



Employers Should Have Clear, Written Bereavement Leave Benefit Policies

The unexpected death of a loved one is the most common traumatic experience Americans report, many report their loss as their worst life experience.¹ Employees who need time off from work to grieve and cope with the death of a loved one have no legal right to take leave, with narrow exceptions in two states and two localities. Bereavement is not acceptable grounds for taking unpaid leave under the Family and Medical Leave Act, despite recent efforts to add bereavement to this law. While many employers offer bereavement leave, it is often only a few days, which is insufficient time for most employees to return to work and productivity after the death of a family member.

As our nation faces the coronavirus pandemic, drug overdoses, suicide and mass gun violence events, employers are forced to acknowledge bereavement and its implications for families, while staying solvent and productive. It is a difficult balance for employers to strike. To address these needs and set national standards, Evermore recommends employers institute a bereavement leave benefit (note: not to be confused with sick leave):

1. Employers with five or more employees should have clear, written bereavement leave benefit policies in employee handbooks or outlined in similar guidance.
2. Small employers (fewer than 50 employees) should offer five days of unpaid leave to bereaved employees following the death of a close family member; thereby, permitting individuals to return to work at the conclusion of the five-day unpaid, leave period.
3. Mid-sized employers (between 50 and 499 employees) should offer five days of paid leave following the death of a close family member and employees should have the option of two additional weeks of unpaid bereavement leave; thereby, permitting individuals to return to work at the conclusion of the 15-day leave period.
4. Large employers (more than 500 employees) should offer ten days of paid leave following the death of a close family member and employees should have the option of two additional weeks of unpaid bereavement leave; thereby, permitting individuals to return to work at the conclusion of the 20-day leave period.

While there is no one standard, proposed or passed state laws are defining a family member or loved one as: (1) Spouses, domestic partners, and both different-sex and same-sex significant others; or (2) Any other family member within the second degree of consanguinity or affinity; or (3) A member of the

¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4119479/>

covered employee's household, including a minor's parents, regardless of the sex or gender of either parent. Most laws liberally define parenthood as legal parents, foster parents, same-sex parent, step-parents, those serving in loco parentis, and other persons operating in caretaker roles.

If an employee experiences more than one significant loss in any given year, employers should consider each case on an individual basis. Cumulative loss can alter an individual's life course and wellbeing significantly; however, premature death disproportionately impacts communities of color thus exposing an employer to an equal opportunity claim. Dependent on the employee, the circumstances of a death, the employer's financial resources and corporate philosophy, appropriate bereavement benefit options will vary. For example, an employer may allow an employee to use sick days or enable colleagues to donate paid time off. Overall, there are five options employers can use to structure benefit leave benefits. These include:

1. *Paid bereavement leave*: Employers can offer employees a set number of days or hours that can be used in the event of the death of a family member.
2. *Quasi-insurance program*: Employees pay into a fund that is then available for employees who need leave to care for a family member.
3. *Donations of leave*: Employees donate their paid time off (PTO) into a general pot of leave that can be drawn upon by employees when needed.
4. *Paid time off*: Paid time off (PTO) is used by employees to take time for vacation, recovering from illness, or other personal reasons; they are paid as usual during this time.
5. *Unpaid Leave*: If the employer cannot afford to give employees paid time off for bereavement, one option is to allow employees to take unpaid time off of work for bereavement.

Beyond bereavement leave, employers can establish "return-to-work" policies that help the bereaved employee reintegrate and constructively contribute back to the workforce. These compassionate measures, such as a cash donation to offset memorial expenses or an advance inquiry to determine if the employee would like to share—or not share—their experience with peers upon return, are not the subject of this brief.

SETTING THE CONTEXT

The unexpected or untimely death of a loved one is the most common traumatic event Americans experience; many bereaved individuals report it as the worst event of their life.² This is not surprising considering suicide, homicide, overdoses, mass casualty events, and now COVID-19 are impacting millions of American households. Americans are not only exposed to an alarming number of tragic and often traumatic deaths, but they are encountering a formidable array of barriers to bereavement care that compound their suffering. Employers, as community anchor institutions, are forced to deal with the stressful and often long-lasting aftermath of these death events on their employees and bottom lines.

