

Is Your Parental Leave Policy Really Gender Neutral?

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On June 15, 2017, J.P. Morgan Chase employee Derek Rotondo filed a charge with the Equal Employment Opportunity Commission (“EEOC”) alleging that the company’s parental leave policy discriminates against males by relying on a sex-based stereotype that mothers are the primary caretakers of children, thereby denying fathers paid parental leave on the same terms as mothers. The EEOC charge, filed on a class-wide basis, seeks relief on behalf of himself and all fathers who were or will be subject to J.P. Morgan’s parental leave policy.

According to the charge, Mr. Rotondo requested primary caregiver leave prior to the birth of his child to take advantage of J.P. Morgan’s generous parental leave policy which offers “primary caretakers” 16 weeks of paid leave to care for and bond with a new child. “Non-primary caretakers” are afforded 2 weeks of paid leave under the policy. Mr. Rotondo claims that the company’s human resources department explained that mothers are presumed to be the primary caretakers and that he would only be considered the primary caretaker (and receive 16 weeks of paid leave) if he could demonstrate that his wife had either returned to work or was medically incapable of caring for the child. Women, on the other hand, are automatically designated as the primary caretaker without satisfying the same eligibility criteria, according to the charge. Mr. Rotondo was unable to qualify as the primary caretaker because his wife, a teacher, was on summer break and in good health.

Some employers utilize “primary” and “secondary” caregiver labels in parental leave policies to promote gender neutrality. The challenge for such employers, however, is how to define and designate who is the primary caregiver without making gender-based assumptions. This approach can also lead to inconsistent application of benefits for varying family dynamics. For example, what amount of leave should be provided to an employee who claims that he or she shares in parenting responsibilities equally with the co-parent? Is it possible for both parents to be “primary” caretakers? This EEOC charge illustrates the potential pitfalls when gender stereotypes influence policy implementation.

The EEOC takes the position that parental leave must be provided to both male and female employees on equal terms, while leave in connection with pregnancy, childbirth or a related disability can be limited to women. The EEOC’s 2015 “[Enforcement Guidance on Pregnancy Discrimination and Related Issues](#)” provides the following examples to illustrate which types of policies violate Title VII as discriminatory based on sex:

Pregnancy-Related Medical Leave and Parental Leave Policy – No Disparate Treatment

An employer offers pregnant employees up to 10 weeks of paid pregnancy-related medical leave for pregnancy and childbirth as part of its short-term disability insurance. The employer also offers new parents, whether male or female, six weeks of parental leave. A male employee alleges that this policy is discriminatory as it gives up to 16 weeks of leave to women and only six weeks of leave to men. The employer's policy does not violate Title VII. Women and men both receive six weeks of parental leave, and women who give birth receive up to an additional 10 weeks of leave for recovery from pregnancy and childbirth under the short-term disability plan.

Discriminatory Parental Leave Policy

In addition to providing medical leave for women with pregnancy-related conditions and for new mothers to recover from childbirth, an employer provides six additional months of paid leave for new mothers to bond with and care for their new baby. The employer does not provide any paid parental leave for fathers. The employer's policy violates Title VII because it does not provide paid parental leave on equal terms to women and men.

In order to create a gender neutral parental leave policy which is not subject to challenge on the basis of gender, employers should consider providing the same benefits to new parents (mothers and fathers) to care for and bond with a newly born, adopted, or placed child. Any additional benefit which is available to mothers only should be tied to a medical disability related to pregnancy, childbirth or related conditions. This approach avoids primary/secondary caregiver designations altogether, and therefore, may eliminate claims that a company's parental leave policy favors one sex over the other.

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