

EEOC Addresses Caregiver Discrimination

On Wednesday, the EEOC issued a document entitled “Employer Best Practices for Workers with Caregiving Responsibilities.” Two years prior, the EEOC published an Enforcement Guidance on “Unlawful Disparate Treatment of Workers with Caregiving Responsibilities.” (Links to both documents are provided below.) The EEOC’s decision to revisit the topic shows that it is focused on the issue, and that means EEOC enforcement actions regarding caregiver discrimination likely will increase. Further, with the corresponding publicity, one should assume there will be an increase in charges and private lawsuits focused on caregiver discrimination. Smart HR professionals and employment lawyers, thus, should familiarize themselves with the legal requirements in this area.

So, what is caregiver discrimination? The EEOC Guidance explains, “Title VII does not permit employers to treat female workers less favorably merely on the gender-based assumption that a particular female will assume caretaking responsibilities or that a female worker’s caretaker responsibilities will interfere with her work performance.” Those concepts recently played out in *Chadwick v. Wellpoint, Inc.*, No. 08-1685, 2009 WL 782822 (1st Cir. Mar. 26, 2009). There, the plaintiff was a mother of an eleven-year-old and six-year-old triplets. She applied for a promotion, and she had solid internal performance reviews. When interviewed, the decision-makers discovered the plaintiff had young triplets and volunteered if they were in her position, they “would feel overwhelmed.” Ultimately, another employee was given the promotion, and Chadwick sued, claiming that she was denied the promotion based on the “sex-based stereotype that mothers, particularly those with young children, neglect their work duties in favor of their presumed childcare obligations.” The court agreed that this could state a sex discrimination claim, and allowed the plaintiff to go forward to trial.

To protect against these types of lawsuits, the EEOC’s Best Practices attempts to articulate not just the “bare minimum” required, but purports to help employers develop family-friendly policies that may curb caregiver discrimination. We have reviewed these “Best Practices,” and note that in some instances they go far beyond any legal requirements. Indeed, they seem to import affirmative action concepts – going so far as to recommend advertising available positions in parenting magazines. Other Best Practices, however, serve as a helpful reminder to employers that they should not make assumptions that motherhood itself (or other caregiving responsibility) prevents an employee from taking on additional responsibilities. Employers need to make sure that management does not prejudge the impact of caregiver responsibilities, particularly eliminating stereotypes surrounding motherhood.

To review the EEOC’s Employer Best Practices for Workers with Caregiving Responsibilities, see <http://www.eeoc.gov/policy/docs/caregiver-best-practices.html>. To review the EEOC’s 2007 Enforcement Guidance on “Unlawful Disparate Treatment of Workers with Caregiving Responsibilities,” see <http://www.eeoc.gov/policy/docs/caregiving.html>.

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