

COMPASSIONATE LEAVE (OR TIME OFF FOR DEPENDANTS) GUIDE

Introduction

This guide outlines the basic statutory entitlements to take compassionate leave (or time off for dependants) provided by legislation Section 57 (A) of the Employment Rights Act 1996. It then goes on to highlight key bargaining issues for seeking improvements on the minimum entitlements and provide benchmark rates as reference points for negotiations.

Basic Statutory Entitlements – Time off for dependants

- As an employee you are allowed time off to deal with an emergency involving a dependant;
- A dependant could be a spouse, partner, child, grandchild, parent or someone who depends on you for care;
- You are allowed a 'reasonable' amount of time to deal with an emergency, but there is no set amount of time as it depends on the situation – [ACAS guidance](#) suggests that the time off allowable is normally a day or two;
- Your employer may pay you for time off to look after dependants but they don't have to. There is no statutory entitlement to pay if you do take time off for an emergency;
- Your right to take time off to look after a dependant is a "day one" employment right;
- The Equality Act 2010 protects employees with protected characteristics and therefore employers must make sure that they treat all requests for leave equally and that they do not treat employees less favourably than others.

Situations that qualify for time off?

An emergency is defined in the government advice by the following examples – you could get time off when a dependant is involved in the following emergencies:

- Illness, injury or assault (of a dependant) – This includes mental or physical illnesses and it does not need to be life threatening. It could be that they have an existing health condition that has got worse. You can also take time off to arrange longer term care for a dependant;
- The death of a dependant (see compassionate leave below);
- The failure of a normal carer to turn up for work;
- An incident with your child at school;
- Dependant is having a baby - you can also take time off if a dependant goes into labour if you are the person they are relying on to take them to hospital – if you are the child's parent you can take time off after the birth as you will be entitled to

paternity or maternity leave. More information on working parents' terms and conditions can be found in our [factsheet](#).

Situations that don't qualify for time off?

Examples of where you do not qualify for time off include:

- Your employer may give you time off to deal with an emergency but they do not have to give you time off to deal with home emergencies including fire, flooding, burglary or broken boiler;
- Your employer does not have to give you time off for taking dependants to a planned medical appointment;
- Your employer does not have to give you time off for dealing with a pet emergency or taking a pet to the vet;
- Your employer does not have to give you time off for dealing with a personal crisis (relationship breakdown).

Time off for dependants – Case Law

Naisbett v Npower Ltd

The employment tribunal found that a mother's six absences totalling seven days in 12 months constituted "reasonable" under S.57A of the Employment Relations Act 1996.

Background

Ms Naisbett had a three year old child who was attending nursery at the time of this claim. Ms Naisbett was the main carer and due to the commitments of other family members she was the only person able to look after her child when the child was ill and unable to attend nursery.

Ms Naisbett brought a tribunal claim against her employer alleging she had suffered a detriment when exercising her right to take time off for dependants. Her employer had placed Ms Naisbett on their formal capability procedure for "non-medical absence" after Ms Naisbett had taken six absences totalling seven days in a period of 12 months.

The employment tribunal ruled in Ms Naisbett's favour and awarded £1,000 for the detriment.

This ruling highlights lack of case law in this area but employers need to decide what a "reasonable" amount of time is in each individual circumstance and decide what is a "genuine" unforeseen emergency.

Source: Xpert HR – Feb 2013

Compassionate Leave

Compassionate leave may be granted to an employee if they experience the bereavement of a dependant. The right to time off to deal with an emergency or compassionate leave is a "day one" employment right; although an employer does not have to pay an employee for any leave taken. Although there is no legal right to be paid, some employers may offer contractual right to pay under an employee's terms and conditions of employment.

Employers may define compassionate leave as time off for an emergency or time off for dependants, as some employers may view this leave as the same thing; however some employers will have negotiated a separate compassionate / bereavement leave policy which may entitle employees to be paid.

It is also important to note that as part of the statutory legislations, female employees who suffer a stillbirth after 24 weeks are entitled to up to 52 weeks statutory maternity leave and/or pay.

In a [report](#) by the National Council for Palliative Care, National Bereavement Alliance and Dying Matters¹, an overwhelming 87% of British adults surveyed agreed that employers should have a compassionate leave policy, four in five people (81%) agreed there should be a legal right to receive paid bereavement leave when someone close to them (child, parent or partner) has just died.

Over half of the respondents they interviewed (56%) said they would consider leaving their job if their employer did not provide proper support if someone close to them died and almost a third of people who had been bereaved in the last five years said they were not treated compassionately by their employer.

ACAS guidance on [Managing Bereavement in the Workplace](#) sets out good practise and practical advice for employers when dealing with employees that have suffered the bereavement of a close family member. The guide explains the legal aspects and rights of employees to apply for compassionate leave in these situations, returning to work after a bereavement, the health and safety implications in the workplace, culture and diversity issues as well as important information on how the Equality Act can protect employees who experience depression, anxiety or post-traumatic stress disorder following a bereavement. The guidance also contains a model bereavement policy that UNISON branches can use as a template if they are in discussions with their employer about adopting a local bereavement policy.

