

STATES OF JERSEY



PARENTAL BEREAVEMENT LEAVE

Lodged au Greffe on 28 June 2021
by Deputy S.M. Ahier of St. Helier
Earliest date for debate: 20 July 2021

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

To request the Minister for Social Security to bring forward proposals to the States, for debate prior to the end of March 2022, to grant all employees the right to two weeks of Parental Bereavement Leave following the death of a child under the age of 18, the costs of the scheme to be met fully by the States

DEPUTY S.M AHIER OF ST. HELIER

REPORT

BACKGROUND

This intended outcome of this proposition is a statutory entitlement to two weeks' paid leave for employees who lose a child ("**Parental Bereavement Leave**"), as was recently introduced in the UK under the Parental Bereavement Leave Regulations 2020 – known in the media as "Jack's Law". Its implementation in the UK was the result of a long-running campaign by Lucy Herd, whose son, Jack, tragically died a month before his second birthday (in 2010). Jack's father was only legally entitled, at the time of his son's death, to three days leave from work, one of which was to include the funeral.

Lucy Herd (Jack's mother) said: "In the immediate aftermath of a child dying, parents have to cope with their own loss, the grief of their wider family, including other children, as well as a vast amount of administrative paperwork and other arrangements. A sudden or accidental death may require a post-mortem or inquest, there is a funeral to arrange and there are many other organisations to contact, from schools to benefit offices."

This proposition seeks to achieve similar rights for employees in Jersey as are enjoyed by employees in the United Kingdom, thanks to the tireless efforts of Lucy Herd in memory of her son.

PARENTAL BEREAVEMENT LEAVE

A statutory entitlement to Parental Bereavement Leave would be exercisable by any employed parent who loses a child under the age of 18 on or after the date of commencement. It would establish a statutory minimum period of unpaid leave to be granted by employers and a salary equivalent benefit to be claimed from the Social Security fund, ensuring that grieving parents do not have to request or negotiate time off work in the tragedy's immediate aftermath, or face any negative fiscal consequences from doing so.

Precedent - Jack's Law (UK)

It is envisaged that Parental Bereavement Leave in Jersey will very closely mirror "Jack's Law" in the UK, in the following ways:

1. *Duration.* The new statutory entitlement to paid leave should be for a period of two weeks, to be taken either as a single block of two weeks' duration, or as two separate blocks of one week each. The full entitlement should be exercised within a period of 56 weeks from the date of the bereavement, regardless of whether the two weeks are taken consecutively.
2. *Eligibility.* The entitlement should apply regardless of whether the employee is a biological, adoptive, or a foster parent; or whether they are the partner of such a parent. It will also be a 'day-one' employment right, meaning that *all* employees will be eligible for Parental Bereavement Leave, regardless of how long they have worked for their employer.
3. *Evidentiary requirements.* The employer should not be able to make an employee's exercise of their right to Parental Bereavement Leave conditional

upon receipt of evidence of entitlement. The employee will have to give notice, but this need not be in writing; and the child's date of death will also have to be provided to the employer.

4. *Detriment and dismissal.* Employees will enjoy protection from detriment whilst on leave, meaning that an employer cannot treat them less favourably for having taken Parental Bereavement Leave, nor can the employee be dismissed because they have taken this leave.

It is the recommendation of this proposition that employees exercising their right to Parental Bereavement Leave should continue to receive full pay from the Social Security Fund. This would represent a departure from the UK legislation, which entitles those who exercise their right to such leave to the current statutory rate of £151.20 per week or 90% of average earnings (whichever is the lower). The justification for this will be outlined in the 'Financial implications' section below.

Another departure from the UK legislation is the case of stillbirths, which in Jersey are covered by the current Family Friendly legislation.

