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Family responsibility discrimination: When work and family care duties clash

By JERRILYN T. MALANA
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Family responsibility discrimination (FRD) is the latest theory of discrimination to hit the workplace. Simply stated, FRD is discrimination against employees based on their obligations to care for family members.

FRD claims have skyrocketed by nearly 400 percent over the last decade as reported in an eye-opening study conducted by the Center for WorkLife Law at the University of California Hastings College of the Law in 2006. Notably, FRD cases have not been limited to employees who have childcare responsibilities at home. FRD claims have also been brought by employees who care for aging parents, or ill or disabled family members.

Not surprisingly, the study by the Center for WorkLife Law indicated that the vast majority of FRD victims are women. However, men have also experienced discrimination in the workplace due to family caregiving responsibilities.

EEOC focuses on FRD

Employers should pay close attention to the dramatic increase in FRD claims. If the mere threat of a lawsuit is not enough motivation to do so, then perhaps the U.S. Equal Employment Opportunity Commission's (EEOC) recent focus on FRD will change this mindset.

On April 17, the EEOC held a meeting where experts were invited to testify on work-life balance issues and how these issues intersect with federal anti-discrimination employment laws. The EEOC plans to hold another meeting to address best practices for employers to prevent FRD claims.

With the EEOC shining a spotlight on FRD, employers can reasonably expect the EEOC to pursue administrative charges of discrimination with added vigor when such charges include allegations of family caregiver discrimination.



Jerrilyn Malana

'Family caregiver' status not a new protected category

In FRD cases, it is key to understand that an employee's status as a "family caregiver" is not a new protected category under federal anti-discrimination laws such as Title VII of the Civil Rights Act, or the California Fair Employment and Housing Act (FEHA). Allegations of FRD fall within a broad scope of claims alleged under various legal theories based upon the particular circumstances of the employee-caregiver.

For example, FRD claims have been brought under various federal statutes including Title VII, Family and Medical Leave Act, Pregnancy Discrimination Act, Americans with Disabilities Act and Equal Pay Act. FRD claims have also been alleged under state anti-discrimination statutes such as California's FEHA and the California Family Rights Act. Common law causes of action have also been alleged in FRD cases, such as wrongful termination in violation of public policy, or intentional infliction of emotional distress.

Negative assumptions, stereotypes give rise to FRD claims

Most FRD claims arise because of a supervisor's negative assumptions or stereotypes that a family caregiver is less committed to his or her job, or less able to perform

his or her job duties because of family caregiving duties.

A new mother might be passed over for a lucrative job assignment because her supervisor believes that she would not welcome expanded job duties, and would want to spend more time at home with her children. Or a father is not promoted because he is viewed as less ambitious, since he often leaves early to attend his children's extracurricular activities, or to care for an elderly parent.

Legal landmines exist where supervisors make inappropriate comments regarding an employee's family caregiver status. FRD claims may also arise from conduct that demonstrates a negative bias against caregivers such as a refusal to hire, inequitable pay or conditions of employment, lack of promotion or termination. While the legal theories and circumstances giving rise to FRD cases differ significantly, the common denominator in these cases is that the alleged victim is treated differently from colleagues at work because of his or her caregiving responsibilities at home.

Stemming the tide

To stem the tide of FRD claims, employers should examine their human resources policies and practices to ensure a family-friendly workplace. In doing so, employers may seek to adopt flex-time, part-time or telecommuting policies, or extended leave policies.

Employers should also ensure that policies are applied appropriately and uniformly. For litigation avoidance, supervisors should be trained on what constitutes FRD, how to avoid such claims, how to respond appropriately, and to partner with the company's human resources team to remedy issues. Additionally, all employees should be trained on appropriate conduct when working with employees who have family caregiving responsibilities, and how to report caregiver discrimination.

Employers may also wish to augment the company's existing policy

on anti-discrimination to include family caregiving as a prohibited basis for discrimination. In light of California's mandatory sexual harassment training for employers with 50 or more employees, incorporating family caregiving into the anti-harassment training is an efficient approach to address caregiver discrimination. However, every employer, regardless of size, is well advised to train its entire work force on anti-discrimination and anti-harassment by addressing all protected categories (i.e., sex, age, race, national origin, disability, sexual orientation, marital status, etc.), and discuss family caregivers as part of this training.

Avoid backlash

In creating family-friendly work environments, employers should remember that not all employees have family caregiving responsibilities. When an employer accommodates family caregiving situations, it should be mindful of the effect that any accommodation may have on coworkers. For example, an employee who is single with no children may feel that he or she is always "picking up the slack" for others who cannot stay late or work extra hours because of family obligations. To avoid backlash from non-caregivers, supervisor training is critical to address feelings of resentment and unfair treatment.

A win-win situation for employers and employees is created when the workplace allows for an effective balance of work and family obligations. Employees benefit through increased workplace satisfaction. Aside from avoiding costly FRD litigation, employers benefit as employee workplace satisfaction leads to better retention, increased productivity and a greater bottom line.

Malana is a shareholder with the law firm of Littler Mendelson PC, where she specializes in representing management in employment-related matters. She can be reached at jmalana@littler.com.

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