

# Questions and Answers about EEOC's Enforcement Guidance on *Unlawful Disparate Treatment of Workers with Caregiving Responsibilities*

The U.S. Equal Employment Opportunity Commission (EEOC) has issued a new [Enforcement Guidance](#) on Unlawful Disparate Treatment of Workers with Caregiving Responsibilities. This document illustrates circumstances under which discrimination against a working parent or other caregiver constitutes unlawful disparate treatment under the federal EEO statutes.

## **Q: Why is the EEOC issuing this document?**

A: Changing workplace demographics, including women's increased participation in the labor force, have created the potential for greater discrimination against working parents and others with caregiving responsibilities. The new guidance is intended to assist employers, employees, and Commission staff in determining whether discrimination against persons with caregiving responsibilities constitutes unlawful disparate treatment under federal EEO law.

## **Q: Are caregivers a protected group under the federal EEO statutes?**

A: No. The federal EEO statutes do not prohibit discrimination based solely on parental or other caregiver status. Under the federal EEO laws, discrimination must be based on a protected characteristic such as sex or race. However, some state or local laws may provide broader protections for caregivers. A particular caregiver also may have certain rights under other federal laws, including the Family and Medical Leave Act.

## **Q: When does discrimination against a worker with caregiving responsibilities constitute unlawful disparate treatment?**

A: Unlawful disparate treatment arises where a worker with caregiving responsibilities is subjected to discrimination based on a protected characteristic under federal EEO law. Generally, this means that, under Title VII of the Civil Rights Act of 1964, unlawful disparate treatment arises where a caregiver is subjected to discrimination based on sex and/or race.

Unlawful disparate treatment of a caregiver also can arise under the Americans with Disabilities Act of 1990 where an employer discriminates against a worker based on his or her association with an individual with a disability.

## **Q: What are some common circumstances under which discrimination against a worker with caregiving responsibilities might constitute unlawful disparate treatment under federal EEO law?**

A: The new enforcement guidance illustrates various circumstances under which discrimination against a caregiver might violate federal EEO law. Examples include:

- [Treating male caregivers more favorably than female caregivers](#): Denying women with young children an employment opportunity that is available to men with young children.
- [Sex-based stereotyping of working women](#):
  - Reassigning a woman to less desirable projects based on the assumption that, [as a new mother, she will be less committed to her job](#).
  - Reducing a female employee's workload after she assumes full-time care of her niece and nephew based on the assumption that, [as a female caregiver, she will not want to work overtime](#).
- [Subjective decisionmaking](#): Lowering subjective evaluations of a female employee's work performance after she becomes the primary caregiver of her grandchildren, despite the absence of an actual decline in work performance.

## Notice Concerning The Americans With Disabilities Act Amendments Act Of 2008

The Americans with Disabilities Act (ADA) Amendments Act of 2008 was signed into law on September 25, 2008 and becomes effective January 1, 2009. Because this law makes several significant changes, including changes to the definition of the term "disability," the EEOC will be evaluating the impact of these changes on this document and other publications. See the [list of specific changes to the ADA](#) made by the ADA Amendments Act.

- [Assumptions about pregnant workers](#): Limiting a pregnant worker's job duties based on pregnancy-related stereotypes.
  - [Discrimination against working fathers](#): Denying a male caregiver leave to care for an infant under circumstances where such leave would be granted to a female caregiver.
  - [Discrimination against women of color](#): Reassigning a Latina worker to a lower-paying position after she becomes pregnant.
  - [Stereotyping based on association with an individual with a disability](#): Refusing to hire a worker who is a single parent of a child with a disability based on the assumption that caregiving responsibilities will make the worker unreliable.
  - [Hostile work environment affecting caregivers](#):
    - Subjecting a female worker to severe or pervasive harassment [because she is a mother with young children](#).
    - Subjecting a female worker to severe or pervasive harassment [because she is pregnant or has taken maternity leave](#).
    - Subjecting a worker to severe or pervasive harassment [because his wife has a disability](#).
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