

Employer Best Practices for Workers with Caregiving Responsibilities

In 2007, EEOC issued guidance explaining the circumstances under which discrimination against workers with caregiving responsibilities might constitute discrimination based on sex, disability or other characteristics protected by federal employment discrimination laws.^[11]

This document supplements the 2007 guidance by providing suggestions for best practices that employers may adopt to reduce the chance of EEO violations against caregivers, and to remove barriers to equal employment opportunity.^[2] Best practices are proactive measures that go beyond federal non-discrimination requirements.

Currently, many workers juggle both work and caregiving responsibilities. Those responsibilities extend not only to spouses and children, but also to parents and other older family members, or relatives with disabilities.^[3] While women, particularly women of color, remain disproportionately likely to exercise primary caregiving responsibilities, men have increasingly assumed caretaking duties for children, parents and relatives with disabilities.^[4]

Employers adopting flexible workplace policies that help employees achieve a satisfactory work-life balance may not only experience decreased complaints of unlawful discrimination, but may also benefit their workers, their customer base, and their bottom line.^[5] Numerous studies have found that flexible workplace policies enhance employee productivity, reduce absenteeism, reduce costs,^[6] and appear to positively affect profits.^[7] They also aid recruitment and retention efforts, allowing employers to retain a talented, knowledgeable workforce and save the money and time that would otherwise have been spent recruiting, interviewing, selecting and training new employees.^[8] The benefits of these programs remain constant regardless of the economic climate, and some employers have implemented workplace flexibility programs as an alternative to workforce reductions.^[9] Such programs not only enable employers to “go lean without being mean,” but they also can position organizations to rebound quickly as soon as business improves.^[10]

The following are examples of best practices for employers that go beyond federal nondiscrimination requirements and that are designed to remove barriers to equal employment opportunity.

GENERAL

- **Be aware of, and train managers about, the legal obligations that may impact decisions about treatment of workers with caregiving responsibilities.** Those include federal employment statutes and regulations,^[11] including the Americans with Disabilities Act of 1990, as amended,^[12] the Equal Pay Act of 1963, as amended,^[13] the Pregnancy Discrimination Act,^[14] Title VII of the Civil Rights Act of 1964, as amended,^[15] the Family and Medical Leave Act (FMLA),^[16] the Employee Retirement Income Security Act (ERISA),^[17] 42 U.S.C. §1983,^[18] and Executive Order 13152.^[19]
- **Develop, disseminate, and enforce a strong EEO policy** that clearly addresses the types of conduct that might constitute unlawful discrimination against caregivers based on characteristics protected by federal anti-discrimination laws.^[20] An effective policy that addresses caregiver protections under the law should:
 - Define relevant terms, including “caregiver” and “caregiving responsibilities.”^[21]
 - Provide an inclusive definition of “family” that extends beyond children and spouses and covers any individual for whom the applicant or employee has primary caretaking responsibilities.^[22]

- Describe common stereotypes or biases about caregivers that may result in unlawful conduct, including:
 - assuming that female workers' caretaking responsibilities will interfere with their ability to succeed in a fast-paced environment;^[23]
 - assuming that female workers who work part-time or take advantage of flexible work arrangements are less committed to their jobs than full-time employees;^[24]
 - assuming that male workers do not, or should not, have significant caregiving responsibilities;^[25]
 - assuming that female workers prefer, or should prefer, to spend time with their families rather than time at work;^[26]
 - assuming that female workers who are caregivers are less capable than other workers;^[27] and
 - assuming that pregnant workers are less reliable than other workers.^[28]

- Provide examples of prohibited conduct related to workers' caregiving responsibilities, such as:
 - asking female applicants and employees, but not male applicants and employees, about their child care responsibilities;^[29]
 - making stereotypical comments about pregnant workers or female caregivers;^[30]
 - treating female workers without caregiving responsibilities more favorably than female caregivers;^[31]
 - steering women with caregiving responsibilities to less prestigious or lower-paid positions;^[32]
 - treating women of color who have caregiving responsibilities differently than other workers with caregiving responsibilities due to gender, race and/or national origin-based stereotypes;^[33]
 - treating male workers with caregiving responsibilities more, or less, favorably than female workers with caregiving responsibilities;^[34]
 - denying male workers', but not female workers', requests for leave related to caregiving responsibilities;^[35] and
 - providing reasonable accommodations for temporary medical conditions but not for pregnancy.^[36]

- Prohibit retaliation against individuals who report discrimination or harassment based on caregiving responsibilities or who provide information related to such complaints.

