

Illinois Expands Unpaid Child Bereavement Leave to Cover Additional Family Members, Losses

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Illinois has enacted [amendments](#) to the Child Bereavement Leave Act, expanding the law's scope and renaming it the "Family Bereavement Leave Act" (FBLA). The amendments are effective January 1, 2023, and the two major purposes are to: (1) expand the definition of family members covered by FBLA; and (2) include fertility-related losses in the acceptable reasons an employee may use leave under the FBLA.

Adopted in 2016, the Child Bereavement Leave Act required Illinois employers to grant employees 10 work days of unpaid leave annually to grieve the death of a child.

Coverage

Under the FBLA, employees can take 10 work days of unpaid leave annually to grieve the death of any "covered family member."

The law defines "covered family member" to include an employee's "child, stepchild, spouse, domestic partner, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent." The law defines "domestic partners" broadly to include adults who are in a committed relationship, and they are not limited to legally recognized partnerships. Further, there is no requirement in the law that "covered family members" reside in the same household.

The FBLA also protects the need of Illinois employees to grieve losses that can be associated with fertility and starting a family. The FBLA requires employers to offer the annual unpaid bereavement leave to grieve failed pregnancies and adoptions. This includes: (i) miscarriages; (ii) unsuccessful rounds of intrauterine insemination or of assisted reproductive technology procedures; (iii) failed adoption matches; (iv) adoptions not finalized due to being contested by another party; (v) failed surrogacy agreements; (v) diagnoses that negatively impact pregnancy or fertility; and (vi) stillbirths.

New Procedures

In addition to the expanded circumstances when employees can take unpaid bereavement leave, the FBLA provides specific procedures employers must follow if they require employees seeking leave related to pregnancy or adoption to submit "reasonable documentation" verifying such request.

If employers choose to require employees seeking a pregnancy- or adoption-related bereavement leave to provide reasonable documentation, they must adhere to the following guidelines when doing so:

1. The documentation requested must be a particular form published by the Illinois Department of Labor to be filled out by the medical professional treating the afflicted family member or the agency coordinating the surrogacy or adoption;
2. The documentation must certify that the employee experienced an event covered by

the law relating to a failed pregnancy, assistive reproduction procedure, adoption, or surrogacy; and

3. The employer must refrain from requiring as part of requesting reasonable documentation that the employee identify the specific event category for which the employee is seeking leave.

Employers operating in Illinois should carefully review the FBLA in conjunction with their policies and practices related to bereavement leave. Jackson Lewis attorneys are available to answer inquiries and assist with these and other workplace issues.

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