Depending on who the employee lost, studies have found the economic costs can be substantial—both in terms of presenteeism and absenteeism. Population-level studies have found that there are considerable health and wellbeing declines among bereaved parents, for example. Compared to non-bereaved peers, bereaved parents are significantly more likely to leave the workforce in the years

² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4119479/>

following a death, to experience reductions in income and mental health, and to undergo marital dissolution.³

From the perspective of corporate performance, an examination of more than 6,700 deaths of Chief Executive Officers (CEOs) or their immediate family members found that the deaths of spouses and children significantly impact corporate performance, whereas deaths of mothers-in-law impact the bottom line the least.⁴ Researchers suggest that daily interactions between the CEO and their children and spouses can impact a CEO’s ability to function, regardless of the size of the firm. Arguably, the same general conclusions could apply to any employee’s job performance, ranging from answering phones to answering to investors.⁵

The Impact of Cause of Death on Leave Benefits

The manner in which a loved one dies may affect the employee’s need for leave and the employee’s recovery process. For example, if the deceased individual experienced prolonged illness, the employee may use their leave before the loved one dies (i.e., to take care of the child or be present with the family in advance of a death). However, a sudden or unexpected death may require additional leave to organize logistics and cope. These differences carry implications for the type and amount of leave available to the employees (see Table 1). Employees whose child dies after a long illness could be eligible for The Family Medical Leave Act of 1993 (FMLA) leave before the child’s death, for example. However, they could exhaust all of their leave (both FMLA and employer-provided time off) before the death occurs. The employee whose child dies suddenly would not be eligible for FMLA at all, for example, unless he or she suffered from a serious health condition (e.g. depression) due to the death, and would have to rely solely on leave provided by the employer.

Table 1: Bereavement Leave and Sudden or Anticipated Death

	Sudden death	Anticipated death
Need for leave before death	No	Yes
Need for leave after death	Yes	Yes
FMLA eligible due to loved one’s condition?	No	Yes
Employer-provided time off (e.g. PTO)	Could use after death event	May have already exhausted all PTO before death

CURRENT POLICY LANDSCAPE

The laws and private employer policies surrounding bereavement leave vary widely. On the federal level, there is no legal right to take leave after a loved one’s death. Only two states (Illinois and Oregon) and two cities (Tacoma and Seattle, Wash.) have enacted laws that explicitly give employees the right to bereavement leave. Private employers have a wide variety of policies; several large corporations have multi-week paid leave policies, whereas employer trade associations report three to four days, on average, for bereavement leave.

³ Van den Berg GJ, Lundborg P, Vikström J. 2016. *The Economics of Grief*. The Economic Journal, **127** (September), 1794-1832.. Available at <https://onlinelibrary.wiley.com/doi/abs/10.1111/econ.12399>

⁴ Bennesen M, Perez-Gonzalez F, Wolfenzen D. 2007. *Do CEOs Matter?* Available at <https://www0.gsb.columbia.edu/mygsb/faculty/research/pubfiles/3177/valueceos.pdf>

⁵ Ibid.

Federal law

FMLA guarantees up to 12 weeks of unpaid time off for certain employees to take care of a new child or a family member who has a serious medical condition. In general, to be eligible, an employee must have worked for at least 1,250 hours over the previous 12 months for an employer that employs at least 50 people. The employee is entitled to 12 weeks of unpaid leave if:

- The employee welcomes a new son or daughter through birth, adoption, or foster care,
- The employee needs time to care for a spouse, son or daughter, or parent with a serious health condition,
- The employee is unable to work because of his or her own serious health condition and
- There is a qualifying exigency arising out of the active duty of a spouse, child, or parent of the employee.

