

# Illinois Broadens Unpaid Bereavement Leave for Employees

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The Family Bereavement Leave Act (FBLA), effective January 1, 2023, amends the Child Bereavement Leave Act and expands the scope of unpaid bereavement leave in Illinois. The amendments broaden the definition of “covered family member” under the law and add pregnancy and fertility losses and adoption-related events as qualifying reasons for which employees may take bereavement leave.

## Covered Employers and Employees

Employees are eligible for leave under the FBLA if they meet the requirements for leave under the federal Family and Medical Leave Act. Accordingly, the FBLA covers any employer with 50 or more employees, and employees are eligible for FBLA leave if they (a) have worked for their employer for at least 12 months (not necessarily consecutively), (b) have worked at least 1,250 hours for their employer during the past 12 months, and (c) work at a location where their employer employs 50 or more employees within a 75-mile radius.

## Newly Covered Family Members and Qualifying Events

In 2016, the Illinois legislature enacted the Child Bereavement Leave Act (CBLA), which guaranteed employees up to 10 workdays of unpaid leave following the death of a child to allow the employee to grieve, attend the child’s funeral or funeral alternative, or make other arrangements necessitated by the child’s death. Starting in this new calendar year, employers must allow eligible employees to take that time following the death of the following additional covered family members of the employee:

- Child
- Stepchild
- Spouse
- Domestic partner

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- Sibling
  - Parent or stepparent
  - Mother-in-law or father-in-law
  - Grandchild
  - Grandparent

The amended law also includes certain fertility or adoption-related circumstances as qualifying events for which an employee may take the 10 workdays of unpaid leave, including:

1. Miscarriage;
2. Unsuccessful round of intrauterine insemination or an assisted reproductive technology procedure;
3. Failed adoption match or adoption not yet finalized because it is contested by another party;
4. Failed surrogacy agreement;
5. Diagnosis that negatively impacts pregnancy or fertility; or
6. Stillbirth.

Similar to the CBLA, an employee must take their leave under the FBLA within 60 days after the date on which the employee receives notice of the covered family member's death or the date on which another qualifying event occurs. In the event of the death of more than one covered family member in a 12-month period, an employee is entitled to up to a total of six weeks of bereavement leave during that period.

## **Reasonable Documentation Requests**

Consistent with the CBLA, employers may, but are not obligated to, require reasonable documentation from an employee requesting leave under the FBLA. Examples of such documentation include (as applicable) a death certificate, published obituary, or documentation from the applicable healthcare provider or adoption or surrogacy agency.

Employers may not require that their employees identify the category or event for which employees seek to take leave.

## **Practical Considerations**

Keep in mind that the law is always the baseline for compliance. An employer can choose to be more lenient or more generous than strict compliance with the law's technical requirements. For example, an employer may choose to waive the 50-employees-within-a-75-mile-radius eligibility factor and extend its bereavement leave policy to all Illinois employees, regardless of worksite. Further,

although the law provides for unpaid leave, an employer can choose to adopt a policy that provides pay for some or all of an employee's bereavement leave.

## Recommendations

Employers should carefully review and update their bereavement leave policy to ensure it complies with the amended law. Such employers should also train supervisors and managers to ensure they are aware of these changes. For guidance or additional information on these updates, Much's Labor & Employment attorneys are always available to help.

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