



CENTER FOR WORKLIFE LAW
EMPLOYER ALERT

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WLL Quiz: Test Your Knowledge of FRD

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This quiz will help you identify family responsibilities discrimination (FRD) issues, and learn more about how employers can prevent FRD. Best of all, this quiz won't be graded, so it should be painless and instructive. The Answers are provided at the end of the quiz.

Questions:

Over the past ten years, the number of FRD cases filed by employees has:

- a. Remained about the same.
- b. Decreased by 50%.
- c. Doubled.
- d. Increased almost 400%.

2. The following employees are considered "caregivers" under family responsibilities discrimination law:

- a. Mothers and fathers.
- b. Grandparents.
- c. Children of elderly parents.
- d. All of the above.

3. Since there is no federal statute prohibiting family responsibilities discrimination, the following is true:

- a. Employers in states that do not have state laws prohibiting FRD can ignore the issue.
- b. All employers can ignore the issue because federal law would pre-empt state law on FRD, and there is no federal law prohibiting FRD.
- c. All employers need to educate themselves on FRD because liability for discrimination against caregivers can arise in any state under a variety of statutory and common law theories.



4. Mrs. Westerby is a stock clerk with excellent reviews at Smiley's Shoppe, which is open from 10 am to 7 pm M – F. All stock clerks work 9 am to 5 pm. Mrs. Westerby cannot drop her kids off at school until 9:30 am, so she proposes that she work 10 am to 6 pm each day. This would be a first for Smiley's Shoppe. Smiley's Shoppe should:
 - a. Deny Mrs. Westerby's request because there is no law requiring it to agree to change its hours to accommodate employee childcare needs.
 - b. Agree to Mrs. Westerby's request because she is a mother, and mothers should receive special treatment.
 - c. Deny Mrs. Westerby's request because granting it is a bad precedent, and other stock clerks may demand individual schedules.
 - d. Consider Mrs. Westerby's request, and whether it will interfere with Smiley's Shoppe's business. Even though the change may not be required by law, if the change does not affect Smiley's Shoppe's business, it would be helpful to grant it to retain a good employee like Mrs. Westerby.

5. Mr. Philby is a marketing manager at Axel Co. He reports to Mr. McLean. Mr. Philby requests an FMLA leave to care for their newborn. Mr. McLean should:
 - a. Check on Mr. Philby's eligibility for FMLA leave, and provide him with the proper forms if he is eligible.
 - b. Deny Mr. Philby's request because his wife is at home, and the FMLA only allows one caregiver to take FMLA leave at a time.
 - c. Ask Mr. Philby if there is any family in the area who can pitch in, since men should be the breadwinners -- not the babysitters -- in a family.
 - d. Tell Mr. Philby that he feels bad for his family situation, but that he needs Mr. Philby to work full-time. Mr. McLean offers to help out by pulling strings at recommended day care center for Mr. Philby's baby.

6. In a case for gender discrimination, including claims of family responsibilities discrimination, a plaintiff can recover the following types of damages:
 - a. Back pay.
 - b. Future wages (Front pay).
 - c. Attorneys' fees
 - d. Punitive damages.
 - e. All of the above.

7. Mrs. Magnus, a well-reviewed employee of Pym Co., goes home every day for lunch to help her disabled husband. Mrs. Magnus' supervisor makes a new rule that bars all Pym Co. employees from leaving the workplace during the lunch break. Mrs. Magnus complains to Pym Co. that this rule discriminates against caregivers. How should Pym Co. respond?



- a. There is no need For Pym Co. to respond. Companies have the right to make workplace rules that apply to all employees.
 - b. HR should find out whether there is a legitimate business reason for adopting the new rule, or whether the rule was adopted to discriminate against Mrs. Magnus because she has a disabled husband.
 - c. Do nothing. Mrs. Magnus' husband is disabled, but the Americans with Disabilities Act does not protect Mrs. Magnus because she is not disabled.
8. During a job interview with HR at Burgess Co., Mr. Blunt volunteers that his wife is pregnant with triplets. The HR Manager should:
- a. Ask Mr. Blunt about his plans to take time off when the babies arrive. It is legal to ask because Mr. Blunt volunteered the information about the triplets.
 - b. Not ask Mr. Blunt any questions about his family plans, and assess his suitability for the job based only on Mr. Blunt's qualifications.
 - c. Decline to hire Mr. Blunt because the poor guy will have his hands full, and will not be able to do a good job at Burgess Co.
 - d. Hire Mr. Blunt if he is qualified, but give him extra work so that he knows how hard it will be to keep this job when he has more responsibilities at home.

