

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

AB 1949 (Low)  
Version: March 30, 2022  
Hearing Date: June 21, 2022  
Fiscal: Yes  
Urgency: No  
TSG

**SUBJECT**

Employees: bereavement leave

**DIGEST**

This bill provides specified California workers with up to five days of job-protected leave from work to grieve and to attend to logistical matters in the event of the death of a close family member, as defined.

**EXECUTIVE SUMMARY**

There is much to attend to when a close family member passes away. There is the emotional toll of course, which often renders people exhausted and heavily distracted. At a minimum, the surviving family members will usually participate in cultural or religious ceremonies – funerals, wakes, and memorial services, among many others – to honor the deceased. Often, close family members of the deceased also have to attend to a long list of logistical and administrative tasks as well: settling the deceased’s finances, sorting out the deceased’s legal affairs, notifying friends and associates, cleaning out the deceased’s residence, and distributing or disposing of the deceased’s earthly possessions. All of this takes time. This bill is intended to ensure that California workers have this time by establishing a right to job-protected bereavement leave. Employees with at least 30 days of service working at companies with five or more employees would be able to take up to five days off within three months of the death of a close family member.

The bill is sponsored by California Employment Lawyers Association, Crime Survivors for Safety & Justice, Equal Rights Advocates, and Legal Aid at Work. Support comes from organized labor and other workers’ rights advocates who laud the bill’s respect for worker’s humanity. Opposition comes from several business and trade associations who worries that the bill would be unmanageable for small business operators, in particular. The bill passed off of the Assembly Floor by a vote of 59-9. If the bill passes out of this Committee, it will next be heard in the Senate Labor, Public Employment and Retirement Committee.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Establishes the Department of Fair Employment and Housing (DFEH) to combat discrimination in housing and employment. Specifies that DFEH has the power to receive, investigate, conciliate, mediate, and prosecute complaints alleging practices made unlawful by the Fair Employment and Housing Act (FEHA). (Gov. Code §§ 12900-12930.)
- 2) Makes it an unlawful employment practice, under the California Family Rights Act (CFRA), for an employer to refuse to grant a request by a qualified employee to take up to a total of 12 workweeks in any 12-month period for family care and medical leave. Defines “family care and medical leave” for this provision to mean taking leave to care for a new child; to care for a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner who has a serious health condition; or to take leave because of the employee’s own serious health condition, as specified. (Gov. Code § 12945.2.)
- 3) Requires the DFEH to create a small employer family leave mediation pilot program for employers with between five and nineteen employees. Allows an employer or employee, within a specified time after DFEH has issued a right-to-sue notice to an employee, to request to participate in the mediation pilot project. Specifies that if either the employer or the employee requests mediation, as prescribed, the employee may not pursue a civil action until mediation is deemed complete, as specified. (Gov. Code § 12945.21.)
- 4) Grants public employees, with specified exceptions, up to three days of paid bereavement leave if the death occurs in California, and up to an additional two days, paid or unpaid, if the death occurred outside of the state. (Gov. Code § 19859.3.)

This bill:

- 1) Defines “employee” to mean a person employed by the employer for at least 30 days prior to the commencement of leave except for certain exempt state employees.
- 2) Defines “employer” to mean either of the following:
  - a) a person who employs five or more persons to perform services for a wage or salary; or
  - b) the state and any political or civil subdivision of the state, including, but not limited to, cities and counties.

