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EEOC Issues Guidance on Caregiver Discrimination Related to COVID-19



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The U.S. Equal Employment Opportunity Commission (EEOC) issued a technical assistance document on March 14, detailing recommended best practices for employers managing workers with caregiver responsibilities.

The guidance notes that the COVID-19 pandemic has compounded stress for many Americans, especially those who care for older relatives, children, spouses, or individuals with disabilities. The guidance further notes that even with care facilities and schools opening up, schedules are still uncertain as there are hybrid working arrangements, limited hours, and abrupt closings. As a result, those who live with or care for vulnerable individuals may have their own work disrupted more often than their fellow employees. This recent guidance reviews and updates the protection from discrimination for these “caregivers.”

While caregivers themselves are not a protected class, caregiver discrimination may violate federal employment discrimination laws under Title VII of the Civil Rights Act of 1964 (Title VII) and/or the Americans with Disabilities Act when an adverse employment action is based on a caregiver’s sex (including pregnancy, sexual orientation, or gender identity), race, color, religion, national origin, age (40 or older), disability, genetic information (such as family medical history), association with an individual with a disability, or any intersection of these characteristics.

For example, the guidance notes that employers cannot refuse to hire a female applicant based on assumptions that, because she is female, she would (or should) focus primarily on caring for her young children while they attend school remotely. Employers are also prohibited from penalizing female employees more harshly than similarly situated male employees for absences or missed deadlines due to pandemic-related caregiving duties. Conversely, employers should also refrain from assuming a male employee does not have any caregiver responsibilities at home simply because of his gender. Further, the guidance states that employers cannot employ more burdensome procedures when it comes to their LGBTQ workers, such as requiring proof of a marital or family relationship to the individual requiring care if such information is not requested from other employees with similar needs.

While employers are not required to excuse poor performance resulting from an employee’s caregiving duties, the guidance notes that they must refrain from applying performance standards inconsistently based on a characteristic covered by federal employment discrimination laws. For example, employers may not penalize a one ethnic group of employees for missing meetings while supervising their children’s virtual school attendance or taking relatives to medical appointments, while overlooking such conduct by employees of other ethnicities.

To best avoid discrimination claims, employers should consider the challenges imposed by the pandemic on *all* employees, including those with caregiving responsibilities, and determine whether, and under what circumstances, adjustments can be made to work schedules or meeting schedules without impairing performance or productivity.

If you would like more information or to discuss these issues further, please contact a member of Gould & Ratner’s [Human Resources and Employment Law Practice](#).