You Will Learn

- The changing demographics of the caregiving in the United States.
- The characteristics of the average caregiver in the United States.
- The stresses placed on caregivers due to their caregiving role.
- The federal laws that govern medical and family leave for caregivers and employers.
- Techniques for employers to become a caregiver-friendly workplace.
Caregiving Is Balancing Care, Work & Life

Aging Population

- 1 in 7 Americans are over age 65
- Will increase to 1 in 5 by 2030
- 36% of those over age 65 report some form of physical or cognitive disability
- 8,357,100 people receive long term care in the United States
- 80% of those receiving long term care receive it at home
- 10.5% of the US population under age 65 reports a physical or mental disability
What is Long Term Care

• Non-medical care to provide for a person's basic personal care
• Activities of Daily Living
  • Eating
  • Bathing
  • Dressing
  • Transferring
  • Using the Toilet or Incontinence Care
• Instrumental Activities of Daily Living
  • Money Management
  • Shopping
  • Scheduling Appointments
  • Housework
  • Communication

Where is Long Term Care Provided?

• In an elder’s home
• In the home of a family member or friend
• Adult Day Care Services
• In Assisted Living Facilities
• In Nursing homes
• MOST LONG TERM CARE IS PROVIDED IN HOME
Population of Caregivers

• More than 65 million Americans provide care for an adult loved one
• 50% of those are providing intensive caregiving – assistance with activities of daily living
• Provide an average of 24 hours a week in care
• 80% of this population spend about 20% of their income on caregiving expenses
• A caregiver loses between $300,000.00 and $400,000.00 over their lifetime due to caregiving
• Provide $470 billion in services a year (2013)

60% of caregivers request accommodations at work for caregiving responsibilities
Profile of a Caregiver

- 2/3 of Caregivers are Female
- 86% are between the ages of 18 & 64
- Average Caregiver Age is 49.5 years
- Female caregivers are likely to spend 50% more time caregiving than their male counterparts
- 1 in 4 caregivers spend 41 hours or more a week caregiving
- 46% of all caregivers perform medical tasks even if they have no training

How Long Do They Provide Care?

- Average of 4 YEARS
- If the caregiver has dementia, then care is 1-4 years longer than any other illness
- 24% provide care for 5 years or more
- 15% provide care for 10 years or more
A Few Problems Faced By Caregivers Affecting Work

- Paid Caregivers Don’t Show Up
- Repetitive Calling By Caregiver
- Missing Work For Doctor’s Appointments (Takes Hours)
- Caregiver Wanders Away
- Caregiver Gets Left At Appointment By Paid Transportation
- Caregiver Emergencies
- Errands for Caregiver-Pharmacy, Bills, Payments
- Money Management Issues for the Caregiver (DPOA)
- Dealing with Government Entities
- Elder Being Victimized

Caregiver Stress

- Financial
- Marital
- Familial
- Work/Career
- Health
- Emotional
- Societal
Financial $tre$$

- Most caregivers are not paid for working what is a part time or full time job
- 60% have asked for work accommodations (usually leads to lost wages)
- Many quit jobs or get fired
- Spend 20% of their own income on caregiving expenses
- These affect the caregiver’s financial stability

Marital Stress

- 80% of caregivers report strain on their marriage due to their caregiving responsibilities
- Caregivers report a higher rate of divorce than non-caregivers
- 25% of divorced Baby Boomers report that caregiving played a major role in their divorces
- Caregivers report spending less time with spouses due to caregiving responsibilities
- Caregivers report more marital tension and marital conflict than non-caregivers
Familial Stress

**Extended Family**
- Conflict between caregiver & caregivee
- Conflict among siblings over caregiving responsibilities
- Conflict between family member over costs of care
- Conflict in family over resources & placement issues

**Nuclear Family**
- Difficulty with children
- Loss of family quality time and activities
- Family conflict over helping with care

**Work/Career Stress**
- 60% request work accommodation due to conflict with caregiving duties
- Caregivers have a higher rate of absenteeism
- Caregivers have a higher rate of partial absenteeism
- Caregivers report that family conflict related to caregiving negatively impacts work performance
- Many caregivers quit or retire early
- A few are fired or face discrimination
Health Stress

- Caregivers report poorer health than non-caregivers
- Caregivers defer or forego preventative health care
- Caregivers report more chronic illnesses than non-caregivers:
  - Depression
  - High Blood Pressure
  - Heart Disease
  - Digestive Disorders
  - Substance Abuse
- 17% of caregivers over the age of 50 report poor health

Emotional Stress

- Caregiving responsibilities can be all consuming
- Higher Rates of Depression
- One third of caregivers report reducing activities they enjoy to accommodate caregiving
- Half of caregivers report that caregiving is emotionally difficult
- Women report more negative impacts of caregiving on family and marriage
Societal Stress

- Expectations that family provide care out of love or responsibility & for no compensation
- Resources for caregivers are disjointed and require work to piece together

Impact on Business

- Businesses in the US lose between $17.1 and $33.6 billion a year due to informal caregiving arrangements of employees
- Higher health care costs
- Absenteeism
- Partial Absenteeism
- Replacing employees who quit or are fired due to caregiving or caregiving related stress
Discrimination Against Caregivers

• Based on Sex
  • Women
    • Seen as bad employees
    • Seen as not committed to the job
  • Men
    • Seen as unsuited as caregivers

• Based on Disability
  • An employee with caregiving responsibilities cannot be discriminated against because they are providing care for a person with a disability

• Based on Race or Ethnicity
  • Stereotypes of individuals of certain races and ethnicity
  • Derogatory comments about a employee’s caregiving responsibilities based on race or ethnicity

Family Medical Leave

• Applies to Employers with 50 or more employees

• Applies to Eligible Employees
  • Worked for an employer for 12 months
  • Worked 1250 hours in the 12 months preceding leave
  • Worked in a location where employer has at least 50 employees within 75 miles

• Provides 12 weeks of:
  • Unpaid leave
  • Job protected, which means the job is there when they return or one similar
  • With continuation of group health benefits under the same conditions
FMLA Leave for:

- Birth of a child
- Foster placement or adoption of a child
- Care of a spouse, parent, or child with a serious health condition
- An employee's serious health condition that makes her unable to perform her duties
- Qualifying exigency for military members on active duty

State & Local Laws

- State laws may apply to smaller employers than federal law
- State laws may provide more protections than federal laws
- Local city and county ordinances may also require paid leave and prohibit discrimination.
- Example states in your materials
  - Florida
  - Montana
Why Be Caregiver-Friendly?

• Profitability
• Retention of Talent
• Maintaining Institutional Knowledge
• Stability
  • In Business Practices
  • In Customer Service
• Reduce Claims of Discrimination or other violations

Where Do We Begin?

• Employees with caregiving duties are a resource
  • Shift the attitude as we have with mothers & pregnancy
• Understand what your employees need
  • An anonymous survey
• Institute anti-discrimination policies
• Training of employees & managers
How Employers Can Help Caregivers

- Caregiving policy available to all employees regardless of status
- Community Resource Guide
- Caregiver Support Group
- Caregiver Support Services
- Care Management Consultations & Referrals
- Workplace Wellness Programs
- Discounted Caregiving Services
- Employee Benefits
- Leave Sharing Programs

Harness Technology

- Use technology to provide
  - Telecommuting Opportunities
  - Flexible Work Schedules
  - Work Share Positions
- Use technology to assist caregivers with
  - Support Groups through on-line programs
  - Find information to assist in caregiving
QUESTIONS

Your Opinion Matters!
Please take a moment now to evaluate this session!
Thank You!