- 3) Defines “family member” to mean a spouse or a child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law, as defined.
- 4) Provides that it is an unfair labor practice for an employer to refuse to grant an employee’s request to take up to five days of bereavement leave upon the death of a family member.
- 5) Provides that days of bereavement leave need not be consecutive and the leave must be taken within three months of the date of the death of the person prompting the need for the leave.
- 6) Authorizes an employee with no existing bereavement policy to take up to five unpaid days of bereavement leave. This leave may be substituted with vacation, personal leave, accrued and available sick leave, or compensatory time off, as specified.
- 7) Provides that an employer may request documentation, as specified, of the death of the family member and the employee shall provide that documentation within 30 days of the first day of the leave.
- 8) Prohibits an employer from refusing to hire, discharging, demoting, firing, suspending, expelling, or discriminating against an individual because of the following:
  - a) an individual’s exercise of the right to bereavement leave; or
  - b) an individual’s giving information or testimony as to their own bereavement leave, or another person's bereavement leave, in an inquiry or proceeding related to rights guaranteed under the bill.
- 9) Provides that it is an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any of the above rights.
- 10) Requires an employer to maintain the confidentiality of the employee requesting the leave and any related documents received regarding violations of this section.
- 11) Exempts from the bill's provisions an employee who is covered by a valid collective bargaining agreement if the agreement expressly provides for bereavement leave equivalent to that required in 6), above, and for premium and regular rate of pay, as specified.
- 12) Requires DFEH to add to its small employer family leave mediation pilot program violations of the above provisions.

## COMMENTS

### 1. Absence of bereavement leave requirements in the private sector

Federal and California law recognize that there are times in life when an employee must miss work in order to attend to the health and welfare of a family member. Of particular note, the California Family Rights Act (CFRA) allows employees to take up to 12 weeks of family leave to care for a newborn child or to care for family members suffering from a serious medical condition. (Gov. Code § 12945.2.) Similarly, the federal Family Medical Leave Act (FMLA) grants most employees the right to take up to 12 weeks unpaid time off work to care for a qualifying family member with a serious health condition. (29 U.S.C. § 2612.) However, under both CFRA and FMLA, an employee's right to take job-protected time off to care for a qualifying family member only applies while the qualifying family member is alive. There are no existing laws that allow private sectors employees to take time off to grieve or deal with the myriad and complex logistical matters that arise when a close family member passes away.

As a result, private employees are generally at the mercy of their employers when a family member dies. According to the U.S. Bureau of Labor Statistics, only 60 percent of full-time private workers in the United States have access to some form of bereavement leave through the terms of their employment contracts.<sup>1</sup> The percentage is even lower among part-time workers.<sup>2</sup> The remainder of the private work force must rely on the *ad hoc* generosity of their employers. Moreover, even where private employers do offer some form of time off in the event of a death in the family, the length of time given may be wholly inadequate to the circumstances. Wrapping up the affairs of a family member can be a complex and time-consuming endeavor.

### 2. The bereavement leave available under this bill

To give California workers greater assurance that they will have the time they need to mourn the loss of a close family member and put their affairs in order, this bill would establish a right to job-protected bereavement leave. To protect small businesses who must have everyone present in order to operate, the bill only covers employers with five or more workers. This is consistent with CFRA's scope as well. Employees would not be eligible immediately upon hire; they would have to accumulate 30 days of service first. Once they qualified for the leave, employees would be able to take up to five days off for the death of close family member, defined, as in CFRA, to mean a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law. In recognition of the fact that wrapping up the affairs of a family member cannot

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<sup>1</sup> Robert W. Van Giezen, "Paid leave in private industry over the past 20 years," *Beyond the Numbers: Pay & Benefits*, vol. 2, no. 18 (U.S. Bureau of Labor Statistics, August 2013), <https://www.bls.gov/opub/btn/volume-2/paid-leave-in-private-industry-over-the-past-20-years.htm> (as of Jun. 15, 2022).

<sup>2</sup> *Ibid.*

necessarily be done in a neat and orderly schedule, the bill specifies that the five days need not be taken consecutively, but a worker cannot drag things out indefinitely: the bill requires the leave to be taken within three months of the family member's passing.

The five days of job-protected bereavement leave guaranteed by this bill would be unpaid, but they would essentially layer over whatever paid leave policies the employer already offers. Thus, a worker whose employer currently provides two days of paid bereavement leave would be entitled to those two paid days plus an additional three unpaid days if this bill is enacted. In a similar way, the bill specifies that government workers, who are currently entitled to three days of paid bereavement leave (Gov. Code § 19859.3.), would be entitled to an additional two days of bereavement leave, but those additional days would be unpaid. Employees who did not want to take unpaid bereavement leave could also substitute other forms of paid time off for their bereavement leave.

