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Oregon Becomes the First State to Require Bereavement Leave

By Don Stait

Effective January 1, 2014, Oregon will become the first state to require certain private sector employers to provide bereavement leave to their covered employees. The new law amends the Oregon Family Leave Act (OFLA) and applies to employers and employees already covered under that Act.

OFLA applies to employers with 25 or more employees working in Oregon during each working day of 20 or more calendar workweeks in the year in which leave will be taken, or in the preceding year. While OFLA is unpaid leave, companies that allow employees to use their paid sick leave for qualifying OFLA events would be required to pay under their sick leave policies.¹

To be eligible to take bereavement leave, employees must have worked for a covered employer for a period of 180 calendar days immediately preceding the date that the requested leave begins. The employee must have worked an average of 25 hours per week during the 180 day period.

Eligible employees may take up to two weeks of leave per death of a family member (as defined by OFLA), up to a maximum of 12 weeks in a 12-month period, to make arrangements necessitated by the death, to attend the funeral or memorial service, or to grieve.

Family members are defined under OFLA to include the employee's spouse, same-sex domestic partner, child, parent, parent-in-law, grandparent, or grandchild, or the same relations of an employee's same-sex domestic partner or spouse.

Under the law, an employee who wishes to take bereavement leave must do so within 60 days of receiving notification of a family member's death.

Prior notice to the employer is not required, but oral notice must be provided within 24 hours of beginning leave. Written notice must be provided to the employer within three days of returning to work. Unlike other types of leave under OFLA, an employer may not reduce the leave time if the employee fails to give notice.

If more than one family member dies during a one year period, the employer may not require the leave periods to run concurrently. Also, unlike other types of leave under OFLA, if an employee's spouse or domestic partner works for the same employer, the employees may take bereavement leave at the same time.

¹ See Howard Rubin and Jennifer Nelson, [Portland City Council Unanimously Passes Sick Leave Law](#), Littler ASAP (Mar. 21, 2013).

The Oregon Bureau of Labor and Industries is currently developing rules to implement the law which will be incorporated into ORS 659A..

Federal and State Legislation Requiring Bereavement Leave is Not New

A bill was introduced in Congress last year that would amend the Family and Medical Leave Act (FMLA) to allow eligible employees of covered employers up to 12 weeks of leave a year following the death of a child. The bill, known as the Parental Bereavement Act was reintroduced this year but has not made it out of committee. It is not expected to pass.

Over the past several years, the California state legislature has passed several bills requiring employers to grant employee requests for up to three days of bereavement leave, only to have the bills vetoed by Governors Arnold Schwarzenegger and Jerry Brown.²

Recommendations for Employers

Employers should review their handbooks, policies, procedures and practices to ensure compliance with the new law. Employers also should consider training their managers and supervisors on bereavement and other leave requirements under OFLA. Human Resource professionals who track leave should be aware that the new bereavement law does not apply to an employee's entitlement to leave under the FMLA and, therefore, the use of bereavement leave will not reduce the amount of leave to which employees are entitled under the FMLA.

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² See Christopher Cobey and Isela Pérez, [Paddling on Each Side: How California Private Sector Employers Must Change Their Operations in 2012](#), Littler ASAP (Oct. 24, 2011); Christopher Cobey, [No Country For Compromise: The California Legislature's 2010 Production Affecting California's Private Sector Employers](#), Littler ASAP (Oct. 5, 2010).