

# Caregivers At Work:

## New EEOC Guidelines Should Prompt Company Action

**W**ith changing demographics and a landscape ripe for increased litigation, the Equal Employment Opportunity Commission (EEOC) is focusing on how work/life balance issues can result in unlawful discrimination. In fact, earlier this year, the EEOC issued enforcement guidance on the treatment of workers with caregiving responsibilities ([www.eeoc.gov/policy/docs/caregiving.html](http://www.eeoc.gov/policy/docs/caregiving.html)). The guidance should signal companies to further train managers on avoiding discriminatory pitfalls, review current policies and implement best practices geared to helping employees balance work/life issues.



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### Time for Change

In issuing the guidance, the EEOC predicted that changing U.S. demographics will increase the potential for unlawful discrimination against caregivers. The demographics are telling. The U.S. Department of Labor (DOL) reports that working women made up 59 percent of the workforce in 2005, compared to 43 percent in 1970, yet women continue to bear primary care responsibilities for others outside the workforce. Indeed, according to the DOL, working women spend an average of between .99 and 2.17 hours per day caring for household members, depending on the age of children at home.

At the same time, working men are spending more time caring for others, up from 2.5 hours per week in 1965 to 7 hours per week in 2003, according to sources cited by the EEOC in its recent enforcement guidance. Furthermore, as baby boomers age, additional time is being devoted to care for the elderly.

Adding to these changing demographics is the increased number of hours people work, with many facing a tough juggling act. The U.S. Bureau of Labor Statistics reported that married couples with children

under 18 worked a combined 66 hours per week in 2000, compared to 55 in 1969. Moreover, according to the Bureau, women with at least a bachelor's degree, who worked full-time, averaged 42.2 hours of work per week in 2005, and women with a professional or doctoral degree averaged about 45 hours of work per week.

Against this background, the EEOC heard testimony from experts on employer best practices for balancing work/life issues. The result: enforcement guidance was issued to assist in identifying and preventing unlawful discrimination against caregivers.

### EEOC Guidance

The enforcement guidance clarifies existing federal law; it does not create a new protected class for caregivers. Indeed, the federal anti-discrimination laws do not prohibit discrimination against workers based solely on caregiver status. Unlawful discrimination occurs, however, when a caregiver is subjected to disparate treatment based on a protected status, such as sex or race under Title VII of the Civil Rights Act of 1964, or association with a disabled individual under the Americans with Disabilities Act.

Notably, the enforcement guidance is just that—guidance. It does not have the force and effect of law. It assists EEOC staff in investigating and prosecuting discrimination complaints, in addition to providing guidance to employers and employees about preventing and addressing caregiving responsibility discrimination issues in the workplace.

### Defining Caregiver Discrimination

The EEOC guidance focuses on single and married working mothers, pregnant women, working women of color, working fathers, grandparents and others with caregiving responsibilities. Particular emphasis is put on low wage earners and part-time employees, who are especially vulnerable to caregiving responsibility discrimination.

In the guidance, the EEOC highlights examples of



unlawful discrimination. For instance, employers cannot discriminate against women with young children by denying them opportunities to participate in executive training programs while granting such opportunities to men with young children. This type of unlawful discrimination may be due to unlawful stereotyping -- believing that a mother with young children will not want to, or should not, work long hours or travel by virtue of the fact that she is the primary household caregiver.

Moreover, the guidance demonstrates that men can be victims of caregiver responsibility discrimination. For example, it is unlawful to deny a man six months of unpaid leave to care for his newborn child, where a collective bargaining agreement provides for such leave and if such leave is granted for a woman with a newborn child.

The EEOC also illustrates in its guidance that denying a job to an applicant whose wife has a disability is unlawful, if it is based on the employer's assumption that the applicant would have to use frequent leave and arrive late due to his responsibilities caring for his wife.

### Responsible Steps for Prevention

**Training.** Now is the time to review EEO training materials to ensure they cover caregiving responsibility discrimination.

Companies must be particularly vigilant because caregiving responsibility discrimination may be subtle and frequently is based on lingering stereotypes or personal views of family values. Accordingly, training should be geared to having employees, especially managers, challenge their own perceptions of the workplace. Examples, such as the ones discussed in the EEOC enforcement guidance, should be utilized to illustrate scenarios that managers confront and how their mishandling of them can constitute caregiving responsibility discrimination.

**Checks and balances.** Review policies and procedures to confirm nondiscriminatory criteria are utilized in hiring, promotion, leave and termination decisions. Also be careful when taking disciplinary action against caregivers. While employers may take adverse action against a caregiver, even if the poor performance is the direct result of the employee's families' responsibilities, check that the real reason for the action is not an unlawful bias or stereotype.

**Best practices.** When companies offer resources

to help employees with caregiving responsibilities, employees generally have better attendance rates, more focus on their work and view their employers more positively. These conditions in turn reduce the likelihood of employee lawsuits.

Helpful resources may include referral programs for local daycare providers, on-site childcare centers, vouchers for back-up care, transportation assistance for elderly family members, and parenting and elderly care workshops. Also consider other valuable resources responding to caregiver needs, such as job-sharing/flex-time, telecommuting, paid sick leave for caregiving responsibilities and compressed workweeks.

It's certain the EEOC will be taking a closer look at caregiving responsibility discrimination complaints. Companies can prepare now by finding ways to identify and correct unfounded biases, and balance employers' and employees' workplace needs. Doing so should reduce litigation exposure and liability, and ultimately promote a more productive, caring workforce.

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