



ISSUE BRIEF

Congress Should Amend the Family and Medical Leave Act to Make Child Death a Qualifying Reason for Leave and Job Protection

To date, an estimated 20 million Americans have experienced the death of a child. According to the National Academies of Sciences, Engineering, and Medicine, “Studies continue to provide evidence that the greatest stress, and often the most enduring one, occurs for parents who experience the death of a child.”¹ This stress produces untold health, social and economic impacts.

Unfortunately, few supports exist to help grieving parents remain solvent and productive. In most cities and states, employees have no legal protections if they need to take leave following the death of a child. The exact number of employers that offer bereavement leave is not known; in most cases, however, only three days of paid leave are allowed.

The federal Family and Medical Leave Act is an appropriate public policy tool to afford some protections to families experiencing the loss of a child. Passage of the Parental Bereavement Act (H.R. 983/S. 559) is advocated to make the death of a son or daughter a qualifying reason for leave under FMLA. The legislation will likely be reintroduced in 2020.

Impacts of Child Death

Child death constitutes an invisible public health crisis. According to Debra Umberson, professor of sociology and director of the Population Research Center at the University of Texas at Austin, the prevalence of child death is sweeping. By age 20, 1 percent of Americans have experienced the death of a child. By age 60, that figure rises to 9 percent. By age 70, 15 percent of American parents have lost a child; by ages 80 and 90, 18 percent of parents and 19 percent of parents, respectively, have lost a child.²

Whether the child death is tied to a health condition, an accident, a drug overdose, suicide, homicide or gun violence, survivors are at increased risk for negative experiences and outcomes. Compared with other parents, parents who lose a child are more likely to suffer from depressive symptoms, are at greater risk for physical health problems and chronic conditions, and are more likely to experience marital or relationship disruption. Mothers, in particular, face an increased risk of psychiatric

¹ Field, M., & Behrman, R. (2003). *When children die: improving palliative and end-of-life care for children and their families*. Washington, DC: Institute of Medicine.

² Umberson, D. (2018, October 10). *Death of a child: extent of the problem and estimating burden*. Paper presented at the meeting of National Academies of Science, Washington, DC.

hospitalization in the first five years following the death.³ They also experience increased mortality from unnatural causes (i.e., suicide and accidents).⁴ The long-term economic ramifications of losing a child—from increased medical expenditures, loss of wages or employment, loss of productivity and reduced future income—are just beginning to be investigated.

Existing Family and Medical Leave Act Protections and Provisions

FMLA aims “to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity.”⁵ The law grants employees up to 12 weeks off to welcome a new child, take care of a serious health condition, or attend to issues arising from a family member’s military service. These goals—work-family balance, economic security and family integrity—are served by allowing employees to take care of family needs without fearing the loss of their job.

The Family and Medical Leave Act of 1993 guarantees up to 12 weeks of unpaid time off for eligible employees to take care of a new child or to take care of a family member who has a serious medical condition. To qualify for leave, an employee must have worked for at least 1,250 hours over the previous 12 months for an employer that employs at least 50 people. The employee is entitled to 12 weeks of unpaid leave if:

- The employee welcomes a new son or daughter through birth, adoption or foster care;
- The employee needs time to care for a spouse, child or parent with a serious health condition;
- The employee is unable to work because of his or her own serious health condition; or
- A qualifying exigency exists arising out of the active duty of a spouse, child or parent of the employee.

An employer may require the employee to substitute all accrued paid leave that is available to the employee, with the total leave still capped at 12 weeks. The employer is not required to pay the employee during leave, but the employee’s health insurance benefits must be maintained. Upon return to work, the employee must be able to return to his or her original job, or to an equivalent job with equivalent pay. The employee’s use of FMLA leave cannot be used to discriminate or retaliate against him or her in any way.

Amendments to FMLA

FMLA has been amended several times through legislation and regulatory actions. Those pertaining to the parent-child relationship include an active duty military exception and the definition of a parent.

Active Duty Military Exception

The National Defense Authorization Acts for Fiscal Years 2008 and 2010, as well as related regulations, expanded the leave protections for family members of military service members and veterans through the addition of “any qualifying exigency” to the list of approved reasons for leave.⁶ Under the umbrella of “qualifying exigency,” an employee may take time for issues arising from a family member’s active duty in the military, including to make arrangements for a military member’s absence, to attend military

³ Li, J., Laursen, T.M., Precht, D.H., Olsen, J., & Mortensen, P.B. (2005, March 24). Hospitalization for mental illness among parents after the death of a child. *New England Journal of Medicine*, 352(12), 1190–1196.

⁴ Li, J., Precht, D.H., Mortensen, P.B., & Olsen, J. (2003, February 1). Mortality in parents after death of a child in Denmark: a nationwide follow-up study. *The Lancet*, 361(9355), 363–367.

