

Common Sense Advice On FRD

“Family responsibility discrimination” has been claimed with increasing frequency over the past few years by parents and other caregivers who feel that they have lost job opportunities as a result of their responsibilities at home. Recently, the Equal Employment Opportunity Commission issued guidelines on the subject, which will likely even further raise awareness of the issue among employees.

Tough To Pin Down

The EEOC made it clear in its guidelines that “family status” is not being added as a new protected category under the anti-discrimination laws. Rather, discrimination against caregivers must be based on some already-existing protected category in order to be found unlawful. The most likely categories to apply are sex, disability and pregnancy discrimination.

Here are some examples of unlawful family responsibility discrimination from the EEOC’s guidelines. They include:

- failing to hire women who have children or plan to have children while hiring men who have or plan to have children;
- applying “gender stereotyping” to women, such as the assumption that a woman with children would not want a promotion to a job that requires extensive travel., or would not perform well in such a job;
- barring pregnant women from certain jobs on the assumption that they cannot perform them well;
- denying leave to male caregivers, such as “paternity leave,” when such leaves are granted to women;
- refusing to hire an applicant who cares for a disabled child or other relative on the assumption that the applicant cannot perform the job along with the caregiving responsibilities; or

- asking female applicants or employees if they plan to have children, or have more children, or criticizing or questioning a female employee's plans for a family when similar inquiries are not made of men.

But Are These Questions Really Unlawful?

These guidelines will place managers in potentially delicate positions. Most managers want to pick the best qualified candidate for a job or promotion, and an employee with important obligations outside of the workplace may not be the best candidates as a result. But these guidelines don't prevent managers from evaluating the potential impact of these commitments. They only prohibit you from applying more scrutiny to one sex than the other, and from basing decisions on assumptions rather than actual experience.

For example, you may still lawfully inquire of *all* candidates whether they have outside family obligations that might get in the way of the job, so long as the inquiries apply to men as well as women (and the inquiries should address *all* non-work obligations, not just family commitments).

These guidelines also don't prohibit an employer from disciplining an employee who cannot perform his or her job on account of family responsibilities, moreover. For example, an employee who fails to meet deadlines or who misses too much work may just as lawfully be disciplined if the failure is due to family responsibilities (unless the absence is for the care of a seriously ill spouse, parent or child that is covered by the Family and Medical Leave Act) as if the failure is due to other factors.

As with most discrimination statutes, one of the keys to avoiding problems is to treat all employees (and applicants) alike, and to make sure you are relying on a solid business justification for all your decisions