None of these rules would apply in the case of workers who are covered by a collective bargaining agreement that already guarantees the workers at least the same amount of bereavement leave as they are entitled to under this bill and also meets other specified requirements, including a regular hourly wage that is at least 30 percent more than the state minimum wage.

### 3. Enforcement, remedies, and mediation for small businesses

The bill proposes to place the right to bereavement leave alongside CFRA in the Fair Employment and Housing Act (FEHA). (Gov. Code §§ 12900-12930.) An employer's failure to allow a worker to take bereavement leave as required would constitute an unlawful employment practice. So would any adverse action taken against an employee for exercising their right to bereavement leave. Aggrieved workers could bring administrative complaints about violations to DFEH for investigation and resolution. After filing their administrative complaint, employees would also have the option of requesting a right to sue letter from DFEH and initiating a complaint in court.

When employees complain to DFEH that an employer with between five and 19 employees has violated CFRA, the small business has the option of requesting that DFEH attempt to mediate the matter. (Gov. Code § 12945.21.) This bill makes the same mediation program available to small businesses in the event that an employee alleges a violation of the new bereavement leave law.

### 4. Confidentiality considerations

A death in the family can be a very personal and private matter. In light of that, the bill contains a provision requiring employers to keep information regarding an employee's request for bereavement leave confidential. Less explicably, the bill also states that employers should keep any information related to a violation of the bereavement leave

law confidential. It is not clear what private information this provision could possibly cover and it could serve as an excuse for an employer to cover up a violation. Accordingly, the author proposes to offer an amendment in Committee that would strike out that language.

#### 5. Proposed amendments

In order to address the issues set forth in the Comments, above, the author proposes to incorporate amendments into the bill that would:

- delete the provision purporting to require employers to keep violations confidential.

A mock-up of the amendments in context is attached to this analysis.

However, due to scheduling considerations, these amendments will not be taken in this Committee, but will instead be taken in the Senate Labor, Public Employment and Retirement Committee, assuming the bill advances.

#### 6. Arguments in support of the bill

According to the author:

This legislation will ensure workers are entitled to take job-protected, unpaid bereavement leave to mourn the loss of their immediate family member. AB 1949 guarantees workers up to 5 business days of unpaid leave. It does not affect existing collective bargaining agreements that provide for this minimum level of bereavement leave. No person should fear losing their job by taking time to grieve the death of their loved one. We cannot expect people to work at full productivity while they are mourning the death of a loved one, regardless of cause. AB 1949 will protect Californians during moments of immense hardship.

As sponsor of the bill, California Employment Lawyers Association, Crime Survivors for Safety & Justice, Equal Rights Advocates, and Legal Aid at Work collectively write:

[I]n 1968, when the Vietnam War death toll was at its peak, the U.S. government passed funeral leave for federal employees to take time off for the combat-related deaths of family or ‘any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.’ We must act with the same kind of compassion to protect the Californians who have lost a family member during this pandemic or for other reasons. Because no one worker should ever have to choose between their employment and grieving the loss of a loved one.

In support, the California Labor Federation writes:

Without adequate time to grieve the loss of a loved one, employees return to work grief-stricken and unable to concentrate. Their grief can manifest in emotional, mental, and physical ways. Employees should not have to force themselves to be at full productivity as they cope with the loss of a loved one. [...] California's workers are the backbone of our state. It is the moral obligation of companies to support their employees to the fullest extent, especially during these hard moments in life. AB 1949 will ensure that workers can take the time they need to grieve the death of their loved ones without the fear of losing their job.

