



BIRMINGHAM LAW SOCIETY

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Response to Carer's Leave Consultation

July 2020

Questions

Name:

Organisation (if applicable): Birmingham Law Society

Address: Suite 101, Cheltenham House, 14-16 Temple Street, Birmingham, B2 5BG

	Respondent type
<input checked="" type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local government
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe)

	If you are an employer, how would you classify your organisation?
<input type="checkbox"/>	Private sector
<input type="checkbox"/>	Public sector
<input type="checkbox"/>	Charity/Voluntary sector
<input type="checkbox"/>	Other (please specify)

	If you are an individual, are you:
<input type="checkbox"/>	Employed
<input type="checkbox"/>	Self-employed
<input type="checkbox"/>	Unemployed
<input type="checkbox"/>	Retired
<input type="checkbox"/>	Not looking for work
<input type="checkbox"/>	other

Existing employment rights and practices

Question 1 Have you or your employees used any of the below options to take time out of work to fulfil caring responsibilities? Please select all that apply.

- ☐ Yes, annual leave
- ☐ Yes, formal flexible working (meaning a change to contracted hours or location of work)
- ☐ Yes, time off for dependants (the statutory right to leave in emergencies)
- ☐ Yes, unpaid parental leave
- ☐ Yes, informal flexible working (such as an afternoon or morning off or occasional homeworking)
- ☐ Yes, other (such as special/compassionate leave granted by the employer)
- ☐ No

Please comment on your experience of these existing rights and practices in relation to care, including what specific caring needs the leave was used for:

N/A

Who would be eligible to take Carer's Leave?

Question 2: Do you agree that an employee should be able to take Carer's Leave to provide care for a dependant such as a spouse or civil partner; a child; a parent; a person who lives in the same household as the employee (other than as an employee, tenant, lodger or boarder); someone else who reasonably relies on the employee for care?

☒ Strongly agree ☐ Agree ☐ Neither agree nor disagree ☐ Disagree ☐ Strongly disagree ☐ Don't know

Please provide reasons for your answer: This would seem to cover the likely categories of people that an employee would care for and is familiar to employers and employees as it accords with the categories of dependants in relation to the time off for dependants.

Question 3: Are there other caring relationships that you think should be considered for inclusion within the scope of Carer's Leave? Comments: No

Question 4: Which conditions on care need do you believe are appropriate for Carer's Leave? Please select all which apply.

☐ Length of the condition. Comment on appropriate length: [Click here to enter text.](#)

☐ Conditions which automatically qualify as a disability under the Equality Act 2010 (Cancer, HIV and MS). Comments: [Click here to enter text.](#)

☐ Terminal illness. Comments: [Click here to enter text.](#)

☐ Other. Comments: No definition of condition should apply

Question 5: If you do not believe that any conditions about care need are appropriate, please explain why and comment on any other conditions which might be appropriate: We do not believe that it is helpful to have conditions on care. The emphasis should be on caring and trying to label a condition may be problematic and/or a source for dispute. The need for care may be short term e.g. following an accident or if we were to take current times as an example due to pandemics such as COVID19. Sometimes the need for care may not be on account of a condition per se but due to a lack of confidence which sometimes arises with age.

Question 6: Which qualifying period do you believe is appropriate for Carer's Leave. Please select one option.

- ☐ 6 months of continuous employment with their employer
- ☐ 3 months of continuous employment with their employer
- ☐ XA day one right (no qualifying period, but with appropriate notice period)
- ☐ Other, please specify [Click here to enter text.](#)

Please provide reasons for your answer: We consider that Carer's Leave should be available even where there is a short term care need. Given that such needs may often not be planned or expected it would seem inappropriate for any service to be required before the individual takes the leave. Further having this as a day one right mirrors the right to time off for dependants.

What the leave can be taken for

Question 7: Do you agree with the proposed reasons for taking Carer's Leave?