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I. Demographics of Caregiving in the United States
   a. Why We Need Caregivers Now More Than Ever
      i. One in seven Americans or 14.5% of the population in 2014 was 65 years of age or older. This increased 28% since 2004. According to the United States Census, by 2030, approximately 20% of the population will be 65 years of age and older.
      ii. More than 10 million older adults live alone in the United States with women living alone more often than men.
      iii. Over one-third (36%) of this population reported some form of disability. These disabilities ranged from difficulties completing selfcare or activities of daily living to sensory impairments (vision or hearing) to cognitive impairments (diminished capacity). 10% of the population between 18 and 64 years of age report a disability.
      iv. As we age, our brains shrink in size. By age 70, the average person’s brain has decreased in size to the point there is approximately one inch of spare space in the skull. The first parts of our brain to shrink are the frontal lobes, which govern our abilities ot plan and our judgment. Cognitive impairments affected approximately 10% of those over 65 with a disability. As the population ages, the likelihood of disability increases as does the severity of the disability.
      v. According to the Centers for Disease Control, approximately 8,357,100 people receive long term care through home health agencies, nursing homes, hospice, assisted care residences, or adult day centers. The Congressional Budget Office estimates that 80% of all individuals receiving long term care live in a private home in the community and not in institutions like skilled nursing facilities or assisted living facilities.
         1. Long term care is the care one needs to conduct their basic personal care. It is usually non-medical and consists of assistance
with activities of daily living and instrumental activities of daily living.

a. Activities of daily living include:
   i. Eating
   ii. Dressing
   iii. Bathing
   iv. Transferring (getting in and out of bed or from the bed to a chair)
   v. Using the Toilet
   vi. Incontinence Care

b. Instrumental activities of daily living include:
   i. Housework/Cleaning
   ii. Transportation
   iii. Money Management
   iv. Using the Telephone
   v. Yard Work
   vi. Scheduling Appointments
   vii. Shopping
   viii. Responding to emergency situations
   ix. Taking Medication

c. Institutionalization is much more likely to occur the older a person is. In 2010, the vast majority of individuals living in nursing homes was white, non-Hispanic females, age 85 and older, and needed assistance with two or more activities of daily living. According to several studies, a person age 65 or older has a one in four chance of ending up in a nursing home. This chance increases with age.

d. According to the Centers for Disease Control, 12% of individuals over 75 need assistance with personal care and 3.4% of individuals 65-74 need assistance with personal care.

e. What does long term care cost?
   1. Long term care costs depend on a number of factors:
      a. Where you live
         i. City, State
         ii. Rural or urban
      b. Who is providing care
         i. Private, non-licensed, uninsured
         ii. Agency employees
      c. Kind of care needed
      d. Where you receive care
         i. Home
         ii. Assisted Living Facility
         iii. Nursing Home
   2. Genworth has an annual long term care cost review:
b.  The national average for long term care depending on type of care and where it is provided ranges from $1500-$8100 a month.

ix. How is Long Term Care Paid For?

1. Medicare
   a.  It is a common misconception that Medicare pays for long term care. However, Medicare only pays for long term care type care if it is provided as part of rehabilitation following an illness or injury and it is limited in duration.
   b.  Medicare does not cover the costs of an assisted living facility.
   c.  These services are usually provided in a skilled nursing facility under Part A and have a co-pay after a certain period of time
   d.  Some home health care is provided following an injury or illness through Part A and B.

2. Health Insurance
   a.  Similar to Medicare, health insurance does not pay for long term care. It can pay for long term care care during a rehabilitation period following injury or illness for a limited duration.

3. Long Term Care Insurance
   a.  Covers long term care costs so long as the applicant meets certain requirements to trigger payment under the policy. Usually, an applicant needs to require assistance with a minimum number of activities of daily living and a physician must certify the applicant’s condition.
   b.  Long term care insurance is expensive to purchase.
   c.  Many people cannot qualify because they have health conditions that prevent them from qualifying or they already need long term care.

4. Personal Assets & Income
   a.  Most people pay privately for care out of their personal income and assets at some point in the continuum of care. They may pay for homemaking services, supervision, or even home health care.

5. Family Resources
   a.  Most of long term care in the home is provided by family members who usually provide free care. This is often combined with some paid services.

6. Medicaid
a. Each state has its own Medicaid program and those programs cover some long term care for individuals who have less than $2000.00 in countable assets and less than a certain amount of income. These rules differ from state to state.

b. Our Population of Caregivers
   i. According to the Administration on aging, 65.7 million Americans provide care for an adult loved one. That is one in four adults.
   ii. Approximately 10% are long distance caregivers.
   iii. More than 50% of caregivers are providing what is defined as intensive caregiving tasks, which include assistance with activities of daily living.
   iv. The average caregiver provides more than 24 hours of care a week
   v. Nearly 9 million Americans provide care to someone with dementia.
   vi. According to AARP, nearly 80% of family caregivers are spending their own money on caregiving costs. The average family caregiver spends about 20% of their income on caregiving costs.
   vii. More than 60 percent of caregivers have requested workplace accommodations for caregiving
   viii. Family members provide a significant amount of free care. More than 80% of the care provided by family members is provided for free. The free or informal free care provided by millions of Americans is valued at approximately $470 billion a year, depending on the study referenced.
   ix. The impact of this care on family caregivers can be significant. It can impact jobs, income, marriages, and health. For a caregiver, the loss of income and benefits over a life time averages more than $300,000.00, per AARP’s Public Policy Institute.
   x. In many states, the pressure on caregivers is made worse by the existence of filial responsibility laws, which can hold family members responsible for the care, including expensive long term care of a loved one. A summary of these laws are in Filial Responsibility: Breaking the Backbone of the Modern Long Term Care System [http://stthomaslawreview.org/articles/v26/1/sketchley.pdf](http://stthomaslawreview.org/articles/v26/1/sketchley.pdf).
II. Characteristics of a Caregiver

a. Two thirds of caregivers are female. This is due to many factors: Women in society tend to be caregivers, their jobs are considered disposable, their work is seen as less valuable than a man’s, families often expect the daughter to provide care.

b. 14% are over the age of 65. 86% are between the ages of 18 and 64—working years.

c. The average age of a caregiver is 49.5 years. This is prime working years for many women. These individuals also tend to have children at home, so caregivers are juggling their own nuclear families, plus the care of an aging parent or other family member.

d. Female caregivers are likely to spend 50% more time caregiving than their male counterparts. Females are also more likely to be doing the more intensive personal care tasks.

e. While the average caregiver spends 24 hours a week giving care, 1 in 4 caregivers spend 41 hours or more a week caregiving. Caregiving is a part-time or full-time job in addition to all the other caregiver’s responsibilities.

f. The average caregiver spends 4 years caring for an elderly loved one. This usually begins as a small amount of care and ends with substantial care. If the care recipient has dementia, then care is 1-4 years longer than any other illness.
   i. 24% provide care for 5 years or more
   ii. 15% provide care for 10 years or more

g. 46% of all caregivers perform medical and personal care tasks even if they have no training. These can include wound care, medication management, health care monitoring, injections, pain management duties, lifting and transferring, and diverse types of therapy.

h. 70% of caregivers are caring for a close relative:
   i. 42% of caregivers are caring for a parent.
   ii. 14% of caregivers provide care for a child with a disability.
   iii. 7% of caregivers care for an in-law.
   iv. 7% of caregivers provide care for a grandparent or grandparent-in-law.

i. 30% are caring for a sibling, relative (aunt, uncle, niece, nephew, or cousin), or friend

j. Problems They Face That Affect Their Jobs
   Reliable, systemic caregiving for elders is not available in our society at a cost that families can afford. Many families are stuck piecing together a caregiving plan with family members, emergency alert services, and paid caregivers. No matter how many resources a family has or where the caregiver is receiving care, a family caregiver will still face issues that affect her work.
   i. Paid Caregivers Miss A Shift – For Caregivers Whose Care recipient is at Home
      1. Unlike the childcare system, there is no community wife system of daycare centers that can take care of elders who need care while a caregiver is working. There are adult daycare centers, but they are
not as common as daycare centers and an elder needing care must meet certain requirements. If an elder needs too much care, is aggressive, or suffers from communicable illnesses, they may not qualify for an adult daycare center. In some communities, even if the elder meets the criteria, the centers have waiting lists or are too expensive and the elder is unable to attend.

