



**Governor's Advisory Council for Exceptional Citizens (GACEC)**  
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### **MEMORANDUM**

**DATE:** May 25, 2016

**TO:** The Honorable Members of the Delaware General Assembly

**FROM:** Robert D. Overmiller, Chairperson  
GACEC

**RE:** **House Bill No. 317 (Employment Discrimination and Family Responsibilities)**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed **House Bill No. 317**, which would add a protected class to Delaware's employment discrimination law - "family responsibilities". Council **endorses the concept** of the proposed legislation and would like to share the following observations.

Under the proposed legislation, "Family Responsibilities" would be defined as follows:

(9) "Family responsibilities" means the state of being, or the potential to become, a contributor to the support of a person or persons in a dependent relationship, irrespective of their number, including the state of being the subject of an order of withholding or similar proceedings for the purpose of paying child support or a debt related to child support.

The effect of the bill would apparently be broad. Consistent with a January 19, 2016 News Journal article, "nearly half of all Delawareans over age 35 provide - or have provided - unpaid long-term care for a loved one who is ill, elderly or lives with a physical or mental disability, according to a survey from AARP."

There already exists a patchwork of laws which provide some protection against workplace

discrimination involving prospective and current caregivers. Pregnant women are protected under both federal and State law [19 Del.C. 711(a)(1)]. Moreover, the Americans with Disabilities Act (ADA) prohibits discrimination because of the disability of an individual with whom the worker has a relationship or association, such as a child, spouse or parent. See 42 U.S.C. 12112(b)(4). The Equal Employment Opportunity Commission (EEOC) offers the following example: “(A)n employer could not refuse to hire a job applicant whose wife has a disability because the employer assumes that the applicant would have to use frequent leave and arrive late due to his responsibility to care for his wife.” See EEOC, “Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities” (2007), Section II. E. It is unclear if Delaware State law covers disability-based discrimination based on a worker’s association with a person with a disability. See 19 Del.C. §§720-728. House Bill No. 317 would cover any State law gap in this context. It would also cover caregivers assisting children without disabilities or the elderly who may not have quite reached the threshold of disability under ADA standards.

Council suggests the sponsors consider improving the bill by explicitly adding provisions similar to the “reasonable accommodations” protections for pregnant workers and workers with disabilities. See 19 Del.C. §§710(18), 711(3)a, and 722(6). Reasonable accommodations for a caregiver could include modified work schedules and job restructuring.

Thank you for your time and consideration of our observations. Please feel free to contact me or Wendy Strauss at the GACEC office if you have any questions.