BIBLIOGRAPHY AND SELECTED CASES ON THE LAW OF
CAREGIVER OR FAMILY RESPONSIBILITIES DISCRIMINATION

BIBLIOGRAPHY

Guidance, Treatises, and Practice Materials


Forthcoming treatise covering all major areas of the law of family responsibilities discrimination, written by top academic and practitioners in the field.


The EEOC’s 2007 Enforcement Guidance, setting out the major legal theories of disparate treatment of caregivers under Title VII and the ADA. Provides analysis with explanatory examples of unlawful disparate treatment of men and women based on their caregiving responsibilities, including under the legal theories of sex and pregnancy discrimination, gender stereotyping, hostile work environment harassment, disability association, and retaliation. Includes discussion of the intersection of caregiver discrimination with race and national origin discrimination.


The EEOC’s supplementary document to its 2007 Enforcement Guidance. Provides best practices for employers to avoid liability for caregiver discrimination generally; in recruitment, hiring, and promotion practices; and in terms, conditions, and privileges of employment.

Agenda with links to testimony of experts at the most recent meeting of the EEOC to address issues of pregnancy and caregiver discrimination. Testimony provided by attorneys, advocates, and academics on three panel topics: “Understanding Pregnancy and Caregiver Discrimination in Today’s Workplace,” “Statutory Framework and Enforcement Efforts,” and “The Way Forward: Implications for the Future.”


First ever comprehensive treatise on the law of family responsibilities discrimination, written by top academic and practitioner in the field.


Materials for ALI-ABA CLE course on the legal, sociological, and practical aspects of family responsibilities discrimination. Covers the law from both plaintiff- and management-side attorney perspectives, including discussion of key cases, patterns of gender stereotyping, and best practices for employers (including a model antidiscrimination policy).


Materials for PLI course handbook, covering the development of the area of family responsibilities discrimination and related case law. Provides a primer on the statistics, social science, legal theories, and EEOC Enforcement Guidance related to caregiver discrimination, including discussion of key cases.

**Law Review Articles and National Reports**


Law review article providing concrete lessons for practitioners about family responsibilities discrimination cases, including typical fact patterns, methods of proof, causation issues, the role of social science evidence and implicit bias, gaps between workplace policy and practice, and remedies.


Law review article providing an overview of data on workplace penalties against mothers and a literature review of key social scientific studies documenting its existence. Details the
social psychological theories that explain the maternal wall, as well as the empirical studies that document and measure its impacts on working women.


Law review article highlighting trends in caregiver discrimination lawsuits brought by low-wage earning workers. Provides information on the types of caregiver discrimination that occur more frequently among non-professional workers, and highlights significant liability risks to employers despite plaintiffs’ limited earnings.


National report on a survey of roughly 3700 localities, detailing 63 local laws in 22 states (as of December 2009) that specifically include the protected classification of parental or caregiver status or family responsibilities in their prohibitions against employment discrimination. Provides comparative analysis of local law definitions and remedies; a map of the distribution of local laws across the states and the country; and information on the handful of related state laws, regulations, and proposed legislation. Report alerts attorneys and employers of an additional avenue of liability under state and local laws.


National report highlighting current data and litigation trends in family responsibilities discrimination cases. Provides information on three recent case trends—identified as “New Supervisor Syndrome,” “Second Child Bias,” and the “Elder Care Effect”—as well as 2010 data on case numbers, plaintiff success rates, and liability risks to employers.


Law review article providing comprehensive analysis of the development of family responsibilities discrimination and the legal theories that make up the field, including the role of social science on stereotypes and implicit bias. Discusses key cases, as well as the 2007 EEOC Enforcement Guidance and its relation to other areas of discrimination law.

Joan C. Williams & Consuela A. Pinto, *Family Responsibilities Discrimination: Don’t Get Caught Off Guard*, 22 Labor Lawyer 293 (Summer 2007).

Article for the ABA Section of Labor & Employment Law publication, to alert employment lawyers, particularly on the management side, to the common causes of action in family responsibilities discrimination cases, as well as emerging legal theories. Provides information to help attorneys to identify risks and prevent employer liability.
State Bar and Practice Journal Articles


Beth A. Danon, Esq., Special Focus: Employment Law: Family Care Commitments and Discrimination in the Workforce, 34 Vermont Bar Journal & Law Digest 34 (Fall 2008).


