

Family Responsibilities Discrimination: What Is It?

Family responsibilities discrimination, which is discrimination against employees based on their responsibilities to care for family members such as children or aging parents, is the new battleground for employers and employees. An increasing number of employees are suing their employers because they lost their jobs, were passed over for promotion, or were treated unfairly based on their responsibilities to care for children or others. A significant number of the cases have been successful, resulting in large damage awards or settlements.

Employees and applicants are successfully suing because they have been rejected for employment, passed over for promotion, subjected to hostile work environments, and terminated based solely on employers' negative assumptions about the value and performance of employees who have care obligations outside of work. Stereotyping is a key feature in most family responsibilities cases. Employers in these cases have made outdated and incorrect assumptions about how a parent or other caregiver will act or should act and then made personnel decisions based on those stereotypes (*e.g.*, a man should not care for his infant, or a woman who is a mother won't be able to concentrate on her job). Even in cases where employees have had superior records, supervisors have wrongly assumed that employees will have productivity or attendance problems because of their family responsibilities. Supervisors have also downgraded or harassed employees who have become parents or taken family related leave, sometimes in an effort to make them quit.

Employees sue for FRD using a variety of statutes and causes of action, which can make it particularly hard for employers and HR professionals to recognize complaints as FRD cases. Employees may use the federal and state anti-discrimination statutes, claiming discrimination based on sex, in situations where women have been treated differently based on assumptions about how mothers behave as workers or in situations where men are denied leave benefits or other benefits connected with caregiving because they are male. Employees who are eligible for FMLA leave in an FMLA-covered company may sue for denial of or interference with leave, or for discrimination or retaliation after they return from leave. Other causes of action include ERISA, the Americans with Disabilities Act, wrongful discharge, breach of contract, tortious interference with business relationships, and infliction of emotional distress. In some jurisdictions, employees can sue for violation of statutes that prohibit discrimination based on "parental status" (Alaska) or "family responsibilities" (District of Columbia). Federal workers and contractors are protected from discrimination based on "status as a parent". California is considering a bill to outlaw discrimination in employment based on "family status."

It is very important for employers to understand what FRD is and how it commonly arises so they can prevent FRD in their workplaces.