While FMLA does not explicitly allow employees to use this time off to grieve the death of a child or family member, an employee might be able to use FMLA leave if he or she develops a serious health condition – such as depression – as a result of the death. Grieving is not depression, however, and employers and employees should be cognizant of invoking a medical diagnosis when it is normative to feel sadness and deeply miss a loved one.

While the text of FMLA does not specifically cite miscarriage and stillbirth as covered reasons for taking FMLA leave, there is evidence in both legislative history (Senate Report No. 103-3, January 27, 1993) and Department of Labor statements that miscarriage is classified as a “serious health condition” under FMLA. Currently, a woman who loses a child through miscarriage or stillbirth should be eligible to take FMLA leave if she is unable to work because of her own “serious health condition” (e.g. physical recovery from miscarriage and/or labor and delivery, emotional distress). Paternal coverage may be extended if a spouse is caring for a loved one with a serious medical condition.

In addition, FMLA does permit employees to take leave for the death of a family member who died while on active duty in the military.⁶ There have been calls to add parental bereavement (resulting from a child’s death) to the list of eligibility criteria for FMLA leave; the Parental Bereavement Act (HR 983) has been introduced in Congress several times over the past decade, but has not yet gained traction.

State laws

Two states – Illinois and Oregon – have laws that require employers to allow employees to take time off following the death of a child. In 2016, Illinois enacted the Child Bereavement Leave Act, which requires employers with 50 or more employees to provide up to 10 days of unpaid bereavement leave for a parent who has lost a child (leave cannot exceed or be in addition to FMLA leave). There are no restrictions on the age of the child.⁷ Employer and employee must meet the requirements of FMLA⁸ and leave must be taken within 60 days of the death notification. Employers can require “reasonable” documentation and if the employee loses more than one child in a one-year timeframe, up to six weeks of unpaid leave may be taken. Further, Illinois established a “Child Bereavement Fund” to monitor and evaluate employer adherence to the law. Employers that violate the law can be financially penalized and

⁶ <https://www.dol.gov/whd/fmla/employerguide.pdf>

⁷ <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=099-0703>

⁸ <https://www2.illinois.gov/idol/Laws-Rules/CONMED/Pages/Child-Bereavement-and-Leave-Act.aspx>

20 percent of the fine may be allocated to the Fund, thus ensuring the solvency and continued bereavement benefit monitoring by the state.⁹

Oregon has two bereavement leave laws. The Family Leave Act, enacted in 2014, requires employers with 25 or more employees to allow qualifying employees to take up to two weeks unpaid bereavement leave for the death of a family member.¹⁰ In addition, Oregon's paid sick leave law requires nearly all employers in Oregon to provide up to 40 hours of sick leave each year, which can explicitly be used for bereavement. If the employer has at least 10 employees (or 6 in Portland), the leave must be paid, otherwise it is unpaid leave.¹¹

City laws

Two localities in Washington state offer paid bereavement leave: Tacoma and Seattle. Tacoma municipality employees earn one hour of paid sick leave for every 40 hours worked. Bereavement leave is one acceptable use of paid time off and covers the death of any family member, including a child, spouse, grandparent, spouse including domestic partner.¹²

Bea's Law, Seattle's paid bereavement leave benefit for municipality employees, passed in June 2019 and allows employees to take up to four weeks of paid bereavement leave in a rolling 12-month period. Bereaved parents who have experienced the death of a child up to age 18 or, if the child was incapable of self-care, no age limit applies are eligible for leave. Children may be biological, foster, stepchildren, a legal ward or for individuals acting as the parent in a guardian role. In addition, the law entitles spouses and domestic partners to paid bereavement leave when a partner dies in childbirth or complications of childbirth.¹³

Corporate action

Employers size, financial resources and philosophy vary widely and there is no vary no exhaustive survey of employers' benefit policies. In 2018, the Society for Human Resource Management (SHRM) found that 88 percent of employers offer paid bereavement leave.¹⁴ However, of SHRM's 285,000 members only 10 percent of their membership was surveyed (or 29,000 members) and of that only 3,518 responded (a 12 percent response rate or 1 percent of SHRM's total constituency). This survey complements the organization's 2016 survey concluding that employees were given an average of four days for the death of a spouse or child, and fewer days for the death of other family members.¹⁵ SHRM reports 2,665 employers responded, although how many surveys and the total membership of SHRM were not reported. Since SHRM surveys its own members and response rates are low,¹⁶ caution should be taken when interpreting these as representative of national findings.

