

Focus on.... Jack's Law – Parental Bereavement Leave



Lucy Herd with her son Jack after whom the new Parental Bereavement (Pay and Leave) Act is named

Bereaved parents will soon be given a new legal right to time off work in recognition of the devastating impact that losing a child has on a family. The changes were announced in January 2020 as part of the UK Government's Budget and will come into effect as of 6 April 2020.

The Parental Bereavement (Pay and Leave) Act will be more commonly known as Jack's Law following a campaign by Lucy Herd, the mother of 23-month-old Jack Herd who died in 2010.

KEY FEATURES

- Working parents who lose a child under the age of 18 will get 2 weeks' statutory leave
- The new legal right to 2 weeks' paid bereavement leave, to be called 'Jack's Law', is a world first
- Parental bereavement leave is the first in a raft of new employment reforms to be introduced in the coming years to make UK workplace the best in the world and encourage business start-up. (UK Government Good Work Plan

Sadly, bereavement is something that will affect many employees at some point in their employment with research suggesting that 1 in 10 employees are likely to be affected at any one point.

It is extremely difficult to imagine the pain of a losing a child and how it will affect an individual. Records in the UK outline that 7,600 children under the age of 18 years of age, including babies and still births, died in 2017.

Currently there is no statutory requirement for employers to provide paid time off for grieving parents nor is there a set amount of minimum time to offer, the guidance is that it should be 'reasonable'.

Some employers may currently offer paid compassionate leave whereas others may only offer statutory unpaid time off for a dependant's care which includes leave to arrange or attend a funeral. It is at an employer's discretion as to whether they pay the employee or not or ask them to use paid holiday or sick leave.

The government believe that the new entitlement under Jack's Law will support around 10,000 parents a year.

The introduction of the Parental Bereavement (Pay and Leave) Act in April 2020 is an opportunity for all employers to either review their current compassionate leave schemes or create a scheme around parental bereavement.

CBR Business Solutions outline below the main points of the incoming legislation, pay and what other considerations an employer should make when handling a bereaved parent or primary carer. The suggestions made at the end of this article may also be supportive to all bereaved employees.

Entitlement

It is not just parents who are entitled to at least two weeks' leave following the loss of a child, but also carers with the eligibility being widened following consultation feedback in 2019.

Who is entitled:

- Parents or primary carers who have suffered the loss of a child under the age of 18 years of age.
- "Primary carers" includes adopters, foster parents, guardians and those classed as 'kinship carers', who may be close relatives or family friends who have assumed responsibility for looking after a child in the absence of parents
- Parents who suffer a stillbirth after 24 weeks of pregnancy. In this instance the female employees will still be entitled to up to 52 weeks of maternity leave and/or pay, as will a mother who loses their child after it is born.

Entitlement to Pay

All employees have a 'day one' right to **unpaid** parental bereavement leave.

Parents and primary carers must have been employed for a continuous period of at least 26 weeks before the child's death to be eligible for statutory **paid parental bereavement** leave. This will be in line with other parental entitlements such as paternity leave and pay.

Parents and primary carers who have been employed for a continuous period of at least 26 weeks prior to when the child dies, and have received pay above the lower earnings limit for the previous eight weeks, are entitled to at least two weeks' statutory parental bereavement pay.

Workers who have not been employed for a continuous period of at least 26 weeks are entitled to two weeks' unpaid leave.

Leave period

Leave can be taken either as a single block of 2 weeks or as 2 separate blocks of one week each, taken at different times across the first year after the child's death. This allows an employee to match their leave to the times they need it most, which could be in the first few days or around the first anniversary or their child's birthday. The leave must be taken within 56 weeks of the date of the child's death.

Jack's mother, Lucy Herd who led the campaign has spoken of her experience and why she felt time is required by a parent: the impact on other children and family members, arrangements, inquests and organisations to contact following her son's death.

Notice requirements for leave will be flexible, so it can be taken appropriately at short notice. There will be no notice required immediately after the loss and if leave is to be taken later a one week notice should be provided by the employee. However, see the below 'Employer actions and considerations'.

Where tragically more than one child has died, an employee will be entitled to take a separate period of leave for each child.

Employer actions and considerations

- Employers will **not be entitled** to request a copy of the child's death certificate as evidence of an employee's right to the entitlement.
- Small employers will be able to recover all statutory parental bereavement pay, while larger organisations will be able to reclaim almost all of it. Current information is that the minimum (and statutory) payment for those entitled will be £148.00 per week during bereavement leave, which is in line with other family statutory payments such as paternity leave.