- Identify an office or person that staff may contact if they have questions or need to file a complaint related to caregiver discrimination.

- **Ensure that managers at all levels are aware of, and comply with, the organization’s work-life policies.** In particular, front-line supervisors, middle management and other managers who regularly interact with employees or who are responsible for assignments, leave approval, schedules, promotions and other employment terms, conditions and benefits should be familiar with the organization’s work-life policies and supportive of employees who take advantage of available programs.
 - Provide incentives for managers to ensure that their employees are aware of work-life balance programs and to support employees who choose to take advantage of such opportunities.
 - Assess supervisors’ willingness to assist employees who have caregiving responsibilities on supervisors’ performance evaluations.
- **Respond to complaints of caregiver discrimination efficiently and effectively.** Investigate complaints promptly and thoroughly. Take corrective action and implement corrective and preventive measures as necessary to resolve the situation and prevent problems from arising in the future.
- **Protect against retaliation.** Provide clear and credible assurances that if employees make complaints or provide information related to complaints about unfair treatment of caregivers, the employer will protect them from retaliation. Ensure that these anti-retaliation measures are enforced.

RECRUITMENT, HIRING, AND PROMOTION

- **Focus on the applicant’s qualifications** for the job in question. Do not ask questions about the applicant’s or employee’s children, plans to start a family, pregnancy, or other caregiving-related issues during interviews or performance reviews.
- **Review employment policies and practices**—particularly those related to hiring, promotion, pay, benefits, attendance, and leave—to determine whether they disadvantage workers with caregiving responsibilities.
- **Develop specific, job-related qualification standards** for each position that reflect the duties, functions, and competencies of the position and minimize the potential for gender stereotyping and other unlawful discrimination against caregivers. Make sure these standards are consistently applied when choosing among candidates.
 - Example: Employer A posts a job opening for a marketing director. The position requires frequent interaction with company executives, marketing staff, and external vendors. Alexis and David apply for the position. Both have extensive marketing experience; however, Alexis is the primary caregiver for her elderly father, who has Alzheimer’s disease, and requests to work from home part-time, while David is available to work on-site full-time. Employer A selects Alexis for the position based on her

familiarity with many of the top vendors in the industry, noting that she can communicate with relevant parties via phone and e-mail on the days that she is not in the office. In this situation, Employer A evaluated both candidates and made the selection decision based on specific, job-related criteria.

- Example: Same facts as above, except Employer A selects David for the position, commenting that, while it sympathizes with Alexis's family situation, it is concerned that her desire to prioritize family responsibilities over work responsibilities would have a detrimental effect on the company's marketing strategy, potentially discouraging future clients and decreasing revenue. Employer A should not have based its selection decision on Alexis's caregiving responsibilities.
- **Ensure that job openings, acting positions, and promotions are communicated** to all eligible employees regardless of caregiving responsibilities.
 - Do not assume that certain employees (for example, mothers of young children or single parents) will not be interested in positions that require significant travel or working long or unusual hours.
- **Implement recruitment practices that target individuals with caregiving responsibilities** who are looking to enter or return to the workplace.
 - Advertise positions in parenting magazines and other publications and web sites that are directed at caregivers.^[37]
- **Identify and remove barriers to re-entry**^[38] for individuals who have taken leaves of absence from the workforce due to caregiving responsibilities or other personal reasons.
 - When reviewing and comparing applicants' or employees' work histories for hiring or promotional purposes, focus on work experience and accomplishments and give the same weight to cumulative relevant experience that would be given to workers with uninterrupted service.
 - Example: Employer B posts a Customer Service Manager position. Joanne and Tim apply. Both have approximately three years of customer service experience; however, Joanne's experience is spread over a five year period due to two maternity leaves, while Tim's experience is uninterrupted by medical leave. Employer B selects Tim, reasoning that his continuous service demonstrates his commitment to his career. Employer B discriminated against Joanne if it refused to consider her for the job based on her use of maternity leave.
 - Example: Same facts as above, except that Tim worked for Employer B in a customer service capacity, while Joann worked for a company in a different field. If Employer B selected Tim

based on his knowledge of and demonstrated commitment to the company, Employer B's decision was not discriminatory.