2. Families often hire caregivers to assist and supervise an elder while the family caregiver is working. But, if a paid caregiver gets ill, doesn’t show up, or quits suddenly, a family caregiver is stuck trying to fill the shift at the last moment or calling into work to provide care.

ii. Repetitive Calling By Care recipient
   1. As an elderly loved one declines physically and mentally, their outlet for anxiety or way to request help is the telephone. Many caregivers receive many calls a day from a care recipient. These may be repetitive calling due to forgetfulness or fear, or just calls to remind the caregiver to do things, get things on their way home, or schedule appointments.

iii. Missing Work For Medical Appointments
   1. Every caregiver, no matter where the care recipient is receiving care will have to attend medical appointments with the care recipient. As we all know, physicians’ offices are not always run in a timely and efficient manner and a physician appointment that may only take a few minutes once they caregiver and care recipient meet with the physician can take several hours to complete due to transportation, waiting at the medical facility, and transportation back to the home.
   2. Unfortunately, medical providers usually don’t make house calls and only schedule appointments during business hours. These issues result in caregivers having to miss work to attend medical appointments.
   3. As people age, they attend more and more appointments. Few if any providers do house calls, so if an elderly loved one is having a medical crisis, a caregiver may have to attend several appointments with the care recipient over a short period of time.

iv. Care recipient Wanders Away
   1. One frightening and time consuming issue faced by caregivers of those who are cognitively impaired is wandering. Whether an elderly loved on is at home or in a facility, they can wander away. For elders who are still physically able to drive, they can drive away and become lost.
2. When an elder is found wandering or lost while driving, the caregiver will receive calls and be asked to come and assist in returning the elder to her home or facility.

v. Care recipient Gets Left At Appointment By Paid Transportation

1. While some communities offer paid transportation services to take elderly or individuals with disabilities to and from appointments, sometimes errors occur. When an elderly loved one is left at a medical appointment or other outing, a caregiver will be called to come and get them.

2. Many facilities, assisted living and nursing homes, provide some limited transportation. However, mistakes can be made with drop off or pick up. When an elder is left at an appointment or delivered to the wrong appointment, a caregiver will be called to remedy the problem. If she cannot get the facility transportation to pick up the elder, she may have to do it.

vi. Care recipient Emergencies

1. There are several problems that can occur wherever an elder or disabled loved one lives.

2. Occasionally, a facility or living arrangement for a care recipient ends. Sometimes, the result is abrupt and unexpected as was the case with the individuals who lived in the nursing home in Hollywood Hills, Florida where a dozen people died due to lack of care at facilities during a hurricane.

3. Often care recipients fall ill or get injured and need to be taken to the emergency room. A trip to the emergency room, even if the elder is not admitted can take an entire day.

4. An elder may set off an emergency alert and a caregiver may have to respond. Even if there is not a true emergency, it could take a couple of hours to sort out the problem.

vii. Errands for Care recipient-Pharmacy, Bills, Documentation, Payments

1. Everyone has errands to run. Caregivers not only have their own errands to run to keep their lives functioning, but also the errands for their care recipient.

2. Occasionally, these errands must be run during business hours. This means that a caregiver will miss work.

viii. Money Management Issues for the Care recipient

1. Many caregivers serve as a fiduciary for their care recipient and manage their finances. They may serve as an agent under a power of attorney, a guardian, a conservator, or a trustee.

2. Managing another’s finances requires a caregiver to fulfill legal duties.

3. Often, because a caregiver has to present documentation to manage finances, transactions that would take only a few moments if a
caregiver were doing it for themselves, can take several hours to get a bank, financial institution, government agency, or business to accept the caregiver’s authority and then conduct the transaction.

4. The time it takes to complete many of these tasks can take time away from work.

ix. Dealing with Government Entities

1. Caregivers often have to deal with a number of government entities on behalf of their care recipient.
   a. Social Security
   b. Medicare
   c. Medicaid
   d. Veterans Administration
   e. State & Local Government for Various Services
   f. Federal Retirement
   g. State Retirement
   h. Local Government Retirement
   i. Tribal Government

2. Government entities are usually open only during business hours. To conduct business, a caregiver must take time away from work to contact or respond to government entities. This can require waiting for hours at a local Social Security Office to become a Social Security Representative Payee or long waits by phone to determine why a service hasn’t been covered by Medicare.

x. Elder Being Victimized

1. 1 in 10 Americans over age 60 have been a victim of elder abuse or exploitation.

2. 25% of care recipients report some form of elder abuse. This abuse is often what causes a crisis requiring significant attention by a caregiver and efforts to remedy the harm.

3. Elders in the US lose approximately $3 billion a year due to financial exploitation alone.
   a. Families often are the ones who step in to cover the financial short fall resulting from exploitation.
III. Caregiver Stresses & Health Problems

a. Financial
   i. Most caregivers are not paid for working what is a part time or full-time job.
   ii. 60% have asked for work accommodations. These accommodations usually mean time off work, unpaid leave, reduction in shifts or a position with less responsibilities. In nearly all cases, this means that the caregiver is losing wages, benefits and savings.
   iii. Many caregivers quit jobs or retired early. Some get fired.
   iv. Caregivers spend 20% of their own income on caregiving expenses. This takes resources from the caregiver’s family and the family budget.
   v. These affect the caregiver’s financial stability
   vi. 20% of caregivers report that caregiving is financially difficult for them.

b. Marital
   i. 80% of caregivers report marital strain due to caregiving responsibilities.
   ii. Caregivers report a higher incidents of divorce due to the strain of caregiving. 25% of divorced Baby Boomers reported that caregiving played a role in their divorces.
   iii. In one study 89% of responding caregivers said that caregiving responsibilities caused them to spend more time apart from their spouse.
   iv. Marital problems can manifest themselves in a variety of ways:
      1. Spousal resentment toward the care recipient. This is particularly hard on a caregiver when it is a parent or grandparent of the caregiver.
      2. There are additional stressors when a caregiver is providing care for an in-law and the spouse (the child of the care recipient) is not the primary caregiver.
      3. Spousal resentment toward a care recipient’s family member who the spouse feels are not providing care. This is particularly stressful on a caregiver when she has had close relationships with siblings and those relationships are also strained due to caregiving.
      4. More tension and conflict as the caregiver tries to balance her family with the demands of caregiving
      5. Just generally drifting apart from a spouse.

c. Familial
   i. Nuclear Family
      1. Difficulty with Children
         a. Caregiving duties often interfere with time spent with children providing them with life guidance, time necessary to assist with disciplining children, or time spent bonding with children.
         b. Caregiving also interferes with the ability of the caregiver to complete tasks related to child-rearing.
2. Loss of family time and bonding
   a. Caregivers often forego family vacations, date nights, or even just quiet time with one another due to caregiving duties.
   b. This lack of bonding and family time can create significant stress within a family and a marriage.
   c. Children and spouses may resent the care recipient for taking up so much time that was once dedicated to family relationships.