ANSWERS TO QUESTIONS:

(All WLL Employer Alerts referred to in these Answers can be found at http://worklifelaw.org/FE_Alerts.html)

1. (d) According to the WLL 2010 Litigation Update Report, the number of family responsibilities discrimination (FRD) cases filed by employees increased by nearly 400% from 2000-2010. During that time, the number of FRD cases decided by courts increased by nearly 300%. (See **WLL Employer Alert, February 2010**, for more discussion of the 2010 litigation update report, or go directly to the report at <http://www.worklifelaw.org/pubs/FRDupdate.pdf>.)
2. (d) FRD occurs when an employee suffers discrimination at work based on unexamined biases about how employees with family caregiving responsibilities will or should act. Any employee who takes care of family members is a caregiver for FRD purposes. See WLL FRD Fact Sheet at <http://worklifelaw.org/FactSheet.html>. (See the EEOC's ENFORCEMENT GUIDANCE: UNLAWFUL DISPARATE TREATMENT OF WORKERS WITH CAREGIVING RESPONSIBILITIES <http://www.eeoc.gov/policy/docs/caregiving.html>.)



3. (b) All employers need to educate themselves about FRD, and how to prevent it. Although there is no federal statute expressly protecting workers from adverse employment actions based on their family caregiving responsibilities, a rapidly growing body of case law has found protections under at least 15 separate legal theories, including, among others: Title VII, FMLA, Americans with Disabilities Act, ERISA and state and local laws. (See [Caregivers as a Protected Class?: The Growth of State and Local Laws Prohibiting Family Responsibilities Discrimination](#), by Stephanie Bornstein and Robert J. Rathmell, December 2009 (<http://worklifelaw.org/Reports.html>)).

4. (a) The law does not require employers to accommodate employee child care needs in most cases. However, the company should determine whether the denial of Mrs. Westerby's schedule change is discriminatory or retaliatory, and whether such a change would negatively affect Smiley Shoppe's business. Although Smiley Shoppe may not be legally required to make the schedule change, it may want to agree to the change to retain a good employee. See *Corporate Voices Study Links Workplace Flexibility for Hourly Workers/Attainment of Business Financial Goals and Core Objectives*, by Corporate Voices for Working Families (Washington 2009) <http://www.cvworkingfamilies.org>

5. (a) If Axel Co. is covered by the FMLA, and Mr. Philby is eligible for FMLA leave (or leave under a similar state law), Axel Co. must provide Mr. McLean with the appropriate forms, including a notice of benefits and medical certification for his wife's health care provider to complete. Mr. McLean must not let his own stereotypes about male and female roles affect his treatment of caregivers of either gender. (See **WLL Employer Alert, July 2010**, for more information on certain FMLA requirements.)

6. (e)) In a case for gender discrimination, including a claim of family responsibilities discrimination, a plaintiff (or plaintiffs in a class action) can recover all of these types of damages and fees. In a 2010 case, *Velez v. Novartis*, a federal jury in New York ordered Novartis Pharmaceutical, Inc. to pay over \$250 million in damages, including punitive damages, to current and former female Novartis employees who brought claims of gender discrimination, including FRD. (See **WLL Employer Alert, June 2010**, for more discussion of the Novartis case).

7. (b) Pym Co. has the right to make reasonable workplace rules. The lunch break rule applies to all employees, so it appears not to discriminate against caregivers *per se*. Nonetheless, HR should investigate further because the adoption of the rule may violate anti-discrimination laws. For example, the Americans with Disabilities Act (ADA) protects employees from "Association Discrimination" -- discrimination based on the employee's relationship to an individual with a disability. HR also should discuss this new rule with Mrs. Magnus' supervisor to determine if there is a legitimate business reason for the rule. It is possible that the supervisor adopted the rule to retaliate against Mrs. Magnus, or does not want Mrs. Magnus working at Pym Co. because he believes she will take more time off due to her disabled husband. (See **Employer Alert, August 2010**, for more discussion of Association Discrimination under the ADA.)



8. (b) Mr. Blunt's family status or plans should have no bearing on Burgess Co.'s decision whether to hire him. An employer should not ask questions about family responsibilities, even if the questions are well meaning, during interviews. This is true even if the employee raises the topic, as Mr. Blunt did in his interview. Mr. Burgess should only be concerned with Mr. Blunt's ability to perform the job, and not with how he will arrange his family situation to allow him to get to work. (See **WLL Employer Alert, October 2010**, for more discussion of interviewing practices.)

More Resources for Employers:

Visit the Employer Section of our WorkLife Law website to view suggestions for employer best practices for avoiding discrimination lawsuits, model FRD policies, available trainings and more: <http://www.worklifelaw.org/ForEmployers.html>.

If you need help with training, the Center for WorkLife Law has developed training programs, including webinars, to assist attorneys and employers. For more information, please call Linda Marks, Director of Training and Consulting, at (415) 565-4640.

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