- ☐ Strongly agree ☒ Agree ☐ Neither agree nor disagree ☐ Disagree ☐ Strongly disagree ☐ Don't know

Please comment, including on whether Carer's Leave should be available to use to accompany someone to appointments: Depending on how it is defined, this may be covered by "providing personal support" in any event but we consider that the carer's leave definitions should be wide enough to allow a carer to use the leave to attend appointments with the individual. Not all appointments will be recurring and so a flexible working request to cover appointments may not be feasible.

Question 8: Are there any other reasons that you think should be included?

No

What the leave cannot be taken for

Question 9: Do you agree that childcare (other than where the child has a disability or other longer-term care need) should be out of scope for Carer's Leave?

- ☐ Strongly agree ☐ Agree ☐ Neither agree nor disagree ☒ Disagree ☐ Strongly disagree ☐ Don't know

Please provide reasons for your answer: Given our view that the leave should be available for short term care, we believe that it is just as applicable to short term care for children as it is for adults. For example, Carer's leave may be used to take the child for hospital appointment post operation and/or for medical investigations, it may be used post operation to change dressings, arrange medication just as it would for someone over 18. We believe that whether or not the right to Carer's leave applies should relate to the reason for the time off rather than the age of the person concerned.

Question 10. Do you agree that caring for a person with short-term care needs should be out of scope for Carer's Leave?

☐ Strongly agree ☐ Agree ☐ Neither agree nor disagree ☐ Disagree ☒ Strongly disagree ☐ Don't know

Please provide reasons for your answer: Short term care needs may arise due to unpredicted events such as a serious accident or the hospitalisation of incapacity of the primary carer. The length of time the care is for does not diminish the need for care at that particular point. If there is a short term care need it is unlikely to be suitable for an employee to put in a flexible working request to deal with the need for time off in these circumstances, bearing in mind that any flexible working change would be a permanent change. The right to time off for dependants may not be available as this would depend on how short term and unexpected the care needs are.

Question 11: Are there any other circumstances or activities which Carer's Leave should not be taken for?

No

Evidence

Question 12. Do you agree that an employee should in the first instance be able to self-certify their eligibility for Carer's Leave?

☐ Strongly agree ☒ Agree ☐ Neither agree nor disagree ☐ Disagree ☐ Strongly disagree ☐ Don't know

Please provide reasons for your answers: [Click here to enter text.](#)

Question 13: If you strongly agree or agree, how often do you think an employee should self-certify their eligibility for Carer's Leave?

☒ Each time they request the leave ☐ Once per year ☐ Other, please comment: [Click here to enter text.](#)

Please provide reasons for your answers: The employee may not be requesting leave for the care of the same person or for the same reason as any previous taken leave.

Question 14: Do you agree that an employer should be able to request further evidence if they are not satisfied with the self-certification?

☐ Strongly agree ☐ XAgree ☐ Neither agree nor disagree ☐ Disagree ☐ Strongly disagree ☐ Don't know

Please provide reasons for your answers This provides a balance of avoiding too much bureaucracy being required before an employee takes leave but does allow an employer to obtain further evidence if the genuineness of the request is at issue. This is in line with the parental leave legislation which allows for the employer to request evidence of the employee's parental responsibility and/or date of birth or adoption and the time off for dependants that does not prevent the employer from seeking further evidence and shared parental leave legislation that enables the employer to request a copy of the child's birth certificate. However we would suggest that the legislation makes clear that the employee is not obliged to provide further evidence where it is not reasonably practicable to do so.

Question 15: If agree or strongly agree, please describe what evidence could be provided to demonstrate:

- The need for care (of the person being cared for): This may be medical confirmation from a GP, nurse or other health practitioner that the employee has responsibility for the care of the individual in question.
- What activities the leave is used for: This may not always be feasible in advance, for example if the leave is to assist with shopping, providing personal support etc. However, we would propose that in the self-certificate the employee has to certify not only that the time off is for the care of an individual but for what particular activity the leave is being taken. Where the time off is to accompany the person being cared for to appointments, then evidence of an appointment may suffice

Question 16: Please comment on the key difficulties or challenges associated with providing and appropriately handling evidence, including data protection issues related to information about a person's health: It is recognised that it is likely to be difficult for employers to obtain health information from a GP, nurse etc about a named individual's health condition and there are data protection issues. Given our view as to who may avail themselves of Carer's leave we propose that evidence of a person's health is not required but instead evidence could be that the employee has attended the surgery on the date in question for the purposes of accompanying one of the surgery's patients. This does not require disclosure of names or medical information but simply amounts to confirmation of the employee's attendance. Confirmation of time off for shopping, visits to the bank etc similarly would not identify any health issues.