⁹ <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=099-0703>

¹⁰ <https://www.oregonlegislature.gov/williamson/WorkgroupDocuments/BOLI%20OFLA%20FMLA%20Overview.pdf>

¹¹ <https://www.oregon.gov/boli/WHD/OST/pages/index.aspx>

¹² <https://cms.cityoftacoma.org/finance/paid-leave/tmc-chapter-18.10-paid-sick-leave.pdf>

¹³ Seattle City Council Ordinance CB 119513 v 2. June 17 2019.

¹⁴ <https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/Documents/2018%20Employee%20Benefits%20Report.pdf>

¹⁵ <https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/Documents/2016-Paid-Leave-in-the-Workplace.pdf>

¹⁶ <https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/Documents/2018%20Employee%20Benefits%20Report.pdf>

EMPLOYER POLICIES

There are few legal requirements for private employers to provide leave for any circumstance. FMLA is an exception to this rule; however, it only applies to employers with more than 75 employees and provides only unpaid leave for a narrow set of circumstances. There are a handful of state laws that require employers to provide paid or unpaid time off for reasons including welcoming a new child, illness of the employee or a family member, and to attend a child's school-related activities.¹⁷ Two states – Oregon and Illinois – require employers to provide bereavement leave. However, many of these laws apply only to mid-sized and large employers, and may not apply to part-time workers.

In general, an employee's ability to take leave – whether for vacation, illness, or bereavement – is at the discretion of the employer. It is difficult to determine the number of employers that offer leave, however, a comparison of two data sources gives a general picture (Table 2).

Table 2: Percentage of employees who have access to paid leave

	Vacation time	Sick time	Personal time	Death-related leave
SHRM ¹⁸	95-96%	77-79%	34-36%	Bereavement leave: 88%
Bureau of Labor Statistics ^{19, 20}	75%	74%	45%	Funeral leave: 59%

Defining eligibility

Family member may be defined as (1) Spouses, domestic partners, and both different-sex and same-sex significant others; or (2) Any other family member within the second degree of consanguinity or affinity; or (3) A member of the covered employee's household, including a minor's parents, regardless of the sex or gender of either parent. Most laws liberally define parenthood as legal parents, foster parents, same-sex parent, step-parents, those serving in loco parentis, and other persons operating in caretaker roles.

Bereavement Leave Policies Options

There are a variety of ways to structure a bereavement leave benefit, and each way has benefits and drawbacks for employers and employees. Depending on the size and finances of an organization, some of these options may be more feasible than others. There are five potential benefit leave policy arrangements: paid bereavement leave, quasi-insurance programs, donations of leave, paid time off, and unpaid time off with job protection.

- 1) *Paid bereavement leave*: Employers can offer employees a set number of days or hours that can be used in the event of the death of a family member. These policies generally specify the relationship of the deceased to the employee (e.g. a policy might permit paid leave for the death of a child, but not the death of a cousin).
- 2) *Quasi-insurance program*: Often paid family leave policies use a quasi-insurance program structure. This could also be used for bereavement leave. In this arrangement, employees pay into a fund that is then available for employees who need leave to care for a family member. The program is generally designed to permit leave for an extended period of time; for example,

¹⁷ <http://www.ncsl.org/research/labor-and-employment/state-family-and-medical-leave-laws.aspx>

¹⁸ <https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/Documents/2018%20Employee%20Benefits%20Report.pdf>

