



# Parental Bereavement Leave and Pay

## Frequently Asked Questions

April 2022

**THIS DOCUMENT IS FOR GUIDANCE ONLY.**

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## Introduction

The Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022 derived from a Private Members' Bill introduced to the Northern Ireland Assembly on 1<sup>st</sup> June 2021. The Bill was passed by the Assembly on 7<sup>th</sup> February 2022 and received Royal Assent on 21<sup>st</sup> March 2022. The new legislation will take effect on 6<sup>th</sup> April 2022 and will align provision in Northern Ireland with the Parental Bereavement (Leave and Pay) Act 2018 which came into force in Great Britain on 6<sup>th</sup> April 2020.

## Parental Bereavement Leave (PBL)

### Q. What is PBL?

**A.** PBL is an entitlement for bereaved parents to be absent from work for period of up to two weeks. This may be taken at any time within 56 weeks of the death of a child<sup>1</sup>. In the case of a stillbirth, the date of death is taken to be the date the child is stillborn.

An employee can choose to take either:

- One whole week
- Two consecutive weeks; or
- Two separate weeks at different times.

A week for these purposes is a seven-day period starting on any day.

The 56-week limit is designed to ensure that an employee has the right to take leave around the time of the anniversary of the child's death.

In circumstances where more than one child has died or been stillborn, the bereaved parent is entitled to a separate period of PBL in relation to each child.

The right applies in relation to children who die on or after **6<sup>th</sup> April 2022**.

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<sup>1</sup> A child is anyone under 18, and includes a baby that is stillborn after at least 24 weeks of pregnancy.

## Q. Who is entitled to PBL?

- A. PBL is **only** available to employees. It is **not available** to other workers, self-employed contractors, or agency workers (unless they are employees of the employment business).

There is no qualifying period; in other words, PBL is a “day one” employment right”. However, there is a qualifying service requirement to be eligible for Parental Bereavement Pay (PBP).

The main requirement for eligibility, besides employment status is whether the employee qualifies as a ‘bereaved parent’. The necessary relationship of the employee to the child is covered in the legislation as follows:

- Birth parents
- Adoptive parents
- Intended parents under a surrogacy arrangement
- The partner of a bereaved parent; and
- “Parents in fact”<sup>2</sup>.

## Q. How much notice must an employee give if they intend to take PBL?

- A. An employee who is intending to take PBL must give their employer notification of:
- The date of child's death
  - The date on which the employee chooses leave to start; and
  - Whether the employee intends that period to be one or two weeks' PBL.

There is no requirement for the notice to be in writing; giving the employer oral notice is sufficient to trigger the entitlement to leave.

The length of notice an employee must give to the employer depends on how long after the child's death PBL is due to start.

Where an employee wants to take PBL within the first 56 days (eight weeks) of the child's death, the notice period is minimal. The employee must notify the employer before the time they are due to start work on the day they want PBL to begin. If this is not practicable, the employee must notify the employer as soon as reasonably practicable.

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<sup>2</sup> Defined as someone who had day-to day responsibility for the child's care and in whose home the child lived, for a continuous period of at least four weeks up to the day they died. For example, this would cover most foster parents.

In circumstances where an employee has already started work but gives notice to begin PBL on the same day, then PBL officially starts the next day.

Where an employee wants to take PBL after the initial 56 days (in weeks 9 – 56) after the child's death, the employee must give at least seven days' notice of their intention to take PBL.

### **Q. Can an employee cancel or change a period of PBL?**

**A.** A period of PBL cannot be cancelled once it has started.

An employee can cancel a period of PBL that has **not** commenced by giving notice to their employer. In other words, for PBL that is due to start within the first 56 days (eight weeks) it can be cancelled by giving notice before the time they are due to start work on the day they previously notified that leave would begin. If this is not practicable, the employee must notify the employer as soon as reasonably practicable.

For leave that is due to start after the initial 56 days (in weeks 9-56) the employee can cancel it by giving notice at least one week (seven days) before the day the leave was due to begin.

Where an employee wants to change the start date of PBL rather than cancel it, they must give notice in accordance with the provisions outlined above. In practice, cancelling and rescheduling PBL would likely be done in one notification (which does not need to be in writing).

### **Q. What about an employee's terms and conditions during PBL?**

**A.** During a period of PBL, an employee is entitled to the same the terms and conditions of employment that would have applied but for their absence, except for terms and conditions regarding remuneration.

### **Q. Does an employee have the right to return to the same job after PBL?**

**A.** After PBL an employee's right to return to work is similar to the right that exists after paternity leave, maternity leave, adoption leave or shared parental leave.

In most cases it is a right to return to the same job in which the employee was employed before the absence.

However, this is modified where the PBL is taken consecutively with a period of:

- Ordinary Parental leave of more than four weeks; or
- Other statutory family-related leave (maternity, adoption or shared parental leave) taken in relation to the same child where the total amount of statutory leave taken in relation to that child is more than 26 weeks.

In these circumstances, the employee's right is to return to the same job or, if it is not reasonably practicable for the employer to permit the employee to return to that job, to another job which is both suitable and appropriate for the employee to do.

In either situation, the employee's seniority, pension and similar rights must be the same they would have been entitled to if the employee had not been absent, and no less favourable terms and conditions than those which would have applied if the employee had not been absent.

## **Q. What protection rights does an employee have that exercises their right to take PBL?**

**A.** An employee is entitled not to be subjected to a detriment by any act, or deliberate failure to act, by their employer because:

- They have taken, sought to take, or made use of the benefits of, PBL; or
- The employer believed that they were likely to take PBL.

If the employee is dismissed for one of the above reasons, the dismissal will be automatically unfair.

A redundancy dismissal will also be automatically unfair if the selection for redundancy was connected to any of the reasons outlined above.

