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CONTENTS

[Care Givers in the Workplace: Prohibitions Against Family-Responsibility Discrimination](#)

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[Care Givers in the Workplace: Prohibitions Against Family-Responsibility Discrimination](#)

Family-responsibility discrimination cases are increasing as more workers struggle to care for both children and aging parents. Family-responsibility discrimination (FRD) refers generally to the concept of discriminating against an employee because of care-giving responsibilities. Examples of FRD include rejecting job applicants or denying promotions based on negative assumptions concerning the worth of employees with care-giving responsibilities. Subjecting employees—male and female—to harassment for their use of parental leave benefits is also a form of FRD.

Although FRD is not expressly forbidden by federal law, certain statutes do provide protections for employees who must tend to personal and family-related matters. These laws include Title VII of the Civil Rights Act of 1964, the Pregnancy Discrimination Act (PDA), the Family and Medical Leave Act (FMLA), and the Americans with Disabilities Act (ADA). The Family Medical Leave Act provides eligible employees leave from work in connection with the birth or adoption of a child or to take care of a family member with a serious health condition. [1] Employers may neither “interfere” with an eligible employee’s right to FMLA leave nor retaliate against an employee who has exercised his or her FMLA rights. An FRD claim may arise under the FMLA, when, for example, an employee is harassed or discriminated against for taking FMLA leave. Title VII of the Civil Rights Act of 1964 forbids discrimination on the basis of gender.[2]

Under Title VII, a female employee with children who is treated differently from a man with children may state a claim for FRD. Under the Pregnancy Discrimination Act,[3] women also cannot be subjected to discrimination simply because they are pregnant, plan to become pregnant, or because of childbirth. For instance, an employer may not have a rule that prohibits an employee from returning to work for a predetermined length of time after childbirth. An additional federal law that has been called on to initiate FRD lawsuits is the Americans with Disabilities Act, which protects employees with a known association or relationship with an individual with a disability from discrimination.[4]

Concerned with the proliferation of FRD, the U.S. Equal Employment Opportunity Commission (EEOC) recently published guidance on how federal laws apply to workers with care-giving responsibilities.[5] The new EEOC guidance highlights how changing workplace demographics, such as the increased number of women in the workplace and the aging baby boomer population, have created more opportunity for discrimination against working parents and those with elder-care responsibilities.[6] The guidance features various scenarios involving FRD.

Consistent with the rise in FRD claims, specific protections based on “familial status” and “parenthood” are finding their way into state legislation. Certain states, including Alaska and Connecticut, now have laws on the books expressly protecting employees from FRD.^[7] Additionally, California, New York, and Pennsylvania have legislation pending that would expressly prohibit FRD.

Also worthy of mention is the rise in the number of cities and counties that clearly protect workers from FRD. These include Atlanta, Georgia; Chicago, Illinois; Tacoma, Washington; and Dade County, Florida. New York City is considering such legislation as well.

In short, most workers have some kind of family-care responsibilities, whether for a child, partner or elderly relative. When making employment decisions, employers must be mindful that they are not tainted by assumptions that these workers are less dedicated to their jobs or less dependable at work. The safest way to avoid FRD lawsuits is to train supervisors and managers regarding FRD and provide examples of scenarios where FRD might arise. Rest assured, parents and other care givers need not receive more favorable treatment. Simply put, they need to be treated the same as other employees, without consideration of their caregiving responsibilities.

[1] 29 U.S.C. §§ 2601, et seq.

[2] 42 U.S.C. §§ 2000(e), et seq.

[3] The Pregnancy Discrimination Act is an amendment to Title VII of the Civil Rights Act of 1964. See *id.*

[4] 42 U.S.C. §§ 12101, et seq.

[5] Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities, Number 915.002, (May 23, 2007).

[6] *Id.*

[7] The District of Columbia’s Human Rights Act also includes protections for employees with “family responsibilities.” See D.C. CODE ANN. §§ 2-1401.01-.02, 1-2502(12).

[▲ Top](#)



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