

A-Z Guide

BEREAVEMENT LEAVE



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Use This Guide to Understand

- When an employee is entitled to bereavement leave
- How to pay an employee on bereavement leave
- What happens when an employee suffers a bereavement when on annual leave or due to start annual leave
- The option to provide extra bereavement leave by agreement
- What records must be kept
- What information must be provided to employees about their entitlements

What is Bereavement Leave?

Bereavement leave is provided under the Holidays Act 2003. The purpose of bereavement leave is to provide all employees with a minimum entitlement to paid leave in the event of the deaths of certain people.

This does not prevent you from providing an employee with enhanced or additional entitlements by agreement. However, it does render ineffective any provision in an employment agreement that excludes, restricts, or reduces an employee's entitlement to bereavement leave. An employee who has several part-time jobs will have separate entitlements with each employer.

This A-Z Guide deals with **Bereavement leave**. Separate **A-Z Guides** deal with:

- Annual Holidays
- Public Holidays
- Domestic Leave
- Sick Leave
- Leave Forms
- Parental Leave
- Holidays Act 2003

Entitlement to Bereavement Leave

An employee is entitled to bereavement leave after the employee has either:

- Completed 6 months' current continuous employment with the employer; or
- The employee has, over a period of 6 months, worked for the employer for:
 - At least an average of 10 hours a week during that period; and
 - No less than 1 hour in every week during that period or no less than 40 hours in every month during that period.

When an employee becomes entitled to bereavement leave, the employee is entitled to:

- Up to 3 days' bereavement leave on the death of the employee's
 - Spouse
 - Parent
 - Child
 - Brother or sister
 - Grandparent
 - Grandchild
 - Spouse's parent
- 1 days' bereavement leave on the death of any other person if the employer accepts, having regard to the following factors, that the employee has suffered a bereavement as a result of the death. The factors you must consider are:
 - The closeness of the association between the employee and the deceased person; and/or
 - Whether the employee has to take significant responsibility for all or any of the arrangements for the ceremonies relating to the death; and/or
 - Any cultural responsibilities of the employee in relation to the death.

End of a pregnancy by miscarriage or still-birth

From **30 March 2021**, if an employee's pregnancy ends by way of a miscarriage or stillbirth, the employee will be entitled to 3 days' bereavement leave. Furthermore, if another person's pregnancy ends by way of a miscarriage or stillbirth, an employee may be entitled to 3 days' bereavement leave, if the employee:

- is the person's spouse or partner; or
- is the person's former spouse or partner and would have been a biological parent of a child born as a result of the pregnancy; or
- had planned to be the primary carer of a child born as a result of the pregnancy (as described in section 7(1)(c) of the Parental Leave and Employment Protection Act 1987); or
- is the spouse or partner of a person who had planned to be the primary carer of a child born as a result of the pregnancy.

Miscarriage means the end of a pregnancy in the first 20 weeks of pregnancy other than as a result of abortion services provided in accordance with the Contraception, Sterilisation, and Abortion Act 1977.

Still-birth means a still-birth within the meaning of the Births, Deaths, Marriages, and Relationships Registration Act 1995 other than as a result of abortion services provided in accordance with the Contraception, Sterilisation, and Abortion Act 1977.

Who is an employee?

An employee is a person of any age employed by you to do any work for hire or reward under an employment agreement. This may include a homeworker and a person intending to work (someone who has accepted an offer of employment) but does not include a volunteer.

Who is a spouse?

Spouse means:

- The employee's husband or wife; or
- The employee's civil union or de facto partner (whether the partner is of the same or different sex).

Taking Bereavement Leave

Where an employee is entitled to 3 days' bereavement leave, the employee may take those days together or as separate days. An employee who intends to take bereavement leave must notify you of that intention as early as possible before they are due to start work on the day that is intended to be taken as bereavement leave. If that is not practicable, they must notify you as early as possible after the time they are due to start work.

Bereavement during or before annual holidays

If an employee is taking annual holidays and suffers a bereavement, then you must allow the employee to take bereavement leave for the relevant period. You must then "reinstate" the employee's annual holidays for the period they are taking bereavement leave.

If an employee is scheduled to take annual holidays but has not yet taken them when they suffer a bereavement, then you must allow the employee to take bereavement leave for the relevant period.

This applies to annual holidays that an employee takes in advance of entitlement as well as annual holidays that an employee takes after entitlement has arisen.

Refer to the **A-Z Guide on Annual Holidays** for more information.

Bereavement on a public holiday

If an employee is scheduled to work on a public holiday that falls on an otherwise working day and the employee suffers a bereavement, then the employee is entitled to take the public holiday that he or she would otherwise have taken or worked but for the bereavement.

