



DEBATE PACK

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Bereavement leave for families that lose a child

Doug Pyper

Summary

A Westminster Hall debate has been secured by Paul Masterson MP, on the topic of bereavement leave from employment for those that lose a child.

The debate is due to take place on 12 September 2017, at 4:30pm.

This debate pack provides an overview of the relevant law, previous attempts to legislate, and current guidance for employers.

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1. Background

There is no specific statutory right in the United Kingdom to parental or any other form of bereavement leave from employment, although a number of areas of law are relevant.

Employment Rights Act 1996

A form of unpaid leave available following the death of a dependant is provided for by [section 57A](#) of the Employment Rights Act 1996:

(1) An employee is entitled to be permitted by his employer to take a reasonable amount of time off during the employee's working hours in order **to take action** which is necessary—

...

(c) in consequence of the death of a dependant

What constitutes "a reasonable amount of time off" depends on the circumstances of the case. An employer does not have to pay for leave under the provision.

The reference in section 57A to taking "action" distinguishes it from bereavement or compassionate leave. The type of action contemplated by the provision is arranging and attending a funeral, registering the death, etc.

Section 57A does not provide a right to leave to cope with an emotional reaction to a child's death, as indicated by Lord Sainsbury of Turville during the House of Lords debate on the section:

We intend the right to apply where a dependant becomes sick or has an accident, or is assaulted, including where the victim is distressed rather than physically injured. It provides for reasonable time off, if an employee suffers a bereavement of a family member, to deal with the consequences of that bereavement, such as making funeral arrangements, as well as to take time off to attend the funeral.¹

The application of section 57A to bereavement scenarios was considered by the Employment Appeal Tribunal (EAT) in *Forster v Cartwright Black* [2004] IRLR 781. In that case the claimant had contended that section 57A covered "time off to come to terms with the emotions caused by the death of a parent". The EAT roundly rejected this:

the death of a dependant may affect the person who has taken time off, but we consider that effect in itself does not trigger the section. Moreover, although it is to be expected that the death of a dependant will produce sadness, bereavement and unhappiness, the section was not intended to introduce the right to compassionate leave as a result of a bereavement.²

¹ [HL Deb 8 July 1999 cc1084-1085](#)

² Para 18

Other relevant law

In circumstances where an employee is too incapacitated through bereavement to be capable of working, they may be able to claim Statutory Sick Pay.

To the extent that any incapacity constitutes a disability under the *Equality Act 2010*, or exacerbates an existing disability, the employer would be required to make reasonable adjustments.

Additionally, the employer's health and safety obligations may be engaged; for example, bereavement affecting concentration may impact an employee's ability safely to operate heavy machinery.

2. Attempts to legislate

2.1 The Parental Bereavement Leave (Statutory Entitlement) Bill 2016-17

The [*Parental Bereavement Leave \(Statutory Entitlement\) Bill 2016-17*](#) was a Private Members' Bill, introduced by Will Quince MP on 6 September 2016, under the Ten Minute Rule.³ It failed to progress during the last session of Parliament.

Clause 1 of the Bill would have amended the *Employment Rights Act 1996* to include a new Chapter IV with the heading 'Parental Bereavement Leave'. A new section 80E1(1) in the 1996 Act would have provided:

The Secretary of State must make regulations entitling an employee who satisfies specified conditions—

- (a) as to duration of employment, and
- (b) as to their relationship with the deceased child

to be absent from work on leave under this section for the purpose of grieving for a deceased child and supporting the other parent or parents

The Bill would have provided entitlement to at least two weeks' leave. Provision for leave would have included a right to pay at a rate which mirrored Paternity, Maternity and Shared Parental Leave Pay.

2.2 Parental Bereavement (Leave and Pay) Bill 2017-19

The [*Parental Bereavement \(Leave and Pay\) Bill 2017-19*](#) was presented to Parliament through the ballot procedure on 19 July 2017. The Bill is sponsored by Kevin Hollinrake. At present, the text of the Bill is unavailable. It is expected to have its second reading on 20 October 2017.

³ [HC Deb 6 September 2016](#)

3. Research and guidance

Acas guidance

In 2014 the Advisory, Conciliation and Arbitration Service (Acas) produced a guidance document entitled [Managing bereavement in the workplace – a good practice guide](#). The document provides a short overview of the relevant law; sets out examples of best practice; contains an FAQ; and includes a model bereavement policy.

National Council for Palliative Care

During January 2014 the National Council for Palliative Care published [Life After Death – Six steps to improve support for bereavement](#), which, among other things, called for better support at work for bereaved employees. Research commissioned by the Council and undertaken by ComRes found:

The overwhelming majority of British adults (87%) agreed that all employers should have a compassionate employment policy, which includes paid bereavement leave, flexible working and a range of other support available.

More than four in five people (81%) agreed that there should be a legal right to receive paid bereavement leave where someone close to the person in question (such as a child, parent or partner) has just died.

82% of people agreed that providing employees with paid bereavement leave is likely to be beneficial to the employer in the long term.

The majority of people (56%) said they would consider leaving their job if their employer did not provide proper support if someone close to them died.

Almost a third (32%) of people who had been bereaved in the past five years who were in a job at the time said that they were not treated with compassion by their employer.⁴

⁴ National Council for Palliative Care, [Life After Death – Six steps to improve support for bereavement](#), 2014, p7

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