

EEOC Meeting Suggests Increased Enforcement of “Caregiver” Discrimination

by Ramon Rivera on March 5, 2012

The Equal Employment Opportunity Commission recently held a public meeting to address discrimination against pregnant women and workers with caregiving responsibilities, characterizing these forms of disparate treatment as a “significant problem” in the workplace. As the meeting clearly suggests increased enforcement may be coming, we strongly recommend that New York and New Jersey employers review their policies and procedures in these two areas.

While employers are generally familiar with the laws regarding pregnancy discrimination, many are less familiar with what constitutes unlawful treatment of a working parent or other caregiver. While federal law does not expressly prohibit discrimination based solely on parental or other caregiver status, employers can still get into trouble if an employee with caregiving responsibilities is subjected to discrimination based on a protected characteristic such as sex or race.

In 2007, the EEOC issued enforcement guidance on unlawful disparate treatment of workers with caregiving responsibilities. Below are several examples of circumstances under which discrimination against a caregiver might violate federal employment laws:

- Treating male caregivers more favorably than female caregivers: Denying women with young children an employment opportunity that is available to men with young children.
- Sex-based stereotyping of working women: Reassigning a woman to less desirable projects based on the assumption that, as a new mother, she will be less committed to her job.
- Subjective decision-making: Lowering subjective evaluations of a female employee’s work performance (for example, after she becomes the primary caregiver of her grandchildren), despite the absence of an actual decline in work performance.
- Assumptions about pregnant workers: Limiting a pregnant worker’s job duties based on pregnancy-related stereotypes.
- Discrimination against working fathers: Denying a male caregiver leave to care for an infant under circumstances where such leave would be granted to a female caregiver.
- Discrimination against women of color: Reassigning a Latina worker to a lower-paying position after she becomes pregnant.

- Stereotyping based on association with an individual with a disability: Refusing to hire a worker who is a single parent of a child with a disability based on the assumption that caregiving responsibilities will make the worker unreliable.

The Message for Employers

According to the EEOC, the number of caregiver discrimination charges filed has climbed steadily over the past five years. During that time, the commission has received approximately 712 charges alleging unlawful caregiver discrimination and obtained approximately \$796,000 in monetary benefits for employees. Given the EEOC's increased scrutiny in this area and the increasing number of employees juggling family and work responsibilities, we expect the number of caregiver discrimination claims will continue to rise. Therefore, we recommend that all employers speak with an employment attorney to verify that they are taking the proper steps to ensure compliance.