

'No one should have to go through this': A fired employee sues Wayfair, accusing it of caregiving and age discrimination

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Not long after the pandemic shut down schools and offices around the country, Richard DiBona, a 53-year-old software manager at Wayfair, sent a message to his team letting them know he would probably be “getting bugged more” by his kids due to his wife’s new high-level job. A few weeks later, he sent another message noting that his wife’s workload had intensified and he would be taking on an even greater share of home-schooling and child-care duties.

His supervisor didn’t respond to either message, he said, or to others he sent about his growing role overseeing his sons, then ages 10 and 13. And in July, after several months trying — and largely failing — to get her to acknowledge his needs, he said, he was fired.

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Adamant that he had been discriminated against because of his family responsibilities, as well as his age, and that his productivity had not declined, DiBona filed suit against Wayfair, which is based in Boston, in Suffolk Superior Court.

DiBona's case is among an "explosion of litigation" involving caregiving during the pandemic, according to the Center for WorkLife Law at the University of California Hastings College of the Law in San Francisco, which has identified at least 60 such lawsuits nationwide. One mother in California was fired from an insurance company after her boss complained that her children were too noisy during work calls, according to news reports. A number of employees sued after being denied paid leave to look after their children, or being fired or disciplined after taking it.

The center's COVID help line also has fielded more than 1,000 calls from working parents and other employees during the pandemic — seven times the center's call volume compared to pre-pandemic calls.

In a statement, Wayfair said there was no wrongdoing in DiBona's case. "We are highly focused on ensuring an inclusive and equitable workplace for all of our employees which has driven our thorough investigatory processes," a spokeswoman wrote. "Upon conducting a comprehensive investigation, we did not find any merit to the allegations in this matter and intend to provide those details and findings in court."

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"We have been and continue to be strongly committed to providing all of our caregivers with the support and flexibility they need to help manage the additional responsibilities and challenges presented by the pandemic," the statement added.

In addition to working parents seeking legal counsel, employers have been trying to figure out their legal obligation to employees with school-age children during the pandemic. One employer was reportedly considering cutting caregivers' salaries by 20 percent to compensate for an anticipated drop in productivity, according to a Boston employment lawyer.

There's nothing preventing a company from firing an underperforming parent, said Frank Gaeta, an employment lawyer at Rich Mayin Boston, but he advises against it. "It's often in the employers' best interest to provide employees with more flexibility than they'd have to provide," he said.

More often than not, it's mothers who bear the brunt of child-care responsibilities, and they are often punished in subtle but insidious ways, such as fewer bonuses, promotions, and plum job assignments, said Rebecca Pontikes, a Boston employment lawyer who handles

many caregiving cases. But when it's a man informing his employer that he has to make time for his kids, as is surely happening more often with an increasing number of dads working from home, the blowback can be especially harsh, employment experts say.

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Men “are expected to perform as ideal workers who are available around the clock and put their company’s needs first,” said Liz Morris, deputy director of the Center for WorkLife Law. “They’re expected to be breadwinners for their family. . . . So they actually suffer a greater penalty when they request flexibility.”

When DiBona, who lives in Newton, was recruited to come back to work for Wayfair in September 2019 (following a stint between late 2010 and 2013), he found a “toxic age-biased environment,” according to the court filing. Disparaging references to “boomers” and “dinosaurs” were rampant in Slack messages between employees, including references to COVID-19 being a “boomer remover.” Of the 15 or so employees who reported to his supervisor, who is also named in the suit, DiBona was the only one over the age of 40 and the only one with children, according to the lawsuit.

DiBona had survived a layoff in February 2020 and said he received a good review later that month, followed by another positive assessment in late March — about a week after schools closed. And he always made up the time he spent helping his sons, he said.

Last spring, when the boys were still using old laptops that didn’t support video calls, DiBona had to help them manually enter Zoom meeting IDs and links on an iPad — and assist them when they got kicked off calls due to an overburdened Wi-Fi system, he said. DiBona also helped them scan and upload physical projects, monitored their autonomous work to make sure they weren’t just playing Fortnite, made meals, and took them to the park — all while being booked solid with meetings all day.

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Having been in the tech world for more than 30 years, DiBona wasn’t surprised by the youthcentric culture at Wayfair. But his supervisor’s lack of regard for his extra child-care duties during the pandemic — especially considering messages from upper management noting that parents with school-aged children shouldn’t be penalized — left him dumbfounded. In late April, a week after DiBona sent his supervisor a message that his older son needed extra help at school, and again got no response, The supervisor told DiBona she was putting him on a performance improvement plan — “the kiss of death,” as DiBona put it.

“I thought I was doing okay,” DiBona wrote to her, “but apparently I am not.”

The plan was scrapped after DiBona filed an internal age-discrimination complaint, but then the supervisor started “gaslighting” him, he contends, withholding critical information and leaving him out of strategic decisions in an attempt to create a paper trail making him look bad.

In late June, he was put on another performance improvement plan stating that he had not mastered the systems he inherited after the February layoffs. Ten days later, he was fired.

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“What they did was wrong,” said DiBona, who is now doing freelance IT work 20 or 30 hours a week and still overseeing his sons’ remote schooling. “What I experienced is totally different from the message they project. . . . I had a humiliating and completely unfair experience that has absolutely impacted my career, family, and self-esteem. No one should have to go through this.”

Among some employers, a culture shift is starting to emerge as the pandemic continues to shine a glaring light on working parents’ needs. But there’s still a long way to go.

“If we can’t figure out how to help people who’ve got caregiving responsibilities hold on to their jobs, then we’re doing something wrong,” said DiBona’s lawyer, Thomas Gallitano. “This is something that we’ve got to figure out as a culture and as a country.”

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