

# PUTNEY, TWOMBLY, HALL & HIRSON LLP

ESTABLISHED 1866

COUNSELORS AT LAW

521 FIFTH AVENUE

NEW YORK, NEW YORK 10175

(212) 682-0020

TELEFAX: (212) 682-9380

putneylaw.com

120 WOOD AVENUE SOUTH  
SUITE 600

ISELIN, NEW JERSEY 08830

(732) 632-2505

TELEFAX: (732) 632-2508

1205 FRANKLIN AVENUE

GARDEN CITY, NY 11530

(516) 746-0070

TELEFAX: (516) 746-0599

2500 NORTH MILITARY TRAIL  
SUITE 465

BOCA RATON, FLORIDA 33431

(800) 935-8480

TELEFAX: (561) 750-6602

COUNSEL

CHARLES J. GROPPE

ALEXANDER NEAVE

LOUIS A. TRAPP, JR.

DANIEL F. MURPHY, JR.  
MICHAEL T. McGRATH  
THOMAS A. MARTIN  
WILLIAM M. POLLAK  
DUSTAN T. SMITH  
JAMES E. McGRATH, III  
CHRISTOPHER M. HOULIHAN  
THOMAS M. LAMBERTI  
STEPHEN J. MACRI  
HARVEY I. SCHNEIDER  
MARY ELLEN DONNELLY  
JOSEPH B. CARTAFALSA  
GEOFFREY H. WARD  
ANDREA HYDE  
E. PARKER NEAVE  
MARK A. HERNANDEZ  
JAMES M. STRAUSS  
PHILIP H. KALBAN

May 29, 2007

## CLIENT ADVISORY

### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

#### **ENFORCEMENT GUIDANCE: UNLAWFUL DISPARATE TREATMENT OF WORKERS WITH CAREGIVING RESPONSIBILITIES**

On May 23, 2007, the Equal Employment Opportunity Commission (“EEOC”) announced guidelines to help employers better comply with Title VII of the 1964 Civil Rights Act (“Title VII”) and the Americans with Disabilities Act of 1990 (“ADA”). The guidance focuses on treatment of employees with caregiving responsibilities.

The EEOC guidance confirms that although caregivers are not a class protected by anti-discrimination laws, there are certain circumstances where employment policies might result in disparate treatment of caregivers who are also members of a protected class, such as women or minorities. Such policies, as unlawful disparate treatment, might violate Title VII or the ADA.

Discrimination against a subset of a protected class is prohibited even if the employer does not discriminate against the class as a whole. For example, discrimination against mothers is unlawful even if there is no discrimination against childless women.

#### **EEOC Examples of Unlawful Disparate Treatment**

##### EEOC Example: Gender-Based Stereotyping

Bob, a manager in a public relations firm, interviewed Patricia, a well-qualified applicant for a position as a marketing assistant. During the interview, Bob asked Patricia if she had any children. When she explained that she did not have any yet, because she and her husband wanted to start their careers before having children, Bob asked her how she would balance having children and the demands of the position. Patricia responded that she and her husband would work together to care for their children. Bob told Patricia that men are not reliable caregivers. Bob told his administrative assistant that being a mother was incompatible with working in a fast-paced business environment, and that, therefore,

he was concerned about hiring Patricia. Bob did not hire Patricia. Patricia filed a sex discrimination charge with the EEOC. The investigation showed that the employer reposted the position after not hiring Patricia and that Patricia had as much experience and education as other employees recently hired as marketing assistants. The EEOC investigator determined that Bob rejected Patricia from the first round of hiring because of sex-based stereotypes in violation of Title VII.

#### EEOC Example: Unlawful Sex-Based Assumptions About Work Performance

Anjali, a police detective, had received glowing performance reviews during her first four years with the City's police department and was assumed to be on a fast track for promotion. However, after she returned from leave to adopt a child during her fifth year with the department, her supervisor frequently asked how Anjali was going to manage to stay on top of her case load while caring for an infant. Although Anjali continued to work the same hours and close as many cases as she had before the adoption, her supervisor pointed out that none of her superiors were mothers, and he removed her from her high-profile cases, assigning her smaller, more routine cases normally handled by inexperienced detectives. The City has violated Title VII by treating Anjali less favorably because of gender-based stereotypes about working mothers.

#### EEOC Example: Unlawful Refusal to Modify Duties

Ingrid, a pregnant machine operator at a bottling company, is told by her doctor to temporarily refrain from lifting more than 20 pounds. As part of her job as a machine operator, Ingrid is required to carry certain materials weighing more than 20 pounds to and from her machine several times each day. She asks her supervisor if she can be temporarily relieved of this function. The supervisor refuses, stating that he can't reassign her job duties but can transfer her temporarily to another lower-paying position for the duration of the lifting restriction. An EEOC investigation reveals that in the previous six months, the employer had reassigned the lifting duties of three other machine operators, including a man who injured his arm in an automobile accident and a woman who had undergone surgery to treat a hernia. Under the circumstances, the investigator determines that the employer subjected Ingrid to discrimination based on sex.

#### EEOC Example: Unlawful Stereotyping Based on Association with an Individual with a Disability

An employer determines that one of the applicants for a position, Arnold, is the best qualified, but is reluctant to hire him because he disclosed during the interview that he is a divorced father and has sole custody of his son, who has a disability. Because the employer concludes that Arnold's caregiving responsibilities for a person with a disability may have a negative effect on his attendance and work performance, it decides to offer the position to the second best qualified candidate, Fred, and encourages Arnold to apply for any future openings if his caregiving responsibilities change. Under the

circumstances, the employer has violated the ADA by refusing to hire Arnold because of his association with an individual with a disability.

### State and Local Laws

Some state and local laws may provide broader protection for individuals with caregiving responsibilities than the federal EEO statutes covered by the enforcement guidance the EEOC has issued.

### What Employers Should Do

The EEOC guidance encourages all employers to take particular care when making employment decisions involving caregivers. Employers should be conscious that their employment decisions are made in a manner that treats all employees equally regardless of any protected characteristic.

Additionally, the EEOC encourages employers to adopt flexible employment policies, to allow all employees, including those with caregiving responsibilities, to effectively balance their work and personal responsibilities. The EEOC believes that these policies will save employers time and money by increasing retention rates.

\* \* \*

Please do not hesitate to contact us should you have any questions about the EEOC's Enforcement Guidance on Unlawful Disparate Treatment of Workers with Caregiving Responsibilities.