- Provide the skills and training necessary to enhance the competitiveness and competency of employees while they are on leaves of absence.^[39]
 - Example: Employer C invites employees who are on personal leaves of absence to attend company-sponsored training and networking events to familiarize themselves with the latest industry developments. Employer C also recruits these employees, on a voluntary basis, to work on temporary assignments.
- **Ensure that employment decisions are well-documented and transparent** (to the extent feasible).
 - To prevent misunderstandings, clearly explain the reasoning behind employment decisions to relevant parties.
 - Retain records relevant to decisions about hiring, promotion, performance, pay, leave, benefits, awards, and other employment decisions for at least the length of time required by statute.

TERMS, CONDITIONS, AND PRIVILEGES OF EMPLOYMENT

- **Monitor compensation practices and performance appraisal systems** for patterns of potential discrimination against caregivers. Ensure that performance appraisals are based on employees' actual job performance and not on stereotypes about caregivers.
- **Review workplace policies that limit employee flexibility**, such as fixed hours of work and mandatory overtime, to ensure that they are necessary to business operations.
- **Encourage employees to request flexible work arrangements** that allow them to balance work and personal responsibilities. Work with employees to create customized flexible work arrangements that meet the specific needs of the employee and employer. Ensure that managers do not discourage employees from requesting flexible work arrangements or penalize employees who make such requests. Flexible work arrangements may include:
 - **General Flexible Options:**
 - **Flextime Programs.** Flextime policies generally permit employees to vary their work day start and stop times within a certain range, such as allowing an employee to arrive at work at any time between 8:00 and 9:30 a.m. and then work for 8 hours.
 - **Flexible Week Opportunities.** Flexible week opportunities may include compressed work weeks, such as a workweek consisting of four ten-hour work days.

- **Telecommuting, Work-at-Home, or Flexplace Programs.** These options enable employees to work from home or alternate office locations.
- **Reduced-time options** – These options permit employees to work part-time while juggling other responsibilities, such as caregiving. Reduced-time options include:
 - **Part-time work opportunities.** Part-time workers should receive proportionate wages and benefits compared with full-time workers.^[40] Similarly, part-time workers should receive proportionate credit for relevant experience needed to qualify for promotions, training programs, or other employment opportunities.
 - Example: José works 3 days a week and spends the other 2 days caring for his young children. José should receive 3/5 of the wages and benefits he would receive if he worked full-time.
 - Example: Employer D posts a job that requires three years of relevant work experience. Nadia and Jermaine apply for the job. Both have the required qualifications and three years of work experience; however, Nadia has worked full-time for the past three years, while Jermaine has worked three days a week for the past five years while caring for his father, who has Parkinson’s disease. Employer D should base its decision on the applicants’ qualifications and experience, rather than on their schedules.
 - **Job sharing.** Job sharing programs permit two employees to share one full-time position. In general, employees participating in job sharing programs receive a proportionate share of the salary and benefits.
- **If overtime is required, make it as family-friendly as possible.** Determine whether a voluntary, rather than mandatory, overtime system would meet the needs of the organization. If not, permit employees to schedule overtime in advance so they can arrange for child care, elder care, or other caregiving responsibilities.
 - Example: Employer E requires employees to work overtime during peak periods to meet customer demand. Employer E first asks for volunteers and then, if necessary, requires employees to sign up for any remaining shifts. Employer E circulates the overtime schedule in advance to enable employees to adjust their personal obligations accordingly.
- **Reassign job duties that employees are unable to perform** because of pregnancy or other caregiving responsibilities.

- Example: Suriya’s doctor recommends a 15 pound lifting restriction during her pregnancy. Employer F adjusts Suriya’s workload by reassigning her heavy lifting duties to one of her co-workers and assigning Suriya some of the co-worker’s duties.
- Example: Jack and Lily work on the same team. Jack requests permission to readjust his schedule so that he can leave work early to pick up his daughter from pre-school. Lily requests a delayed start time so that she can take her mother to her weekly physical therapy sessions. Amar, their supervisor, grants both requests on the condition that Jack represents the team at early morning meetings and Lily represent the team at late afternoon meetings.
- **Provide reasonable personal or sick leave to allow employees to engage in caregiving** even if not required to do so by the Family and Medical Leave Act of 1993 (FMLA).^[41]
 - Permit employees to use sick leave to care for family members who are ill and/or to handle medical emergencies involving family members.^[42]
 - Engage in dialogue with employees to determine the amount of leave that is appropriate and acceptable based on their workload, upcoming deadlines and personal circumstances.
 - Ensure that leave policies exist and are available to male and female employees on an equal basis. Train managers to ensure that both male and female employees are aware of leave policies and are not implicitly or explicitly discouraged from requesting leave.
 - Example: Employer F offers maternity and paternity leave to employees upon the birth or adoption of a child. Sue requests maternity leave to have a baby. Bob requests paternity leave after he and his wife adopt a baby. Employer F approves Sue’s request but denies Bob’s request, commenting that as the “family breadwinner,” Bob had a responsibility to focus on his career. Employer F acknowledged that the company policies provided for paternity leave, but noted that the policy was rarely enforced and implied that men who took time off risked losing out on high-profile assignments. Employer F should ensure that managers enforce leave policies consistently and without regard to the gender of the requesting employee. Employer F should not discourage or punish male employees from requesting leave related to caregiving responsibilities.
 - To the extent feasible, permit employees to take leave with little notice in case of an emergency and to use leave in short increments, rather than full days or weeks. Caregiving issues may arise suddenly and unexpectedly, and may be resolved in a relatively short amount of time.

