



EEOC Provides Updated Caregiver Discrimination Guidance

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Earlier this month, the Equal Employment Opportunity Commission (EEOC) provided updated and additional guidance regarding caregiver discrimination under federal employment laws in light of the ongoing COVID-19 pandemic and its aftermath. In its new guidance, the EEOC explained the circumstances under which caregiver discrimination might occur under federal law.

Although the EEOC recognized that Federal employment discrimination laws do not prohibit employment discrimination based *solely* on an employee's or potential employee's status as a caregiver, the agency made clear that such discrimination is illegal when based on a protected characteristic. The guidance then provided a number of illustrations of types of decisions that would be unlawful discrimination under federal employment law, including:

- It would violate the law if an employer refused to hire a female applicant or refused to promote a female employee based on assumptions that, because she was female, she would (or should) focus primarily on caring for her young children if they attend school remotely, or on caring for her parents or other adult relatives.
- It would be unlawful for an employer to deny leave or permission to work a flexible schedule, care for a family member with COVID-19, or handle other pandemic-related caregiving duties to male employees if the employer grants such requests when made by similarly situated female employees.
- Employers may not impose more burdensome procedures on LGBTQI+ employees who make caregiver-related requests, such as requiring proof of a marital or other family relationship with the individual needing care, if such requirements are not imposed on other employees who make such requests.
- It would be unlawful for an employer to refuse to hire pregnant applicants, or to demote or refuse to promote pregnant employees, based on assumptions that these individuals will or should be primarily focused on ensuring safe and healthy pregnancies.
- It would be unlawful under the ADA (or the Rehabilitation Act) for an employer to refuse an employee's request for unpaid leave to care for a parent with long COVID that is a disability under those laws, while approving other employees' requests for unpaid leave to handle other personal responsibilities.

This guidance – which includes additional examples and illustrations – provides a helpful clarification of the scope of Federal employment discrimination laws. However, it is worth noting that the EEOC's guidance is not in itself legally binding, although the guidance may be given some weight by a court reviewing a claim involving allegations of unlawful treatment by a caregiver. Thus, when faced with litigation, courts could determine that the protections for caregivers under federal law are broader, or narrower, than those described in the agency's latest guidance. Nonetheless, the guidance – and the agency's Best Practices for Workers with Caregiving Responsibilities – provide helpful direction to ensure that employers' policies and practices are designed to eliminate unnecessary risks of liability under Federal law.

Ultimately, whether particular conduct exposes an employer to liability under federal law requires an individualized analysis of the facts and circumstances of the particular case.

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