

REGULATION

2009

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Personnel

SUBJECT: SCHOOL DISTRICT BEST PRACTICES FOR EMPLOYEES WITH CAREGIVING RESPONSIBILITIES

The Equal Employment Opportunity Commission (EEOC) has issued guidance explaining the circumstances under which discrimination against workers with caregiving responsibilities might constitute discrimination based on sex, disability or other characteristics protected by federal employment discrimination laws.

[*Employer Best Practices for Workers with Caregiving Responsibilities (2009)*, available at <http://www.eeoc.gov/policy/docs/caregiver-best-practices.html>]

The guidance document provides suggestions for "best practices" that the School District, as an employer, may implement to reduce the chance of equal employment opportunity (EEO) violations against caregivers, and to remove barriers to equal employment opportunity.

The guidance document does not create a new prohibited basis for discrimination. Rather, the document illustrates circumstances in which stereotyping or other forms of discrimination against workers with caregiving responsibilities may violate federal employment statutes and regulations. Under the federal EEO laws, discrimination must be based on protected characteristics such as sex and/or race. A particular caregiver also may have certain rights under other federal laws, including the Family and Medical Leave Act (FMLA). Also, a state or local law may provide broader protections for caregivers.

Unlawful disparate treatment of the caregiver also can arise under the Americans with Disabilities Act (ADA) of 1990 and the ADA Amendments Act of 2008 where an employer discriminates against a worker based on his or her association with an individual with a disability.

The District, by encouraging and implementing flexible workplace practices that help employees achieve a satisfactory work-life balance, hopes to foster a positive educational environment for its staff and students, enhance employee productivity, and reduce absenteeism.

These workplace practices (best practices) are aimed at removing barriers to equal employment opportunities for employees who have caregiving responsibilities. Best practices are proactive measures that go beyond federal nondiscrimination requirements. Examples include personal or sick leave policies that allow employees to use leave to care for ill family members, flexible work arrangements, and part-time opportunities with proportional compensation and benefits. Responsibilities extend not only to spouses and children, but also to parents and other older family members, or to relatives with disabilities.

The following are examples of best practices for the School District that go beyond federal nondiscrimination requirements and that are designed to remove barriers to equal employment opportunity.

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General

- 1) **Be aware of, and train administrators about, the legal obligations that may impact decisions about treatment of workers with caregiving responsibilities.** Those include federal employment statutes and regulations including the Americans with Disabilities Act of 1990, as amended; the Pregnancy Discrimination Act; Title VII of the Civil Rights Act of 1964, as amended; and the Family and Medical Leave Act (FMLA).
- 2) **Develop, disseminate and enforce a strong Equal Employment Opportunity policy** that clearly addresses the types of conduct that might constitute unlawful discrimination against caregivers based on characteristics protected by federal antidiscrimination laws.
- 3) **Ensure that administrators at all levels are aware of, and comply with, the District's personnel policies and practices.** In particular, those administrators who regularly interact with employees or who are responsible for assignments, leave approval, schedules, promotions and other employment terms, conditions and benefits should be familiar with the District's personnel policies and practices, as well as applicable collective bargaining agreements.
- 4) **Respond to complaints of caregiver discrimination efficiently and effectively.** Investigate complaints promptly and thoroughly. Take corrective action and implement corrective and preventive measures as necessary to resolve the situation and prevent problems from arising in the future.
- 5) **Protect against Retaliation.** Provide clear and credible assurances that if employees make complaints or provide information related to complaints about unfair treatment of caregivers, the District will protect them from retaliation. Ensure that these anti-retaliation measures are enforced.

Recruitment, Hiring and Promotion

- 1) **Focus on the applicant's qualifications** for the job in question. Do not ask questions about the applicant's or employee's children, plans to start a family, pregnancy, or other caregiving-related issues during interviews or performance reviews.
- 2) **Review employment policies and practices** - particularly those related to hiring, promotion, pay, benefits, attendance, and leave - to determine whether they disadvantage workers with caregiving responsibilities.

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Personnel

SUBJECT: SCHOOL DISTRICT BEST PRACTICES FOR EMPLOYEES WITH CAREGIVING RESPONSIBILITIES (Cont'd.)

- 3) **Develop specific, job related qualification standards** for each position that reflects the duties, functions, and competencies of the position and minimize the potential for gender stereotyping and other unlawful discrimination against caregivers. Make sure these standards are consistently applied when choosing among candidates.
- 4) **Ensure that job openings, acting positions, and promotions are communicated** to all eligible employees regardless of caregiving responsibilities.
- 5) **Implement recruitment practices that target individuals with caregiving responsibilities** who are looking to enter or return to the workplace.
- 6) **Identify and remove barriers to re-entry** for individuals who have taken leaves of absence from the workforce due to caregiving responsibilities or other personal reasons.
- 7) **Ensure that employment decisions are well-documented and transparent** (to the extent feasible).