3. Conflict among family members about who will help with caregiving
   a. Female caregivers are more likely to report conflict at home than male caregivers.
   b. Because female caregivers shoulder a greater burden of housework and child-rearing than male caregivers, caring for an elderly loved one can cause familial conflict when those duties are shifted to a husband or partner.
   c. Often spouses and children of the caregiver begin to have conflicts with other family members of the care recipient whom they feel are not providing as much care or taking as much responsibility as the caregiver.

4. Conflict over use of family resources to pay for caregiving expenses
   a. The costs of long term care are staggering as discussed above.
   b. Caregivers spend about 20% of their income on caregiving expenses.
   c. Caregivers are also more likely to have reduced their own income to accommodate caregiving duties.
   d. All these factors put stress on a family’s budget, which can lead to conflict over the use of a family’s resources to support a loved one who needs long term care.

ii. Extended Family
  1. Conflict between caregiver & care recipient
     a. Often a caregiver has conflict with the loved one to whom they are providing care. As a person loses the ability to care for themselves and/or their cognitive function, they may resist care, insist on doing activities that can present danger to the care recipient, or even engage in cruel arguments with caregivers.
     b. The caregiver to care recipient relationship is often referred to as a role reversal with the caregiver taking a parental role and the care recipient taking a child like role. This role
reversal is difficult for both parties and leads to emotional, mental, and, sometimes, physical conflict.

2. Conflict among siblings over caregiving responsibilities
   a. A caregiver may find herself in the middle of a conflict with her siblings over the care she provides for a parent.
      i. Often the primary caregiver will receive criticism from siblings. Sometimes this is actual criticism and other times it is perceived.
      ii. The distance of caregivers and siblings can also create stress. A distant sibling may be unaware of the day-to-day difficulty of dealing with a frail aging parent. The distant sibling may also hear only the complaints the parent has about the sibling providing the care. That sibling may then decide to come to “rescue” a parent, only to find that the caregiving sibling is providing appropriate care.
      iii. The rifts between siblings, based on behavior, criticism, and reaction last beyond the life of the care recipient and can often result in lifelong estrangement between siblings and even litigation following the death of a care recipient.

3. Conflict between family member over costs of care
   a. With the costs of care so high and differing from region to region throughout the United States, disputes over costs of care are frequent.
   b. A primary caregiver may be suffering from financial stress due to reduced work hours caused by caregiving and want to hire home health workers to assist, but other siblings who are not primary caregivers may see that as an unnecessary expense.
   c. One sibling may want to pay an agency to provide care to ensure that caregivers are trained, licensed and insured. However, another sibling may want to hire a friend who will do the care for cheaper, but does not have insurance, licensing or any training.

4. Conflict in family over resources
   a. With costs of long term care so high, and strains on other parts of a family’s budget, a family may find itself in conflict over what kind of care to obtain based on costs, where to go to obtain the care, and even whether to continue to assist other family members who may have been dependent upon a care recipient for support.
b. In some instances, family members may be looking at that costs of care as a diminution of their inheritance. In these cases, one or more family member may advocate for a family member to continue to provide unpaid care to preserve the care recipient resources for inheritance for everyone, including family members who are not assisting in caregiving. This can create resentment and conflict that continues well beyond the death of a care recipient.

5. Conflict in family over placement issues
   a. A common conflict in families is whether placement in a facility is appropriate for a care recipient.
   b. A primary caregiver may reach her breaking point and no longer be able to provide for care. However, the care recipient may be unwilling to move to an assisted living facility or nursing home.
   c. A family member may oppose the idea of a parent going to an institution and resist placing a care recipient, even if such placement is safer for the care recipient.
   d. Resource use and costs are also a significant source of conflict when discussing placement. Many family members do not understand the costs of placement, the resources available to pay for care, or the eligibility for programs that may pay for care.

d. Work/Career
   i. 60% of caregivers report conflicts with caregiving duties and work and request accommodations for caregiving duties.
   ii. Most caregivers are employed. Caregivers between 50 and 64 are working full or part time.
   iii. Between 50-60% of caregivers report that their supervisor is aware of the caregiving status.
   iv. The Family Caregiving Alliance estimates that businesses lose as much as $17.1 billion annually in productivity due to informal caregiving arrangements.
   v. Caregivers report that family conflict due to caregiving negatively impacts their work performance.

e. Health
   i. Caregivers report poorer health than non-caregiving counterparts.
   ii. Caregivers report more chronic illnesses than non-caregiving counterparts.
      1. Depression
      2. Anxiety
      3. Hypertension (High Blood Pressure)
      4. Diabetes
      5. Obesity
6. Heart Disease
7. COPD
8. Kidney disease
9. Digestive disorders
10. Substance abuse (Alcoholism and Smoking)

iii. 17% of caregivers over age 50 report fair to poor health
1. 25% of women caregivers report poor health
2. 54% of women caregivers report at least one chronic health problem

iv. Caregivers tend to defer or forego their own preventative health care screenings due to caregiving responsibilities.

v. Caregivers report that only about 15% to 17% of medical providers ask about caregiving and what they might need as caregivers.

f. Emotional
   i. Caregiving can be all consuming.
   ii. Nearly half of caregivers report that caregiving is emotionally difficult for them.
   iii. Half of caregivers consider the caregiving circumstances to be moderate to highly stressful.
   iv. Approximately one-third of caregivers report reducing the activities they enjoy to accommodate caregiving duties.
      1. This includes loss of social activities.
   v. Female caregivers report more negative impacts of caregiving on family and marital life.
   vi. Caregivers exhibit higher rates of depression.

g. Societal
   i. Expectations that family members provide care out of love & for no compensation.
      1. There is a societal expectation that family members will provide long term care for loved ones. This is based on the history of providing care for family members. However, in the last few decades our medical care has allowed us to live far longer in the past and survive longer with more catastrophic illnesses. The expectation of family care may have reached the point that its idealistic origins are in direct conflict with modern reality.
      2. Filial responsibility laws further cement this societal expectation by holding children and grandchildren liable for long term care costs.
   ii. Resources for caregivers are disjointed and require work to piece together.
      1. The long term care system in the United States is a patchwork of federal, state, and local programs, licenses, and resources. These resources all have different rules and regulations, are administered through a variety of entities, and are often limited in scope.
a. Caregivers must learn a variety of rules and regulations, juggle a number of different providers and keep track of how each service is paid, in order to maintain a coherent care plan for a care recipient.

2. Caregiver supports are even more disjointed than those for a care recipient.
IV. Federal Laws for Family & Medical Leave & Supporting Caregivers
   a. Discrimination Against Caregivers
      i. Equal Employment Opportunity Commission
         1. Employees can make a charge of discrimination here: https://www.eeoc.gov/employees/charge.cfm
         2. ENFORCEMENT GUIDANCE: UNLAWFUL DISPARATE TREATMENT OF WORKERS WITH CAREGIVING RESPONSIBILITIES
            a. 42 U.S.C. § 12101 et seq.
            b. 29 U.S.C. § 206(d)
            c. 42 U.S.C. § 2000e et seq.
   3. Discrimination Based on Sex
      a. Women make up 50% of the labor force
      b. Women continue to be the primary caregivers in society
         i. Children
         ii. Elderly
         iii. Adults with Disabilities
      c. The impact of caregiving responsibilities impact minority women most
      d. Individuals with caregiving duties encounter discrimination based on employer stereotyping.
         i. Women are seen as bad employees
            1. Denied raises
            2. Denied promotions
            3. Denied accommodations
         ii. Women are seen as not committed to a job
            1. Denied raises
            2. Denied promotions
            3. Denied accommodations
         iii. Men are seen as badly suited for caregiving
            1. Denied necessary and appropriate leave
            2. Denied accommodation
      e. Potential discriminatory acts
         i. Asking women about their caregiving roles and duties
         ii. Derogatory comments about caregiving roles and responsibilities
         iii. Were employees treated differently after caregiving started and was that treatment different based on sex
         iv. Changes in assignments based on assumptions and stereotypes instead of job-performance or requests from an employee
v. Has an employee been denied leave for caregiving based on sex

