

Advance Directives and Paid Family Leave:

A Must for Aging Family Members and Elder Caregivers

The implementation of Paid Family Leave in New York State may help individuals who are caring for elderly family members. However, it does not eliminate problems for the working elder caregiver. In fact, not planning ahead can cause even more headaches for an elder caregiver who is requesting time off under Paid Family Leave.

It is critical that your aging loved ones execute Advance Directives, including a Power of Attorney, Health Care Proxy and Living Will.

Power of Attorney: A Power of Attorney is a legal document wherein a trusted individual is appointed to handle financial affairs, including banking matters, real estate transactions, estate planning and Medicaid planning.

Health Care Proxy: A Health Care Proxy is a document wherein a health care agent is appointed to make any and all health care decisions for an individual who is unable to do so him/herself.

Living Will: A Living Will is a document wherein wishes regarding end-of-life care, including life-sustaining treatment, are set forth.

Properly drafted and executed Advance Directives are invaluable to elder caregivers assisting family members with their financial and medical affairs. For example, when an elder caregiver requests time off under Paid Family Leave, the qualifying “serious health condition” of the family member must be disclosed to the employer. This information cannot be obtained by the elder caregiver without a HIPAA authorization. If the family member does not have mental capacity to execute a HIPAA authorization, the agent under a properly drafted and executed Health Care Proxy or Power of Attorney can sign on their behalf. However, if a Health Care Proxy or Power of Attorney is not in place, the elder caregiver must bring a guardianship proceeding in the Supreme Court. Even the simplest guardianship proceeding can keep an elder caregiver out of work for days or weeks and can easily cost thousands of dollars.

Educating your employees is the key to making sure working elder caregivers are properly armed with the documentation they need to swiftly assist their aging family members.

GDGC’s Elder Care Employee Benefit program is designed to give working elder caregivers the tools they need to navigate the elder care landscape while remaining present and productive at work. The program helps employers by reducing absenteeism, downtime and turnover and promotes job security for employees. For information on TAWC: Tools and Advice for Working Caregivers, [click here](#).

Having resources and support in place means your workforce does not need to take paid family leave or can minimize the amount of time taken.

Our Elder Law attorneys are always available to address your questions and concerns. Call us at 631.390.5000 or [click here](#).