

EEOC Issues Guidance on Discrimination Against Employees With Caregiving Responsibilities

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Employers today are faced with more employees who are the primary caregivers within their families. A new “sandwich generation” of employees struggles to balance work responsibilities with the need to care for both their children and aging parents. As a result, employers constantly face managing a workplace affected by employee absences and performance issues resulting from these increased caregiving obligations. Based upon its belief that employers often perceive such caregivers as being less competent and less committed to their jobs than other workers, the federal Equal Employment Opportunity Commission (“EEOC”) recently issued new enforcement guidance on how it believes disparate treatment of employees who care for children, parents or other family members may violate federal employment laws.

Federal employment laws do not expressly prohibit discrimination based upon caregiver status. However, circumstances arise where an employment action affecting a caregiver may constitute unlawful discrimination on the basis of a class protected under either Title VII of the Civil Rights Act of 1964 or the Americans with Disabilities Act of 1990. The recently issued EEOC guidance provides examples and advice to assist employers in assessing whether their employment actions affecting caregivers are lawful.

The most prevalent type of discrimination relating to caregivers is usually based upon stereotypical assumptions about a mother’s ability or willingness to perform work duties. For example, a new mother who is not offered a promotion because her employer assumes that her caregiver responsibilities will make her less dependable in the future is the victim of unlawful sex-based discrimination. In addition, an employer who acts benevolently and refuses to give a new client to a working mother because of a belief that mothers should spend less time at work and more time with their families has violated Title VII by applying sex-based stereotypes.

Despite its position, the EEOC specifically stated that the new guidance does not create a new special category entitled to protection.

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Because Title VII does not prohibit discrimination based solely on caregiver status, an employer does not generally violate the Title VII if it treats both working mothers and working fathers in a similar unfavorable manner. Similarly, employment decisions do not generally violate Title VII if they are based upon an employee's actual work performance (even if that performance is attributable to caregiving obligations) rather than assumptions or stereotypes.

Male caregivers are also vulnerable to discrimination based on gender stereotypes. For example, employers may deny male caregivers' requests for leave while granting similar requests made by female caregivers because of the perception that women are (or should be) the primary caregivers in most families. While Title VII allows employers to grant leave specifically to women for limited childbirth and related medical conditions, it does not permit employers to treat men and women differently with regard to other types of leave. In addition, employers need to be aware of any obligations they may have to employees under the Family and Medical Leave Act or other laws affecting leave for employees.

Lesson: Employers are encouraged to review the EEOC's new guidance, which may be found at www.remboltludtke.com/asp/legalnews5.asp. Employers need to review their policies and procedures to make sure that all employees have an equal opportunity to balance work and family responsibilities. Though neither Title VII nor the ADA prohibit discrimination against caregivers, employers need to examine their past employment decisions for any such patterns, and take steps to insure that future employment decisions are made with evidence of an employee's actual work performance or qualifications rather than unlawful assumptions or motives.

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