It will also be unlawful for an employer to subject an employee to any detriment short of dismissal because of any of those reasons.

There is no qualifying period required for either a detriment claim or an automatic unfair dismissal to be made to an industrial tribunal in these circumstances.

## Q. How does PBL interact with maternity and paternity leave for stillbirths and neonatal deaths?

- A. In cases of stillbirth after 24 weeks of pregnancy, or the death of a child shortly after birth (neonatal death) employees retain their full entitlement to maternity leave and paternity leave (and pay), in addition to the right to PBL and PBP where certain eligibility criteria are met.

Maternity leave for the mother will start immediately upon the birth (if it has not already started) and can last for up to 52 weeks.

Paternity leave is available to the child's father or mother's partner providing they have been continuously employed by their employer for at least 26 weeks ending with the 15th week before the expected week of childbirth (EWC). One or two consecutive weeks' paternity leave can be taken, within 56 days of the birth, or if the birth is premature, within 56 days of the start of the EWC.

PBL can be taken after the end of maternity or paternity leave if desired.

If a miscarriage happens in the first 24 weeks of pregnancy, there is no entitlement to maternity or paternity leave or PBL.

## Parental Bereavement Pay (PBP)

### Q. What is PBP?

- A. **Employees and workers**<sup>3</sup> may be entitled to PBP if they meet the eligibility criteria and provide the relevant notifications and evidence.

PBP can be taken in periods of one week, two consecutive weeks, or two separate weeks and paid at the same rate as other statutory payments (being the minimum amount employers must pay eligible staff) such as paternity pay.

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<sup>3</sup> An "employee" for PBP purposes means a person who is gainfully employed either under a contract of service or in an office (including elective office) with earnings. This includes apprentices, and also anyone treated as an "employed earner" for NIC purposes (such as cleaners, most agency workers and members of the clergy). This means that some individuals who are not strictly "employees" as defined in the Employment Rights NI Order 1996 may still qualify for PBP even if they do not qualify for PBL, provided they serve the relevant notices and refrain from work during the week or two weeks in which PBP is being claimed.

The forthcoming regulations will set out the applicable rate of pay but, by way of indication, the corresponding pay entitlement in Great Britain is the same as other statutory payments. The position is expected to be the same in Northern Ireland, which would mean a weekly rate of £156.66 or 90 per cent of average weekly earnings, whichever is lower for 2022/23.

Where an employee has lost more than one child, PBP is payable in respect of each child.

## **Q. Who is eligible to receive PBP?**

**A.** To be eligible to receive PBP, the individual must:

- Be a “bereaved parent”, satisfying the conditions with regard to their relationship to the child or the child’s parent.
- Be an employee with the same employer for a continuous period of at least 26 weeks, on the Saturday before the child’s death.
- Remain in that employment at least until the day the child died.
- Have received normal weekly earnings for the period of eight weeks, ending with the relevant week that are not less than the lower earnings limit in force at the end of the relevant week (£123 for the 2022-2023 tax year).

## **Q. What notice and evidence is an employee required to give their employer?**

**A.** An employee must provide notice to their employer, specifying the week or weeks in which PBP is being claimed.

The notice does need to be in writing unless the employer requests it. A written notice may be sent by post or given in person. If the employer agrees, it may be given electronically, for example, to an email address specified by the employer.

An employee must give notice either before the start of the PBP period, or no later than 28 days after the first day of the period. If it is not reasonably practicable to give notice in that time it can be given as soon as reasonably practicable thereafter.

At the same time as giving notice, an employee must also provide a written statement specifying:

- Their name.
- The date of the child's death or stillbirth.
- A declaration that they meet one of the criteria of a "bereaved parent" – listed on Page 3 of this document.

## **Q. Can an employee cancel or change a period of PBP?**

**A.** Where an employee has given notice in advance of their dates for PBP, they may cancel (and, if they wish, subsequently rearrange) those dates. Where the pay period is due to start within the first 56 days (eight weeks) beginning with the child's death then the notice of cancellation can be given at any time up to the first day of the pay period. Where the pay period is due to start after the initial 56 days (in weeks 9-56) the notice of cancellation must be given a week before the pay period is due to begin.

## **Q. When is PBP not payable?**

**A.** PBP is not payable during any week in which:

- The employee is entitled to statutory sick pay (SSP), even for part of the week.
- The employee dies.
- The employee is detained in custody or imprisoned (unless subsequently released without charge, acquitted, or given a non-custodial or suspended sentence).

## **Q. What is the position if an employee works during a period of PBL?**

**A.** PBP is not available during any statutory pay week<sup>4</sup> in which the employee works for the employer under a contract of service.

PBP would also not be payable by an employer (employer A) if the employee works during the pay week for a non-liaible employer (employer B). Employer B is a non-liaible employer if the employee does not meet the service or earnings criteria in that employment. However, there is an exception if the employee was working for employer B in the week immediately preceding the child's death.

In these circumstances, employer A will still be liable even if the employee does any such work for employer B during a pay week. However, the employee must notify employer A (the employer who is paying PBP), within seven days of them first doing the work. The notification must be in writing if employer A requests.

Where an employee works for two or more employers who are all potentially liable for PBP, work done for any of these employers during a pay week does not affect entitlement to pay from any of the others. The legislation specifically only deals with work for non-liaible employers.

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<sup>4</sup> A "statutory pay week" means any seven-day period in which an employee has chosen to receive PBP.



**Q. What can an employer recover from HMRC?**

- A.** Statutory payments to employees for periods of family-related leave (such as statutory maternity pay) can be recovered by the employer from HMRC at a rate of 103% for small firms and large firms at 92%.

The forthcoming regulations will make similar provision in relation to PBP.