

Employment E-Brief No 79

STATUTORY RIGHT TO TAKE TIME OFF

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The Employment Rights Act 1996 provides the right to take time off in certain scenarios. One of those is the right to take time off "to take action which is necessary in consequence of the death of a dependant".

In the case of Foster v Cartwright Black the EAT has clarified that taking sickness absence as a result of grief caused following a bereavement is not time off to take action in consequence of a death of a dependant. The EAT said the provision only extended to matters such as time off to make funeral arrangements, registering the death and applying for probate.

This meant that the Applicant in the case, who took time off work, on medical advice, for grief following a bereavement could not claim unfair dismissal when she was dismissed. She lacked one year's service and so could not bring the claim under normal unfair dismissal rules. Due to that, she sought to bring the claim under the breach of the statutory right to take time off - a right which does not require one year's service - but such time off was not covered.

20th August 2004

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