



EEOC Lists Employer Best Practices for Supporting Caregiver Employees

By Vanessa R. Waldref

On April 22, 2009, the Equal Employment Opportunity Commission (EEOC) issued a set of “best practices” for employers that address employees with caregiving responsibilities.¹ These best practices are not binding on employers, but are “proactive measures that go beyond federal non-discrimination requirements.” The EEOC suggests that following these best practices may help prevent claims that an employer discriminates against caregivers in a way that violates Title VII, the ADA, or other federal and state employment laws.

“Caregiver” is defined generally as someone who cares for spouses, children, parents, elderly family members and relatives with disabilities. These best practices supplement EEOC guidance from 2007 that explained the circumstances under which discrimination against workers with caregiving responsibilities might constitute discrimination based on sex, disability, or other characteristics protected by federal employment discrimination laws.²

AVOIDING DISCRIMINATION CLAIMS AND STEREOTYPING

Because more women than men generally undertake caregiving responsibilities, discrimination based on caregiving responsibilities may violate Title VII, which prohibits discrimination based on sex.

Furthermore, recent amendments to the Americans with Disabilities Act of 1990, which became effective January 1, 2009, now explicitly prohibit discrimination based on an employee’s association with an individual with a disability.³ Again, because women are more likely than men to take on caregiving roles (which include caring for someone who may have a condition that qualifies as a disability under the ADA), discrimination based on caregiving responsibilities may violate the ADA or Title VII.

The EEOC’s recent technical assistance document recommends a set of best practices for employers to follow when dealing with employees with caregiving

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duties. The EEOC suggests that employers adopt policies that describe the stereotypes or biases about caregivers that might result in unlawful conduct, such as assuming that female workers' caretaking responsibilities will interfere with their ability to succeed in a fast-paced environment, or assuming that male workers do not have significant caregiving responsibilities. Additionally, the EEOC recommends that the employer provide employees assurances that they will not be subject to employer retaliation for reporting incidents of perceived bias for caregiving responsibilities.

RECRUITMENT, HIRING, AND PROMOTION

The EEOC recommends that employers review their employment policies and practices to determine whether they disadvantage workers with caregiving responsibilities. Employers should also reiterate to all employees who participate in interviews or performance reviews to not ask questions about the applicant's or employee's children, plans to start a family, pregnancy, or other caregiving-related issues.

Employers should also ensure that job openings, acting positions, and promotions are communicated to all eligible employees regardless of caregiving responsibilities. The best practices mention "benevolent" (but still unlawful) stereotyping, such as when an employer may not offer a qualified employee a promotion because he believes that a working mother would not want to relocate to another city or take on additional travel responsibilities. Such an assumption may violate Title VII.

GENERAL BEST PRACTICES

Additional best practices that the EEOC recommends:

- Maintain and enforce employment policies and handbook provisions that expressly prohibit discrimination and retaliation against caregivers.
- Ensure that managers at all levels are aware of, and comply with, the organization's work-life policies.
- Implement hiring practices that do not explicitly exclude applicants with caregiving duties or have the effect of excluding applicants with caregiving responsibilities.
- Offer flexible working schedules, telecommuting, and part-time work opportunities to allow workers with caregiving responsibilities the flexibility to perform them.
- Monitor compensation practices and performance appraisal systems for patterns of potential discrimination against caregivers.
- Provide reasonable personal or sick leave above that required by the Family and Medical Leave Act (FMLA) to allow flexibility for workers with caregiving responsibilities.

This newsletter addresses recent employment law developments. Because of its generality, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.

Editor: Lloyd W. Aubry, Jr., (415) 268-6558

San Francisco

Lloyd W. Aubry, Jr. (415) 268-6558
laubry@mofocom

James E. Boddy, Jr. (415) 268-7081
jboddy@mofocom

Karen Kubin (415) 268-6168
kkubin@mofocom

Linda E. Shostak (415) 268-7202
lshostak@mofocom

Eric A. Tate (415) 268-6915
etate@mofocom

Palo Alto

Christine E. Lyon (650) 813-5770
clyon@mofocom

David J. Murphy (650) 813-5945
dmurphy@mofocom

Raymond L. Wheeler (650) 813-5656
rwheeler@mofocom

Tom E. Wilson (650) 813-5604
twilson@mofocom

Los Angeles

Timothy F. Ryan (213) 892-5388
tryan@mofocom

Janie F. Schulman (213) 892-5393
jschulman@mofocom

New York

Miriam H. Wugmeister (212) 506-7213
mwugmeister@mofocom

Washington, D.C./Northern Virginia

Daniel P. Westman (703) 760-7795
dwestman@mofocom

San Diego

Rick Bergstrom (858) 720-5143
rbergstrom@mofocom

Craig A. Schloss (858) 720-5134
cschloss@mofocom

Denver

Steven M. Kaufmann (303) 592-2236
skaufmann@mofocom

London

Ann Bevitt 44-20-7896-5841
abevitt@mofocom

If you wish to change an address, add a subscriber, or comment on this newsletter, please write to:

Wende Arrollado
Morrison & Foerster LLP
12531 High Bluff Drive, Suite 100
San Diego, California 92130
warrollado@mofocom

www.mofocom

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- In general, foster an employment atmosphere that respects and honors those with caregiving responsibilities.

Because employers are not required to follow these best practices to comply with federal discrimination laws, employers may implement them at their discretion. Implementing some or all of them, however, will help prevent claims that an employer discriminates against caregivers in a way that violates Title VII, the ADA, or other federal employment laws. In addition, many state and local laws prohibit discrimination based on parental or familial status, which also may occur when an employer discriminates against a caregiver. Employers may wish to consider adopting some or all of these best practices. ■

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¹ EEOC, Employer Best Practices for Workers with Caregiving Responsibilities, available at <http://www.eeoc.gov/policy/docs/caregiver-best-practices.html>.

² EEOC, Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities, <http://www.eeoc.gov/policy/docs/caregiving.html>.

³ 42 U.S.C. § 12101 et seq. (2009).

Vanessa R. Waldref is an associate in our Washington, D.C. office and can be contacted at (202) 887-8776 or vwaldref@mofocom.