¹⁹ https://www.bls.gov/ebs/paid_personal_leave_122017.htm

²⁰ <https://www.bls.gov/ncs/ebs/benefits/2017/ownership/civilian/table32a.htm>

in New York employees may draw on these funds for up to 12 weeks. These programs put the burden for paid leave on the employees themselves, which may make them more attractive to employers. However, it is difficult to model the expected cost of including bereavement in these policies, due to a lack of data about potential use of the program.²¹

- 3) *Donations of leave*: Another option for a bereavement policy is to allow employees to donate their paid time off (PTO) into a general pot of leave that can be drawn upon by employees when needed. Because this leave is already (presumably) accounted for in the employer's budget, the financial impact on the employer would be minimal. The drawbacks of this structure are that it requires fellow employees to forgo their earned vacation and sick leave, and that the pot of leave may not be large enough to provide a bereaved employee with sufficient time.
- 4) *Paid time off*: Paid time off (PTO) is used by employees to take time for vacation, recovering from illness, or other personal reasons; they are paid as usual during this time. Some employers offer PTO as one combined pot of leave that employees can draw from for any reason, while others provide specific amounts of time for vacation, specific time for illness, and/or personal days. PTO is paid for by the employer. If an employer does not have a bereavement-specific policy, the employer can allow employees to use their PTO for bereavement leave. One drawback to using PTO for bereavement leave is that an employee may have already used up his or her PTO through vacation or illness. When a loved one dies, the employee would no longer have leave to draw from. Similarly, if an employee uses up PTO due to bereavement, and then gets sick, he or she would not be able to take time off to recover from illness.
- 5) *Unpaid Leave*: If the employer cannot afford to give employees paid time off for bereavement, one option is to allow employees to take unpaid time off of work for bereavement. Similar to the protections of FMLA, the employee should be permitted to return to work at the same job level, benefits, and pay.

RECOMMENDATIONS BY EMPLOYER SIZE

The availability and amount of leave for employees often depends on the size of the organization. A larger organization with many employees may be able to absorb the costs associated with giving an employee paid time off to grieve the death of a loved one. A smaller organization, with fewer employees and a smaller profit margin, may find it difficult or impossible to provide paid time off. There is no agreed-upon classification of employer sizes, but there are several ways to group employers by size. The Bureau of Labor Statistics uses multiple classification systems; the one we have chosen to use classifies employers into three groups:

- Small employers: 1-49 employees
- Mid-sized employers: 50-499 employees
- Large employers: 500 or more employees²²

This classification works well when discussing bereavement policy because it aligns with the requirements of the FMLA. While FMLA does not include bereavement leave, it is relevant because it

²¹ <https://paidfamilyleave.ny.gov>

²² <https://www.bls.gov/osmr/pdf/st120070.pdf>

may be used by parents to take time off to care for sick children, or to take time off after a loved one's death if the survivor/employee develops a serious health condition.

Small Employers

Small employers (fewer than 50 employees) make up nearly 95 percent of all businesses in the United States.²³ About 28 percent of employees in the U.S. work for a small employer.²⁴ Small employers are exempt from many federal and state laws regarding employee benefits, including the FMLA and the Illinois Child Bereavement Leave Act, for example.

Small employers may find it more difficult to offer paid – or even unpaid – bereavement leave to employees. There may be ways to structure leave in order to minimize the burden on the employer. For example, an employer may offer a small amount of paid leave (e.g. three days), while also allowing employees to donate their paid leave into a general pot that can be used when needed. If more leave is required, the employer could offer unpaid leave (or job protection, similar to FMLA).

The Girl Scouts of Greater Iowa is a small employer, with around 45 employees, and offers employees a comprehensive benefits package that includes five days of paid bereavement leave for a miscarriage.²⁵

Recommendation: Small employers (fewer than 50 employees) should offer five days of unpaid leave to bereaved employees following the death of a close family member; thereby, permitting individuals to return to work at the conclusion of the five-day unpaid, leave period.