Rationale for legislation in Jersey

“This needs independent legislation[;] this is not a Family Friendly Policy[,] this is a family support policy to cover all working parents who lose a child under the age of 18, irrespective of how long an individual has been with their current employer.” - Lindsay Edwards-Thatcher

The implementation of Jack's Law in the United Kingdom has brought the issue of parental bereavement to the fore. There is currently no statutory right in Jersey to time off work specifically for parental bereavement, and the possibility of such leave was omitted from the Employment Forum's 2017 recommendation on family-friendly employment rights (presented to the States on 28 December as [R.140/2017](#)). The sensitivity of the issue has precluded certain means of collating data for the Assembly's consideration, such as directly contacting parents who have lost a child in Jersey. Therefore, this proposition will instead present, as evidence, testimonials and viewpoints sought from locals with appropriate expertise.

It would not be feasible, and would, indeed, be disproportionate (as aforementioned), to conduct large-scale research to evidence certain assumptions that support the case for legislation. These assumptions, broadly speaking, are: that the death of a child is a time of unimaginable grief and suffering for any parent; that an employee who has just lost a child will almost certainly require time off (to take care of, for example, funeral arrangements); that an employer has a duty of care towards any employee in such a situation; and that the government has a duty to ensure that no employee is treated with a lack of care in such an emotionally devastating situation. If these assumptions are accepted by the Assembly, then the only question that remains to be answered is: do all employers in the island of Jersey act with such compassion toward bereaved employees as to render legislation unnecessary, and/or an overreach on the part of the States?

Lindsay Edwards-Thatcher (solicitor at Thatcher Mackenzie) clarified what local companies currently offer bereaved employees as standard: “The current situation[,] that it is up to the individual's employment contract[,] is not satisfactory as that usually dictates 3 days compassionate leave”. Some employers might well go ‘above and

beyond' even what their company policy officially allows; however, some parents only discover that they do not work for such a company when they are experiencing every parent's worst nightmare. Jo Nash of Philip's Footprints (a local charity which supports parents after loss) gave a sobering example, some specifics of which have been redacted in order to protect the individual's identity: "Philip's Footprints would welcome a 2 week bereavement leave for parents of children up to the age of 18. Whilst many larger Jersey employers are in a position to grant 2 weeks compassionate leave, not all employers can and not all empathise... This was clearly evidenced in [year redacted] when [age redacted]-year-old [name of child redacted] died... and her father was asked to return to work after 5 days."

Whilst it is safe to assume that many local businesses have behaved with commendable compassion in such circumstances, the rationale for this proposition relies on the fact that any example to the contrary amounts to irrefutable evidence of inequity. Malcolm Ferey, Chief Executive of Citizens Advice Jersey (and Deputy Chair of the Employment Forum), arrived at the same conclusion: "The current provision for giving people sufficient time off work in these circumstances is, in my opinion, inadequate and the practice of discretionary extensions to compassionate leave can be viewed as inequitable. Any increase in the current provision for compassionate leave has to be welcomed".

Strategic Priorities

The Ministers' strategic priorities for this term of office were outlined in the [Common Strategic Policy 2018–2022](#). They are each examined (with the exception of the last, relating to our physical environment), in relation to Parental Bereavement Leave, below:

1. *We will put children first.* Some parents who lose a child will have other children at home, who will likely require considerable support from their parents during this tragic time.
2. *We will improve islanders' well-being and mental and physical health.* As discussed above, this paper assumes that Parental Bereavement Leave will be beneficial to the well-being of islanders who suffer the loss of a child, as well as to children who suffer the loss of a sibling.
3. *We will create a sustainable, vibrant economy and skilled local workforce for the future.* As the "Financial and manpower implications" section below will detail, the impact on our island's economy, from a cost point of view, would be minimal. The sustainability of our economy depends on Jersey remaining an attractive place to work, where employees are treated fairly.
4. *We will reduce income inequality and improve the standard of living.* No islander should have to incur a financial penalty (in the form of loss of wages) as a result of having lost a child. The current Death Grant, to which a parent is entitled upon bereavement, amounts to just £890.

