



LEGISLATORS RENEW ATTEMPT TO PROVIDE FMLA LEAVE FOR DEATH OF A CHILD

APRIL 2017

At a time when bipartisanship is hard to come by, some members of Congress have reached across the aisle to propose a “common sense” modification of the Family Medical and Leave Act (FMLA). In general, the FMLA requires employers with 50 or more employees to provide employees with up to twelve weeks of leave in a 12-month period for qualifying medical and family reasons, such as the birth, adoption, or foster care placement of a child, the employee’s or a family member’s serious health condition, and certain circumstances related to the military service of an employee’s family member. The FMLA also provides employees with up to 26 weeks of leave in a 12-month period to provide care for the serious injury or illness of a covered family member in the military.

Now, some legislators are looking to add an additional leave entitlement to the FMLA.

On March 16, 2017, Representatives Martha McSally, R-Ariz., Barbara Comstock, R-Va., Paul Gosar, R-Ariz., Don Beyer, D-Va., Brad Schneider, D-Ill., and Thomas Suozzi, D-N.Y., introduced a House bill (H.R. 1560) that would trigger a parent’s right to FMLA leave upon the death of a child. Earlier in March, Sen. Jon Tester, D-Mont., introduced a similar bill (S. 528), which has since been referred to the Senate Committee on Health,

Education, Labor and Pensions. Under the proposed bills, grieving parents would be entitled to up to twelve weeks of unpaid leave to recover from the physical and emotional stress of losing a child. Congress members were inspired to act after hearing about the personal experiences of grieving parents, some of whom had to return work only days after burying their children.

While supporters of the bills are hopeful a bereavement provision will pass, a number of similar bills have been introduced, and failed, in the past six years. Still, support for parental bereavement leave has been growing in both parties, and it is likely that if the current proposals fail to pass, similar proposals will continue to be introduced in the future.

Grieving parents get little help from state laws, either. Currently, only two states require bereavement leave for the death of a child or family member: Oregon requires that employers with more than 25 employees provide up to two weeks of unpaid bereavement leave for the death of a family member, and Illinois law requires employers of at least 50 employees to provide up to ten days of unpaid leave for the death of a biological, adopted, foster, or step child, as well certain legal wards.



CLIENT ALERT

Employers of grieving parents should also be aware that the loss of a child can lead a parent to become depressed, which may also entitle them to protection under the Americans with Disabilities Act of 1990 (“ADA”). As we wrote [last December](#), guidance issued by the [Equal Employment Opportunity Commission](#) makes clear that

depression may qualify as a disability with the meaning of the ADA. Depending on the circumstances, qualified individuals with a handicap may be entitled to accommodations, which could include an extended leave of absence. When possible, employers should consider providing extra leave for grieving parents.