, and practices to ensure they are compliant with their state's respective bereavement laws.

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