Mid-sized Employers

Mid-sized employers (between 50 and 499 employees) make up just under 5 percent of all U.S. businesses,²⁶ and employ about 25 percent of all employees.²⁷ These employers likely have more ability to offer employees bereavement leave than small employers, due to greater staffing levels and financial resources. Once an employer reaches 50 full-time employees, the company is subject to many laws that govern employee benefits, including the Affordable Care Act, FMLA, and a variety of other federal and state requirements.

Veros Technologies, a tech firm located in Reston, Virginia, with more than 60 employees, offers five days of paid bereavement following the death of a family member and employees have the option for two additional weeks of unpaid leave.

Recommendation: Mid-sized employers (between 50 and 499 employees) should offer five days of paid leave following the death of a close family member and employees should have the option of two additional weeks of unpaid bereavement leave; thereby, permitting individuals to return to work at the conclusion of the 15-day leave period.

²³ https://www.bls.gov/web/cewbd/table_g.txt

²⁴ https://www.bls.gov/web/cewbd/table_f.txt

²⁵ <http://www.girlscoutsiowa.org/en/our-council/news.html>

²⁶ https://www.bls.gov/web/cewbd/table_g.txt

²⁷ https://www.bls.gov/web/cewbd/table_f.txt

Large Employers

While large employers (more than 500 employees) make up less than 5 percent of all total businesses in the United States, they employ nearly half of all employees – more than 66 million people. Given the scope and footprint of these institutions, large corporate entities can have a tremendous impact on the health and wellbeing of the American workforce. Like mid-sized employers, large employers are subject to many federal and state laws about employee benefits, including FMLA; however, due to their size and elevated financial resources, large employers have the capacity to offer robust bereavement leave policies to their employees.

In 2017, Facebook expanded its leave benefits to include up to 20 paid days off for the death of an immediate family member, and up to 10 paid days off for the death of an extended family member.²⁸ Mastercard followed suit, also offering up to 20 paid days for the death of a spouse, partner, or child, up to 10 days for a parent, grandparent, or sibling, and up to 5 days for other extended family.²⁹ In 2019, General Mills expanded its bereavement leave benefit to up to four weeks of leave for all 11,000 employees, non-union and salaried.³⁰

Recommendation: Large employers should offer ten days of paid leave following the death of a close family member and employees should have the option of two additional weeks of unpaid bereavement leave; thereby, permitting individuals to return to work at the conclusion of the 20-day leave period.

MOVING FORWARD

The death of a loved one is a common life event that can have sweeping implications on an employee's health and productivity. As community anchor institutions, employers must manage the inevitable life experiences of their workforce while maintaining profitability and stability. Bereavement leave offerings can help an employee ease back into the workplace and create a culture of goodwill. Benefits may be structured in various manners based on employer size, amount of paid or unpaid leave, who the employee lost (e.g., child or grandparent) and the manner of death (i.e., sudden versus prolonged death) and benefit cost considerations.

About Evermore: Evermore is dedicated to making the world a more livable place for bereaved individuals and families. Bereavement care in America is broken and that's why we're here. We are committed to an equal America where all families and professionals have access to care, programs, tools and resources to cope and adapt to loss. We believe in a society where bereavement care is the rule, not the exception. Our nation needs it now more than ever. Help us make that change. To learn more, visit www.live-evermore.org.

²⁸ <https://www.facebook.com/sheryl/posts/10158115250050177>

²⁹ <https://www.benefitnews.com/news/mastercard-extends-bereavement-leave>

³⁰ <https://www.generalmills.com/en/News/NewsReleases/Library/2018/July/Expanded-US-benefits-aug29#:~:text=Caregiver%20Leave%3A%20A%20new%20benefit,with%20a%20serious%20health%20condition.&text=Bereavement%3A%20An%20expansion%20of%20the,of%20an%20immediate%20family%20member.>