



## **Bar Council response to the Department for Business and Trade Consultation on leave for bereavement including pregnancy loss**

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Department for Business and Trade Consultation on leave for bereavement including pregnancy loss.<sup>1</sup>

2. The Bar Council is the voice of the barrister profession in England and Wales. Our nearly 18,000 members – self-employed and employed barristers – make up a united Bar that aims to be strong, inclusive, independent and influential. As well as championing the rule of law and access to justice, we lead, represent and support the Bar in the public interest through:

- Providing advice, guidance, services, training and events for our members to support career development and help maintain the highest standards of ethics and conduct
- Inspiring and supporting the next generation of barristers from all backgrounds
- Working to enhance diversity and inclusion at the Bar
- Encouraging a positive culture where wellbeing is prioritised and people can thrive in their careers
- Drawing on our members' expertise to influence policy and legislation that relates to the justice system and the rule of law
- Sharing barristers' vital contributions to society with the public, media and policymakers
- Developing career and business opportunities for barristers at home and abroad through promoting the Bar of England and Wales
- Engaging with national Bars and international Bar associations to facilitate the exchange of knowledge and the development of legal links and legal business overseas

3. To ensure joined-up support, we work within the wider ecosystem of the Bar alongside the Inns, circuits and specialist Bar associations, as well as with the Institute of Barristers' Clerks and the Legal Practice Management Association.

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<sup>1</sup> [Make Work Pay: leave for bereavement including pregnancy loss - GOV.UK](#)

4. As the General Council of the Bar, we are the approved regulator for all practising barristers in England and Wales. We delegate our statutory regulatory functions to the operationally independent Bar Standards Board (BSB) as required by the Legal Services Act 2007.

**Question 1 – Which relationships between the employee and the person who has passed away should qualify for the bereavement leave entitlement? Please select all that apply.**

5. This is a matter for Parliament and we have no comment. However, we do suggest that it will be important to have a simple, clear and certain description of the qualifying relationships ideally with a list that can be consulted by employees and employers alike rather than requiring subjective assessment in each case.

**Question 2 – [if yes to option E] Please describe the types of relationships or roles that should be eligible]**

6. –

**Question 3 – Should bereavement leave for pregnancy loss be restricted to the person who has physically experienced the pregnancy loss?**

7. This is a matter for Parliament and we have no comment. We observe however that many commentators in the field of law and psychology consider that, in many cases, there is also another parent to be considered who has not suffered physical effects of the pregnancy loss, but may have experienced other effects including, simply, grief, which may affect their ability to work. We would also note that the person who physically experiences the pregnancy loss may need practical support from the other parent, and this may require the other parent to take time off work. That may be particularly so where the pregnancy loss involves a medicalised situation.

**Question 4 – If your answer is no, who else should be able to take leave? Please select all that apply and/or suggest others:**

8. –

**Question 5 – Do you agree that all the types of pregnancy loss listed above by the Government should be eligible for bereavement leave?**

9. This is a matter for Parliament and we have no comment on its policy.

**Question 6 – Are there any additional forms of pregnancy loss that should be included?**

10. This is a matter for Parliament and we have no comment on its policy.

**Question 7 – How long should unpaid bereavement leave be?**

11. This is a matter for Parliament and we have no comment. However, the government will no doubt receive useful information from employers and employees alike, and hopefully also from representative organisations, as to the physical effects of pregnancy loss on women as well as the psychological effects on parents and those who might otherwise be affected by the loss, which are all to be weighed in the balance no doubt as against employer's needs and affordability. These are, however, squarely policy decisions as to which the Bar Council does not seek to trespass.

**Question 8 – Do you think employees should be offered the same amount of leave for all types of scenarios, and all relationships to the deceased, that you have selected above?**

12. Yes. We consider that legal certainty is important for the employee and the employer, particularly in circumstances where the employee is suffering a bereavement, and the employer is facing potential business disruption due to an employee taking leave. Giving different categories of people different leave entitlements may lead to confusion and uncertainty. It may also lead to complaints of unfair, differential and discriminatory treatment leading to litigation which is unlikely to be welcomed by employee or employer.

**Question 9- If you have selected "no", what types of bereavement might require different leave arrangements?**

13. –

**Question 10 – For bereavement leave, which of the following options for the leave entitlement to begin would be most appropriate?**

14. B. For the leave entitlement to be effective it must start from the date of knowledge of the pregnancy loss. Otherwise a woman who has a miscarriage but only discovers the fact of the miscarriage days later (or even weeks e.g. in a silent miscarriage) will have a smaller window in which to exercise her leave entitlement and we do not see why that should be the case.

**Question 11 – Which of the following options for taking Bereavement Leave would be most appropriate?**

15. We have no comment, other than to say that it is important that the right to bereavement leave be kept separate and distinct from any other rights and employee may have, including any other rights to time off work.

**Question 12 – Which of the following windows for taking Bereavement Leave would be most appropriate?**

16. This is a matter for Parliament and we have no comment, save that we refer to our answer to question 10.

**Question 13 – Do you think employees should be required to provide notice they intend to take bereavement leave to their employer?**

**I. If the leave is taken very soon after the bereavement (e.g. within the first few days or weeks)**

17. Yes. It is important for employers to understand the type of leave an employee is taking and to have notice that an employee will not be at work so that they can minimise any disruption caused.

18. We note that the period between when a bereavement occurs and when the employee is able to give notice is likely to be covered by sick leave.

**II. If the leave is taken at a later period (e.g. several weeks or months after the bereavement, such as on an anniversary):**

19. Yes. It is important for employers to understand the type of leave an employee is taking and to have notice that an employee will not be at work so that they can minimise any disruption caused.

**Question 13a – (For those that answered ‘yes’ to selected I): How much notice should employees be required to give to their employer that they intend to take bereavement leave straight away?**

20. A. We consider that it would be sensible and straight forward for the notice requirements to mirror those provided for under Parental Bereavement Leave.

**Question 13b - (For those that answered 'yes' to II): What is a reasonable notice period employees should give for leave taken at a later period?**

21. B. We consider that it would be sensible and straight forward for the notice requirements to mirror those provided for under Parental Bereavement Leave.

**Question 14 – If you think that notice should be given for bereavement leave, in what form should it be given?**

22. A. We consider that it would be sensible and straight forward for the notice requirements to mirror those provided for under Parental Bereavement Leave.

**Question 15 – For bereavement leave do you think that employees should be required to provide evidence of a bereavement to their employer?**

23. C. Imposing a requirement to provide evidence as a pre-condition for taking leave seems to impose an unnecessary administrative burden at an already difficult time. However, this must be balanced against the rights of the employer to ensure leave entitlements are not being misused. We would suggest that employers should have the right to ask for evidence but that a time period is specified for the provision of the evidence, for example within two weeks of the employee returning from leave. This would mitigate the burden on the employee at what is a difficult time and allow for practical considerations such as the time it may take to seek a letter from one's GP.

**Question 16 – If you think an employee should provide evidence, or an employer should be allowed to request it, in order to take bereavement leave, what evidence would it be reasonable for an employee to provide?**

24. The burden should not be overly onerous. We consider that a signed letter from a General Practitioner, Nurse / Advanced Nurse Practitioner, Physician Associate, Midwife or a Consultant or other junior doctor in secondary care who has treated the person supplying the evidence, should suffice.

**Question 17 - Do you have a view on timescales which an employee should be required to provide evidence?**

25. Please see our answer to question 15.

**Bar Council**

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For further information please contact:

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