7. Arguments in opposition to the bill

In opposition to the bill, the National Federation of Independent Business - California writes:

We acknowledge that AB 1949 has undergone numerous change from last year's AB 95 which makes the bill less onerous; however, California has a multitude of leaves available to employees. Many businesses do include unpaid leave on their own for employees to attend funerals and other related services. That said, the layering of various leaves makes it especially difficult for small businesses to comply and continue the operation of a small business. We support the rights of employers to provide bereavement leave on a voluntary basis. However, California simply cannot continue to burden employers with the thread of new mandates as small businesses continue to claw back after two years of COVID-instilled slowdowns.

In further opposition to the bill, the California Landscape Contractors Association writes:

If a private company does not have a bereavement policy in place when an employee needs time for bereavement, it is negotiated with their employee on a case-by-case basis. AB 1949 creates new mandated leave burdens for employers that will hit small business especially hard. Most employers either have bereavement policies in place or work it out with their employees when the need arises.

**SUPPORT**

California Employment Lawyers Association (sponsor)  
Crime Survivors for Safety & Justice (sponsor)  
Equal Rights Advocates (sponsor)  
Legal Aid at Work (sponsor)  
American Association of University Women – California  
American Federation of State, County, and Municipal Employees, AFL-CIO  
Association of California Caregiver Resource Centers  
Beloved Survivors Trauma Recovery Center  
Rob Bonta, Attorney General, State of California  
Broken By Violence  
Business and Professional Women of Nevada County  
California Conference Board of the Amalgamated Transit Union  
California Conference of Machinists  
California Federation of Teachers  
California Immigrant Policy Center  
California Labor Federation  
California Latinas for Reproductive Justice  
California School Employees Association  
California Teachers Association  
California Teamsters Public Affairs Council  
California Work & Family Coalition  
Caring Across Generations  
Church State Council  
Consumer Attorneys of California  
Crime Survivors for Safety and Justice  
Ella Baker Center for Human Rights  
Engineers & Scientists of California, IFPTE Local 20  
Friends Committee on Legislation of California  
Initiate Justice  
Integral Community Solutions Institute  
Jewish Center for Justice  
Los Angeles Alliance for a New Economy  
Los Angeles Best Babies Network  
National Association of Social Workers, California Chapter  
National Council of Jewish Women – Los Angeles  
National Women’s Political Caucus of California  
Nevada County Citizens for Choice  
Public Counsel  
Restaurant Opportunities Centers of California  
Sharp Healthcare  
Unite Here International Union, AFL-CIO  
United Communities for Peace



Utility Workers of America  
Women For: Orange County  
Working Partnerships USA  
Worksafe

**OPPOSITION**

California Landscape Contractors Association  
Construction Employers Association  
Housing Contractors of California  
National Federation of Independent Business - California

**RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation:

AB 95 (Low, 2021) would have required that employers with 25 or more employees provide up to ten business days of unpaid bereavement leave and those with fewer than 25 employees provide up to three days of unpaid bereavement leave. AB 95 died in the Assembly Appropriations Committee.

AB 2992 (Weber, Ch. 224, Stats. 2020) expanded leave protections for employees who are victims of a crime and to their immediate family members who are deceased as a direct result of a crime.

AB 2999 (Low, 2020) was substantially similar to AB 95. AB 2999 was never heard in the Senate Judiciary Committee due to restraints imposed by the COVID-19 pandemic.

AB 325 (Lowenthal, 2011) would have provided employees with up to three days of unpaid bereavement leave. In his message vetoing AB 325, Governor Brown wrote: "granting bereavement leave when a close family member dies is the moral and decent thing to do and I believe that the vast majority of employers voluntarily make such an accommodation for the loss of a loved one. I am also concerned that this measure adds a more far reaching private right to sue than is contained in related statutes."

**PRIOR VOTES:**

Assembly Floor (Ayes 59, Noes 9)  
Assembly Appropriations Committee (Ayes 13, Noes 3)  
Assembly Judiciary Committee (Ayes 9, Noes 0)  
Assembly Labor and Employment Committee (Ayes 6, Noes 1)

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**Amended Mock-up for 2021-2022 AB-1949 (Low (A))**

**Mock-up based on Version Number 98 - Amended Assembly 3/30/22**

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 12945.7 is added to the Government Code, to read:

**12945.7.** (a) As used in this section:

(1) (A) "Employee" means a person employed by the employer for at least 30 days prior to the commencement of the leave.

