

Unequal Treatment Of Workers With Caregiving Responsibilities

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On May 23, 2007, the Equal Employment Opportunity Commission (“EEOC”) issued enforcement guidance to address an emerging discrimination issue in the 21st century workplace: the unequal treatment of workers with caregiving responsibilities. The EEOC is focusing on this issue because “changing workplace demographics, including women’s increased participation in the labor force, have created the potential for greater discrimination against working parents and others with caregiving responsibilities, such as eldercare – all of which may vary by gender, race, or ethnicity.” In addition, more claims of discrimination against caregivers are being initiated and pursued.

In its guidance document, the EEOC provides the following examples of situations where treating caregivers unequally can be discriminatory:

- Sex-based stereotyping and subjective decision-making regarding working mothers;
- Assumptions about pregnant workers;
- Unreasonably refusing to accommodate employees with caregiver responsibilities;
- Discrimination against working fathers;
- Stereotyping based on association with an individual with a disability; and
- Hostile work environments affecting caregivers.

The EEOC underscores that the guidance document is not intended to create a new protected class. Rather, unequal treatment of employees who are caregivers may violate existing laws prohibiting discrimination, such as Title VII of the Civil Rights Act. Discrimination against caregivers may also be a violation of the ADA, which prohibits discrimination based on a worker’s association with an individual with a disability.

Here are some practical tips for employers and businesses to follow, or at least to be aware of, to avoid liability for caregiver discrimination:

- Educate supervisors about what constitutes illegal discrimination (including sexual and/or other illegal stereotypes that may negatively affect caregiving employees) and incorporate training into existing diversity training;
- Make sure that personnel actions are based on clear, nondiscriminatory business reasons and objective evidence of employee performance, not assumptions or stereotypes;

- Examine hiring, attendance, leave, compensation, and promotion policies to make sure they are free from biased standards (e.g., attendance policies that prohibit new employees from taking leave during their first year of employment have been found to have a disparate impact on women because they are more likely to need leave if they become pregnant);
- Examine the types of employees who fill specific roles in your company (e.g., are the top ranks filled only with non-caregivers? Why?).

Useful links:

[EEOC press release](#)

[EEOC “frequently asked questions” about the unlawful disparate treatment of caregiver-employees](#)

[EEOC Enforcement Guidance No. 915.002 \(full text\)](#)

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