Avoiding Family Responsibilities Discrimination

EAPs can help employers understand and mitigate the risks of discrimination against workers with family responsibilities.

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Family responsibilities discrimination (FRD) is a fast-developing trend in employment law. According to the University of California Hastings College of Law, the number of successful lawsuits brought by employees suing for workplace discrimination based on family responsibility has doubled since 2000, with court settlements in favor of employees as high as $11.65 million. The past decade alone has seen a 419 percent increase in the number of lawsuits brought by family caregivers, with legal action taken against city and state governments, universities, Fortune 500 companies, and a variety of private organizations.

These lawsuits have demonstrated that FRD can pose significant risks to employers, not only in terms of legal costs but also through declines in employee productivity and increases in disability and workers’ compensation claims. This article examines the impact of FRD and explores how EAPs can partner with employers to minimize risks associated with this new and growing form of discrimination.

WHAT IS FRD?

Since most employers have never heard of family responsibilities discrimination, it is important to understand how FRD manifests itself in the workplace. Research conducted by Joan Williams, a professor at the Hastings College of Law, reveals a pattern of workplace discrimination against family caregivers. In a recent article in the Women’s Lawyer Journal, Williams and attorney Calvert Thomas provide examples of FRD from U.S. court cases:

- A police officer is told that his wife would have to be “dead or in a coma” before he would qualify for leave under the 1993 Family and Medical Leave Act to care for his newborn infant (Knussman v Maryland, 272 f.3d 655 4th Cir 2004).
- A top salesperson with outstanding reviews experiences hostility from her supervisor after returning from maternity leave (Walsh v National Computer Systems, Inc No. 00-CV-82, 2002).
- A school psychologist is not considered for promotion because her supervisor assumes she won’t want to work additional hours now that she has “little ones at home” (Buck v Hastings on Hudson Union Free School District, 365 E3d 107 2d Cir 2004).
- An automobile salesperson is harassed by her supervisor because he believes she should “do the right thing” and stay home with her children and that “a woman with a family would always be at a disadvantage at the dealership” (Plaatzer v Burton Automotive, Inc., 2004 WL 2066770 (D. Minn. 2004)).
- A maintenance worker is fired for taking intermittent leave to care for his elderly father with Alzheimer’s disease and his ill mother, who later died (Schultz v Advocate Health & Hospitals Corp., No. 01C0702 (N. D. Ill. 2002)).

As Williams and Thomas explain, “FRD occurs when an employee suffers discrimination at work based on unexamined biases about how employees with family caregiving responsibility will or should act.” In the cases noted previously, employers made assumptions about the family caregiving responsibilities of their employees.

For example, the employers of the male police officer and male maintenance worker assumed the men “should” not ask for or use family leave and that a father “would” not qualify for family leave. In the case of the female school psychologist and female salesperson, the employers assumed that mothers “would” be more committed to their families than to their careers and “should” stay at home with their children.

As of this writing, there are no federal laws that prohibit employment discrimination based on family responsibility, although a bill to prohibit FRD is pending in California and other states are considering similar laws. Since no federal laws protect family caregivers from discrimination, a variety of legal theories have been used to win FRD cases in court.

According to Williams and Thomas, claims of disparate treatment, disparate impact, harassment, failure to promote, retaliation, and discrimination based on gender stereotypes have all been used under Title VII of the Civil Rights Act of 1964 to protect family caregivers. In addition, anti-retaliation provisions and
denial of leave under the Family and Medical Leave Act of 1993 and the Pregnancy Discrimination Act of 1975 have also been used to protect family caregivers.

**HOW FRD AFFECTS THE WORKPLACE**

Although the legal field has tracked FRD since 1998, very little is known about how family responsibilities discrimination affects the workplace. In 2003, the author conducted what appears to be the first study to examine FRD in the workplace. Study participants consisted of 498 full-time employees working in a variety of occupational settings.

The study found that employees who perceived they were victims of FRD reported significantly less job satisfaction and organizational commitment and greater turnover intentions and work-family conflict. Since job satisfaction, organizational commitment, and turnover intentions are indicators of employee productivity, these findings suggest that perceptions of FRD may have a negative impact on employee productivity.

In addition, chronic work-family conflict has been linked to a variety of medical and psychiatric conditions, such as high blood pressure, high cholesterol, depression, anxiety, and substance abuse, any of which may increase disability and workers' compensation claims. Thus, the study findings suggest that perceptions of FRD may also increase disability and workers' compensation claims.

