

## BEST PRACTICES FOR WORKERS WITH CAREGIVING RESPONSIBILITIES

On April 22, 2009, the U.S. Equal Employment Opportunity Commission (“EEOC”) issued *Employer Best Practices for Workers with Caregiving Responsibilities* (“Best Practices”), available at <http://www.eeoc.gov/policy/docs/caregiver-best-practices.html>. Best Practices supplements previous guidance issued by the EEOC in 2007 (the “Guidance”), which examines how federal anti-discrimination laws apply to workers with caregiving responsibilities. The Guidance is available at <http://www.eeoc.gov/policy/docs/caregiving.html>.

It is important to note that Best Practices and the Guidance do not create a new protected class of citizens. Nevertheless, the many stereotypes, biases and assumptions about caregivers often form the basis of valid discrimination claims under Title VII, the Americans with Disabilities Act, the Family and Medical Leave Act and the Pregnancy Discrimination Act. As such, Best Practices goes beyond the federal anti-discrimination laws and is aimed at removing barriers to equal employment opportunity for workers with caregiving responsibilities.

The issuance of Best Practices is timely as many employers are currently struggling with concerns about the economy and how to handle necessary cost-cutting measures without violating the anti-discrimination laws. Due to the economic conditions and the increasing unemployment figures, many working mothers are their family’s sole or primary breadwinner. Best Practices addresses many of the misperceptions about working mothers. Best Practices might also answer many of the questions about how Employers should handle time off and other issues related to the H1N1 virus. Caregivers may find it necessary to take time off to care for an ill family member. Nevertheless, it is imperative that employers take appropriate steps to ensure compliance with federal, state and local discrimination laws, as they deal with these issues.

The following are examples of Best Practices for employers, as suggested by the EEOC, designed to remove barriers to equal employment opportunity. Many of these Best Practices should already be in place in your current EEO compliance program.

### General

- Be aware of, understand and train management on all applicable anti-discrimination laws.
- Implement and enforce a strong EEO policy:
  - Clearly define relevant terms, including “caregiver,” “family,” and “caregiving responsibilities”;
  - Provide examples of common stereotypes about caregivers that may result in unlawful discrimination, including, without limitation, the assumption that a female employee’s caretaking responsibilities will interfere with her ability to succeed;
  - Provide examples of prohibited conduct based on caregiver responsibilities, such as, without limitation, asking female job applicants (but not male applicants) about their childcare responsibilities;
  - Prohibit retaliation against individuals who report discrimination or harassment based on caregiving responsibilities; and
  - Identify a contact person for questions and complaints related to discrimination.
- Ensure that managers at all levels are aware of, and comply with, the organization’s work-life policies. The goal is to promote balance between work and home.
- Promptly and effectively respond to complaints of discrimination.

## Recruitment, Hiring and Promotion

- Focus on a job applicant's qualifications – not his or her caregiving obligations.
- Carefully review employment policies and practices to determine whether they disadvantage workers with caregiving responsibilities.
- Identify specific job duties related to qualifications and minimize the potential for gender stereotyping and other unlawful discrimination against caregivers.
- Ensure that job openings and promotions are communicated to all employees regardless of caregiving responsibilities.
- Target individuals with caregiving responsibilities for open positions.
- Allow individuals who have taken leaves of absence to fulfill caregiving responsibilities the opportunity to return to their job, even if not required by FMLA.
- Clearly and accurately document all employment decisions.

## Terms, Conditions and Privileges of Employment

- Implement performance review procedures capable of preventing appraisals based on stereotypes.
- Policies that limit employee flexibility must be necessary to business operations.
- Encourage employees to request flexible work arrangements, such as:
  - Flexible work-days.
  - Flexible work-weeks.
  - Telecommuting.
  - Part-time opportunities.
  - Job sharing
- If overtime is required, make it as family friendly as possible (i.e., voluntary rather than mandatory).
- Adjust job duties, if necessary, for those with caregiving responsibilities.
- Allow employees to use personal leave or sick leave to engage in caregiving activities.
- Post employee schedules as early as possible to allow for changing work schedules.
- Promote an inclusive workplace culture.
- Develop all employees without regard to caregiving obligations.

Although Best Practices are not required, the EEOC's heavy emphasis on this topic suggests that complaints of discrimination based on caregiver responsibilities will be very closely scrutinized. Therefore, implementation of Best Practices, including the adoption of more flexible workplace policies, is likely to promote a healthy work-life balance, enhance productivity and assist in the defense of such complaints. If you have any questions with regard to Best Practices, would like assistance in implementing Best Practices, or need assistance with any other matter relating to the EEOC or the Nebraska Equal Opportunity Commission, contact any member of the Koley Jessen Employment, Labor and Benefits Group.

## ELECTRONIC CHILD SUPPORT PAYMENTS

As a reminder, effective August 1, 2008, Nebraska requires that employers with 50 or more employees, who are paying on at least one child support order, must remit such child support payments electronically. More information on electronic child support payments can be found at [www.nebraskachildsupport.com](http://www.nebraskachildsupport.com).

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