New right for employees to take carer’s leave to be introduced

[et_pb_section fb_built=”1″ _builder_version=”3.0.100″ background_image=”http://davidk423.sg-host.com/wp-content/uploads/2017/09/bdbf_final-stages-1-4-1.jpg” custom_padding=”|||” global_module=”2165″ saved_tabs=”all” global_colors_info=”{}”][et_pb_row _builder_version=”4.7.4″ min_height=”66.4px” custom_padding=”50px|||false|false” global_colors_info=”{}”][et_pb_column type=”4_4″ _builder_version=”3.25″ custom_padding=”|||” global_colors_info=”{}” custom_padding__hover=”|||”][et_pb_text _builder_version=”4.7.4″ _dynamic_attributes=”content” text_font=”|700|||||||” text_font_size=”27px” background_layout=”dark” custom_margin=”0px|||” custom_padding=”0px|||” global_colors_info=”{}”]@ET-DC@eyJkeW5hbWljIjp0cnVlLCJjb250ZW50IjoicG9zdF90aXRsZSIsInNldHRpbmdzIjp7ImJlZm9yZSI6IiIsImFmdGVyIjoiIn19@[/et_pb_text][et_pb_text _builder_version=”4.7.4″ _dynamic_attributes=”content” _module_preset=”default” background_layout=”dark” global_colors_info=”{}”]@ET-DC@eyJkeW5hbWljIjp0cnVlLCJjb250ZW50IjoicG9zdF9kYXRlIiwic2V0dGluZ3MiOnsiYmVmb3JlIjoiIiwiYWZ0ZXIiOiIiLCJkYXRlX2Zvcm1hdCI6ImRlZmF1bHQiLCJjdXN0b21fZGF0ZV9mb3JtYXQiOiIifX0=@[/et_pb_text][/et_pb_column][/et_pb_row][/et_pb_section][et_pb_section fb_built=”1″ admin_label=”section” _builder_version=”3.22.3″ global_colors_info=”{}”][et_pb_row admin_label=”row” _builder_version=”4.7.4″ background_size=”initial” background_position=”top_left” background_repeat=”repeat” global_colors_info=”{}”][et_pb_column type=”4_4″ _builder_version=”3.25″ custom_padding=”|||” global_colors_info=”{}”

custom_padding__hover="|||"][et_pb_text _builder_version="4.10.7" text_orientation="justified" hover_enabled="0" use_border_color="off" global_colors_info="{}" sticky_enabled="0"]

The Government has announced that a new right for employees to take up to one week of unpaid carer's leave per year will be introduced when Parliamentary time allows. In this briefing we explain how the new right will work and what steps employers should take to prepare.

Background

Plans to introduce a new right to carer's leave were first raised almost two years ago. The Queen's Speech in December 2019 outlined the Government's intention to bring forward an Employment Bill which would introduce a new right to unpaid carer's leave. Unsurprisingly, given the onset of the pandemic, the Employment Bill did not materialise. However, the Government did open a public consultation on the proposal – that consultation closed on 3 August 2020. Just over a year later, on 23 September 2021, the Government published its response to the consultation and has confirmed that the right will be introduced as soon as Parliamentary time allows. It is estimated that this right will benefit almost 2.5 million employees who have caring responsibilities.

Who will be able to take carer's leave?

All employees in England, Wales and Scotland will be entitled to take carer's leave from Day 1 of their employment. They will be entitled to take the leave to care for and/or make arrangements to provide care for a "dependant" who has a "long-term care need".

It is anticipated that the meaning of "dependant" here will align with its meaning in the context of other employment rights and will cover the following people:

- spouse / partner / civil partner (including same sex partners);
- child;
- parent;
- a person living with the employee as part of their household; and
- a person who relies on the employee for care.

In this context, a "long-term care need" will mean:

- a long-term physical or mental illness or injury;
- a disability under the Equality Act 2010; and/or
- care needs relating old age.

How may carer's leave be taken?

The entitlement is to one week's unpaid leave per year.

The one week's leave may be taken flexibly, for example as half days, full days or in a single block of one week. It is hoped that such flexibility will better meet the needs of those with caring responsibilities. In theory, this means that employers could have to deal with a higher number of leave requests than would be the case if the leave had to be taken in a single block. However, we suspect that, in practice, many carers wishing to take shorter blocks of leave (such as half days) will be in a position to plan in advance when they will need to take the leave and be able to make a block booking.

The right is to unpaid leave only. Although some respondents to the consultation were in favour of prescribing paid leave, the Government rejected this option on the basis that it wanted to ensure a "proportionate impact" on employers. However, employers may choose to offer paid leave if they wish.

What are the requirements for booking carer's leave?

An employee wishing to take carer's leave must give notice to their employer at least twice the length of the leave requested, plus one day. For example, if an employee wished to take Friday afternoon off as carer's leave, they would need to give notice by no later than the preceding Wednesday. An employer may refuse a particular request to take carer's leave where they consider this would unduly disrupt their business. However, the employee must be allowed to take the leave at another time.

There will be no requirement for employees to provide their employer with evidence of the need to take carer's leave – they will be able to self-certify. Should an employee falsely claim the leave then this would be a disciplinary matter (and, as a dishonesty offence, would probably justify immediate dismissal). Employers could introduce their own requirement for evidence to be provided, but consideration would have to be given to compliance with data protection laws (since the evidence may involve the disclosure of medical information relating to a third party).

Do eligible employees have any other rights?

Employees will be protected from detriment and/or dismissal for taking, or seeking to take, carer's leave. A dismissal for a reason connected to exercising the right to carer's leave will be automatically unfair.

Where eligible, employees taking carer's leave will remain entitled to take 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 flexible working arrangements (and proposals to make this a Day 1 employment right are currently under consultation).

What are the next steps?

The new right to carer's leave will be introduced when Parliamentary time allows. It is not yet clear when that will

be, but we anticipate that it will be in 2022.

In due course, employers should consider putting in place a written policy explaining what the right is and how employees may request leave. Consideration should be given to whether evidence of eligibility will be required and whether the right will be enhanced, for example, by offering additional and/or paid leave. Where a decision is made to offer paid leave, then this is information which must form part of the particulars of employment to be given to an employee on Day 1 of their employment (either in the employment contract or another document such as a Staff Handbook). Consideration should also be given to providing training to line managers, so that they understand how to respond to requests and how to avoid responding in a way which may be viewed as detrimental.

Carer's leave consultation: Government response

If you would like to discuss how to implement carer's leave within your organisation please contact Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.

[/et_pb_text][/et_pb_column][/et_pb_row][/et_pb_section][et_pb_section fb_built="1" _builder_version="3.26.6" global_colors_info="{}"][et_pb_row _builder_version="3.26.6" global_colors_info="{}"][et_pb_column type="4_4" _builder_version="3.26.6" global_colors_info="{}"][/et_pb_column][/et_pb_row][/et_pb_section]