(B) "Employee" does not include a person who is covered by Section 19859.3.

(2) "Employer" means either of the following:

(A) A person who employs five or more persons to perform services for a wage or salary.

(B) The state and any political or civil subdivision of the state, including, but not limited to, cities and counties.

(3) "Family member" means a spouse or a child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law as defined in Section 12945.2.

(b) It shall be an unlawful employment practice for an employer to refuse to grant a request by any employee to take up to five days of bereavement leave upon the death of a family member.

(c) The days of bereavement leave need not be consecutive.

(d) The bereavement leave shall be completed within three months of the date of death of the family member.

(e) (1) The bereavement leave shall be taken pursuant to any existing bereavement leave policy of the employer.

(2) If there is no existing bereavement leave policy, the bereavement leave shall be unpaid, except that an employee may use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee.

(3) If an existing leave policy provides for less than five days of paid bereavement leave, the employee shall be entitled to no less than a total of five days of bereavement leave,

consisting of the number of days of paid leave under the existing policy and the remainder of days of leave unpaid, except that an employee may use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee.

(4) If an existing leave policy provides for less than five days of unpaid bereavement leave, the employee shall be entitled to no less than five days of unpaid bereavement leave, except that an employee may use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee.

(f) The employee, if requested by the employer, within 30 days of the first day of the leave, shall provide documentation of the death of the family member. As used in this subdivision, "documentation" includes, but is not limited to, a death certificate, a published obituary, or written verification of death, burial, or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution, or governmental agency.

(g) It shall be an unlawful employment practice for an employer to refuse to hire, or to discharge, demote, fine, suspend, expel, or discriminate against, an individual because of either of the following:

(1) An individual's exercise of the right to bereavement leave provided by subdivision (b).

(2) An individual's giving information or testimony as to their own bereavement leave, or another person's bereavement leave, in an inquiry or proceeding related to rights guaranteed under this section.

(h) It shall be an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

(i) The employer shall maintain the confidentiality of any employee requesting leave under this section. ~~An employer shall also maintain confidentiality relating to any information received regarding violations of this section.~~ Any documentation provided to the employer pursuant to subdivision (f) or subdivision (g) shall be maintained as confidential and shall not be disclosed except to internal personnel or counsel, as necessary, or as required by law.

(j) An employee's right to leave under this section shall be construed as separate and distinct from any right under Section 12945.2.

(k) The section does not apply to an employee who is covered by a valid collective bargaining agreement if the agreement expressly provides for bereavement leave equivalent to that required by this section and for the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all

overtime hours worked, where applicable, and a regular hourly rate of pay for those employees of not less than 30 percent above the state minimum wage.

**SEC. 2.** Section 12945.21 of the Government Code is amended to read:

**12945.21.** (a) The department shall create a small employer family leave mediation pilot program for employers with between 5 and 19 employees. Under the pilot program, when an employee requests an immediate right to sue alleging a violation of Section 12945.2 or Section 12945.7 by an employer having between 5 and 19 employees, the department shall notify the employee in writing of the requirement for mediation prior to filing a civil action if mediation is requested by the employer or employee. The employee shall contact the department's dispute resolution division prior to filing a civil action.

(b) (1) Under the pilot program, the employee shall contact the department's dispute resolution division prior to filing a civil action in the manner specified by the department. The employee shall also indicate whether they are requesting mediation.

(2) Upon contacting the dispute resolution division regarding the intent to pursue a legal action for a violation of Section 12945.2 or Section 12945.7 by an employer having between 5 and 19 employees, the department shall notify all named respondents of the alleged violation and the requirement for mediation, if mediation is requested by the employee or employer, in writing.

(3) The department shall terminate its activity if neither the employee nor the employer requests mediation within 30 days of receipt by all named respondents of the notification specified in paragraph (2).