How the leave can be taken

Question 17: Please comment on the pros and cons for employees and employers, if the leave was available to take as:

A week of unpaid leave, available to take as a single block?

Pros for employees: Assist where the caring required is for a period of time

Cons for employees: This would not assist where the need is of a more recurring or intermittent nature which would not fall within the right to time off for dependents.

Pros for employers: Gives certainty as to when an employee is going to be off work

Cons for employers: May be more disruptive if it is at a peak time for the business or many other employees are also absent at that time

A week of unpaid leave, available to take as individual days?

Pros for employees: Gives the employee greater flexibility. If a week's leave is not required given the reason for the leave then the employee loses less pay.

Cons for employees: If the individual can elect to take the individual days consecutively then none.

Pros for employers: This may be easier to accommodate and be less disruptive for the business as the employee is off work for a shorter period of time. Employees may take less time off.

Cons for employers: More uncertainty as to when the employee may be absent

Requesting the leave

Question 18: Do you agree that an individual should be required to give their employer notice ahead of taking Carer's Leave?

☒ X Strongly agree ☐ Agree ☐ Neither agree nor disagree ☐ Disagree ☐ Strongly disagree ☐ Don't know

Please provide reasons for your answers: Some notice should be given to enable the employer to plan for the absence. The employee has the protection that if this is an emergency situation then the right to time off for dependants would apply. Although there should be a minimum period of notice, the employer and employee are still free to agree to shorter period if they so wish.

Question 19. If you strongly agree or agree, what do you think a reasonable notice period would be for a block of one week of Carer's Leave? Please select one:

☒ X 2 weeks

☐ 3 weeks

☐ Other, please specify:

Please provide reasons for your answers: This accords with the notice required for an employee to take time off for annual leave under WTR and so is already familiar to employer and employee. However, there may be some circumstances when Carer's Leave is urgently required and so there should be an exception where it is not reasonably practicable to provide the necessary notice.

Question 20. If you strongly agree or agree, what do you think a reasonable notice period would be for single day of Carer's Leave? Please select one:

☒ Less than 1 week, please specify: [Click here to enter text.](#)

☐ 1 week

☐ More than 1 week, please specify: [Click here to enter text.](#)

☐ Other, please specify: [Click here to enter text.](#)

Please provide reasons for your answers: This is consistent with the notice required to take annual leave under WTR. However, there may be some circumstances when Carer's Leave is urgently required and so there should be an exception where it is not reasonably practicable to provide the necessary notice

Question 21. Please comment on how employers would manage the process for requesting and recording the leave, and any associated issues, if it was:

☐ A week of unpaid leave, available to take as a single block? N/A

☐ A week of unpaid leave, available to take as individual days? N/A

The impact on employers

Question 22. What benefits for employers would arise from introducing a right to unpaid Carer's Leave? N/A

Question 23. What are the most significant costs for employers which would arise from a right to unpaid Carer's Leave? Please rank 1 – 4; with 1 as the most significant cost.

	5	4	3	2	1
The costs of administering the process (for example employees submitting requests to line managers/HR, asking for	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

additional information, HR recording details of leave taken)					
Re-organisation process/costs (reallocating work, costs of an absent employee etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Familiarisation costs (costs associated with understanding any new legislation)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The costs of employers voluntarily opting to pay for the leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please provide reasons for your answers and indicate if there are other significant costs: N/A

Thank you for your views on this consultation.

We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply ☒

At BEIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

☒ Yes

☐ No

Linden Thomas
President
21.07.20