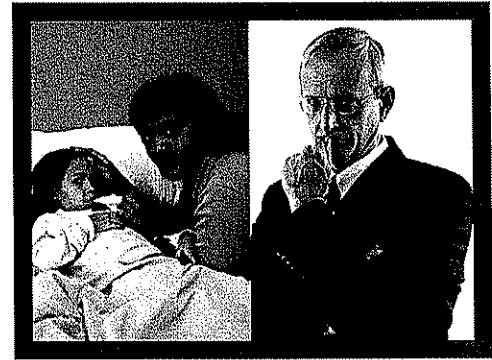


# FAMILY RESPONSIBILITY DISCRIMINATION: THE PARENT TRAP

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In May 2007, the Equal Employment Opportunity Commission (EEOC) issued Enforcement Guidance regarding the “Unlawful Disparate Treatment of Workers with Caregiving Responsibilities.” This is also referred to as Family Responsibility Discrimination (FRD). The subject has received considerable coverage in the mainstream media, including *The New York Times*, *The Washington Post*, *The Wall Street Journal*, and others. The press has reported alarming statistics, such as the fact that since the mid-1990s, the number of workers who have sued their employers for alleged mistreatment on account of family responsibilities has increased by more than 300 percent.

The stories tug at the heartstrings: mother with severely ill premature baby takes leave to care for her infant; husband stays home to care for wife with life-threatening illness; worker takes leave to care for mother with Alzheimer’s – all ruthlessly fired by their employer. What’s the right way to handle these situations? How do you avoid becoming an employee’s star witness in her soon-to-be-filed family discrimination lawsuit? Read more to learn about navigating this developing area of the law.

## FRD, the EEOC, and you

What do you need to know about Family Responsibility Discrimination? First of all, it is not a newly-created protected class. No employee is owed special treatment just because they have a family member to care for, no matter how unfortunate the circumstances. Instead, it is an area which overlaps with already existing laws such as Title VII, Family Medical Leave Act (FMLA), American Disabilities Act (ADA) or state laws. It’s also getting increasing attention from the EEOC, the agency charged with enforcing discrimination statutes already on the books. The newly-issued guidance from the EEOC shows that it is focusing on this issue, so employers should be too.

The concept of FRD is not designed to root out all that is unfair or unfortunate in the workplace. A mother who is absent an excessive amount of time from the office in violation of office policy is not protected just because the reason for her absence was to care for a sick child. FRD is

instead designed to provide a remedy for subtle gender biases that may adversely affect caregivers (primarily women) in the workplace.

These biases often are reflected by managers’ off-handed comments. For instance, the interviewer who, upon learning that the female applicant has three children, asks “Three children! How do I know you’re not going to run home every time one of them gets the sniffles?” Or the manager who says at the baby shower for one of his employees “OK, this is the last pregnancy in the department, right?”

Few would deny the fact that most women shoulder the majority of childcare responsibilities, whether they are employed outside the home or not. So isn’t it reasonable for managers to be more concerned about childcare-related absences for its female employees? Maybe. But to make employment-related decisions based on this assumption about a woman’s caregiving responsibilities may run afoul of Title VII.

## Taking Baby Steps

What should you do to make sure your company doesn’t wind up defending this type of claim?

1. Review the EEOC’s guidance (available at [www.eeoc.gov/policy/docs/caregiving.html](http://www.eeoc.gov/policy/docs/caregiving.html)). If nothing else, review just the examples, which are very helpful and will help you to recognize these issues in your own workplace.
2. Review your company’s policies, especially leave policies, to ensure they are gender-neutral and don’t reflect biases about caregiving responsibilities.
3. Consider family-friendly policies (flex-time, etc.).
4. Train your managers to recognize these issues.

By taking these steps, your company should be able to avoid being the subject of a Family Responsibility Discrimination claim.

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