

More male caregivers, more discrimination at work

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The recession took a heavy toll on men in general and many became caregivers by default. Corporate policies and attitudes haven't kept pace.

By David Koepfel

FORTUNE -- Employees are mad as hell, and they are not going to take it any more. At least some of them, that is.

The Equal Employment Opportunity Commission has reported a rise in employee discrimination claims made by both female and male caregivers of children, the disabled, and the elderly.

While most caregivers are women, a growing number of men have been taking on these roles and have contributed to the overall spike in employee discrimination claims. Experts say a combination of social, economic, and demographic changes -- changing gender expectations, longer life expectancies, the increase in stay-at-home fathers, and the recession -- have been driving this trend.

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The number of stay-at-home dads has increased from 81,000 in 2001, to 176,000 in 2011, according to U.S Census data. And a 2012 analysis by the Pew Research Center's Internet and American Life Project reports that male caregivers now comprise 45% of all family caregivers in the nation. Between 1996 and 2011, men caring for family with Alzheimer's disease or dementia almost doubled from 19% to 40%, according to a study by the Alzheimer's Association.

It's not that employers are targeting men. The recession took a heavy toll on men in general and many became caregivers by default. Men lost 5.2 million jobs between 2007 and 2009, twice as many jobs as women, according to analysis by the Pew Research Center. And the percentage of men ages 25-54 in the workforce has declined to 83% in February 2012, compared to 88% in 2007, according to data from the Bureau of Labor Statistics.

Joan C. Williams, a law professor at UC Hastings and the director of the Center for WorkLife Law, says that a "minority of younger men" have rejected the classic bread-winning role and are choosing to be more involved with their families. Williams calls these men "early adopters." But, says Williams, "there's still a sense that a real man doesn't need to leave a job for family reasons."

As more women become the family breadwinners, staying home with the kids has become an increasingly viable option for men. At the same time, employers are showing plenty of resistance to this phenomenon and can make it a nightmare for men who want to or need to serve as caregivers.

"Employers are often more relaxed in applying blatant sexual discrimination against male caregivers," says Elizabeth Grossman, a regional attorney in the EEOC New York district office. "When invoking parental leave, some supervisors might say 'Oh no, that's for women.' There are some pretty entrenched stereotypes."

From 1989 to 2008, a period in which employment discrimination lawsuits declined, lawsuits related to family responsibility discrimination climbed from 444 cases to 2,207, as reported by the AARP Public Policy Institute.

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The EEOC has only begun collecting enforcement data on caregiver discrimination in recent years, but over the last five years, claims have steadily increased. During that time, the EEOC has received approximately 712 charges alleging unlawful caregiver discrimination, resolved about 564 charges, and won approximately \$796,000 for the complaining parties. (The charges are not broken down by the gender of those who file claims.)

Between 2006 and 2010, 147 family responsibility discrimination cases (FRD) brought by male plaintiffs were decided in the court system, a 300% increase compared to the number of such decisions between 2001 and 2005, according to data from the Center for WorkLife Law.

In what is still a predominantly male corporate culture, employment lawyers admit that many companies are not getting the message that male and female caretakers must be treated equally under the law.

Mara Levin, a partner and co-chair of the employment practice at Herick, Feinstein, a New York-based law firm, says that clients have been increasingly seeking advice on how to deal with issues involving male caregivers. In September, a New York-based retail department store contacted Levin about a male employee who had asked to move to a part-time schedule so he could leave early to care for his daughter. Levin says she advised the client to grant the employee's request since the company had made similar accommodations for women. "If employers are not sophisticated enough to understand this, we need to set them straight," says Levin.

Levin says that Family and Medical Leave Act (FMLA) requests need to be gender neutral, as do requests for part-time and flexible schedules. And references to maternity leave need to be immediately changed to parental leave.

One male caregiver lawsuit involving an FMLA claim is set to come to trial on February 11 in Massachusetts federal court. Ariel Ayanna, a lawyer and father of two, is suing Dechert LLP, the law firm where he was once a rising young associate. Ayanna claims that after he took FMLA leave to care for his wife -- who has suffered with mental health issues -- and his kids, the law firm criticized, demoted, and ultimately fired him.

Ayanna deferred all questions to his Boston-based attorney, Rebecca Pontikes, who says that Dechert treated him poorly solely because he chose to be a caregiver. "I think we're hopeful if we win, the message to employers is that they should think more expansively about gender," says Pontikes

In its response to the lawsuit, Dechert is arguing that Ayanna's assertions about its "macho" culture are untrue. Dechert did not respond to a request for further comment.

Such cases are certainly not limited to the corporate world. Michael Villalobos, 38, has filed a lawsuit against the U.S. Department of Agriculture, claiming that he was fired in July 2010 from his job maintaining campground areas because of his requests to take family leave to care for his sick daughter, Yvonne. The suit is currently working its way through federal court in California.

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Villalobos says that men at the Department of Agriculture were regularly asked to "donate hours" for women taking pregnancy leave, but that he wasn't granted the same reciprocity. His goal, he says, is to get his old job back.

In court documents, the government claims that Villalobos was fired for "use of discourteous language towards his superiors; use of rude and confrontational language towards others, and lack of candor." A spokesman from the U.S. Attorney's Office declined to comment.

While caregivers are not a protected group with the EEOC, workers can bring action based on unlawful caregiver discrimination under Title VII and the ADA.

Ultimately, though, employers need to catch up with the changing patterns in the American social fabric, if they haven't already. Mara Levin of Herrick Feinstein says companies need to be sensitive to changes among caregivers in the U.S. "It's important that people can be caregivers and still succeed and rise up the corporate ladder."

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