



*This article presents general guidelines for Ohio nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.*

## Caregiver Discrimination? EEOC Provides Updated Guidance

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This spring, the Equal Employment Opportunity Commission (EEOC) provided updated guidance regarding caregiver discrimination under federal employment laws in light of COVID-19 and its aftermath. Except for those with few employees, most nonprofit employers are subject to federal employment laws and fall under the EEOC's purview when it comes to prohibited discrimination.<sup>1</sup>

In this recent guidance, the EEOC outlined situations that can lead to actionable caregiver discrimination in the workplace. For example, it would be unlawful for an employer to:

- Refuse to hire a female applicant or promote a female employee based on the assumption that, because she is female, she will or should be primarily focused on caring for her family, including young children who attend school remotely, parents or other adult relatives;
- Deny a male employee's request for leave or permission to work a flexible schedule to care for a family member with COVID-19, or handle other pandemic-related caregiving duties, if the employer grants such requests when made by a similarly situated female employee;
- Refuse to hire a pregnant applicant, or demote or refuse to promote a pregnant employee, based on the assumption that this individual will or should be primarily focused on ensuring a safe and healthy pregnancy; or
- Refuse an employee's request for unpaid leave to care for a parent with long COVID qualifying as a disability under the ADA (or the Rehabilitation Act) while approving another employee's request for unpaid leave to handle other personal responsibilities.

The EEOC's guidance includes additional examples and illustrations that provide helpful clarification in the backdrop of shifting work arrangements and family responsibilities. While the EEOC's guidance is not legally binding, it could be given weight by a court reviewing a claim of unlawful treatment by a caregiver—in effect, providing broader protection for caregivers under federal law.

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<sup>1</sup> As some basic thresholds, employers with 15 or more employees are covered by Title VII and the ADA, employers with 20 or more employees are covered by the ADEA, employers that gross \$500,000 annually are covered by the FLSA, and employers with 50 or more employees are covered by the FMLA.



Nonprofit employers should consider familiarizing themselves with this new guidance and the “[Best Practices for Workers with Caregiving Responsibilities](#)” bulletin issued alongside it. They both provide practical ways employers can set aside outmoded mindsets that might lead to liability.

## Need Legal Advice?

If you are a PBPO client and have questions regarding the content of this article or need legal assistance, please contact us at [info@pbpohio.org](mailto:info@pbpohio.org) or (513) 977-0304.

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