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NEW YORK CITY'S NEW CAREGIVER LAW EXPANDS PROTECTION FOR EMPLOYEES WITH CAREGIVING RESPONSIBILITIES

The New York City Commission on Human Rights (the “Commission”) announced that Section 8-101 and 102 of the Administrative Code (part of the New York City Human Rights Law) was amended to prohibit “employment discrimination on an individual’s actual or perceived status as a caregiver.”

The new law -- the “Caregiver Law” -- went into effect on May 4, 2016¹ and protects from workplace discrimination a person who “provides direct and ongoing care” for a minor child or a “care recipient.” A care recipient is defined as “a person with a disability who: (i) is a covered relative or a person who resides in the caregiver’s household; and (ii) relies on the caregiver for medical care or to meet the needs of daily living.” A covered relative includes the caregiver’s children (of any age), spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of the caregiver’s spouse or domestic partner or other person as designated by the Commission. The Caregiver Law protects employees from termination,

¹ See N.Y.C. Admin. Code § 8-101 and 8-102 for the amendments to the New York City Human Rights Law.

demotion, denial of promotion, or from actions affecting the terms, conditions, or privileges of their employment because of their status as caregiver.

The Caregiver Law applies to employers with four or more employees (owners count as one of the employees), at least one of whom must work in New York City. It also applies to job applicants as well as current employees, part-time and full-time employees and paid and unpaid interns. Certain independent contractors also will be covered.

Caregivers in New York City are numerous and include people caring for approximately 1.8 million children under the age of 18, one million people aged 65 and older, and 900,000 people with disabilities.

The Caregiver Law makes it easier for a caregiver to file workplace discrimination claims under the New York City Human Rights Law. Previously, to obtain protection under law, caregivers in New York City who were discriminated against by their employers for having caregiving responsibilities had to couch their claims as gender discrimination claims based on unlawful stereotypes regarding the caregiving responsibilities. Now, these caregivers are provided specific protections under the new Caregiver Law, which currently is one of the strongest human rights laws in the nation.

The Commission stated that under the Caregiver Law it is illegal for employers to terminate, refuse to hire, deny promotions to, or disparately treat an employee because he or she is:

- an employee with one or more children perceived to be “too busy” for new projects or increased employment responsibilities;

- an employee with one or more children who is the primary caregiver and is perceived not to be “hardworking;”
- a single parent with sole custody of a child/children;
- the primary caregiver for a grandchild;
- caring for a sick child, spouse, parent, grandparent, or loved one with whom the employee lives; or
- living with a friend of the family who has a disability and provides care for that person before and after work.

An employer cannot provide certain benefits to some employees and refuse to provide the same benefits to other employees who request them because of caregiving responsibilities.

Similarly, an employer cannot publish an advertisement or job posting stating any limitation on whom they will hire based on the applicant’s caregiver responsibilities.

The Caregiver Law does not require employers to make special accommodations to caregivers outside the scope of company policy. For example, an employer is not required to change an employee’s shift or allow that person to leave work early merely because the employee has caregiving responsibilities. Rather, it requires employers to provide employee leave time and workplace flexibility equally and not to make assumptions about a person’s commitment or ability as an employee.

The Caregiver Law goes further than New York State’s ban on “familial status” discrimination (that went into effect on January 19, 2015), which protects only employees caring for children under age 18. New York City’s law protects from workplace discrimination employees caring for parents, children of any age, siblings, spouses, grandparents, grandchildren

with a disability, or a person with a disability residing with them. The Caregiver Law also goes further than the federal anti-discrimination law, which does not expressly include caregivers among its protected groups.

In light of the Caregiver Law, it would be prudent for New York City employers to review their human resources policies and employee manuals and update their anti-discrimination training materials to ensure compliance with this new law.

Please contact Avi Lew, the undersigned or your regular Warshaw Burstein attorney if you need assistance reviewing your human resources policies, updating your training manuals, or for any questions you may have about employment law issues.

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