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Illinois Expands Child Loss Bereavement Leave to Cover Pregnancy and Adoption Loss--Now Includes Updated Policy Requires Policy Changes

Posted October 13, 2022 - Illinois has enacted a new law that expands the unpaid bereavement leave available to employees in Illinois. The Family Bereavement Leave Act – an amendment to the Child Bereavement Leave Act – requires employers with at least 50 employees to provide up to ten days of unpaid leave to employees who are absent due to:

- A miscarriage;
- An unsuccessful round of intrauterine insemination or of an assisted reproductive technology procedure (e.g., artificial insemination or embryo transfer);
- A failed adoption match or an adoption that is not finalized because it is contested by another party;
- A diagnosis that negatively impacts pregnancy or fertility; or
- A stillbirth.

Previously, the law allowed leave for bereavement for the death of the employee's child. The amendment also expands the law to allow leave for bereavement upon the death of other family members, including an employee's spouse, domestic partner, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent or stepparent.

Like the federal Family and Medical Leave Act of 1993 (FMLA), employees become eligible for unpaid bereavement leave under the Family Bereavement Leave Act after 12 months of employment and at least 1,250 hours worked within the previous 12-month period. It also permits, but does not require, employers to request reasonable documentation in response to an employee's request for unpaid bereavement leave. However, the employer is prohibited from requiring the employee to specifically identify whether the leave pertains to a miscarriage, a failed adoption or any other category of event set forth in the Act, even if the employer requires the employee to provide documentation. In such a case, employers should anticipate receiving a form from the employee's health care practitioner – provided by the Illinois Department of Labor – that will verify the leave-inciting event without identifying the specific statutory category.

Notably, the Act does not create an employee right to take unpaid leave that exceeds the leave time permitted under the FMLA.

Content provided by Kerri Feczko and Jeff Nowak, [Illinois Expands Unpaid Leave to Employees for Pregnancy and Adoption Loss](#), Littler ASAP (June 10, 2022).

REVISIONS TO SAMPLE POLICY

Child Bereavement Leave

Upon request, eligible employees will be allowed a maximum of two weeks (10 workdays) of bereavement leave in connection with the death of an employee's child, **spouse, domestic partner, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent or stepparent**. For purposes of this policy, "child" is defined 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.

Eligible employees may take leave under this policy for any of the following reasons:

1. To attend the funeral (or funeral alternative) of ~~the child~~ **a covered family member**;

2. To make arrangements necessitated by the death of the ~~child~~; or a covered family member;
3. To grieve the death of the ~~child~~ covered family member; or
4. To be absent from work due to a miscarriage; an unsuccessful round of intrauterine insemination or of an assisted reproductive technology procedure (e.g., artificial insemination or embryo transfer); a failed adoption match or an adoption that is not finalized because it is contested by another party; a diagnosis that negatively impacts pregnancy or fertility; or a stillbirth.

“Eligible employees” have the same definition as that under the federal Family and Medical Leave Act (“FMLA”). Thus, in order to be eligible for leave under this policy, an employee must: (1) have worked for the Company for a total of at least 12 months; (2) have worked at least 1,250 hours over the previous 12 months as of the start of the leave; and (3) work at a location where at least 50 employees are employed by the Company within 75 miles, as of the date the leave is requested. If employees are unsure whether they qualify, they should contact ~~[insert name/contact details for appropriate company representative or department]~~. **Human Resources.**

~~Child bereavement~~ **Bereavement** leave under this policy must be completed within 60 days after the date on which the employee receives notice of the death of ~~his or her child~~ **the covered family member or the date on which an event listed under paragraph 4 above occurs.** In the event of the death of more than one ~~child~~ **covered family** member within a 12-month period, an employee may take ~~two weeks of leave per child~~, up to a total of six weeks of bereavement leave during a 12-month period.

Employees may elect to substitute other types of leave for ~~child~~ bereavement leave, including but not limited to any available paid leave, such as accrued vacation, ~~PTO~~ or sick leave. While bereavement leave does not run concurrently with the FMLA, employees who have already exhausted their FMLA leave are ineligible for leave under this policy.

An employee must provide the Company with at least 48 hours of advance notice of the employee’s intention to take bereavement leave, unless providing such notice is not reasonable or practicable. The Company may request reasonable documentation from the employee to verify the employee’s eligibility for leave under this policy.

The Company will not retaliate or tolerate retaliation against employees who request or take leave in accordance with this policy.