

## New EEOC Guidance Spotlights Caregivers in the Workplace

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As the number of employees requesting flexible work arrangements increases, the Equal Employment Opportunity Commission (EEOC) has released a new technical assistance document, [“The COVID-19 Pandemic and Caregiver Discrimination Under Federal Employment Discrimination Law,”](#) and an update to its COVID-19 [“What You Should Know”](#) to address employees and job seekers with family caregiving responsibilities.

The new EEOC guidance highlights potential issues and scenarios that could lead to discrimination claims based on caregiver responsibilities, and it offers important reminders for employers dealing with employees’ flexible work requests.

There is generally no right under federal employment discrimination laws to reasonable accommodations based on caregiver status (absent a potential need to accommodate employees temporarily disabled by pregnancy, childbirth, or related medical conditions). However, as the EEOC highlighted, employees with caregiving responsibilities may have rights under other laws, such as leave for covered caregiving purposes under the Family and Medical Leave Act or similar state or local laws.

Even as COVID-19 pandemic conditions improve, the challenge of juggling work and caregiver responsibilities remain an important concern for employees. To address this, and to attract and retain top talent in a difficult labor market, many employers are looking to provide flexible arrangements for employees, generally, or specifically to those with caregiver responsibilities.

The EEOC’s guidance makes clear that treating employees with caregiver responsibilities more favorably in terms of flexible working conditions does not violate any equal employment opportunity laws, as long as an employer is not treating employees requesting flexibility for caregiving responsibilities differently due to their sex or any other equal employment opportunity (EEO)-protected characteristic. As the EEOC points out, treating caregivers differently violates federal equal employment discrimination laws if an employer bases workplace flexibility decisions on a caregiver’s protected characteristic (such as sex, race, disability, and age) or a combination of protected characteristics. Additionally, treating caregivers differently based on their association with

an individual with a disability or on a protected characteristic of the individual for whom care is provided may violate EEO laws.

Two other reminders are highlighted in the EEOC guidance. In terms of accommodations based on age, the EEOC reiterated that the Age Discrimination in Employment Act does not entitle older employees to reasonable accommodations, but it does not prohibit employers from treating older workers more favorably than younger workers because of the older workers' age. Some state laws, however, may not allow preferential treatment for older workers.

Finally, the EEOC cautioned that, while having a policy or practice that conditions availability of flexible work arrangements on a caregiver's performance is permissible, employers should ensure performance standards are applied consistently without regard to protected characteristics.

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