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Illinois recently enacted amendments to the state's Child Bereavement Leave Act, which expand the circumstances for which bereavement leave is available. Effective January 1, 2023, the bereavement leave law will be known as the Family Bereavement Leave Act. In addition to unpaid leave for bereavement related to the loss of a child, the amended law will require unpaid leave for bereavement related to the loss of other family members, as well as for absences due to miscarriage or stillbirth, failed adoption or surrogacy agreement, and other fertility-related reasons.

Unpaid bereavement leave entitlement

The Family Bereavement Leave Act will require employers to provide up to two weeks (10 workdays) of unpaid bereavement leave for employees to:

- Attend the funeral or alternative to a funeral of a covered family member.
- Make arrangements necessitated by the death of the covered family member.
- Grieve the death of the covered family member.
- Be absent from work due to:
 - A miscarriage or stillbirth.
 - An unsuccessful round of intrauterine insemination or an assisted reproductive technology procedure.
 - A failed adoption match or an adoption that is not finalized because it is contested by another party.
 - A failed surrogacy agreement.
 - A diagnosis that negatively impacts pregnancy or fertility.

Covered family members are an employee's child, stepchild, spouse, domestic partner, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent or stepparent. For purposes of the amended law, a domestic partner is a person legally recognized as an employee's domestic partner, or a person in a "committed, personal relationship" with the employee (and who is not in a domestic partnership with any other person) whom the employee designates to the employer as that employee's domestic partner.

In the event of the death of more than one covered family member in a 12-month period, an employee is entitled to up to six total weeks of bereavement leave during the 12-month period. The Illinois bereavement leave requirement does not allow an employee to take unpaid leave that exceeds the unpaid leave time allowed under, or in addition to the unpaid leave time permitted by, the federal Family and Medical Leave Act.

Leave procedures

An employee has to provide the employer with at least 48 hours' notice of the employee's intention to take bereavement leave, unless providing this notice is not reasonable and practicable. Bereavement leave must be completed within 60 days after the employee receives notice of the death of the covered family member or the date on which a miscarriage, stillbirth, failed adoption or surrogacy agreement, or other covered fertility-related reason occurs.

An employer cannot require employees to identify which category of event the leave pertains to as a condition of taking leave, but an employer can require reasonable documentation to substantiate the leave. For leave resulting from a miscarriage or stillbirth, failed adoption or surrogacy agreement, or other covered fertility-related reason, reasonable documentation is a form provided by the Illinois Department of Labor and filled out by a health care practitioner or documentation from the adoption or surrogacy organization.

Penalties

The civil penalties for violating the bereavement leave law, or retaliating against employees for exercising their rights under the law, remain the same: for a first offense, a civil penalty of up to \$500 for each employee affected, and for a second or subsequent offense, a civil penalty of up to \$1,000 for each employee affected. A court also can grant equitable relief.

Illinois employers should review the new bereavement leave requirements and update their policies and practices with respect to bereavement leave accordingly. If you have any questions about or related to Illinois leave requirements, please reach out to a member of the Cooley employment team.

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