(4) If the department receives a request for mediation from the employee or employer within 30 days of receipt by all named respondents of the notification specified in paragraph (2), the department shall initiate the mediation within 60 days of the department's receipt of the request or the receipt of the notification by all named respondents, whichever is later.

(5) Once the mediation has been initiated, no later than seven days before the mediation date, the mediator shall notify the employee of their right to request information pursuant to Sections 226 and 1198.5 of the Labor Code. The mediator shall also help facilitate any other reasonable requests for information that may be necessary for either party to present their claim in mediation.

(c) (1) The employee shall not pursue any civil action under Section 12945.2 or Section 12945.7 unless the mediation is not initiated by the department within the time period specified in subdivision (b) or until the mediation is complete or the mediation is deemed unsuccessful.

(2) The statute of limitations applicable to the employee's claim, including for all related claims under Section 12945.2 or Section 12945.7 and not under Section 12945.2 or Section 12945.7, shall be tolled from the date the employee contacts the department's

dispute resolution division regarding the intent to pursue a legal action until the mediation is complete or the mediation is deemed unsuccessful.

(d) (1) For purposes of this section, the following shall apply:

(2) A mediation is deemed complete when any of the following occur:

(A) Neither the employee nor the employer requests the mediation within 30 days of receipt by all named respondents of the notification or both parties agree not to participate in the mediation.

(B) The employer fails to respond to the notification or mediation request within 30 days of receipt.

(C) The department fails to initiate the mediation within 60 days of the department's receipt of the request for mediation or the receipt by all named respondents of the notification, whichever is later.

(D) The department notifies the parties that it has determined that further mediation would be fruitless, both parties agree that further mediation would be fruitless, one of the parties failed to submit information requested by the other party and deemed by the mediator to be reasonably necessary or fair for the other party to obtain, or the mediator determines that the core facts of the employee's complaint are unrelated to Section 12945.2 or Section 12945.7.

(3) A mediation is unsuccessful if the claim is not resolved within 30 days of the department's initiation of mediation, unless the department notifies the parties that it has determined more time is needed to make the mediation successful.

(e) A respondent or defendant in a civil action that did not receive a notification pursuant to subdivision (b) as a result of the employee's failure to contact the department's alternative dispute resolution division prior to filing a civil action, and who had between 5 and 19 employees at the time that the alleged violation occurred, shall, upon a timely request, be entitled to a stay of any pending civil action or arbitration until mediation is complete or is deemed unsuccessful.

(f) If a request for an immediate right to sue includes other alleged violations under this part, this section shall only apply to the claim alleging a violation of Section 12945.2 or Section 12945.7. Notwithstanding this subdivision, nothing in this section prohibits the parties from voluntarily choosing to mediate all alleged violations.

(g) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

**SEC. 3.** Section 19859.3 of the Government Code is amended to read:

**19859.3.** (a) Any permanent employee who is either excluded from the definition of state employee in subdivision (c) of Section 3513, or is a nonelected officer or employee of the executive branch of government who is not a member of the civil service, shall be granted bereavement leave with pay for the death of a person related by blood, adoption, or marriage, or any person residing in the immediate household of the employee at the time of death. The employee shall give advance notice to the employee's immediate supervisor and shall provide substantiation to support the request.

(b) For any one occurrence, the bereavement leave shall not exceed three days with pay. However, a request for two additional days of bereavement leave shall be granted, at the option of the employee, as either without pay or as a charge against any accrued sick leave credit.

(c) If additional bereavement leave is necessary, the employee may use accrued vacation, compensating time off, or take an authorized leave without pay, subject to the approval of the appointing power.

**SEC. 4.** The Legislature finds and declares that Section 1 of this act, which adds Section 12945.7 to the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The confidentiality provisions set forth in Section 1 further the need to protect the privacy rights of employees regarding the passing of a family member, and to protect the enforcement process related to violations of the bereavement provisions. These limitations are needed in order to strike the proper balance between the privacy interests of the employee and the employee's family, and the public's right to access.