# Family Responsibilities Discrimination

By Ken Gilberg, Esq.

Currently, there is no federal statute specifically prohibiting discrimination against employees with care-giving obligations, but courts have seen a growing number of lawsuits brought for claims of discrimination related to employees' family care responsibilities.

These lawsuits have arisen under a variety of legal theories, including Title VII gender discrimination claims brought by working mothers alleging disparate treatment because of their childcare responsibilities or because of stereotypical attitudes towards working mothers. Other employees have sued employers for discrimination and violation of the Americans with Disability Act (ADA), claiming that they have been treated aversely because of their care giving responsibilities for disabled children or family members. These claims, brought by both females and males, are often referred to as Family Responsibilities Discrimination (FDR) and they are on the rise. The Center for World Life Law (WLL) recently documented a 400 percent increase in all other discrimination claims during the same period. Further, the FRD cases identified show a greater than 50 percent success rate for plaintiffs. Awards have been substantial, including an $11.65 million dollar verdict.

Demographic changes in the workplace have caused several interest groups to solicit the government and/or employer-based assistance to working families. The media also has focused on the difficulties employees have balancing work and family. Studies and reports frequently highlight the difficulties faced by employees, particularly women, in the "sandwich generation" (those who care for elderly parents as well as their children). Statistics confirm that there has been an increase in the number of women in the labor force since 1970, and the increase has been marked by women with children who, in many cases, continue to be the primary family caregivers. The studies also show that the amount of time men spend caring for children has nearly tripled since 1965. Lastly, one third of families have at least one disabled family member and about 10 percent have a child with a disability whose care is typically the responsibility of a family member who also works outside of the home.

Once the dealer is willing to face these truths, he will be better prepared to analyze viable options which may lead to the sale of the dealership but often times result in the dealer taking action which will allow the dealership to be saved. Consider the reasons for selling the dealership:

- Although the dealership has not made a profit for the last few years, it still is desirable and has significant "good will" value; or
- In addition to owning the dealership, the dealer principal also owns the real estate, and, upon sale, would be able to collect significant rent for the long-term.

In either of these scenarios, if the dealership has consistently lost money, it would be prudent for the dealer to explore a sale. Under the first scenario, if the dealer has a very marketable car line, he should try to cash out and realize a return on his investment before losing more money. Under the second scenario, the dealer will not only be able to cash out on the "good will" value of the dealership, he will also be able to receive monthly income in the form of rent.

Reasons for possibly keeping the dealership:

- The manufacturer has indicated its desire to maintain your dealership location for the long-term; or
- Dealership facilities are significantly larger than needed based upon a decreased market share for the dealership's brand (consider reduction in facilities or acquisition of additional franchise).

To the extent that the dealer maintains a realistic hope for the future success of his dealership and merely needs either a capital infusion or a way to defray or reduce overhead expenses, the dealer can seek either site control money from the manufacturer or can look to either reduce facility size (and thereby reduce overhead) or add a second franchise (and thereby defray overhead).

Many manufacturers are fearful of losing representation in particular markets. If a dealer is located in such a market, he may be surprised at how flexible a manufacturer may be concerning site control (i.e. payment to the dealer in exchange for a long term commitment to remain at a particular location) or reduction of facility size or allowing a dual with a "non-competitive" brand (in order to keep representation in a market area).

In these very uncertain economic times automobile dealers must be willing to explore all options for their financial survival. In order to do so it is necessary that dealers, along with their accountants and attorneys leave no stone unturned in seeking a solution. **nj car**

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## EEOC Guidance

The EEOC has responded to these demographic changes by issuing new guidelines on how to spot discriminatory treatment against employees with care giving responsibilities. The EEOC explains that its "Enforcement Guidance" is not intended to create a new protected category, but rather to illustrate circumstances in which stereotyping or other forms of disparate treatment may violate Title VII or the prohibition under the ADA against discrimination based on a worker's association with a disabled individual.

Title VII prohibits discrimination employment on the basis of several protected characteristics including race, color, religion, gender, and national origin. While Title VII does not specifically protect employees' childcare or parenting decisions, the federal courts have recognized the theory of liability under the statute know as "gender plus" or "sex plus discrimination." These cases hold, for example, that Title VII does not allow an employer to have one hiring policy for women with preschool age children and another for men with preschool age children.

