

Publications

California and Illinois Require Bereavement Leave

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It is not uncommon for an employer's policy to permit employees to take bereavement leave upon the death of a family member. As of January 1, 2023, both California and Illinois require that employers provide such bereavement leave. Employers should review their leave policies to account for the new bereavement leave requirements. Contact your Vorys lawyer if you have questions.

California

California now makes it unlawful for employers to refuse to grant eligible employees up to five days of bereavement leave. This leave is separate from any leave required by the California Family Rights Act (CFRA).

Employees are eligible for bereavement leave after working for the employer for at least 30 days before the leave begins, and may be taken for the death of a spouse, child, parent, grandparent, grandchild, domestic partner or parent-in-law. Bereavement leave need not be consecutive, but must be completed within three months of the date of death. The law does not limit the number of times an employee may take bereavement leave. An employer may request documentation (death certificate, obituary, etc.) within 30 days of the first day of leave. An employer must keep an employee's request for leave and any documentation provided confidential.

If an employer does **not** have an existing bereavement leave policy, then all of the leave may be unpaid. If the employer's existing policy provides for less than five days of **paid** bereavement leave, the employee is entitled to no less than five days of leave, consisting of the number of days of paid leave under the employer's policy, with the remainder of days of leave unpaid. If the employer's existing policy provides for less than five days of **unpaid** bereavement leave, the employee is entitled to no less than five days of unpaid bereavement leave. In each case, the law permits an employee to use vacation, personal leave, sick leave, or compensatory time off that is otherwise available when the leave would be unpaid.

As with the CFRA, it is unlawful to refuse to hire, discharge, demote, fine, suspend, expel, or discriminate against an employee who exercises their right to bereavement leave. It is also unlawful to interfere with an employee's right to bereavement leave.

The above requirements do not apply to employees covered by a collective bargaining agreement if the agreement expressly provides for (1) equivalent bereavement leave; (2) the wages, hours of work, and working conditions of the employees; (3) premium wage rates for all overtime hours worked; and (4) a regular hourly rate of pay for those employees that is at least 30% above the state minimum wage.

Illinois

The existing Child Bereavement Act was renamed the Family Bereavement Leave Act and expanded to include the death of a child, stepchild, spouse, domestic partner (whether recognized by law or designated as such by the employee), sibling, parent, in-law, grandparent, grandchild or stepparent. In addition, the reasons for leave now include being absent from work due to (1) a miscarriage; (2) an unsuccessful round of intrauterine insemination or of an assisted reproductive technology procedure; (3) a failed adoption match or an adoption that is not finalized because it is contested by another party; (4) a failed surrogacy agreement; (5) a diagnosis that negatively impacts pregnancy or fertility; or (6) a stillbirth. If an employer requests documentation related to any of these reasons, it may not require the employee to identify the category of event to which the leave pertains.

The Family Bereavement Leave Act provides eligible employees of covered employers with up to two weeks (10 work days) of unpaid bereavement leave. Determining whether an employer is covered and whether an employee is eligible uses the same criteria as the federal Family and Medical Leave Act.

Bereavement leave must be completed within 60 days of the date of death or the date on which one of the above six events occurs. Employees must provide at least 48 hours' advance notice of the need for leave, unless doing so is not reasonable and practicable.