

The case for implementing a compassionate leave policy

It is inevitable that employees will at some point need time off work to deal with personal and family problems. Employers should support employees in such situations by providing time off, allowing them the space to come to terms with the distress caused.

It may be that this causes inconvenience to the organisation, but an employer that refuses or is reluctant to grant time off for compassionate reasons, or that makes an employee feel guilty about taking such time off, is unlikely to retain motivated or productive staff for long.

An employee that does not have access to compassionate leave may well instead obtain a fit note signing them off work for a considerably longer period of time than they would have taken had the employer adopted a more accommodating and sympathetic attitude.

The statutory right to time off for dependants

The right to time off for dependants under s.57A of the Employment Rights Act 1996 entitles all employees to take a reasonable amount of time off work 'to take action which is necessary' in relation to the care of certain dependants. Under this provision, an employee is entitled to take time off work:

- to provide assistance when a dependant falls ill, gives birth or is injured or assaulted;
- to make arrangements for the provision of care for a dependant who is ill or injured;
- following the death of a dependant;
- where there has been an unexpected disruption to, or termination of, the arrangements for the care of a dependant; and
- to deal with an incident involving a child of the employee that occurs unexpectedly at the child's school.

The application of the statutory right is therefore limited to specific circumstances. For example, while it allows for time off to decide for the care of a child who is ill or has had an accident, it does not provide for employees to take time off to look after the child themselves; neither does it allow the employee time off in recognition of the emotional impact on them if the illness or accident is serious.

Where a dependant dies, the statutory right is limited to time off to take action necessary 'in consequence of' the death. This would include making funeral arrangements, registering the death, and applying for probate, but would not provide for a longer period of bereavement leave.

The statutory right is intended to allow employees to deal with emergencies or unexpected situations, and the amount of time off allowed will in most cases be in the region of a few days rather than a longer period.

Therefore, employers may wish to devise and implement their own more generous policy granting compassionate leave to employees in a range of circumstances. Employers should address the following matters when devising such a policy.

Statutory carer's leave

From 6 April 2024, an employee who has a dependant with a long-term care need will also be entitled to one week's carer's leave every 12 months. A dependant has a long-term care need if they:

- have an illness or injury requiring care for more than three months;
- have a disability (under the Equality Act 2010 definition); or
- require care for a reason connected with their old age.

Carer's leave must be taken for the purpose of providing or arranging care. There is no definition of what this could cover, and employees should not be required to justify their reason for taking the leave.

The statutory right is to one week's unpaid carer's leave. Employers may choose to provide more generous entitlement, for example by paying employees while they are on carer's leave. The compassionate leave policy could be used to provide for additional time off to accommodate caring responsibilities.

Extent of application of the compassionate leave policy

Family emergencies and personal problems can affect anyone. Therefore, it is arguably best to make a policy on compassionate leave applicable to all employees, rather than differentiating on, for example, grounds of grade or status.

The employer should consider whether to include a service requirement in the policy.

Employers may be minded to stipulate a minimum length of service for eligibility for paid compassionate leave, perhaps with unpaid leave being available to those who do not have the required service. As an employee may have a genuine need to take compassionate leave at any point in their employment, some employers may decide not to link eligibility to length of service.

Relationships qualifying employees for compassionate leave

The policy should define the circumstances in which employees will be eligible for compassionate leave.

As a minimum, these are likely to include the types of circumstances covered by the statutory rights to time off for dependants and carer's leave. It will therefore be important for the employer to define the family members and others in respect of whom the right to time off will apply. The statutory right to time off for dependants and the statutory right to carer's leave both relate to:

- a spouse or civil partner;
- a child; or a parent;
- a person who lives in the same household as the employee (other than as an employee, tenant, lodger, or boarder); and
- any person who reasonably relies on the employee to decide for the provision of care (for time off for dependants) or to provide or arrange care (for carer's leave).

The employer may wish to extend this definition. A policy could, for example, apply to situations involving not only spouses, civil partners, partners, parents and children, but also to grandparents and grandchildren, and possibly also to those involving parents-in-law, brothers-in-law, sisters-in-law, sons-in-law and daughters-in-law.

