

THE INSIDE PERSPECTIVE

LABOR AND EMPLOYMENT LAW SOLUTIONS FOR EXECUTIVES AND HR PROFESSIONALS



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“Workers With Caregiving Responsibilities” – The EEOC Speaks

In an earlier issue of *The Inside Perspective* we covered the increase in Title VII claims alleging “family responsibility discrimination.” The EEOC has now issued enforcement guidance on what it considers to be “unlawful disparate treatment of workers with caregiving responsibilities.”

The key components of the EEOC’s latest guidance are as follows:

- Employers should not make personnel decisions based on assumptions about how pregnancy, childcare or senior care duties will affect an employee’s job performance. Employers should base those decisions on objective and verifiable criteria such as actual performance.
- On the other hand, employees may not use caregiving duties as an *excuse* for poor performance. As a general rule, an employer may discipline or discharge an employee whose performance declines after he or she assumes caregiving duties, even if the employee can show that the decline is due to those duties.
- Men and women with caregiving duties should be treated the same regardless of gender. Acting on stereotypes is unlawful under Title VII.
- The Americans with Disabilities Act prevents employers from making adverse decisions based on an assumption that an employee’s association with a disabled individual might affect his attendance or performance.
- The EEOC will recognize hostile work environment claims under Title VII or the ADA where an employee is harassed about his or her caregiving responsibilities.
- The EEOC does not enforce the FMLA. However, leave for caregivers may be protected in some circumstances under that statute.

TIP

The EEOC is focused on ensuring lawful treatment of employees who have or expect to have caregiving responsibilities. In its latest guidance, the EEOC highlights how decisions that adversely affect caregivers might violate existing protections under Title VII, the ADA or the FMLA.



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