4. Discrimination Based on Disability
   a. The ADA prohibits discrimination against employees based on the disability of someone with whom an employee is associated, which can include
      i. Spouse
      ii. Child
      iii. Parent
   b. An employer cannot treat employees providing care to a relative or other individual with a disability differently than other employees
      i. For example, refusing to hire a man because his wife has Parkinson’s disease and needs assistance during the day

5. Discrimination Based on Race or Ethnicity
   a. Derogatory comments about a person’s caregiving responsibilities with reference to race or ethnicity
   b. Changes in assignments based on stereotypes after caregiving duties began
   c. Denial of leave

b. Family Medical Leave Act (FMLA)
   i. 29 U.S.C. 2601 et.seq.
   ii. 29 CFR 825
   iii. Purpose it to help balance family responsibilities and work and to promote economic security for families and serve the national interests of preserving family integrity. 29 U.S.C. 2601
      1. It passed in 1993 under President Bill Clinton
   iv. Federal law applies to employers with 50 employees or more.
      1. Corporations are treated as single employers even if they have several locations
      2. Subdivisions or other separate entities may be considered a single employer for FMLA purposes if they meet the integrated employer test.
      3. Enforced by the Wage & Hour Division of the Department of Labor
   v. Eligible employees are those that meet all the following criteria:
      1. Worked for an employer for 12 months, which can include seasonable work.
      2. Worked at least 1250 hours in the 12 months preceding leave.
         i. If accurate hours are not kept then the employer has the burden of showing that the hours of service are not met.
3. Work in a location where an employer has at least 50 employees within 75 miles.

vi. Eligible employees can take up to 12 work weeks of leave in a 12 month period for:
   1. Birth of a child
   2. Foster placement or adoption of a child.
   3. Care of a family member who has a serious health condition
      a. Spouse
      b. Child
      c. Parent
   4. For a serious health condition that makes the employee unable to perform the essential functions of her/his job.
   5. Any qualifying exigency arising out of a spouse, child, or parent is a military member on covered active duty or called to covered active duty.
      a. Additional time may be allowed for care of a service member who is injured.
   6. Leave can be taken intermittently.
   7. Employees may be required to substitute paid leave for FMLA leave.

vii. Covered employers must:
   1. Post notice of this information
   2. Include it in the employee handbook
   3. Provide notice of eligibility to requesting employees
   4. Notify employees of whether leave is FMLA and how much will be deducted from the employees allotment

viii. When an employee takes leave under FMLA, she is entitled to the following:
   1. 12 weeks unpaid leave during 12 months
   2. Her job will be protected
      a. She shall be restored to her previous position or a similar position with equivalent benefits, pay, and terms of employment
   3. Continuation of health insurance coverage under the same conditions as if she had not take leave
   4.

ix. The Department of Labor Wage and Hour Division has sample forms that can be used by employers to implement FMLA
   2.

c. State laws may also apply.
   i. State laws may be stricter than federal laws or they may be more lenient.
   ii. State laws may also apply to smaller employers than federal laws.
iii. Local ordinances may also have requirements for employers within a particular city or county

iv. Example states
   1. Florida
      a. Florida has no equivalent of FMLA
      b. Florida Statutes Chapter 110 provides for state employee leave provisions
      c. Florida Statutes Chapter 760 addresses discrimination based on race, color, religion, sex, national origin, age, handicap, or marital status
         i. It applies to employers with 15 or more employees.
   2. Montana
      a. MCA § 2-18-606 covers sick leave for state employees
      b. MCA Title 49 Chapter 2 covers illegal discrimination
V. Techniques for the Caregiver-Friendly Workplace

a. Why Be Caregiver-Friendly

Having a caregiver-friendly workplace can help business maintain profitability, retain valuable talent, maintain business stability, and reduce discrimination complaints. As the population ages the need for caregivers will increase. When business fail to address the negative impacts of caregiver stress, those negative impacts will harm the business.

According to the Department of Labor, the best available evidence shows that adopting flexible practices in the workplace to accommodate caregiving responsibilities boosts productivity, improves morale, and benefits the economy overall.

i. Profitability

1. It is estimated that business loses as much as $17.1 billion annually in productivity due to informal caregiving. MetLife Caregiving Costs Study of 2006 estimates that losses to businesses could be as high as $33.6 billion.
   a. The Family Caregiving Alliance estimates that it costs approximately $3.3 billion a year just to replace women caregivers who quit their job due to caregiving responsibilities.
   b. Partial absenteeism such as extended lunch breaks, late arrivals, early departures, and longer breaks causes business to lose hundreds of millions of dollars a year in productivity.
   c. Daily work interruptions due to caregiving cost businesses nearly $4 billion a year.

2. Employee turnover can represent a high cost and erode a business’ profitability.

3. According to MetLife, employees with caregiving duties can cost employers an extra $13.4 billion a year in health care costs due to caregiving stress.

4. Addressing caregiver stresses can help maintain a business’ profitability.

ii. Retention of Talent

1. It takes time, money, and energy to train an employee. Over time, that employee gains institutional knowledge that benefits the entire team or business.

2. When a caregiver must quit or retire early due to caregiving responsibilities or related stress, the business loses a valuable resource.
3. A business must spend the time, money, and energy to train a new person. However, that training cannot replace the institutional knowledge that goes with the employee.

iii. Stability
1. Reducing employee turnover helps maintain stability for a business.
2. Stability in employees and business keeps business costs more steady and predictable.

iv. Reduce Discrimination Complaints
1. While there is no way to prevent anyone from making a claim against an employer for discrimination, there are things an employer can do to reduce the chances that a legitimate claim can be made or won.
2. Working to reduce discrimination claims keeps business expenses from unexpectedly increasing due to a lawsuit or judgment of damages.
3. Taking actions that can reduce claims of discrimination based on the status of caregiver or other basis associated with being a caregiver makes the corporate culture more friendly and protects a business’ profitability.

b. Where to Begin
i. Begin by looking at your employees, regardless of their caregiving responsibilities as a resource.
ii. Refer to your employees with caregiving responsibilities not as “caregivers” but as employees with additional responsibilities.
iii. Understand what your employees need and what you can provide as an employer.
   1. Conduct an anonymous survey to see what types of services may be needed by a particular workforce.
   2. Needs of employees may differ based on where the employer or office is located.
iv. Institute policies that work to reduce claims of discrimination based on caregiving:
   1. Zero tolerance of discriminatory behavior. Caregivers are already under stress, references to gender, “woman’s work”, laziness, etc. or retaliation for fulfilling caregiving duties will only create a hostile work environment for employees with caregiving duties.
   2. Create an open door complaint policy so employees feel free to come to supervisors or leaders with complaints without fear of retaliation.

c. Training
i. Training
1. Management should be trained regarding unlawful discrimination is regarding employees with caregiving responsibilities
   f. State laws that prohibit discrimination
   g. State laws requiring accommodation for caregivers

