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MAGGIE JACKSON | BALANCING ACTS

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Working caregivers get a protective lift



More working parents claim employers peg them as less committed when they have children. Pregnancy discrimination filings with the EEOC, for example, rose to 4,901 last year, a 31 percent climb in the past decade. (Illustration/ Christophe Vorlet)

By Maggie Jackson | July 15, 2007

Bosses who refuse a dad -- but not a mom -- a family leave, or shuttle a new mother away from plum work assignments, or allow co-workers to harass a colleague whose spouse is disabled should beware.

The EEOC is on guard.

Amid rising complaints of "caregiver discrimination," the federal Equal Employment Opportunity Commission is stepping up protection of workers with family responsibilities.

In recently released guidelines aimed at what it calls "an emerging discrimination issue," the federal agency detailed how current federal laws protect such workers.

The move signals to employers that the government is taking seriously an issue that was practically unheard of just a few years ago.

A growing number of working parents, especially mothers, claim that employers treat them as less committed or effective when they have children.

Such stereotypes constitute bias, many have argued. Pregnancy discrimination filings with the EEOC, for example, rose to 4,901 last year, a 31 percent rise in the past decade.

"The guidelines were brought about by the fact that we're seeing more claims brought under our existing statutes claiming discrimination against caregivers," says Elizabeth Grossman, lead EEOC attorney for the New York and New England regions. She predicted the new guidelines will spur a rise in lawsuits in this arena.

The new enforcement guidelines do not prohibit discrimination against working caregivers, that is, create a new protected class.

Rather, they detail how existing laws can apply to caregivers. For example, a new mother who is reassigned to less desirable work because her boss assumes she is less serious about her career postbirth is protected against sex-based stereotyping under Title VII of the Civil Rights Act of 1964.

An employer that allows co-workers to bully a man who is caring for a spouse with disabilities may be violating the Americans with Disabilities Act of 1990, which bans discrimination against workers based on their association with a person with a disability.

In one recent case, a Chicago doctor who is a mother of five and the EEOC are suing her former employer in federal district court, claiming that an offer of a partnership in an emergency room staffing firm was rescinded due to gender stereotyping.

In 2000, Margaret Lynch was twice offered partnerships but after she rejected the terms as unfair compared to those made to other doctors, the company demoted her, says Ethan Cohen, the EEOC lawyer in the case.

Lynch's boss has testified that one partner said women like Lynch "aren't partnership material because they're more interested in having children," according to testimony provided by Cohen. Lynch is now chairwoman of the emergency room department at Lake Forest Hospital in Lake Forest, Ill.

Lynch's former employer maintains that those statements were never made, discrimination did not occur, and the dispute concerns the timing and terms of the offers, says Jeff Fowler, a lawyer for the company, one of several that operate under the brand Midwest Emergency Associates. "It was purely about how much money and she didn't like what was being offered," says Fowler, who is based in Chicago.

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Caregiver discrimination is often subtle, says Boston employment lawyer Rebecca G. Pontikes.

"It doesn't have to be hostile and mean," said Pontikes, who often represents workers in pregnancy and sex discrimination cases. "You can have a boss who says, 'I didn't put you up for that promotion because you've just had a new baby'. . . . Clearly, the boss doesn't think he's discriminating."

That's pretty much what a Maine insurance company worker alleges happened to her after a boss at her employer, Anthem Health Plans of Maine, found out she had an 11-year-old, plus 6-year-old triplets.

In a January Superior Court complaint, Laurie Chadwick alleges that she was told that she didn't get a promised promotion last year because someone in management thought she had too much on her plate, including her kids and night classes, says Chadwick's lawyer, David Webbert of Augusta, Maine.

The company disputes the allegations and says that the case didn't involve discrimination because the person who got the new team leader position was a mother with young children, according to spokesman Mark Ishkanian. Webbert counters that Chadwick was still the victim of a stereotype about mothers.

Already, this area of the law is heating up, and more such cases are expected. In the six weeks since the guidelines were issued, the Center for WorkLife Law at the University of California-Hastings has received dozens of inquiries about the document from companies, lawyers, and workers.

"It's going to have, I think, a tremendous impact," says Joan Williams, the director of the worklife law center. The guidelines show that "you can't treat mothers and other caregivers differently based on assumptions of how they will or should behave."

For more information on the EEOC's guidelines to protect working caregivers and issues related to women and families, including work/family balance, healthcare, and fairness in the workplace, visit:

eeoc.gov, the Equal Employment Opportunity Commission

worklifelaw.org, the Center for WorkLife Law at the University of California-Hastings

nationalpartnership.org, the National Partnership for Women & Families

Balancing Acts appears every other week. Maggie Jackson can be reached at maggie.jackson@att.net. ■

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