FINANCIAL AND MANPOWER IMPLICATIONS

Maximum Number of Eligible Employees

The number of parents who might be eligible to claim Parental Bereavement Leave depends on the number of child deaths each year in Jersey, which stands at less than 10 for 2020 (and is likely to be substantially lower, however all such numbers are rounded to the nearest ten in order to avoid potential identification of individuals, further to the Data Protection (Jersey) law 2018). There were 17 recorded deaths of children under the age of 18 between the years 2015-2019 (therefore less than 5 per year).

If there are 10 child deaths in Jersey in 2021, and we also account for the fact that the biological, adoptive, or foster parents of the child may have separated, and that each parent may have a new partner, that yields an upper maximum of 40 people who might be entitled to claim this year. However, this assumption is still cautiously high, as for example, it does not account for the number of parents who have taken a career break to look after young children.

Statutory Pay Entitlement

Jack's Law entitles employees who exercise their right to Parental Bereavement Leave to 90% of their average weekly earnings, or £151.20 (whichever is the lower). This proposition would create an entitlement to take Parental Bereavement Leave at full pay, to be paid by the States of Jersey.

The evidence we have indicates that no more than 40 people per year will be eligible to claim their entitlement, under Parental Bereavement Leave, here in Jersey; whereas the maximum number of people who could claim their entitlement under Jack's Law in the UK¹ was estimated, in the UK Government's initial Impact Assessment, to be 20,300. However, the UK's Impact Assessment includes estimates of how many parents will have separated at the time of the child's death, whereas this Proposition engages in no such speculation. 40 people is therefore an upper maximum which does not consider widowed parents, for example, or parents who are not in work and therefore not eligible.

Capping statutory pay at £151.20 still therefore results in a potential burden, for the UK Government, of millions of pounds.² In Jersey, capping the pay entitlement under Parental Bereavement Leave at £1,000 per week would mean that the annual cost would not exceed £80,000; in fact, given that 40 is a strict upper maximum, the cost would likely amount to far less. However, such a cap seems redundant when it is considered that Jersey's average weekly earnings were, last year, £780 (a £10 increase on the previous year).

Non-Wage Costs

There are, of course, other business costs to consider outside of the payment of wages, such as familiarisation and implementation costs. However, given that less than 40 people per year will be eligible for Parental Bereavement Leave, it follows that the vast

¹ This does not mean a) that 100% of people with the requisite relationship to the deceased are in eligible employment; or b) that there will be 100% take-up among those eligible.

² The full Impact Assessment carried out by the UK Government in 2020 may be accessed here (the statutory pay cap was then £140.98):

https://www.legislation.gov.uk/ukia/2020/5/pdfs/ukia_20200005_en.pdf

majority of the island's employers will simply never have to deal with the implications of this legislation. Whereas larger firms with dedicated HR departments will likely tackle the issue straightaway, as a contingency (larger firms are more likely to be affected anyway, as they employ more people), many smaller companies will not attend to the issue unless they are, sadly, forced to by misfortune. These smaller businesses are therefore unlikely to incur any costs at all unless an employee takes Parental Bereavement Leave. Larger businesses will simply update their systems and incorporate this legislation like they would any other: this is, after all, why larger firms have Human Resources departments in the first place.

The most obvious cost to affected businesses (aside from wages) is going to be incurred if the affected employee must be (temporarily) replaced. Again, larger firms will be better prepared for this eventuality, as they have more people in the office who can provide cover in the event of an unplanned absence. Smaller businesses will naturally be the losers in that, if they have too few employees to adequately cope with unplanned absences, they might have to recruit temporary cover. As they will not be paying the affected employee during the period of bereavement leave, they would have sufficient funds to ensure temporary cover if needed.

Manpower Implications

There would be limited additional impact on Government manpower. Administrative repercussions would be constrained by the small number of individuals who would be seeking Parental Bereavement Leave.