2. Employees
   a. Employment policies regarding caregiving
   b. Employment policies regarding accommodations
   c. How to request accommodations
   d. How to request leave
   e. How to report discrimination

ii. Develop clear employment policies regarding caregiving and possible discriminatory behavior
    1. Definitions
    2. Prohibited Behaviors
    3. Job Sharing Options & Responsibilities
    4. Flex Work Schedules
    5. Tele-commuting Policies
    6. Remove Workplace Reentry Barriers

d. Employee Resources
   i. Create a caregiving policy that is available to all employees of a business, not just full-time employees. A program that only is not available to part-time or flex-time employees will exclude many caregivers from the program, especially when they may have to reduce their hours to address caregiving responsibilities.

ii. Caregiver Support Group
   1. A caregiver support group offers a place where caregivers can go to:
      a. Discuss the stresses of caregiving
      b. Exchange practical information on problems
      c. Exchange solutions
      d. Share feelings, frustrations, and highlights of caregiving
      e. Find out about community resources
      f. Learn coping techniques to help with caregiver stress

   2. Many local organizations have caregiver support groups already in place that may be near a business. Connecting caregiver employees with the support group can reduce stress for employees

   3. Many local organizations will establish support groups for religious groups, employers, neighborhood associations, hospitals, or civic groups if they are provide with the space to do so.

iii. Caregiver Support Services
1. Arrange for local resource providers to come to the business periodically to assist caregivers in applying for services

2. Arrange for local resources to assist caregivers with Medicare, Medicaid, and Veterans Administration paperwork. Often community resources have a person available to assist with application or answer questions free of charge. It is just a matter of finding that person and connecting them with a caregiver.

3. Partner with local organizations to provide resources and referrals to employees with caregiving responsibilities.

4. If your resources are limited locally, a new associate can be tasked with providing some of these services and that can be part of their billable hour goals.
   a. This also creates institutional knowledge within a law firm that can be used to assist clients that have these issues.

iv. Community Resource Guide

1. Develop a local resource guide for employees that includes:
   a. Definitions of common words and phrases in caregiving
   b. Local assisted living facilities
   c. Local nursing homes
   d. Local geriatric caregivers
   e. Local government agencies that assist with caregiving
   f. Local resources to support caregivers.

2. This can be done by a summer intern or a law clerk.

3. Some communities already have these resources available through a local Aging and Disability Resource Center. These can be purchased in bulk for employees. Many organizations will provide them for free.

4. A resource guide can also be a valued added service for a law firm’s clients who might be caregivers too.

v. Care Manager Consultations & Resource Referrals

1. Geriatric case managers can be an invaluable resource to caregivers. These individuals are usually social workers or nurses with experience and knowledge of caregiving resources.

2. Contract with a local geriatric care manager to provide care resource and referral consultation to employees with caregiving responsibilities.

3. Contract with a geriatric care manager to develop a caregiving resource plan for employees.

4. Provide in-house presentation on caregiving issues by a geriatric care manager that are available to all employees.

vi. Workplace Wellness Programs

1. Incentives for maintaining healthy a healthy lifestyle

2. Incentives for taking health education classes, which should include class regarding caregiver stress and self-care.

3. Offer in-house yoga or meditation classes for all employees with incentives for attendance. This can reduce the stress levels of all employees.

vii. Discounted Caregiving Services
1. Create a relationship with a local care service providers and home health agencies that give employees a discount of services they may need as caregivers:
   a. Companion Care
   b. Respite Care
   c. Transportation
   d. Adult Day Services
   e. Overnight or Emergency Respite Care

viii. Changes in Work Arrangements
    As technology has progressed, the ability of employers to accommodate employee schedules has improved. By utilizing technology, employers can provide varied work arrangements to support employees with caregiving responsibilities.
    1. Flexible work schedules
    2. Work share arrangements
    3. Telecommuting

ix. Employee Benefits
    1. Paid caregiver leave. Like sick leave or vacation, paid caregiver leave is a benefit that can be used by employees who are caring for children or adults in need of care.
    2. Subsidies for emergency caregiving services. These benefits could be limited in hours, amount, or reason, but could act as a safety net for an employee who may need to work late to meet a project deadline or whose paid-caregiver did not show up for a shift.
    3. Leave sharing programs. These programs can allow employees to donate sick leave or annual leave to other employees who may need it when fulfilling caregiving duties.
APPENDIX

I. STATUTES

FMLA

Entitles eligible employees of covered employers to take unpaid, job-
protected leave for specified family and medical reasons.

A covered employer is a:

- Private-sector employer, with 50 or more employees in 20 or
  more workweeks in the current or preceding calendar year,
  including a joint employer or successor in interest to a covered
  employer;
- Public agency, including a local, state, or Federal government
  agency, regardless of the number of employees it employs; or
- Public or private elementary or secondary school, regardless of
  the number of employees it employs.

29 CFR 825.104

An eligible employee is one who:

- Works for a covered employer;
- Has worked for the employer for at least 12 months;
  The 12 months of employment do not have to be
  consecutive. That means any time previously worked
  for the same employer (including seasonal work)
  could, in most cases, be used to meet the 12-month
  requirement
- Has at least 1,250 hours of service for the employer during the
  12 month period immediately preceding the leave*; and
- Works at a location where the employer has at least 50
  employees within 75 miles.

29 CFR 825.110

LEAVE ENTITLEMENT

Eligible employees may take up to 12 workweeks of leave in a 12-
month period for one or more of the following reasons:

- The birth of a son or daughter or placement of a son or
  daughter with the employee for adoption or foster care;
- To care for a spouse, son, daughter, or parent who has a serious
  health condition;
- For a serious health condition that makes the employee unable
  to perform the essential functions of his or her job; or
- For any qualifying exigency arising out of the fact that a
  spouse, son, daughter, or parent is a military member on
  covered active duty or call to covered active duty status.

29 CFR 825.112

An eligible employee may also take up to 26 workweeks of leave
during a "single 12-month period" to care for a covered
servicemember with a serious injury or illness, when the employee is the spouse, son, daughter, parent, or next of kin of the servicemember.

The "single 12-month period" for military caregiver leave is different from the 12-month period used for other FMLA leave reasons.

29 CFR 825.127

Under some circumstances, employees may take FMLA leave on an intermittent or reduced schedule basis.

When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operations.

If FMLA leave is for the birth, adoption, or foster placement of a child, use of intermittent or reduced schedule leave requires the employer’s approval.

29 CFR 825.202

Under certain conditions, employees may choose, or employers may require employees, to "substitute" (run concurrently) accrued paid leave, such as sick or vacation leave, to cover some or all of the FMLA leave period.

An employee’s ability to substitute accrued paid leave is determined by the terms and conditions of the employer's normal leave policy.

29 CFR 825.207

NOTICE

Employees must comply with their employer’s usual and customary requirements for requesting leave and provide enough information for their employer to reasonably determine whether the FMLA may apply to the leave request.

Employees generally must request leave 30 days in advance when the need for leave is foreseeable.

29 CFR 825.302

When the need for leave is foreseeable less than 30 days in advance or is unforeseeable, employees must provide notice as soon as possible and practicable under the circumstances.

29 CFR 825.303

When an employee seeks leave for a FMLA-qualifying reason for the first time, the employee need not expressly assert FMLA rights or even mention the FMLA.

If an employee later requests additional leave for the same qualifying condition, the employee must specifically reference either the qualifying reason for leave or the need for FMLA leave.

29 CFR 825.302-.303
Covered employers must:

- Post a notice explaining rights and responsibilities under the FMLA (and may be subject to a civil money penalty of up to $110 for willful failure to post);
- Include information about the FMLA in their employee handbooks or provide information to new employees upon hire;
- When an employee requests FMLA leave or the employer acquires knowledge that leave may be for a FMLA-qualifying reason, provide the employee with notice concerning his or her eligibility for FMLA leave and his or her rights and responsibilities under the FMLA; and
- Notify employees whether leave is designated as FMLA leave and the amount of leave that will be deducted from the employee’s FMLA entitlement.