- For example, a child or elderly parent may get sick during the day and need to see a doctor. Or, a parent may need to make a quick phone call to ensure that his or her child got home from school safely.
- With appropriate communication procedures and leave policies in place, these situations may be addressed with minimal inconvenience or cost to the employer.
- Establish leave donation banks that enable employees to voluntarily contribute their leave to co-workers.^[43] Some organizations have “use or lose” leave policies which prohibit employees from accruing and retaining large amounts of leave. Leave donation banks ensure that leave does not go to waste and foster an atmosphere of collegiality and cooperation.
- **Post employee schedules as early as possible** for positions that have changing work schedules so that employees can arrange in advance for child care or address other personal responsibilities, thereby enabling them to more readily fulfill work responsibilities.
- **Promote an inclusive workplace culture.** Cultivate a professional work environment that recognizes and appreciates the contributions of all staff members and demonstrates respect for employees’ personal lives and obligations.
 - Example: Employer G ensures that all employees, including employees who work part-time or have flexible work schedules, are eligible to receive awards and recognition for their achievements.
 - Example: Employer H schedules all-employee meetings and events on “core days” when employees who work flexible schedules are in the office and able to attend.
- **Develop the potential of employees, supervisors, and executives** without regard to caregiving or other personal responsibilities.
 - Provide **training** to all workers, including caregivers, to provide them with the information necessary to perform their jobs well.
 - Example: When Nejib has to miss Employer I’s annual training session to take his wife to the doctor, Nejib’s supervisor e-mails him copies of the training presentations and handouts and provides him with contact information for the presenters in the event he has questions or comments. In this situation, Employer I has ensured that Nejib has both access to the information presented and the ability to follow up with the appropriate individuals, as necessary, for additional information.

- Ensure that employees are given **equal opportunity to participate on complex or high-profile work assignments** that will enhance their skills and experience and help them ascend to upper-level positions.
 - Example: Employer J solicits assistance from employees on a large-scale project for an important client. Nicole has a flexible work schedule that enables her to work from home several days a week so she can care for her young son. Nicole volunteers to assist with the project and is selected for the team. The majority of work for the project can be performed off-site and circulated electronically to team members. Nicole also volunteers to come to the office for meetings with the client.
 - Example: Same facts as above, except Nicole is not selected for the project. Necessary files and equipment are stored on-site and cannot be removed. Furthermore, impromptu team meetings occur frequently so project members can discuss new developments and share information. As a result, it would be very difficult for an employee who works remotely to participate in this assignment. Employer J is justified in refusing Nicole's request to participate on this basis.

- Provide employees with **equal access to workplace networks** to facilitate the development of professional relationships and the exchange of ideas and information.
 - Example: Employer K has a mentor program that matches experienced employees with more recent hires. All employees, including employees who work part-time or have a flexible work schedule, are eligible to participate in the program.

- Provide **support, resource, and/or referral services** that offer caregiver-related information to employees. Such services may include referral services for local child care centers or assisted living facilities, adoption assistance services, parenting education classes, college financing classes, or a toll-free caregiver hotline that provides guidance and advice to employees who have work-life balance questions or concerns.^[44]

Studies have demonstrated that flexible work policies have a positive impact on employee engagement and organizational productivity and profitability.^[45] The practices outlined above have the potential to benefit all workers, regardless of caregiver-status. Furthermore, these practices have the potential to benefit employers, enabling them to recruit and retain talented, productive, committed employees. Finally, these practices will help ensure that all workers enjoy equal opportunity to compete, advance, and succeed in the workplace. [www.eeoc.gov]

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