

Supporting Care for the Elderly and Disabled

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In 2014, California began to better protect the rights of domestic employees, including personal attendants who care for the elderly and disabled. A series of legislative acts require minimum pay, overtime pay and mandatory paid sick leave for these workers.

These are needed improvements. But there are sometimes conflicts between employee rights and the needs of families taking care of the elderly or disabled, which need to be addressed in our legal system. More tools and protections also need to be created to assist families in safely selecting and managing caregivers.

We have had around-the-clock personal attendants for my 94-year-old mom for the past seven years. Most of her caregivers have been amazing, capable and dedicated individuals.

Caregiving can be demanding and stressful, and caregivers deserve support and protection. Nonetheless, there are sometimes conflicts between the needs and rights of the elderly and disabled and the way the legal and administrative systems are structured to uphold employee rights.

Employment in in-home care for the elderly and disabled is different than in other fields, because the individuals being cared-for are completely dependent. Yet neither legal nor administrative structures distinguish between employees caring for helpless individuals and those doing other work, in terms of their rights, their responsibilities or expectations of them.

For example, one of our caregivers had an auto accident with my mom in the car. The caregiver objected to my requiring that they not drive my mom until fault was established for the accident, and complained at my keeping my mom at home during this caregiver's shifts or switching schedules with another caregiver to drive my mom. The caregiver argued that they had a clean driving record and implied that I might be discriminating by requiring that they not drive my mom for a period of time. Of course, employment law prohibits discrimination.

Yet the priority for a frail senior or disabled person is their safety, so surely the law should support a family member who makes a conservative decision on their behalf.

Sometimes one caregiver proves to be better at a certain task—accompanying the senior or disabled person to medical appointments, or cooking their restricted diet or giving them medications or doing exercise with them—than others. So for the disabled person's well-being, a family member may sometimes need to switch responsibilities among caregivers. Are they then discriminating if they change responsibilities to those who can perform them better?

Employment law also protects employees who are disabled. I suspected that one caregiver was an alcoholic. Under employment law, I could have been accused of discrimination if I terminated this

individual for alcoholism per se, since alcoholism is classed as a disability. Should there be any question about firing a suspected alcoholic from duties caring for a helpless individual?

Predictability of care is essential for those who are disabled. In a few cases, we have experienced caregivers who were absent from work without explanation, called in to take time off a few minutes before their shift began, or left their post without notice.

Leaving a helpless person unattended is obviously very dangerous. Yet California's current legal and administrative framework has a high bar when it comes to termination of employment, often requiring repeated documented instances like this before firing. There are no exemptions or special requirements for caregivers of helpless individuals.

Some important elements of a system that supports home care are resources to train caregivers and help families find and vet appropriate and qualified caregivers. Currently there is no specific and affordable training, certification or qualification path for in-home caregivers.

Anyone can say they are a caregiver. Violent felons can work as caregivers; their records might not show up on background checks of companies such as Care.com because their crimes were in a different state. Under a 2016 California law, home health-care agencies have to be licensed, but individual caregivers do not. There are individuals who are not licensed who are presenting themselves as home-care businesses or agencies.

Our society puts a priority on families being able to care for their loved ones at home. Currently, neither our legal framework nor our support structures are very good at facilitating this.

We should examine best practices in other countries for supporting home care for elderly and disabled individuals. This includes reviewing our laws to ensure that while caregiver rights are protected, family members are also supported in protecting their loved ones. There should be training, certification and qualification procedures, perhaps through community colleges, and perhaps state or county registries of qualified caregivers.

We should be looking around the world for the best models. Even in California, some of our smaller counties have lessons to offer metropolitan areas like the Bay Area. Hospices and hospitals in Siskiyou County will provide families with access to their lists of home health workers. We need much more of this kind of support for those caring for dependent individuals.



Photo courtesy of Gloria Duffy