

October Legal Notes:

The current issue of the AARP Bulletin (yes, I'm now that old) features a great article ("The Caregiver's Dilemma") about the difficulties caregivers have in helping spouses or families that are suffering from dementia, Alzheimer's, or are otherwise incapacitated. Specifically, the article focuses on the employment problems caregivers have in trying to balance employment and providing care for a loved one.

Unfortunately, the article did not address the legal protection that may be available to such caregiver's.

The primary protection will be the state and federal Family and Medical Leave Acts. These laws are well known for requiring an employer to give a leave of absence for employees who have a serious health condition. Less well known are the protection available for employees who need to provide care for a relative. It is often assumed that this provision is only for children, but there is no age limit in the law. Employers must provide some leave under law for an employee who is required to care for a relative who has a serious health condition.

The usual time limits apply (2 weeks under the Wisconsin law and 12 weeks under the federal version). Only certain relatives qualify and non-relatives don't qualify. The relative must have a serious health condition and the employee's care must be necessary to provide aid to that relative. A doctor's note made be required to qualify for the leave (and most doctors are willing to write such a note if requested). Like with regular FMLA, the leave can be taken all at once or in incremental periods.

As with any use of the FMLA, the employee must tell the employer about the need for the care. The AARP article mentions the reluctance of employee's to so notify their employer for fear of retaliation. However, for the FMLA to be in effect, the employee must place the employer on notice of the need for the protected leave.

While the FMLA will be the greatest protection, there may be another possible remedy as well. It is unlawful for an employer to discriminate against someone for associating with someone with a disability. While this provision of the anti-discrimination laws is little used, it may become more prevalent with our aging population.