

## Illinois Enacts Child Bereavement Leave Act

AUGUST 26, 2016

Illinois recently became the second state (following Oregon) to enact legislation requiring covered employers to provide eligible employees with unpaid leave in the event of the death of an employee's child. The Child Bereavement Leave Act (Act), [Public Act 099-0703](#), requires employers with 50 or more employees to provide employees with up to two weeks (10 working days) of unpaid leave following the death of a child. The Act is now in effect.

### Covered Employers/Employees

The Act covers employees and employers as those terms are defined for coverage under the Family and Medical Leave Act (FMLA). Thus, covered employers must have at least 50 employees. Likewise, a covered employee is eligible for the leave after 1,250 hours of service with the employer during the prior 12 month period.

### Bereavement Leave Coverage

The Act provides that covered employees may use unpaid child bereavement leave to:

1. attend the funeral or an alternative to the funeral of a child;
2. make arrangements necessitated by the death of a child; or
3. grieve the death of a child.

The Act defines "child" as "an employee's son or daughter who is a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis." The Act further provides that the employee must complete the bereavement leave within 60 days of receiving notice of the death of a child. Where reasonable and practicable, the employee shall provide at least 48 hours of notice of the intention to take bereavement leave. If an employee loses more than one child in a 12-month period, the employee is entitled to take up to six weeks of unpaid leave in that 12-month period.

Notably, the Act does not create a right for employees to take unpaid leave that exceeds, or is in addition to, the unpaid leave time available under the FMLA. For example, if an employee has already utilized 12 weeks of FMLA leave, the employee is not entitled to an additional 10 working days of leave time under the Act. However, an employee who is entitled to take paid or unpaid leave (including family, medical, sick, annual, or personal) pursuant to federal, state, or local law, a collective bargaining agreement, or employment benefits program, may elect to substitute any period of such leave for an equivalent period of leave under the Act.

An employer may require reasonable documentation, such as a death certificate, published obituary, or verification of death, burial or memorial, to verify the necessity of the leave.

## Unlawful Employer Practices

Employers are prohibited from taking any adverse action against an employee in response to the employee: (1) exercising rights or attempting to exercise rights under the Act; (2) opposing practices which an employee believes to be in violation of the Act; or (3) supporting the exercise of rights of another employee under the Act. Aggrieved employees may seek recourse either before the Illinois Department of Labor or in state court.

Covered Illinois employers should update employee handbooks and/or leave policies to ensure compliance with the Act.

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