Refer to the **A-Z Guide on Public Holidays** for more information.

Payment of Bereavement Leave

The payment of bereavement leave must occur in the pay that relates to the pay period in which the leave is taken. You must pay an employee an amount that is equivalent to the employee's relevant daily pay for the day concerned.

Relevant Daily Pay

Relevant daily pay means the amount of pay that the employee would have received had the employee worked on the day concerned. It includes:

- Productivity or incentive-based payments (including commission) if those payments would have otherwise been received on the day concerned; and
- Payments for overtime if those payments would have otherwise been received on the day concerned; and
- The cash value of any board or lodgings provided by the employer to the employee, unless the work done by the employer requires the employee to stay overnight in a place of residence other than the employee's usual place of residence, or if the board or lodgings are provided because of special circumstances.

If it is not possible or practicable to determine an employee's relevant daily pay because they have irregular work patterns, it is calculated by using the Average Daily Pay calculation:

Gross earnings for the last 52 calendar weeks

Average Daily Pay = _____

Number of whole or part days worked (including paid leave but excluding other days not worked)

Agreed rate of daily pay

You can specify a special rate of relevant daily pay in an employment agreement for the purpose of calculating payment for a public holiday, alternative holiday, sick leave, or bereavement leave if the rate is equal to, or greater than, what would otherwise be calculated under the two calculations above.

Gross earnings

Gross earnings means all the payments you are required to pay under the employment agreement. This includes:

- Salary or wages; and
- Allowances: (except non-taxable payments to reimburse the employee for any actual costs incurred by the employee related to their employment) and Payments for:
 - Annual holidays; and
 - Public holidays; and
 - Sick leave; and
 - Bereavement leave; and
- Productivity or incentive-based payments (including commission); and
- Overtime; and
- The cash value of any board or lodgings that are provided by the employer to the employee unless they are provided when:
 - The work done by the employee requires the employee to stay overnight in a residence other than the employee's usual place of residence; or
 - The board and lodgings are provided because of special circumstances; and
- The first week lost earnings payable under section 97, and Compensation Act 2001 or its predecessors.

Gross earnings do not include:

- Any discretionary payments; and
- Any payment of weekly compensation under the Accident Compensation Act 2001; and
- Any payment for absence provided for by the Volunteers Employment Protection Act 1973; and
- Any payment to reimburse an employee for costs incurred in or related to the employee's employment.

Gross earnings also exclude any payments made when cashing-up a portion of the statutory annual leave entitlement.

Discretionary payments

While discretionary payments are excluded from the definition of Gross Earnings, there has been some confusion over exactly what a discretionary payment is.

A 'discretionary payment' is defined as:

- A payment that the employer is not bound, by the employee's employment agreement, to pay the employee; but
- Does not include a payment that the employer is bound, by the employee's employment agreement, to pay the employee, even though:
 - The amount to be paid is not specified in that employment agreement and the employer may determine the amount to be paid; or
 - The employer is required under that employment agreement to make the payment only if certain conditions are met.

Holiday and Leave Records

The Holidays Act 2003 requires you to keep a holiday and leave record for each employee that records (amongst other things):

- The employee's name; and
- The date on which the employee's employment commenced; and
- The cash value of any board or lodgings that is included in ordinary weekly pay and relevant daily pay; and
- The dates on which any bereavement leave has been taken; and
- The amount of payment for any bereavement leave that has been taken; and
- The date of the termination of the employee's employment.

A holiday and leave record must be kept in writing in a manner that allows the information recorded to be easily accessed and provided in writing.

The information entered in an employee's holiday and leave record must be kept for not less than 6 years after the date on which the information is entered. However, EMA recommends that you keep the information for the duration of the employee's employment, and for not less than 6 years after the employee's employment ends.

It is best practice to keep a record of the person's death in connection with which the employee took bereavement leave. This will allow you to challenge an employee's claim of bereavement if the same person appears to have died more than once.

Refer to the **A-Z Guide on Records** and the **Holidays Act**, for more information.

Conclusion

This A-Z Guide has been designed to help you understand your obligations and rights in respect of bereavement leave entitlements. It has set out for you the requirements of the Holidays Act 2003 and guide you on recommended best practices where applicable.

If you have any questions that remain unanswered by this guide, need assistance with the drafting or redrafting of your employment agreements, or just want to talk to a real person about your bereavement leave issues, contact EMA Advice.

Remember

- Always call AdviceLine on 0800 300 362 to check you have the latest guide.
Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your situation.
- Use our AdviceLine employment advisors as a sounding board to test your views.

This guide is not comprehensive and should not be used as a substitute for professional advice.

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