Research conducted by the Chartered Institute of Personnel and Development (CIPD) and cited in the ACAS guidance suggests that most employees are given five days paid leave to deal with emergencies (compassionate leave). Many employers in the public and private sector have separate bereavement leave policies and procedures, which are separate from time off for dependants.

SOAS has negotiated a Bereavement Leave Policy and Procedure with the joint staff-side trade unions. All members of staff are entitled to request bereavement leave, regardless of length of service. The length of paid bereavement leave will be determined by the employee's manager. Following the death of a close relative employees can be granted up to three days paid leave, although this can be extended up to five days.

¹ Life After Death – Six steps to improve support in bereavement - ComRes data - Jan 2014

The University of Glasgow has negotiated with the trade unions a bereavement leave policy. In the event of a death of an immediate family member (spouse, civil partner, partner, parent/stepparent, child/stepchild or sibling), the member of staff will be granted up to five days paid time off. This includes time to attend the funeral.

The list below shows how a number of local agreements in the public and private sectors have pushed rights above the nationally agreed guidance on compassionate leave:

Public Sector

10 days paid leave – Eastleigh Borough Council
10 days paid leave – London Fire fighters
10 days paid leave – Central College, Nottingham
10 days paid leave – London Borough of Hounslow
5 days paid leave – Bassetlaw District Council
5 days paid leave – Burnley Borough Council
5 days paid leave – Middlesex University
5 days paid leave – North Somerset Council
5 days paid leave – Ulster University
5 days paid leave – Glamorgan University

Voluntary Sector

10 – 2 days paid bereavement leave – Age UK
10 days paid leave - Amnesty International UK
5 days paid leave – Arts Council England

Police and Justice

5 days paid leave – Derbyshire Police
5 days paid leave – Leicestershire Police

Private Sector

10 days paid leave – Asda Distribution
10 days paid leave – Association of Chartered Certified Accountants
10 days leave – Fox's biscuits (Northern Food)
10 days paid leave – HJ Heinz
10 days paid leave – Morrisons
10 days paid leave – Unilever
7 days paid leave – Royal Mail
5 days paid leave – Severn Trent Water
3 days (unpaid) leave - Air France / KLM services dept

Source: LRD Payline 2016 / Workplace Report 2014

Organising around rights for time off for dependants / compassionate leave

1. **Present ACAS's model policy on compassionate leave:-** Consult workers on what terms and conditions they would like to see improvements on, including the implementation of a compassionate leave policy. Good practice is to start with an open meeting for members and non-members where the workforce is briefed about the current situation and potential improvements. The decisions about what improvements or new policies should be put to the employers should then be made in a meeting open to members only.

2. **Mobilising the membership:-** Members and non members need to see that the union has been instrumental in bringing this issue of importance to the attention of the employer. Members should be asked to support the branch's efforts to get improvements on an existing policy or (in workplaces that do not have a policy) the implementation of a local compassionate leave policy by, for instance, signing a petition, or taking part in a member's survey. In this way, workers are empowered by showing that they can change things through joining together in the union, rather than simply being recipients of services.
3. **Recognising wins:-** Too often we undermine our achievements and fail to point out that, without UNISON and more importantly our members, any improvements would not have been won.

For more advice on organising issues see UNISON's [Organising Space](#)

What can branches do?

- Check to see if your employer has local policies or an agreement that covers employees in the event of a bereavement or if an employee needs to take time off for a dependant / emergency;
- If there isn't a current policy which covers compassionate leave or time off for dependants the branch could negotiate one through their local bargaining machinery (JNCC);
- Using the model policy drawn up by ACAS (an industry standard good practice example), aim for employers to adopt at least a minimum of 5 days paid leave (across all sectors this is the medium);
- Explain to employers the benefits of having a separate compassionate leave policy - you may want to use the statistics from the 'Life after Death' report to support your arguments or conduct your own workplace member survey;
- Tell your employers that employees who do not feel supported or feel like they have not been treated compassionately by their employer at a time of bereavement are more likely to consider leaving their job. Employers who are sympathetic and flexible will get increasing loyalty, improved morale and greater productivity from their workforce;
- Other areas to explore with your employer include working with a local bereavement service to develop a policy, offer training for staff who come into contact with bereaved people (HR professionals) and offer a counselling service for staff to access following a bereavement or if they are in a time of need;
- Having workplace policies in place that allows time off for dependants / compassionate leave can help reduce stress and gives some guidance to managers who have to support their employees through a difficult time;
- Negotiating a policy with the employer is a good win for the branch and could encourage more employees to join UNISON!

UNISON has access to the Labour Research Department Payline database, which contains details of compassionate leave / time off for dependants agreements for employers across the economy. For details of how to access Payline contact the Bargaining Support Group on bsg@unison.co.uk



The UNISON [agreements library](#) some examples of compassionate leave agreements with public service employers. UNISON staff have access to this database and if branches wish to check for the availability of a particular agreement, please contact the Bargaining Support Group on bsg@unison.co.uk