- Employers should be considerate of other religions and nationalities having their own bereavement traditions and funeral rites that must be followed. Refusing to allow an employee to observe their beliefs and customs could amount to discrimination.
- Be aware that under the Data Protection Act 2018, employees have the right to keep **details of their child's death confidential**. The employer should seek to understand how much detail employees would like their colleagues to know and to ensure their wishes are respected. This may change over the grieving period and a manager should ask the employee if they wish for colleagues to be aware or have more / less detail so they are supportive of the employee.
- Whilst as much as, 2 weeks' leave (paid or not) will support a bereaved parent, an organisation should consider what other support they may need to provide. Many employees who have been bereaved stated in research that they needed more than two weeks before they felt able to go back to work. Employees will also respond in different ways and at different rates. Employers will need to be flexible, supportive and sensitive to an employee's needs.
- It may be appropriate to also consider providing additional paid leave or paid sick leave, provide flexible working and/or a phased return to work and potentially counselling and occupational health support. Employees may also wish to use unpaid Parental Leave to support other children at home.
- Managers and HR should offer an open door to the bereaved employee to allow them to come and talk about their situation and support the employee in finding a way forward if necessary.
- Bereaved employees may not be able to cope with their usual workload due to concentration and/or grief for a period of time, so colleagues and managers should suggest taking time out, going for a coffee break or walk. Managers may need to make adjustments to work tasks, timings, work attendance for a period to support the employee.
- Employers should advise the employee of the support network they have in the workplace whether it is informal in nature with colleagues, HR, Occupational Health and managers, so that they feel comfortable and know who to talk with if necessary. The more support provided the more likely the employee will feel able to return to their duties and tasks.
- If the organisations does not have an Employee Assistance Programme (EAP) it may be advisable to consider the provision of a formal confidential third party support such as an EAP or a counselling service where financially viable. Other options and resources are provided below which may of use initially for employers or bereaved employees.
- Employers and managers should recognise that grief comes in stages as any change or loss will and that it is not a straightforward process through the stages

over time but loops back and forth and an employee's emotions will fluctuate. An employee may appear shocked, grief stricken and emotional, numb, angry, or avoidant during their grief.

- Bereavement is also likely to physically impact an employee. Chronic stress also is common during acute grief and can lead to a variety of physical and emotional issues, such as depression, trouble sleeping, feelings of anger and bitterness, anxiety, loss of appetite, and general aches and pains. It can deplete the immune system and leave an individual vulnerable to infection. The heartbreak of grief can increase blood pressure and the risk of blood clots. Intense grief can also alter the heart muscle so much that it causes "broken heart syndrome," a form of heart disease with the same symptoms as a heart attack.

Managing bereavement in the workplace is challenging and employers should be considerate of the impact on their employee and offer kindness, compassion and support during the trauma and also understand and recognise that 2 weeks' Parental Bereavement Leave is unlikely to be sufficient and offer continued ongoing support to the employee.

Resources

Gov.uk

<https://www.gov.uk/search/all?keywords=bereaved+parents>

ACAS

<https://www.acas.org.uk/absence-from-work/time-off-for-bereavement> - not updated as yet to reflect Jack's Law

NHS

<https://www.nhs.uk/conditions/stress-anxiety-depression/coping-with-bereavement/>

CRUSE Bereavement

<https://www.cruse.org.uk/get-help>

MIND

<https://www.mind.org.uk/information-support/guides-to-support-and-services/bereavement/about-bereavement/>

Care for the Family

<https://www.careforthefamily.org.uk/family-life/bereavement-support/supporting-bereaved-people/further-help>

Nelson's Journey – support for bereaved children

<http://www.nelsonsjourney.org.uk/>

Grief Chat

<https://www.griefchat.co.uk/>

Child Death Helpline

<http://childdeathhelpline.org.uk/>

Samaritans – 24 hour support

<https://www.samaritans.org/>

All information included in the Focus On ... “Jack’s Law” – Parental Bereavement Leave is accurate at the time of publication in February 2020.

How CBR Business Solutions HR and Employment Law can help.

Our Chartered CIPD qualified HR Consultants are experienced in advising clients on all aspects of HR and Employment Law and in helping organisations deal with potential problems before and as they arise and also advise on on-going HR issues and special HR Projects.

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