

Family Responsibilities Discrimination Claims Increase

By Anique Gonzalez

Employers know that it is illegal to discriminate against employees, or potential employees, on the basis of gender, yet there has been an increase in the number of lawsuits filed against companies where employees claimed they were discriminated against based on family caregiving responsibilities. Although such claims have existed since the 70s, the number of cases filed throughout the United States has increased by 400% since 1996.

Family responsibilities discrimination (FRD) claims involve company statements, policies, or types of conduct that primarily discriminate against women as a result of stereotypical views of parenthood. These may include no-marriage requirements or denials of candidates who have preschool-aged children. Such claims, which are tied to gender/sex discrimination allegations, are said to violate a variety of laws, including Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Equal Pay Act of 1983, and the Family and Medical Leave Act.

Although such claims are generally filed by women, a recent study found that nearly 8% are brought by men with family caregiving responsibilities. Location is also a factor; the largest increase in the filing of such claims has occurred on the East Coast. This is also where the most cases are won by employees.

A recent case, *Kirleis v. Dickie, McCamey & Chilcote, PC*, filed in the United States District Court for the Western District of Pennsylvania has brought such cases into the national spotlight. Kirleis, a female attorney, claims that her firm employed a different method to determine her pay than it used for her male counterparts simply because she was a mother.

Kirleis maintains that her claim is substantiated by a statement made by a member of the compensation committee who allegedly said her "priorities were not straight because of her work and she did not spend enough time with her husband and children." The individual even recommended that she cut back her hours and work part-time so that she could spend more time with her family.

The first FRD case, *Phillips v. Martin-Marietta Corp.*, was filed in 1971. The case was heard by the United States Supreme Court, which found that employers could not reject women with preschool-aged children as potential employees if they hired, or were willing

continued on back

to hire, men with children of the same age. It said, “Section 703(a) of the Civil Rights Act of 1964 requires that persons of like qualifications be given employment opportunities irrespective of their sex.”

Other cases that strengthened this judgment include *Santiago-Ramos v. Centennial P.R. Wireless Corp.*, *Trezza v. Hartford*, and *IncBaily v. Scott-Gallagher*. Essentially, these cases laid the groundwork for future suits in which women were discriminated against as a result of employers questioning—via policies, conduct, etc.—their abilities to simultaneously be employees and mothers.

Currently, in the State of New Jersey, FRD claimants are not only able to use the violation of Title VII as the basis for their suits, but they can also claim their employers violated the counterpart of New Jersey’s Title VII, the New Jersey Law Against Discrimination, or NJLAD. Thus far, New Jersey courts have not decided a case that would directly impact how family caregiving-responsibilities claims would be handled under NJLAD; however, a case that is currently pending in the District Court of New Jersey may soon provide an answer.

To date, such cases have resulted in plaintiffs being awarded more than \$100,000 in damages. Consequently, it is of the utmost importance that employers realize they are not to factor in individuals’ roles as parents when making hiring decisions. In fact, to err on the side of caution, employers should examine the policies they currently have in place to ensure that they do not discriminate, even inadvertently, against employees who have family caregiving responsibilities.

On the Net

Civil Rights Act of 1964

usinfo.state.gov/usa/infousa/laws/majorlaw/civilr19.htm

United States District Court for the Western District of Pennsylvania

www.pawd.uscourts.gov

State of New Jersey

www.state.nj.us