

THE INSIDE PERSPECTIVE

LABOR AND EMPLOYMENT LAW SOLUTIONS FOR EXECUTIVES AND HR PROFESSIONALS



SMITH MOORE LLP
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FRD – It's Gender Discrimination With a Twist

One trend likely to continue is the increase in claims of family responsibility discrimination (“FRD”). Courts are more frequently using Title VII to protect employees from stereotypes about gender roles and premature assumptions that family will interfere with work.

Examples of employer conduct that might be challenged as FRD are:

- Assuming that a mother will be less committed or able to perform her job than an employee without children, and therefore choosing another candidate for a job that requires significant night or weekend work, out-of-town assignments, or extreme flexibility in work schedules.
- Adopting policies or practices (e.g., requiring travel on short notice) that have a more burdensome impact on those with family responsibilities, unless the employer can establish that the policy or practice is related to and necessary for the job.
- “Forcing” an employee with family responsibilities to take advantage of part-time policies or work-from-home opportunities—even if the employer believes it is acting in the best interest of the employee.
- Making comments that suggest the employer believes that having a family will negatively affect an employee’s ability to perform his or her job. Innocent statements made while sympathizing with an overworked and stressed-out parent could leave an unintended impression that the employer doubts his or her ability simply due to the outside family duties.

Statistics show a 23% decline in employment discrimination cases as a whole over the past decade, but a 400% increase in FRD claims. With a win-rate of greater than 50%, FRD claims are growing not only in number but also in their appeal to judges and juries.

TIP

Recognize that employees should not be treated differently because they may have more family duties than others. Base all decisions on an employee’s actual performance, not on what you suspect will be problems in the future.



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