ADA prohibits employers from discriminating against qualified employees because of their own disability or their association or relationship with a disabled child or family member. Thus, some courts have recognized an ADA associational discrimination claim where an employer takes action against an employee or applicant because of stereotypical assumptions about the individual's time required to care for a disabled child. While the ADA mandates employers to make reasonable accommodations for qualified employees or applicants with disabilities, there is no such accommodation requirement for employees to care for disabled children or family members. For example, an employer is not required to provide an employee a modified or reduced work schedule to care for a disabled child. Employees who fail to meet legitimate attendance requirements for that reason may be lawfully subject to adverse employment action.

The EEOC's Guidance entitled "unlawful disparate treatment of workers and care giving responsibilities" can be found at www.eeoc.gov/policy/docs/caregiving.pdf.

## Educating and Training Managers/Supervisors

The basis for many FRD claims brought by employees arise because the employer's adverse actions are based not on the individual employee's performance or desires, but rather on stereotypes. Accordingly, many plaintiffs are successful in FRD cases because they have "the smoking guns"- a manager/supervisor with loose lips has made statements relating to the competency of caregivers, particularly mothers, in a workplace. Most managers do not realize that stereotyping of mothers can constitute gender discrimination and they make comments that become the key piece of evidence in a plaintiff's case. Similarly, employers often draft policies without carefully thinking them

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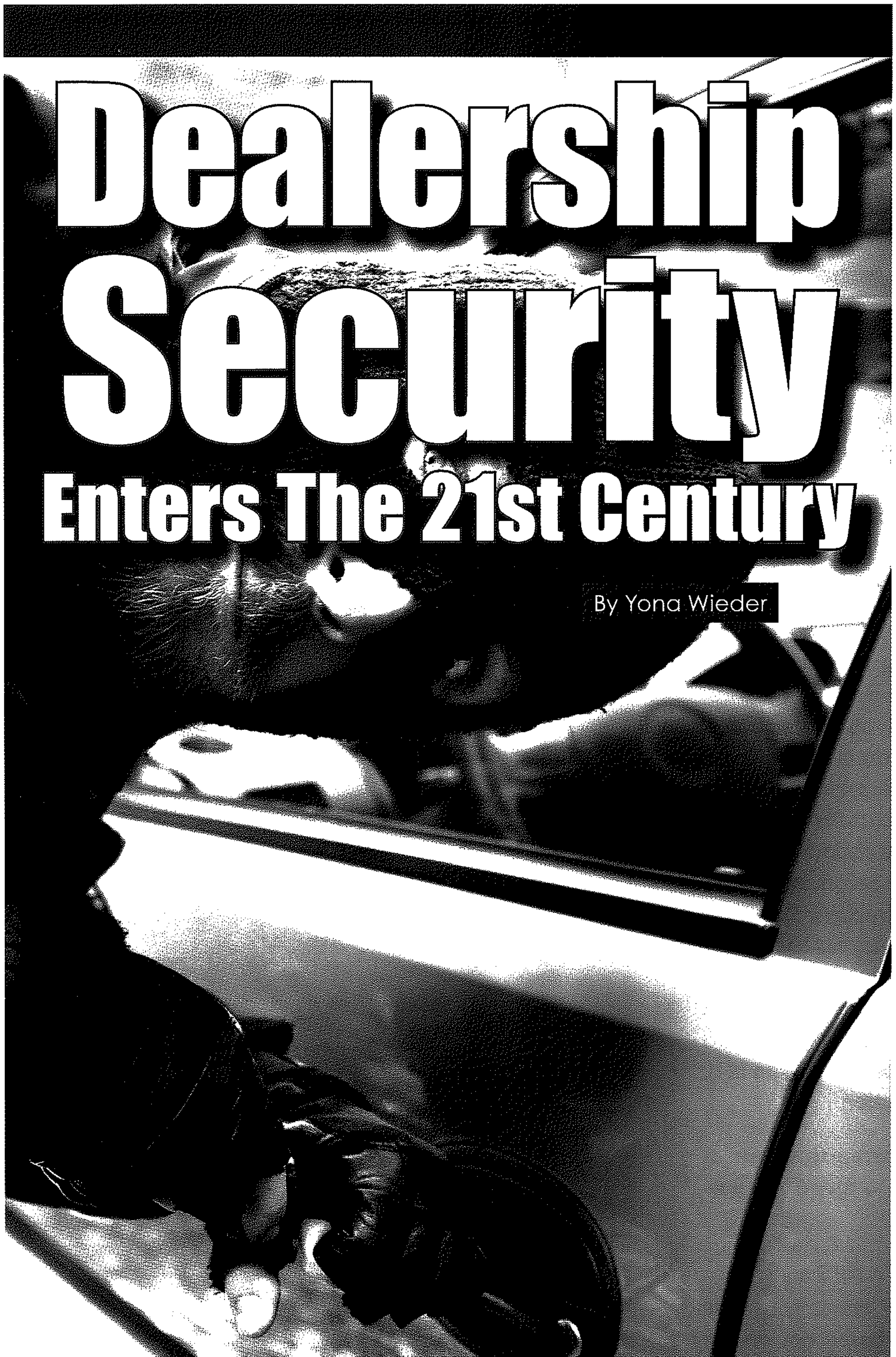
# Dealership Security Enters The 21st Century

