

New law offering workplace rights to those with caring responsibilities

The Carer's Leave Bill received Royal Assent on 24 May 2023, becoming the Carer's Leave Act 2023. The Act provides the pathway to new rights and protections at work for employees who have caring responsibilities. In this briefing, we outline where things currently stand and what steps employers should take next.

What is the background?

The charity, [Carers UK](#), estimates that there is a 50:50 chance of a person in the UK having caring responsibilities before the age of 50 – long before retirement age. Caring responsibilities can take many forms. It may include caring for an elderly relative, but it may cover other scenarios such as caring for a child who has a disability, or a partner injured in an accident. It can extend to caring for those suffering with mental health impairments (such as dementia or depression) as well as physical health impairments.

Carers UK reports that caring is often “invisible” in the workplace, with many not identifying themselves as carers or feeling uncomfortable about raising personal matters at work. The result is that many carers struggle on in silence, attempting to juggle their unpaid carer's role with work. These pressures have led one in ten carers to consider reducing their working hours or giving up work altogether and 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 “as soon as Parliamentary time allowed”. However, the legislation did not

materialise. Instead, the Government chose to back a Private Members' Bill – the Carer's Leave Bill – which would allow regulations to be made to provide new rights and protections for carers.

What rights and protections will carers be given?

The Carer's Leave Act 2023 provides for the introduction of new rights and protections for carers including:

- a Day 1 right for employees to take at least one week's unpaid carer's leave in any 12-month period to provide care for, or make arrangements to provide care for, a dependant who has a long-term care need. In this context, a "long-term care need" means:
 - an illness or injury (whether physical or mental) 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).
- a right to benefit from the existing terms and conditions of employment that would have applied but for the leave (apart from terms and conditions about remuneration);
- a right to return to work to a job of a kind to be prescribed by the regulations;
- a right to claim compensation from employers who unreasonably postpone, attempt to prevent or prevent the taking of carer's leave; and
- protection from detriment or dismissal as a result of having taken carer's leave.

However, the precise scope and mechanics of the new rights will be set out in separate regulations. For example, the regulations will address:

- how much leave an employee may take (it must be at least one week in any 12-month period);

- when and how leave may be taken (e.g. continuously or discontinuously);
- the amount and form of notice to be given to the employer;
- what records employers will need to keep;
- whether, and in what circumstances, an employer is able to postpone the leave; and
- which activities count as “providing care” or “making arrangements to provide care”.

The Government has said that the regulations will be laid in due course, although it is expected that this will not be before April 2024.

What steps should employers take now?

With just under a year before these new rights come into force, employers should devise their approach to carer’s leave now. Although employers will need to await the publication of the regulations to understand the finer detail of how the rights will work, employers should consider the following policy issues now:

- 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)?
- 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)?
- If the regulations provide that leave may only be taken continuously, will you take a more flexible approach and allow the employee to take it discontinuously (e.g. a

day at a time)?

- Will you relax any notice requirements provided for in the regulations? If so, what would be the minimum notice required? What form must it take (e.g. would verbal notice be sufficient)?

Employers should also remember that employees taking carer's leave will remain entitled to other relevant forms of leave 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.

In addition, where an employee is caring for someone with a disability, they may also have rights under the Equality Act 2010. Although such employees are not entitled to have reasonable adjustments made for them, they are protected from less favourable treatment because of their association with a disabled person. Further, where an apparently neutral workplace policy or practice disadvantages such an employee, this may amount to indirect disability discrimination by association, unless the employer is able to justify its approach.

[Carer's Leave Act 2023](#)

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