

EEOC Updates Guidance on Caregiver Discrimination

PUBLISHED ON

March 18, 2022

The Equal Employment Opportunity Commission (EEOC) released new guidance on March 14, 2022 titled "The COVID-19 Pandemic and Caregiver Discrimination Under Federal Employment Discrimination Laws" to address how employers treat employees facing the challenge of juggling work and caregiving responsibilities.

While caregiving discrimination is not by itself unlawful under federal law, it can be discriminatory in violation of Title VII of the Civil Rights Act of 1964 (Title VII), the Americans with Disabilities Act of 1990 (ADA) or other EEOC-enforced laws if based on protected characteristics such as gender or disability.

A caregiver is not just an employee who cares for children but can include workers who have any type of caregiving responsibilities such as caring for a spouse, partner, relative, or a disabled individual.

Employers should be mindful of situations where caregiver discrimination might violate federal law, even if the employers believe the action they are taking is for the employee's benefit:

- Not assigning work that involves overtime and/or travel to female employees because the employer knows that the female employee has a family.
- Being more lenient on enforcing attendance policies for a female employee because they have children versus a male employee who does not.
- Denying a male employee leave or a flexible schedule based on the belief the male is the family breadwinner and does not have caregiving responsibilities.
- Requiring more burdensome proof of relationship status for LGBTQ employees with caregiving responsibilities than non-LGBTQ employees.
- Refusing to grant leave to a LGBTQ employee because they desire to care for their same sex partner while granting similar leave for non-LGBTQ employees.
- Refusing to hire a female because of the belief she will be too focused on her family because of gender stereotypes.
- Denying an employee's request for unpaid leave to care for a disabled individual while granting unpaid leave for other employees' personal responsibilities unless there are legitimate business reasons to do so.
- Refusing to hire an employment applicant because they have a disabled family member who will need to use the company health care plan.

It is important to note that employees do not have the right under federal discrimination law to reasonable accommodations such as telework, flexible schedules, or reduced travel and/or overtime based solely on their caregiving obligations. However, employees who are unable to perform their job duties because of pregnancy,

childbirth, or related medical conditions must be treated the same as other employees who are temporarily unable to perform job duties. Please be mindful that in some circumstances, FMLA leave may also be available to caregivers.

An employer is not required to excuse poor performance resulting from an employee's caregiving duties and should apply performance standards consistently to all employees.

If you have any questions about the implications of this guidance, please contact [Susanna Fultz](#) or any member of the [Barley Snyder Employment Practice Group](#).

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