The employer may want to draft the policy in a way that recognises that not everyone has a family, or is close to them, and that the network of people who are most important to an employee, and most reliant on them, may be friends rather than family.

Precisely defining the type of relationship to be covered is likely to be difficult and it may be necessary for the employer to incorporate an element of discretion into the policy in this respect.

Circumstances that trigger compassionate leave

The statutory right to time off for dependants provides for short-term time off to plan for the care of a dependant who is ill. An employer may wish to allow employees to take compassionate leave to care for a dependant themselves, and it may decide to allow employees to take more leave than is available under the statutory right to carer's leave.

The policy could specifically provide for employees to take compassionate leave to spend more time with dependants who have been diagnosed with a terminal illness.

An employer's compassionate leave policy is likely to cover time off for employees when someone close to them dies. Alternatively, or in addition, the employer may decide to put in place a separate bereavement policy, covering time off and additional support for bereaved employees.

The compassionate leave policy could include separate provision for time off to attend funerals. This right could apply more widely than the right to take a longer period of compassionate leave, for example it could extend to the funerals of more distant relatives and friends.

Other circumstances in which an employer may wish to consider granting compassionate leave include divorce, separation, or relationship difficulties. The employee may wish to seek counselling or relationship guidance, or may need to obtain legal advice, and may struggle for appointments outside working hours.

A policy could specifically provide that an employee who is affected by domestic violence is eligible for compassionate leave. Alternatively, the employer could have a separate policy covering how it will support victims of domestic violence, including entitlement to time off. Arguably, any personal or family event that causes serious personal disruption or distress should potentially be grounds for compassionate leave.

Domestic emergencies such as a fire or a flood would obviously require the presence of the employee at home and a degree of sympathy would be appropriate in the event of a request for time off work in such circumstances.

The employer should decide whether such events should specifically be included under its compassionate leave policy, or whether it should have a separate policy covering special leave in unexpected circumstances.

Notification requirements

The policy should set out the procedure that employees should follow to request compassionate leave.

This is likely to be that the employee should notify the employer as soon as reasonably practicable of the reason that they wish to take compassionate leave.

The policy should allow for a degree of flexibility around how and when employees contact the employer, in recognition of the fact that this may not be their first priority in an emergency or particularly distressing situation. Any time frame for contacting the employer should be used as a guideline rather than a strict requirement for eligibility for leave.

Where an employee attends work or requests annual leave in circumstances when they would be entitled to compassionate leave, the employer could suggest to them that they take compassionate leave. The employee may not have been aware that this was an option.

Length of leave to be granted

When deciding how much compassionate leave to grant employees, the employer should take a number of factors into account. For example, if an employee requires compassionate leave when a family member is ill, the closeness of the relationship between the employee and the family member, whether other people are available to help with any emergency or care arrangements and how far the employee has to travel, will be relevant.

The policy should allow for a certain amount of discretion in terms of how much time off employees can take, so that the employer can consider individual circumstances and deal with employees considerately.

The employer could set a maximum amount of compassionate leave that employees can take in a 12-month period. This would be advisable particularly where compassionate leave is paid.

The policy could specify that a further period of unpaid compassionate leave could be available when the employee has exhausted their entitlement to paid leave. Again, the policy could specify a maximum entitlement to unpaid leave.

Paid or unpaid leave

Since the law does not require employers to grant paid time off for compassionate leave, it is at the discretion of each employer whether to grant leave with or without pay. If leave is to be paid, the policy should clarify whether that means only basic pay, or whether any allowances to which the employee is normally entitled are included.

Communicating the policy

Employers should ensure that their policy on compassionate leave is properly communicated to all employees, explaining that the purpose of introducing the policy is to ensure that employees are treated fairly and considerately in difficult circumstances.

It should highlight any conditions attached to the granting of compassionate leave, for example any length of service requirement, and the circumstances in which employees will be eligible to take leave.

The employer must also take steps to ensure that line managers understand the scope of the policy, particularly where it provides for an element of manager discretion. It will be important for the employer to ensure that the policy is applied fairly and that employees in different departments are treated consistently, while still considering the needs of individuals.

The employer should provide written guidelines for managers so as to avoid a situation where one line manager adopts a sympathetic approach to an employee who requests time off, while another takes a strict view that as little time off as possible should be granted.