29 CFR 825.300

CERTIFICATION

When an employee requests FMLA leave due to his or her own serious health condition or a covered family member’s serious health condition, the employer may require certification in support of the leave from a health care provider.

An employer may also require second or third medical opinions (at the employer’s expense) and periodic recertification of a serious health condition

29 CFR 825.305

JOB RESTORATION AND HEALTH BENEFITS

Upon return from FMLA leave, an employee must be restored to his or her original job or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment.

29 CFR 825.215

An employee’s use of FMLA leave cannot be counted against the employee under a “no-fault” attendance policy.

29 CFR 825.220

Employers are also required to continue group health insurance coverage for an employee on FMLA leave under the same terms and conditions as if the employee had not taken leave

29 CFR 825.209

ENFORCEMENT

It is unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided by the FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to the FMLA.

29 CFR 825.220
The Wage and Hour Division is responsible for administering and enforcing the FMLA for most employees. Most federal and certain congressional employees are also covered by the law but are subject to the jurisdiction of the U.S. Office of Personnel Management or Congress.

If you believe that your rights under the FMLA have been violated, you may file a complaint with the Wage and Hour Division or file a private lawsuit against your employer in court.  
29 CFR 825.401

a. Florida

760.01 Purposes; construction; title.--

(1) Sections 760.01-760.11 and 509.092 shall be cited as the "Florida Civil Rights Act of 1992."

(2) The general purposes of the Florida Civil Rights Act of 1992 are to secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, and privileges of individuals within the state.

(3) The Florida Civil Rights Act of 1992 shall be construed according to the fair import of its terms and shall be liberally construed to further the general purposes stated in this section and the special purposes of the particular provision involved.

Florida has no state-law equivalent to the FMLA.

Family Sick Leave

110.219 Attendance and leave; general policies.—

(1) The workday for each full-time state employee shall be 8 hours or as otherwise justified by the agency head.
(2) Overtime may be required for any employee.
(3) The granting of any leave of absence, with or without pay, shall be in writing and shall be approved by the agency head. An employee who is granted leave of absence with or without pay shall be an employee of the state while on such leave and shall be returned to the same position or a different position in the same class and same work location upon termination of the approved leave of absence. The agency head and the employee may agree in writing to other conditions and terms under which the leave is to be granted.
(4) Each agency shall keep an accurate record of all hours of work performed by each employee, as well as a complete and
accurate record of all authorized leave which is approved. The ultimate responsibility for the accuracy and proper maintenance of all attendance and leave records shall be with the agency head.

(5) Rules shall be adopted by the department in cooperation and consultation with the agencies to implement the provisions of this section; however, such rules must be approved by the Administration Commission prior to their adoption. Such rules must provide for, but need not be limited to:

(a) The maximum responsibility and authority resting with each agency head to administer attendance and leave matters in the agency within the parameters of the rules adopted by the department.
(b) Creditable service in which 1 month of service credit is awarded for each calendar month that the employee is on the payroll of a state agency or during which the employee is on authorized leave without pay.
(c) Holidays as provided in s. 110.117.
(d) Overtime provisions.
(e) Annual leave provisions.
(f) Sick leave provisions.
(g) Parental leave provisions.
(h) Family medical leave provisions.
(i) Disability leave provisions.
(j) Compulsory disability leave provisions.
(k) Administrative leave provisions.
(l) Military leave provisions.
(m) Educational leave with pay provisions.
(n) Leave of absence without pay provisions.

(6) The leave benefits provided to Senior Management Service employees shall not exceed those provided to employees in the Selected Exempt Service.

(7) Each December, a permanent career service employee shall be entitled, subject to available funds, to a payout of up to 24 hours of unused annual leave as follows:

(a) A permanent career service employee must have an annual leave balance of no less than 24 hours, after the payout, in order to qualify for this benefit.
(b) No permanent career service employee shall receive a payout of greater than 240 hours over the course of the employee’s career with the state, including any leave received at the time of separation.

Medical Leave

110.221 Parental or family medical leave.—
(1) As used in this section, the term “family” means a child, parent, or spouse, and the term “family medical leave” means leave requested by an employee for a serious family illness including an accident, disease, or condition that poses imminent danger of death, requires hospitalization involving an organ transplant, limb amputation, or other procedure of similar severity, or any mental or physical condition that requires constant in-home care. The term “parental leave” means leave for the father or mother of a child who is born to or adopted by that parent.

(2) The state shall not:

(a) Terminate the employment of any employee in the career service because of the pregnancy of the employee or the employee’s spouse or the adoption of a child by that employee.
(b) Refuse to grant to a career service employee parental or family medical leave without pay for a period not to exceed 6 months. Such leave shall commence on a date that is determined by the employee in consultation with the attending physician following notification to the employer in writing, and that is approved by the employer.
(c) Deny a career service employee the use of and payment for annual leave credits for parental or family medical leave. Such leave shall commence on a date determined by the employee in consultation with the attending physician following notification to the employer in writing.
(d) Deny a career service employee the use of and payment for accrued sick leave or family sick leave for any reason deemed necessary by a physician or as established by policy.
(e) Require that a career service employee take a mandatory parental or family medical leave.

(3) Upon returning at the end of parental or family medical leave of absence, such employee shall be reinstated to the same job or to an equivalent position with equivalent pay and with seniority, retirement, fringe benefits, and other service credits accumulated prior to the leave period. If any portion of the parental or family medical leave is paid leave, the employee shall be entitled to accumulate all benefits granted under paid leave status.

Leave for Domestic violence and sexual violence — 741.313 Unlawful action against employees seeking protection.—
(2)(a) An employer shall permit an employee to request and take up to 3 working days of leave from work in any 12-month period if the employee or a family or household member of an employee is the victim of domestic violence or sexual violence. This leave may be with or without pay, at the discretion of the employer.

(b) This section applies if an employee uses the leave from work to:
   1. Seek an injunction for protection against domestic violence or an injunction for protection in cases of repeat violence, dating violence, or sexual violence;
   2. Obtain medical care or mental health counseling, or both, for the employee or a family or household member to address physical or psychological injuries resulting from the act of domestic violence or sexual violence;
   3. Obtain services from a victim services organization, including, but not limited to, a domestic violence shelter or program or a rape crisis center as a result of the act of domestic violence or sexual violence;
   4. Make the employee’s home secure from the perpetrator of the domestic violence or sexual violence or to seek new housing to escape the perpetrator; or
   5. Seek legal assistance in addressing issues arising from the act of domestic violence or sexual violence or to attend and prepare for court-related proceedings arising from the act of domestic violence or sexual violence.

(3) This section applies to an employer who employs 50 or more employees and to an employee who has been employed by the employer for 3 or more months.

(4)(a) Except in cases of imminent danger to the health or safety of the employee, or to the health or safety of a family or household member, an employee seeking leave from work under this section must provide to his or her employer appropriate advance notice of the leave as required by the employer’s policy along with sufficient documentation of the act of domestic violence or sexual violence as required by the employer.

(b) An employee seeking leave under this section must, before receiving the leave, exhaust all annual or vacation leave, personal leave, and sick leave, if applicable, that is available to the employee, unless the employer waives this requirement.

(c) 1. A private employer must keep all information relating to the employee’s leave under this section confidential.
   2. An agency, as defined in s. 119.011, must keep information relating to the employee’s leave under this section confidential and exempt from disclosure to the extent authorized by subsection (7).
(5)(a) An employer may not interfere with, restrain, or deny the exercise of or any attempt by an employee to exercise any right provided under this section.