⁵ Department of Labor, Wage and Hour Division. *The family and medical leave act of 1993, as amended*. Retrieved from Department of Labor website: https://www.dol.gov/whd/fmla/fmlaamended.htm#SEC_2_FINDINGS_AND_PURPOSES

⁶ Department of Labor, Wage and Hour Division. *The family and medical leave act of 1993, as amended*. Retrieved from Department of Labor website: https://www.dol.gov/whd/fmla/fmlaamended.htm#SEC_102_LEAVE_REQUIREMENT

events, to attend counseling, and to address issues arising from the death of a covered military member while on active duty status.

Definition of a Parent

In 2010, the Department of Labor clarified that the parent of a “son or daughter” could be a person who had assumed the role of caring for a child, regardless of a legal or biological relationship.⁸

State and Local Bereavement Laws

Two states (Illinois and Oregon) and two cities (Seattle and Tacoma in Washington) have enacted bereavement laws to support grieving families.

Illinois

Illinois enacted its Child Bereavement Leave Act in 2016. The law requires employers with 50 or more employees to provide up to 10 days of unpaid bereavement leave for a parent who has lost a child; this leave cannot exceed or be in addition to FMLA leave. If a parent has lost multiple children during a 12-month period, employees may be entitled to up to six weeks of unpaid bereavement leave. Employers and employees must meet FMLA requirements.⁹

Oregon

Oregon’s Family Leave Act, enacted in 2014, requires employers with 25 or more employees to allow qualifying employees to take up to two weeks of unpaid bereavement leave for the death of a family member.¹⁰ In addition, Oregon’s paid sick leave law requires nearly all employers in the state to provide up to 40 hours of sick leave each year, which can be used explicitly for bereavement. If the employer has at least 10 employees (or six in Portland), the leave must be paid; otherwise, the leave is unpaid.

Seattle and Tacoma

In 2019 Seattle passed Bea’s Law. The law entitles grieving families up to four weeks of paid bereavement leave following the death of a child up to age 18.¹¹ In Tacoma, workers are entitled to one hour of paid sick leave for every 40 hours worked, and one of the acceptable uses of this leave is bereavement of a family member.¹²

Although these nascent state and local developments to require employers to provide leave to employees experiencing the loss of a child are encouraging, further action is uncertain and, if pursued, is likely to take considerable time. Congressional action to amend the federal law is the preferred course.

⁷ Office of Personnel Management. *Fact sheet: family and medical leave qualifying exigency leave*. Retrieved from Office of Personnel Management website:

<https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/family-and-medical-leave-qualifying-exigency-leave/>

⁸ Department of Labor, Wage and Hour Division (2010). *Administrator’s interpretation no. 2010-3*. Retrieved from Department of Labor website: https://www.dol.gov/whd/opinion/adminintrprtn/fmla/2010/fmlaai2010_3.pdf

⁹ Illinois Department of Labor. *Child bereavement leave act*. Retrieved from Illinois Department of Labor website: <https://www2.illinois.gov/idol/Laws-Rules/CONMED/Pages/Child-Bereavement-and-Leave-Act.aspx>

¹⁰ Oregon Bureau of Labor and Industries. *Oregon family leave act and federal family and medical leave act overview*. Retrieved from Oregon Bureau of Labor and Industries website: <https://www.oregonlegislature.gov/williamson/WorkgroupDocuments/BOLI%20FLA%20FMLA%20Overview.pdf>

¹¹ Retrieved from Seattle municipal code: https://library.municode.com/wa/seattle/codes/municipal_code?nodeId=TIT4PE_CH4.29PAFACALE

¹² City of Tacoma. *Paid sick leave: employees*. Retrieved from city of Tacoma website: <https://www.cityoftacoma.org/cms/One.aspx?portalId=169&pageId=87938>

Next Steps

The Family and Medical Leave Act does not allow employees to take leave for the death of a child—one of the most life-altering and devastating events a family can experience. The Parental Bereavement Act would amend FMLA to allow employees to take FMLA leave in the event of their child's death. Parents who lose a child suffer both short- and long-term health and emotional consequences, and they need time to process and grieve their loss before returning to work. Passing the Parental Bereavement Act (H.R. 983/S. 559) would further the original aims of FMLA to help employees balance work and family, promote the economic security of bereaved parents and families, and protect family integrity.

About Evermore: Evermore is dedicated to making the world a more livable place for bereaved individuals and families. Bereavement care in America is broken and that's why we're here. We are committed to an equal America where all families and professionals have access to care, programs, tools and resources to cope and adapt to loss. We believe in a society where bereavement care is the rule, not the exception. Our nation needs it now more than ever. Help us make that change. To learn more, visit www.live-evermore.org.