**PARTNERING WITH EMPLOYERS**

At some point, employees who've felt mistreated at work due to their family responsibilities probably have contacted their EAP, so most employee assistance professionals involved in direct client services have heard of FRD. However, many EA professionals may not have given claims of FRD the same level of attention and sensitivity given to claims of sexual harassment or racial discrimination. As a result, they unintentionally may have intensified an already precarious situation.

Now that EA professionals are more aware of this form of employment discrimination, how can they strategically position themselves as key partners in preventing FRD? There are five proactive strategies that EAPs should implement to prevent FRD and minimize risk to employers. Each strategy is drawn from the author’s research on FRD.

1. **Promote and evaluate EAP services.** Since EAPs have a long history of supporting employees with families, the availability of EAP services may send a powerful message to family caregivers that the organization supports their caregiving responsibilities. Indeed, the research shows that the availability of employer-sponsored EAP services significantly decreased perceptions of FRD, especially for employed parents.

   This suggests that EAPs should seek to promote and evaluate their services. The following strategies can increase awareness and utilization of EAP services:
   - **Conduct supervisory and employee trainings.** The most effective way for EAPs to promote their services is through trainings with supervisors and employees.
   - **Develop promotional materials.** EAPs should develop high-impact promotional materials and consistently communicate information about their services to managers and staff via e-mail, brochures, posters, and face-to-face contact.
   - **Conduct twice-yearly program evaluations.** EAPs should consistently measure and evaluate the effectiveness of their services. In today's fast-paced workplace, turnover is inevitable and new employees are continuously joining the workplace. Conducting needs assessments, identifying gaps in service, and evaluating services can help determine whether or not clients are satisfied with the EAP's service, workers are aware of the variety of services offered, and the EAP is meeting the organization's needs.

2. **Promote employer-sponsored work-life benefits.** The research results showed that the availability and use of employer-sponsored work-life benefits, especially flexible work arrangements, decreased employee perceptions of FRD. These findings suggest that simply informing employees of their work-life benefits can serve to decrease perceptions of FRD.

   EA professionals should promote employer-sponsored benefits in management and employee consultations when appropriate. In addition, EAPs should prepare newsletters highlighting the availability and success of employer-sponsored work-life benefits.

3. **Coach and train managers.** The research revealed that managerial support of family responsibilities significantly decreased employee perceptions of FRD. Since most EA professionals regularly coach and train managers, they have a unique opportunity to intervene at the managerial level. For example, EA professionals can coach and train managers to:
   - Review their underlying beliefs about work-life balance and family care in an effort to avoid displaying unintentional bias against caregivers;
   - Behave in a flexible and responsive manner toward employees' work-life issues; and
   - Set appropriate limits and boundaries with their employees while effectively balancing the needs of the employer with the needs of the employee.

4. **Develop tip sheets for managers.** According to the research, employees who reported positive experiences using work-life benefits perceived significantly less FRD. EA professionals should create tip sheets for managers that include a list of "dos and don'ts" for effective communication with employees who are taking or returning from family leave, requesting flexible work arrangements, and requesting information about work-life benefits. Managers should pay attention to workers' reactions when they request or use work-life benefits and communicate information about work-life benefits in a positive and clear manner.

5. **Strengthen the OD role of EAPs.**

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The most statistically significant findings revealed that employee perceptions of FRD decrease markedly in organizational cultures that support work-life balance. Although EAPs have not traditionally provided organizational development (OD) services, research findings on FRD suggest EAPs are in a key position to partner with employers to develop their organizational cultures. EA professionals should partner with employers to do the following:

- Conduct a SWOT analysis of work-life benefits. Analyzing the strengths, weaknesses, opportunities, and threats of the existing work-life benefits program is an important first step. For example, does the work-life benefits program consider the needs of all employees? Do all employees feel comfortable using the benefits?

- Perform a work-life culture assessment. Conducting an assessment to determine how informal workplace practices may conflict with formal workplace policies that support work-life balance is an important second step. For example, are there “unwritten rules” that prevent work-life balance, such as expecting employees to prioritize work over their personal life or using “face time” as an indicator of productivity? If so, develop action plans to manage these informal practices.

By understanding this research, EA professionals have an opportunity to partner with employers, develop innovative coaching and training sessions for managers, strengthen the role of organizational development in EAP services, and showcase their unique talents for protecting employers from the risks posed by FRD. In so doing, EAPs can create a healthier, more effective, and more efficient workplace for all employees and lower the risk of productivity loss and increased disability and workers' compensation claims.

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meetings possible within work schedule constraints.

Substance abuse impedes work performance and can pose significant legal risks to employers and the public they serve. Timely and effective treatment can save a career (and even a life) and reduce organizational risks. An EAP can play a valuable role in reducing risk by supporting recovery in the workplace and helping maintain the safety compliance protocols of the organization. ■

References