

## EEOC Issues Guidance on Family Caregiving Responsibilities Discrimination

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The U.S. Equal Employment Opportunity Commission (EEOC) has issued a new enforcement Guidance to assist municipalities on what is unlawful disparate treatment of their workers with family caregiving responsibilities. The Guidance gives 20 examples of particular employment decisions affecting a caregiver which might violate Title VII of the Civil Rights Act of 1964 (Title VII) or the American with Disabilities Act (ADA).

One of the examples involves a police detective who had received glowing performance reviews during her first four years with the police department and was assumed to be on a fast track for promotion. However, after she returned from leave to adopt a child during her fifth year with the department, her supervisor frequently asked how she was going to manage to stay on top of her caseload while caring for an infant. Although she continued to work the same hours and close as many cases as she had before the adoption, her supervisor pointed out that none of her supervisors were mothers, and he removed her from her high-profile cases, assigning her smaller, more routine cases normally handled by inexperienced detectives. The EEOC found the City has violated Title VII by treating her less favorably because of gender-based stereotypes about working mothers.

Other examples in the Guidance include:

- Denying women with young children an employment opportunity that is available to men with young children.
- Lowering subjective evaluations of a female employee's work performance after she becomes a primary caregiver of her grandchildren, despite the absence of an actual decline in work performance.
- Limiting a pregnant worker's job duties based on pregnancy-related stereotypes.
- Refusing to hire a worker who is a single parent of a child with a disability based on the assumption that caregiving responsibilities will make the worker unreliable.
- Subjecting a female worker to harassment because she is a mother with young children or because she is pregnant or has taken maternity leave.
- Denying male employees' requests for leave for childcare purposes while granting female employees' requests.

Municipalities are encouraged by the Guidance to adopt best practices to make it easier for all workers, whether male or female, to balance work and personal responsibilities. Studies have shown that employees with the most flexibility and control over their hours reported more job satisfaction, greater sense of control, and less intention to leave than those on other schedules. Most employers when surveyed why they offer flexible work schedules stated their main reason was to recruit and retain employees and their second reason was to enhance productivity and commitment. Thus, municipalities can benefit by adopting flexible workplace policies by saving dollars in retention costs.

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**Editor's Note:** This article is not intended to provide legal advice to our readers. Rather, this article is intended to alert our readers to new and developing issues and to provide some common sense answers to complex legal questions. Readers are urged to consult their own legal counsel or the author of this article if the reader wishes to obtain a specific legal opinion regarding how these legal standards may apply to their particular circumstances. The author of this article, Jerry L. Pigsley, can be contacted at 402/434-3000, or at Harding & Shultz, P.C., L.L.O., P.O. Box 82028, Lincoln, NE 68501-2028, or [jpigsley@hslegalfirm.com](mailto:jpigsley@hslegalfirm.com).

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