(b) An employer may not discharge, demote, suspend, retaliate, or in any other manner discriminate against an employee for exercising his or her rights under this section.

(c) An employee has no greater rights to continued employment or to other benefits and conditions of employment than if the employee was not entitled to leave under this section. This section does not limit the employer’s right to discipline or terminate any employee for any reason, including, but not limited to, reductions in work force or termination for cause or for no reason at all, other than exercising his or her rights under this section.

(6) Notwithstanding any other law to the contrary, the sole remedy for any person claiming to be aggrieved by a violation of this section is to bring a civil suit for damages or equitable relief, or both, in circuit court. The person may claim as damages all wages and benefits that would have been due the person up to and including the date of the judgment had the act violating this section not occurred, but the person may not claim wages or benefits for a period of leave granted without pay as provided in paragraph (2)(a). However, this section does not relieve the person from the obligation to mitigate his or her damages.

(7)(a) Personal identifying information that is contained in records documenting an act of domestic violence or sexual violence submitted by an agency employee to an agency, as defined in chapter 119, under the requirements of this section is confidential and exempt from s. 119.07(1) and s. 24(a), Art. 1 of the State Constitution.

(b) A written request for leave that is submitted by an agency employee under the requirements of this section and any agency time sheet that reflects such a request are confidential and exempt from s. 119.07(1) and s. 24(a), Art. 1 of the State Constitution until 1 year after the leave has been taken.

b. Montana

Parental Leave For State Employees § 2-18-606.
The department of administration shall develop a parental leave policy for permanent state employees. The policy must permit an employee to take a reasonable leave of absence and permit the employee to use sick leave immediately following the birth or placement of a child for a period not to exceed 15 working days if:

the employee is adopting a child; or
the employee is a birth father.

As used in this section, "placement" means placement for adoption as defined in 33-22-130.
A state agency that is not subject to the provisions of the Family and Medical Leave Act of 1993, 29 U.S.C. 2601 through 2654, may extend the provisions of that act to the employees of the agency.

Maternity leave -- unlawful acts of employers § 49-2-310

It is unlawful for an employer or an employer's agent to:

1. terminate a woman's employment because of the woman's pregnancy;
2. refuse to grant to the employee a reasonable leave of absence for the pregnancy;
3. deny to the employee who is disabled as a result of pregnancy any compensation to which the employee is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to plans maintained by the employer, provided that the employer may require disability as a result of pregnancy to be verified by medical certification that the employee is not able to perform employment duties; or
4. require that an employee take a mandatory maternity leave for an unreasonable length of time.

Reinstatement to job following pregnancy-related leave of absence § 49-2-311.

Upon signifying an intent to return at the end of a pregnancy-related leave of absence, the employee must be reinstated to the employee's original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits, and other service credits unless, in the case of a private employer, the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

Sick leave § 2-18-618.

1. A permanent full-time employee earns sick leave credits from the first day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) equals 1 year. Sick leave credits must be credited at the end of each pay period. Sick leave credits are earned at the rate of 12 working days for each year of service without restriction as to the number of working days that may be accumulated. Employees are not entitled to be paid sick leave until they have been continuously employed 90 days.
2. An employee may not accrue sick leave credits while in a leave-without-pay status.
3. Permanent part-time employees are entitled to prorated leave benefits if they have worked the qualifying period.
4. Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.
5. A short-term worker may not earn sick leave credits.
6. Except as otherwise provided in 2-18-1311, an employee who terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated
sick leave. The pay attributed to the accumulated sick leave must be computed on the basis of the employee's salary or wage at the time the employee terminates employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment is the responsibility of the agency in which the sick leave accrues. However, an employee does not forfeit any sick leave rights or benefits accrued prior to July 1, 1971. However, when an employee transfers between agencies within the same jurisdiction, the employee is not entitled to a lump-sum payment. In a transfer between agencies, the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

(7) An employee who receives a lump-sum payment pursuant to this section or who, pursuant to 2-18-1311, converts unused sick leave to employer contributions to a health care expense trust account and who is again employed by any agency may not be credited with sick leave for which the employee has previously been compensated or for which the employee has received an employer contribution to the health care expense trust account.

(8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this section.

(9) An employee of a state agency may contribute any portion of the employee's accumulated sick leave or accumulated vacation leave to a nonrefundable sick leave fund for state employees and becomes eligible to draw upon the fund if an extensive illness or accident exhausts the employee's accumulated sick leave, irrespective of the employee's membership or nonmembership in the employee welfare benefit plan established pursuant to 2-18-1304. The department of administration shall, in consultation with the state employee group benefits advisory council, provided for in 2-15-1016, administer the sick leave fund and adopt rules to implement this subsection.

(10) A local government may establish and administer through local rule a sick leave fund into which its employees may contribute a portion of their accumulated sick leave or vacation leave.

**DISCRIMINATION STATUTES**

Americans with Disabilities Act : 42 USC 12101 - Findings and purpose

§ 12101 - Findings and purpose

(a) Findings The Congress finds that—

(1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of
discrimination against individuals with disabilities continue to be a serious and pervasive social problem;
(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;
(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;
(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;
(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;
(7) the Nation’s proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and
(8) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) Purpose It is the purpose of this chapter—
(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;
(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;
(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and
(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

§ 12102 - Definition of disability
(1) Disability The term “disability” means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
(B) a record of such an impairment; or
(C) being regarded as having such an impairment (as described in paragraph (3)).

(2) Major life activities

(A) In general
For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.
(B) Major bodily functions
For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) Regarded as having such an impairment
For purposes of paragraph (1)(C):

(A) An individual meets the requirement of “being regarded as having such an impairment” if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.
(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

(4) Rules of construction regarding the definition of disability
The definition of “disability” in paragraph (1) shall be construed in accordance with the following:

(A) The definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.
(B) The term “substantially limits” shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.
(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.
(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(E) 

(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as—

(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(II) use of assistive technology;

(III) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(iii) As used in this subparagraph—

(I) the term “ordinary eyeglasses or contact lenses” means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

(II) the term “low-vision devices” means devices that magnify, enhance, or otherwise augment a visual image.
SUBCHAPTER III - PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES (§§ 12181 to 12189)

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Minimum Wage: Prohibition of sex discrimination – 29 USC 206(d)

(1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: Provided, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

(2) No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall
cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection.

(3) For purposes of administration and enforcement, any amounts owing to any employee which have been withheld in violation of this subsection shall be deemed to be unpaid minimum wages or unpaid overtime compensation under this chapter.

(4) As used in this subsection, the term “labor organization” means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Definitions 42 USC 2000e(k)

(k) The terms “because of sex” or “on the basis of sex” include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e–2(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

Equal Employment Opportunities Act 42 USC 2000e et seq

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§ 2000e-1 - Exemption
§ 2000e-2 - Unlawful employment practices
§ 2000e-3 - Other unlawful employment practices
§ 2000e-4 - Equal Employment Opportunity Commission
§ 2000e-5 - Enforcement provisions
§ 2000e-6 - Civil actions by the Attorney General
§ 2000e-7 - Effect on State laws
§ 2000e-8 - Investigations
§ 2000e-9 - Conduct of hearings and investigations pursuant to section 161 of title 29
§ 2000e-10 - Posting of notices; penalties
§ 2000e-11 - Veterans’ special rights or preference
§ 2000e-12 - Regulations; conformity of regulations with administrative procedure provisions; reliance on interpretations and instructions of Commission
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