

Expanding Existing Bereavement Leave Policies to Account for Fertility Related Losses

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Bereavement leave policies generally aim to provide employees with paid leave following the death of a family member. These policies, however, often fail to acknowledge the grief that employees experience upon a fertility related loss, such as a miscarriage. Fertility related losses are very common (with more than 1 in 4 pregnancies resulting in miscarriage) and frequently result in post-traumatic stress disorder (with almost 1 in 3 women developing PTSD after a miscarriage), and yet they remain largely unaddressed in the workplace. An expanded bereavement leave benefit is one way that an employer can acknowledge the emotional and overall well-being of its employees during a time of loss.

Some states and cities have already mandated bereavement leave recognizing fertility loss. Illinois law, for example, provides up to two (2) weeks of unpaid bereavement leave both in connection with the death of a family member and following losses associated with certain pregnancy, fertility, surrogacy and adoption-related events. But these laws are few and far between leaving private employers to decide whether, and how, to acknowledge fertility loss in their bereavement leave policies.

In thinking through this issue, employers should consider the following:

- The amount of paid time off that will best meet the needs of employees and the business.
- How will this leave interact with other state and local laws (e.g., California requires five (5) days of bereavement leave after the death of a family member, which may be used intermittently) and other leave and paid time off policies?
- Bereavement leave benefits must be equally provided to all parents, and not only birthing parents, as it is being provided for employees to emotionally process their loss and not for the purpose of medical recovery.
- The timing of leave should account for delayed or non-linear grief, which would allow it to be offered continuously or intermittently or, if consecutive, may be addressed with language such as “following a miscarriage” as opposed to “immediately following a miscarriage”.
- Language in defining the fertility related loss (i.e., failed surrogacy, adoption or fertility treatment) should be left intentionally broad to capture the different ways surrogacies,

adoptions or fertility treatments may fail.

- The notification mechanism required for employees who seek to take this leave. For example, employees should be required to notify any member of the Human Resources team or their manager, as opposed to one designated person, to ensure that the employee feels comfortable speaking with the appropriate contact about a sensitive need.
- Whether documentation certifying the need for the leave will be required. Anecdotally, we have not seen abuse of this policy and most employers do not require documentation of a fertility loss.

Fertility related loss should not disadvantage an employee's professional development and potential career growth opportunities. Taking actionable steps towards implementing policies that acknowledge the emotional toll of fertility loss is important for employees but has also been shown to have positive outcomes for the employer. Inclusion informed policies help to retain talent and promote recruitment opportunities.

Thanks to Mintz project analyst Giselle Mota for her valuable contribution to this blog post.

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National Law Review, Volumess XIII, Number 254

Source URL: <https://www.natlawreview.com/article/expanding-existing-bereavement-leave-policies-to-account-fertility-related-losses>