

Illinois Mandates Providing Leave to Grieving Parents

Labor & Employment Law Update

on August 5, 2016

On Friday, July 29, 2016, Governor Rauner approved Public Act 99-0703, the Child Bereavement Leave Act (likely to be codified at 820 ILCS 154). Without a lot of fanfare or notice, this law became effective immediately upon signature. This law requires employers with 50 or more employees (those subject to the Family and Medical Leave Act) to provide two weeks (10 business days) of unpaid bereavement leave to employees so that they can:

- (1) attend the funeral or alternative to a funeral of a child;
- (2) make arrangements necessitated by the death of the child; or
- (3) grieve the death of the child.

Under the Act, “child” includes a biological, adopted or foster child, a stepchild, a legal ward or a child of a person standing *in loco parentis*.

Of note, the law provides that:

- Bereavement leave must be completed within 60 days after the date on which the employee receives notice of the death of the child.
- An employee is required to provide the employer with at least 48 hours’ advance notice of the employee’s intention to take bereavement leave, unless providing such notice is not reasonable and practicable.
- An employer has the right to request “reasonable” documentation to substantiate the request (e.g., a death certificate).
- In the event of the death of more than one child in a 12-month period, an employee is entitled to a total of 6 weeks of bereavement leave during the 12-month period.

Fortunately, there is a short window for an employee to file a claim under this Act: 60 days to file a complaint with the Department of Labor or to file a civil action for any violation. Similarly, an employee may also file a civil action against the employer to *enforce* the Act. Of course, public outcry to an employer failing to give leave to a grieving parent would likely far outweigh any fine issued by the Department of Labor: (I) up to \$500 for a first offense; and (II) up to \$1,000 for a second or subsequent offense.

The key takeaway here is that while there is no mandatory notice or posting requirement, employers must nevertheless be aware of this law's existence should a request be made for such leave and also to prevent unnecessary lawsuits coupled with negative publicity of failing to abide by the law's mandates. To this end, employers may want to consider drafting a short policy pertaining to this new mandated leave and incorporating it into their Employee Handbooks to alert employees and their supervisors of their responsibilities under company policy and the law.

Additional insights on this new law:

1. Not only must the Employer be a covered "Employer" under the FMLA, but the Employee must be an "Eligible Employee" under the FMLA to take advantage of this new leave entitlement.
2. Employee must provide 48 hours advance notice (unless not practicable/ reasonable — and it will hardly ever be, realistically, practicable/reasonable).
3. Employer may require documentation. We advise that the Employer first search online for information relating to the death. If the Employer cannot find anything, then documentation can be requested.
4. Vacation or paid time off benefits during this unpaid leave of absence shall not be forced on the Employee — rather, like IL's VESSA law, electing to use PTO benefits is something the Employee ultimately must decide. NOTE: We usually explain in policies that such PTO will run concurrently with the leave *unless* the Employee contacts HR or some other contact internally to say otherwise.
5. We believe the leave can and likely should run concurrently with the FMLA when possible — it's just good practice. NOTE: Like IL's VESSA law, leave taken is NOT in addition to FMLA leave (so if someone uses 12 weeks of FMLA leave for the birth of a child and if the child dies, the Employee is no longer eligible to use the 2 weeks of leave under this new law. Of course, we know of no employer who would take adverse action against an employee who loses a child and needs time away for a week or two. We also know that an employee impacted here would likely have a solid case under the ADA (the emotional pain, anxiety and/or depression that follows in these cases is overwhelming). Also, if an employee uses 2 weeks of leave under this law and the employer did NOT administer FMLA leave concurrently for those 2 weeks, and that employee later adopts a child in the same 12 month time period, then the 12 weeks of leave under the FMLA would still be available.
6. As with IL's VESSA law, the employer should define the 12 month period. We advise this period to be defined similar to how the employer defines it under VESSA and the FMLA — a 12 month rolling look back period of time.
7. There is no posting requirement (yet). We are sure we'll see one shortly from the IL Department of Labor.
8. Finally, the IL Department of Labor will be issuing guidance on this through regulations.

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