By Yona Wieder



In the world of automotive security, car theft is a familiar problem. This menace, a national phenomenon that costs billions of dollars, consumes the attention of local, state and federal law enforcement. Auto theft increases the price of insurance and acts as a general threat to public safety. It is a perpetual challenge for both retailers and drivers.

Among the former, including dealerships throughout the country (and those in the state of New Jersey, specifically), new ways of maintaining and improving security are at the heart of combating this element.

Car and truck retailers have a vested interest in policing their inventory not only from outright theft, but from vandalism and other malicious acts that can immediately lessen a new car's value, or even its status (as defined by law) as new. New forms of technology, strengthened by the power of the Internet and various forms of proprietary technology, now afford car dealers - as well as companies across a diverse number of industries - the opportunity to proactively shift the terms of this battle. Conventional brands of security, namely private security personnel and/or passive monitoring devices (stationary cameras), are merely an incomplete solution -- at a higher price. The answer rests with marrying the very best video detection and analysis with advanced networking/command-and-control technology.

An overview of the latest statistics governing auto theft reveals the seriousness of this problem. According to the Federal Bureau of Investigation (FBI)'s Uniform Crime Reports, a motor vehicle is stolen in the United States every 26.4 seconds. The odds of a vehicle being stolen were 1 in 207 in 2005 (latest data available based on registrations from the Federal Highway Administration, thefts from the FBI and calculated by the Insurance Information Institute). The odds are highest in urban areas. Among consumers, and these figures are important for drivers who are the most frequent victims of auto theft, these facts are a cold reminder of the personal and financial effects that accompany this threat. For auto dealers, an additional challenge exists: the ability to successfully secure new inventory is a constant undertaking, when criminals view this property as an inviting target for theft or mischief.

Consider, further, that attacks against auto dealerships are another security priority. In New Jersey, the car theft capital of the world, acts of arson are now some of the worst and most opportunistic forms of property damage: three separate dealerships in South Jersey were struck over the March 29-30 weekend, where some form of accelerant was poured over autos in the display line and then ignited; the losses ranged between 8 to 27 cars for each attack.

Standard types of policing fail to prevent these events from happening, forcing car dealers to ask: Why spend even more money on security personnel, alarms and guard dogs when these techniques do not fully protect against theft?

Dealers need to make a shift toward a system that uses state of the art technology to fully protect outdoor spaces. This solution must provide full accountability – typical alarm installers do not meet this requirement, nor do they often willingly accept this responsibility. For example: before an intruder can scale a fence or even attempt to steal a car – at the very moment a suspect trespasses on the lot – using a preemptive brand of technology, which enables trained staff at a remote location to monitor everything, accomplishes more results than any traditional brand of "security." In the end, this model is less about hardware and software, important though they are, and more about using an experienced provider.

Also, these methods reduce the number of false alarms, a major inconvenience among local law enforcement. Indeed, the frequency of false alarms – coupled with the limited resources of area police

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through and whether they could have an unintentional disparate impact.

Plaintiffs are successfully challenging workplace discrimination based on their family care giving responsibilities. Substantial damages have been awarded and the trend appears to be increasing and new legal theories are continuing to develop. Managers and supervisors must be educated about discrimination claims and theories and they must be careful about making improper and potentially unlawful statements. Similarly, policies and procedures should be evaluated for potential discrimination. Lastly, employees must be made aware of how to voice their concerns about discrimination. We strongly recommend that employers broaden their anti-harassment programs to include claims for family responsibility discrimination. Moreover, having a policy is not enough. Unless it is well publicized and the supervisory/management team is trained, it is likely not an adequate defense.

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