

Employees to have new right to take one week's carer's leave from 6 April 2024

The draft Carer's Leave Regulations 2024 were laid before Parliament on 11 December 2023. The Regulations set out the details of how the new carer's leave regime will operate. This detailed briefing explains how the new rights will work in practice.

What is the current position?

Currently, employees with caring responsibilities have no specific right to take leave in order to discharge their caring duties. They may be able to take other relevant forms of leave where they meet the eligibility requirements, such as unpaid time off for dependant emergencies or unpaid parental leave. Eligible employees may also be able to request temporary or permanent flexible working arrangements.

However, the charity [Carer's UK](#) has reported that many affected employees either do not identify themselves as carers, or are uncomfortable about raising personal matters at work. The result is that many carers struggle on in silence. These pressures have led one in ten carers to consider reducing their working hours or giving up work altogether, with over 200,000 people per year end up leaving the workplace.

To help address this issue, in September 2021, the Government

confirmed that a Day 1 employment right to carer's leave would be introduced. The Carer's Leave Act 2023 finally came into force on 24 May 2023. The Act provided the pathway to new rights and protections at work for employees who have caring responsibilities. It allowed for secondary legislation to be made which would set out the detail of how the new rights would work. The Carer's Leave Regulations 2024 were laid before Parliament on 11 December 2023. Together, the Act and the Regulations (if passed in their current form) will introduce the new carer's leave regime on 6 April 2024.

What is the right and who qualifies for it?

Employees will have a Day 1 right to take at least one week's unpaid carer's leave in any 12-month rolling period to provide or arrange care for a "dependant" who has a "long-term care need".

In this context, "dependant" means:

- a spouse, civil partner, child or parent of the employee;
- someone who lives in the same household as the employee (but not someone who is the employee's boarder, lodger, tenant, or employee);
- someone else who reasonably relies on the employee to provide or arrange care.

The dependant must also have a “long-term care need” – this means:

- an illness or injury (whether physical or mental) that requires, or is likely to require, at least three months of care;
- a disability under the Equality Act 2010; or
- care needs relating old age (although “old age” is not defined).

However, neither the Act nor the Regulations define what counts as “providing care” or “arranging care” and so this is left open to interpretation.

In cases where an employer provides a contractual right to carer’s leave, an employee is not entitled to exercise the new statutory right and the contractual right separately. However, they may take advantage of whichever right is more favourable to them in any particular respect.

How should the employee’s carer’s leave entitlement be calculated?

The right is to take one week's leave. This means that full-time employees are entitled to take up to five working days' leave. This should be pro-rated for part-time employees to reflect their working arrangement (e.g. an employee who worked a 60% FTE arrangement would be entitled to three days' leave).

In the event that the employee's working time varies, or they work in some weeks but not others, a "week's leave" must be calculated by dividing the total of the periods that the employee is normally required to work in a 12-month period by 52. Special rules will apply where the employee is in the first year of employment, which mean that this calculation cannot be performed.

How may carer's leave be taken?

Employees may take carer's leave in discontinuous blocks of at least half a working day. The leave can be taken at different times and need not be taken on consecutive days. Alternatively, the leave may be taken as a continuous block of one week's leave. For example:

- Akash's wife was in a bad car accident and sustained damage to her legs. She needs specialist physiotherapy once a week for three months and needs assistance to get to and from the appointments. If Akash works full-time, he could ask to take half a day's leave on up to ten separate occasions, or a full day's leave on up to five separate occasions, in order to assist his wife.

- Jessica's elderly father needs to move into a care home. Jessica may ask to take a week off for the purpose of visiting different care homes to identify a suitable home for her father and deal with the administration and practical issues associated with the move.

What are the notification requirements?

In order to qualify for carer's leave, employees must comply with the notice requirements set out in the Regulations.

- Employees are required to give their employer notice of their intention to take carer's leave. The notice must specify that they are entitled to take carer's leave. Employers cannot require employees to supply evidence of their entitlement to take carer's leave and, instead, must rely on the employee's self-certification.
- The notice must set out the days (or half days) that the employee wishes to take as leave. The notice may relate to all or part of an employee's overall carer's leave entitlement (but if it only relates to part of their entitlement, they will need to serve a further notice when they wish to take a further period of leave).

- The amount of notice that must be given to the employer differs depending on the amount of leave requested. For blocks of leave of 1.5 days or under, the employee must give at least three days' notice before the first period of leave specified in the notice. For blocks of leave of two days or more, the employee must give double the number days of leave specified in the notice before the first day of leave (e.g. two weeks' notice must be given in order to take a week's leave, or seven days' notice must be given in order to take 3.5 days' leave). The Regulations provide that an employer may choose to waive the requirement to give notice in this way.

The Regulations do not require the employee's notice to be given in writing. However, there is nothing to prevent employers from asking employees to provide such notices in writing, and it would be sensible to do so to avoid requests getting missed.

Can an employer postpone a period of carer's leave?

An employer may postpone a period of carer's leave where it reasonably considers that the operation of its business would be "unduly disrupted" if the employee took carer's leave on the employee's chosen date/s. In such circumstances, however, the employer must permit the employee to take the requested period of carer's leave at another time. This must be no later than one month from the first day of the leave requested by the employee and the employer is required to consult with the employee about the new start date (although there are no rules on what form this consultation should take).

Where an employer postpones a period of carer's leave, it must provide the employee with written notice of the same, stating the reason for the postponement and setting out the newly agreed dates for the leave. This notice must be given to the employee as soon as reasonably practicable and not later than seven days after the employee's notice was given to the employer or before the first day of leave requested by the employee (whichever is the earlier).

What rights does an employee have during and after a period of carer's leave?

During any period of carer's leave, the employee has the right to benefit from the existing terms and conditions of employment that would have applied but for the leave, save for terms and conditions about wages or salary. In other words, the leave is unpaid.

After any period of carer's leave, the employee has the right to return to the same job they were employed in immediately before the absence. The employee's seniority, pension and similar rights should be the same as they would have been had the employee not been absent. The employee's terms and conditions should be no less favourable than those that would have applied had the employee not been absent.

When can an employee complain to an Employment Tribunal?

An employee will have the right to complain to an Employment Tribunal and seek compensation where the employer has:

- subjected them to a detrimental act or omission because the employee took, sought to take, or made use of the benefits of, carer's leave, or because the employer believed the employee was likely to take carer's leave; and/or
- dismissed them (or selected them for redundancy) and the reason or principal reason for dismissal (or selection for redundancy) was because the employee took, sought to take, or made use of the benefits of, carer's leave, or because the employer believed the employee was likely to take carer's leave. Any such dismissal would be "automatically" unfair and the employee would not need to have two years' service in order to bring the claim. However, compensation would be capped in the usual way.

What steps should employers take now?

With just under three months to go until these new rights come into force, employers should finalise their approach to carer's leave now. You should consider the following issues:

- Who will have "ownership" of ensuring compliance with

the new rules in your business (including things like preparing a staff policy, training line managers and managing any record-keeping obligations)? How will you raise awareness of the new right among staff?

- Will you enhance the amount of carer's leave available? If so, to what amount?

- Will you offer paid leave? If so, how much?

- Will you extend the rights to non-employees on a voluntary basis (albeit that any individuals benefitting from this would not be able to bring relevant claims before an Employment Tribunal as they would fall outside the statutory scheme)?

- Will you relax the notice requirements provided for in the regulations? If so, what would be the minimum notice required?

[Carer's Leave Act 2023](#)

[The Carer's Leave Regulations 2024](#)

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