

Time to rethink miscarriage bereavement leave in the UK

In March 2021, New Zealand's ruling Labour Party introduced 3 days of bereavement leave for women and their partners following miscarriage. In the UK Parliament, members of opposition parties have called for the UK to match New Zealand's policy but Boris Johnson indicated that the government has no intention of changing the law.^{1,2}

New Zealand's Holidays (Bereavement Leave for Miscarriage) Amendment Bill (No 2) classifies miscarriage as a relevant bereavement under the Holidays Act 2003. This change allows women and partners 3 days' paid leave, unlimited by gestational age, or proof of pregnancy. Terminations of pregnancy are excluded.

In the UK, the Parental Bereavement (Leave and Pay) Act 2020 introduced 2 weeks' statutory bereavement leave for pregnancy loss after 24 weeks (stillbirth), which extends to loss of a child up to 18 years. Parents are also entitled to take any maternity leave or shared parental leave planned prior to the stillbirth. However, if the pregnancy ends before 24 weeks (miscarriage), parents in the UK have no right to bereavement leave and are ineligible for maternity or paternity leave. Instead, women who miscarry before 24 weeks are entitled to sick leave with the additional protections afforded by the Equalities Act. Specifically, pregnancy-related sick leave cannot be used against women regarding redundancy or career progression. Women can self-certify for 7 days, after which medical certification is required. In practice, half of the women who miscarry are not aware of their employment rights.³

This policy creates an arbitrary cliff edge at 24 weeks. Women who miscarry at 23+6 weeks accumulate sick days while those who experience

stillbirth at 24+0 weeks have their loss acknowledged as 'bereavement' and are afforded weeks or months to recover. But it is unclear whether the New Zealand approach is the solution. The price of the New Zealand bill is difficult to estimate because of the unpredictable impact of leave on productivity and uncertainty around who would claim. Further confounding estimates, the number of miscarriages in the UK each year and the amount of sick leave taken for them are unknown. The UK government seems inclined against legislating to expose private companies to unknown costs for employee miscarriage.² However, within 2 or 3 years it will be possible to interpret data from New Zealand to estimate the impact of the policy.

Nevertheless, miscarriage loss should as far as possible be recognised as bereavement, not sickness, and many parents will need time off work afterwards.¹ Any policy change will involve balances and none will satisfy everybody. How many days should be included? Why exclude termination of pregnancy? What about women who cannot tell their employer they are trying to start a family?

One approach would be to introduce 1 week of statutory bereavement leave when miscarriage occurs after the 12-week scan in order to soften the unjustifiable cliff edge at 24 weeks. Miscarriage risk after 12 weeks is less than 1% so this policy would be highly targeted with a less uncertain price tag.⁴ This smaller cohort could receive statutory bereavement pay in keeping with the Parental Bereavement (Leave and Pay) Act, easing the burden off employers.

To be sure, the many individuals experiencing first-trimester miscarriage bereavement should be informed of their existing rights. Leave following first-trimester miscarriage should be prioritised when New Zealand has published data. But whatever approach is taken with regard to

early miscarriages, the cliff edge at 24 weeks is a stark injustice demanding remedy.

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