

## Employment E-Brief No 90

### TIME OFF FOR DEPENDANTS - A CLARIFICATION

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The EAT has recently held that time taken off by an employee following the death of her mother, for which she had sick notes, did not fall within the rules on time off for dependants (the particular provision in question being the right to time off to take action which is necessary in consequence of the death of a dependant). The EAT made it clear that the relevant provisions had not intended to introduce the right to compassionate leave as a result of bereavement.

The facts of the case are sad and involve an individual who, following the death of her father, was given a number of days paid bereavement leave. A few months later her mother also died. She was again given a few days bereavement leave.

After the expiry of that leave, she went sick for two weeks. Her doctor certified her absence as being related to the bereavement. There followed a further two weeks, also certified by her doctor, for the same reasons. She was then dismissed.

Following that, she unsuccessfully claimed automatic unfair dismissal - on the ground that the reason for her dismissal was that she had taken time off for dependants. She appealed to the EAT.

It was found the right to take time off for dependants was subject to a requirement that the time off be necessary to deal with an emergency. This was not limited to the making of actual funeral arrangements, and it could include other arrangements, such as registering the death, etc. However, the key issue was whether the time off was necessary to take action in consequence of the death. The EAT recognised that although the death of a dependant undoubtedly produces sadness, the right to time off for dependants was not intended to introduce a right to compassionate leave as a result of bereavement.

While this case might seem very employer friendly, employers ought not rely on it to dismiss staff in similar circumstances. It is highly likely that, although not automatically unfair, such treatment of an individual would be considered unfair on general dismissal principles.

2<sup>nd</sup> February 2005