Yida Kopka, Young Lawyers Journal; Rights and Responsibilities in the Workplace; Family Responsibility Discrimination, 22 CBA Record 50 (September 2008).


Carmelyn P. Malalis & Linda A. Neilan, Protecting Worker; A Crackdown on Caregiver Discrimination, 43 Trial 32 (August, 2007) [American Association for Justice].


Michael Newman, Shane Crase, Family Responsibilities Discrimination, 54 Federal Lawyer 14 (September, 2007) [Federal Bar Association].


SELECTED CASES*

Sex discrimination and stereotyping
Back v. Hastings on Hudson Sch. Dist., 365 F.3d 107 (2d Cir. 2004)
B bannerando v. Madison County, 922 F.2d 139 (2d Cir. 1990)
Chadwick v. Wellpoint, Inc., 561 F.3d 38 (1st Cir. 2009)
Gerving v. Opbiz, LLC, 324 Fed. Appx. 692 (9th Cir. 2009)
Knussman v. Maryland, 272 F.3d 655 (4th Cir. 2001)
Lettieri v. Equant Inc., 478 F.3d 640 (4th Cir. 2007)
Lust v. Sealy, 383 F.3d 580 (7th Cir. 2004)
Santiago-Ramos v. Centennial P.R. Wireless Corp., 217 F.3d 46 (1st Cir. 2000)

Pregnancy discrimination and stereotyping
Bergstrom-Ek v. Best Oil Co., 153 F.3d 851 (8th Cir. 1998)
Lulaj v. Wackenhut Corp., 512 F.3d 760 (6th Cir. 2008)
Sheehan v. Donlen Corp., 173 F.3d 1039 (7th Cir. 1999)
Troy v. Bay State Computer Group, Inc., 141 F.3d 378 (1st Cir. 1998)

Equal pay
Hostile work environment sexual harassment

Retaliation
Gerving v. Obiz, LLC, 324 Fed. Appx. 692 (9th Cir. 2009)
Lettieri v. Equant Inc., 478 F.3d 640 (4th Cir. 2007)
Zimmerman v. Direct Federal Credit Union, 262 F.3d 70 (1st Cir. 2001)

Family and medical leave for caregiving
Bell v. Prefix, 321 Fed. Appx. 423 (6th Cir. 2009)
Grew v. Kmart Corp. of Ill., Inc., 97 Fair Empl. Prac. Cas. 1561 (N.D. Ill. 2006)
Knussman v. Maryland, 272 F.3d 655 (4th Cir. 2001)
Lewis v. School Dist. #70, 523 F.3d 730 (7th Cir. 2008)
Martin v. Brevard Cty. Public Sch., 543 F.3d 1261 (11th Cir. 2008)

Disability association
Trujillo v. PacificCorp, 524 F.3d 1149 (10th Cir. 2008)

ERISA
Grew v. Kmart Corp. of Ill., Inc., 97 Fair Empl. Prac. Cas. 1561 (N.D. Ill. 2006)
Fleming v. Ayers & Associates, 948 F.2d 993 (6th Cir. 1991)
Trujillo v. PacificCorp, 524 F.3d 1149 (10th Cir. 2008)

State common law claims
Lewis v. School Dist. #70, 523 F.3d 730 (7th Cir. 2008) [breach of contract]
Zimmerman v. Direct Federal Credit Union, 262 F.3d 70 (1st Cir. 2001) [tortious interference]
Caregiving cases brought by male plaintiffs
Bell v. Prefix, 321 Fed. Appx. 423 (6th Cir. 2009)
Knussman v. Maryland, 272 F.3d 655 (4th Cir. 2001)
Martin v. Brevard Cty. Public Sch., 543 F.3d 1261 (11th Cir. 2008)
Trujillo v. PacificCorp, 524 F.3d 1149 (10th Cir. 2008) [husband and wife]

Class, systemic, or disparate impact cases

* This list features selected cases in which plaintiffs' claims alleging caregiver discrimination survived employers’ challenges. Please note that this list is illustrative only—it is in no way exhaustive. Cases may appear under more than one heading, where relevant. For additional cases, see Center for WorkLife Law, *Key Cases: Family Responsibilities Discrimination* (Aug. 13, 2009), available at http://www.worklifelaw.org/pubs/Key_Case_List_081309.doc, from which this list draws, in part. For a more comprehensive treatment of caregiver discrimination cases, see the Calvert, Phelan & Williams (forthcoming 2012) and Williams & Calvert (2006) treatises listed in the bibliography.