



Understanding Illinois' Child Bereavement Law

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An Illinois law that took effect July 29, 2016, requires Illinois employers covered by the federal Family and Medical Leave Act (FMLA) to provide FMLA-eligible employees up to 10 workdays of unpaid bereavement leave for reasons related to the death of their child. Employers should update leave policies and employee handbooks to comply with these changes in the law.

Details of the Law

For purposes of this leave, “child” is defined as the employee’s biological, adopted or foster child, stepchild, legal ward or child for whom the employee stands *in loco parentis*. Eligible employees can take child bereavement leave to:

- Attend their child's funeral (or alternative to a funeral)
- Make arrangements necessitated by the death of their child
- Grieve their child's death

Employees must complete the leave within 60 days of receiving notice of their child's death. If more than one of an employee's children die in a 12-month period, an employee can take up to six weeks of bereavement leave during the 12 months.

Notice and Certification Requirements

Employees must give their employer at least 48 hours' notice of their need to take child bereavement leave, unless providing such notice is not reasonable and practicable.

Employers can require that employees provide reasonable documentation of their need for such leave, such as a death certificate, published obituary, or written verification of death, burial or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution or government agency.

Employees have up to 60 days after an alleged violation of the law to file a complaint with the Illinois Department of Labor or to file a civil action. An employer that violates any provision of the law is subject to a civil penalty for each employee of up to \$500 for a first offense and \$1,000 for each subsequent offense.

Frequently Asked Questions

1. *Does child bereavement leave reduce an employee's amount of available FMLA leave?*

No. Eligible employees still are entitled to the maximum amount of unpaid leave permitted by the FMLA. However, the child bereavement leave law does not give employees the right to take unpaid leave that exceeds the unpaid leave permitted by the FMLA. If employees have exhausted their FMLA leave, they would not be entitled to take additional days of child bereavement leave under the new law.

2. *Can employees designate child bereavement leave as FMLA leave?*

Possibly. Whether an employee can designate this leave under the FMLA depends on the reason for the employee's leave and whether the employee has available FMLA leave remaining. If the employee has provided enough information about the reasons for leave to enable the employer to otherwise designate the leave as FMLA leave, then such designation is allowed.

3. Can employees substitute paid leave for their child bereavement leave?

Yes. While employers cannot force employees to substitute paid leave for child bereavement leave, employees can choose to substitute any amount of paid or unpaid family, medical, sick, annual, personal or similar leave to which they may be entitled under federal, state or local laws, a collective bargaining agreement or an employment benefits program or plan.

4. Can employees take child bereavement leave intermittently?

Yes. There is no requirement that employees take their days of child bereavement leave consecutively, and the approved reasons for leave do not necessarily lend themselves to taking the leave consecutively.

Contact Us

For more information on how the Illinois law may affect your organization, contact [Sonni Nolan](#), [Kayt Kopen](#) or another member of Husch Blackwell's [Labor & Employment](#) group.