



FRD PREVENTION PROGRAM

Family Responsibilities Discrimination (FRD), also known as “caregiver discrimination,” is discrimination against applicants and employees who have family caregiving responsibilities such as pregnant women, mothers and fathers of young, ill or disabled children, and workers who care for their aging, ill or disabled parents, spouses or partners. Employees with these obligations may be treated less favorably at work than their colleagues because of their supervisors’ and/or co-workers’ hidden biases about caregivers. These biases may include assumptions that family caregivers are not as committed to their work, are not as reliable, will be absent more often and won’t be as productive. The unfavorable treatment could include such actions as termination, loss of good work assignments and responsibilities, demotion or denial of promotion, denial of a bonus or other incentive pay, hostile comments or unwarranted criticisms, and denial of or retaliation for taking protected family leave.

Like other forms of workplace discrimination and harassment, FRD can be prevented. The following is a five step program for minimizing FRD liability in your workplace. These strategies are very similar to the best practices for preventing other forms of discrimination and harassment on our website at <http://worklifelaw.org/BestPractices.html>.

I. IMPLEMENT AN FRD ANTI-DISCRIMINATION POLICY

As part of an FRD prevention program, an anti-discrimination policy should include:

1. A definition of FRD;
2. A statement of zero tolerance for discrimination against employees because of their caregiving responsibilities;
3. Procedures for filing an internal complaint;
4. An assurance that employees will not be retaliated against for filing a complaint.

II. AUDIT RELEVANT POLICIES AND PRACTICES

Review not only the language of your company’s policies, but also the *application* of those policies on a day-to-day basis.

A. *Review written policies related to FRD, including:*

1. Attendance;
2. Leave benefits;



3. Availability and form of alternative work schedules;
4. Compensation policies and their application to employees on alternative work schedules;
5. Written hiring and promotion criteria (some may be based on stereotypes);
6. Performance evaluations.

B. *Make Sure Your Practices Match Your Policies.*

It is great to have written FRD policies, but check whether your practices are consistent with these policies.

1. If your company has flex-time policies, make sure that employees who take flex-time are not penalized for doing so.
2. Analyze your organizational chart to identify who does what at your company. Analyze patterns of hiring and promotions to determine if unwritten hiring and promotion criteria exist.
3. Examine who is included in training and mentoring programs, which often correspond to opportunities for advancement;
3. Make sure the review process is even-handed. Randomly review a reasonable number of performance evaluations for any indications of caregiver bias.
4. Make sure that your managers are working to support, promote and retain talented employees with family responsibilities. One way to do this is by adding this objective to their annual performance goals.

III. RAISE AWARENESS THROUGH TRAINING

A. *Train to Raise Awareness of Biases.* Management training is the cornerstone of an FRD prevention program. Training must get to the underlying assumptions and biases regarding caregivers in the workplace in order to be an effective tool for minimizing liability. Managers may not even realize that they harbor any biases against employees who are caregivers. For example, many managers might deny a promotion to a new mother on the unexamined assumption that she wouldn't be as competent or hard working now that she has a baby, without thinking about her skills or performance.



B. *Train to Reduce Liability.* In addition, managers are not aware that refusing to hire an applicant, or failing to promote an employee, based on gender bias related to caregiving responsibilities may violate laws. Managers can create liability for their employers (and themselves) with comments such as “I don’t see how you could handle this job and your responsibilities at home” or “You belong at home with your baby -- not at work.” These types of comments can be powerful evidence in FRD cases.

C. *Customize Your Training.* FRD training can take many forms: e.g. a formal standalone training session, a section in a general EEO training program, or ad hoc teachable moments that arise in the course of a typical work day. An example of a teachable moment is when a manager contacts HR for advice on how to handle an employee’s request for family leave or the termination of an employee with caregiving responsibilities. WorkLife Law suggests a combination of either standalone training or a section in a more comprehensive EEO training along with teachable moments.

D. *General Points to Cover When Training Managers:*

1. How FRD cases arise and the groups that may be affected (it is not just about mothers);
2. How to identify common gender-based biases against working mothers, as well as and men and women who take an active role in caring for a child or other family member;
3. How to avoid gender-based biases in performance evaluations;
4. That personnel actions must be based on legitimate job-related criteria, business needs and individual performances rather than stereotypes;
5. That employees should be free to exercise their rights to FMLA leave without discrimination or retaliation;
6. That there are business benefits (cost savings, increased productivity and efficiency, and morale) to retaining productive employees rather than terminating or limiting their advancement simply because they are caregivers.



E. Additional Points to Cover When Training Managers and Interviewers --If your company has both managers and non-management employees interview applicants or make employment decisions, be sure that you train these employees in (1) through (5) above, as well as avoiding gender-based biases in hiring and interviews by:

1. Ensuring that interview questions are based on the position job description and established criteria;
2. Providing interviewers with guidelines for interviews, and examples of questions they should and should not ask.

IV. IMPLEMENT PROCEDURES FOR RESPONDING TO COMPLAINTS

Identify a person or persons whom employees can contact if they believe they have been discriminated against based on their caregiving responsibilities. Do not require employees to file complaints with their supervisor if the supervisor is the source of their concerns. Respond to complaints promptly and effectively.

A. When investigating FRD complaints, ask whether:

1. The employee is pregnant, returning from maternity or family leave, or has become a caregiver (“employee caregiver”);
2. The employee caregiver suffers adverse action or denied opportunities;
3. There is evidence that the employee caregiver was treated less favorably than similarly situated employees without caregiving responsibilities;
4. There are legitimate job-related reasons for any adverse employment action. How were non-caregivers treated in similar situations?
5. There was a recent change in the employee caregiver’s supervisor;
6. Managers or co-workers made biased comments, e.g. negative statements about mothers, fathers, pregnant employees, or caregivers generally.
7. The employee caregiver recently requested, took or returned from FMLA leave.

B. Notify the complainants of the results of the investigations.

C. Take remedial steps where there is reason to believe that discrimination has occurred.



V. HAVE HR TAKE AN ACTIVE OVERSIGHT ROLE

There are a number of situations that are common triggers for FRD. Giving HR a more active role in anticipating and dealing with these situations will help prevent FRD. Some suggestions:

- A. Have HR check in frequently with new supervisors on how they are handling issues with their employees.*
- B. Review new supervisors' personnel decisions for the first 3-6 months.*
- C. Check in when an employee has another child or a multiple birth --. FRD more often occurs when an employee has more than one child.*
- D. Check in with employees on FMLA leave to make sure that they are relieved of all duties if requested.*
- E. Monitor an employee's transition when he or she returns from FMLA leave;*
- F. Track all documentation and decisions made by supervisors with respect to leaves.*
- G. Review all negative personnel decisions made on the basis of attendance and tardiness.*

The information on this website is provided for general information purposes only. Any information contained here should not be construed as legal advice and is not intended to be a substitute for legal counsel.