



## Extending Paid Leave Without Setting an Unsustainable Precedent

By Jodi Schafer, SPHR, SHRM-SCP | HRM Services | [www.WorkWithHRM.com](http://www.WorkWithHRM.com)

December 2019

**QUESTION:** We are a large company with multiple locations and over 50 employees total. We comply with the Family Medical Leave Act (FMLA) and have had a staff member who has recently experienced a significant loss. Her husband passed away suddenly last week - he was only 40. She was off last year on FMLA for the birth of their first child and used all 12 of her weeks. Now her husband has passed away, almost a year to the date of their daughter's birthday. It's really rocked the entire office. We'd like to find a way for her to take additional time off (beyond her minimal PTO) where she could retain her pay now that she's down to one day. We want to help her out without setting a precedent that would not be sustainable. What are our options?

**ANSWER:** This is a tragic event and my heart goes out to her and her family. Remember you have the right to do what you want to as long as you are in compliance with the law. While FMLA does not allow you to extend FMLA-protected leave beyond the 12-week maximum, there is nothing that prevents you from providing this individual with additional non-FMLA designated time. In this case, bereavement leave may be the logical choice. It is a separate type of leave not covered under FMLA and often provided as a paid leave benefit (unlike FMLA).

So, do you have a bereavement policy and if so, does it allow for the extension of leave with or without pay? If you have a policy, you will need to follow it. You have, however, the right to amend that policy or create a new policy on bereavement if one doesn't already exist. Before you do write/amend the policy, I want you to consider the Public Relations (PR) impact of your decision. This is a valuable step ANYTIME you are making office rules, but especially during times of hardship. Think about the message you want to send to the current staff and future staff members. Think about the message you send to the community your company serves. Based on your question to me, it sounds like you want to find a way to help this employee out with (a) additional leave and (b) wage continuation.

You can mitigate the potential of setting precedent by adding language to your leave policy that states that *management has the right to provide additional time off with or without pay in cases of extreme circumstance.* (And I'd say this was an extreme circumstance.) You are setting the bar for when to allow for additional time with pay and it is a very high bar. This time needs to be documented as something other than FMLA, for example, "Bereavement Leave" as we have already discussed or perhaps, "Personal Leave with Pay." The circumstances surrounding this situation should also be documented.

To implement this policy, you will need to open the lines of communication with the bereaved staff person as soon as possible. Let her know that she is being placed on a bereavement/personal leave with pay and tell her the duration of this leave is flexible but it is also finite. She needs time off but she also needs to

get back to a routine. It is important for her to know that she is valued and welcomed back to work when she is ready. Consider offering to bring her back slowly, such as starting her off working one or two days a week and let her build up from there, before moving her back to full time.

The public relations aspect is often missed in our HR related decisions. The impact of negative stories about how you treat your staff is long reaching, but how does this positive message get out since you are not sending a press release? Tell only those who need to know your decision. This is confidential, between management and the bereaved employee. Yet, you may want to let your staff members know about the new/revised policy language and provide them a copy. Tell them that you cannot discuss the action taken on one employee with another employee, but let your staff connect the dots. This is one instance where the rumor mill can work in your favor and is the best tool to get the word out.