POLICY BRIEFING SERIES
WORK-FAMILY INFORMATION FOR STATE LEGISLATORS
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ADDRESSING FAMILY RESPONSIBILITIES DISCRIMINATION

COMMENTS BY: MICHIGAN SENATOR DEB CHERRY

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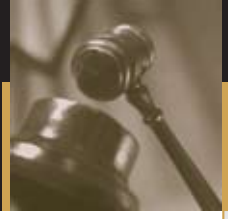

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ADDRESSING FAMILY RESPONSIBILITIES DISCRIMINATION (FRD)

Workplace discrimination against mothers and others based on their family caregiving responsibilities is a rapidly growing problem. Recently, the U.S. Equal Employment Opportunity Commission (EEOC) responded by issuing new enforcement guidance on caregiver discrimination. State policymakers are beginning to respond, too.

WHAT IS FAMILY RESPONSIBILITIES DISCRIMINATION (FRD)?

Family responsibilities discrimination (FRD) is employment discrimination against workers based on their responsibilities to care for family members. For example, a pregnant employee, a mother or father with a young child, or a worker who cares for an elderly parent or family member with a disability may experience FRD if they are unfairly penalized at work based on their family responsibilities. They may be passed over for hire or promotion, harassed, terminated, or otherwise penalized, despite good performance, because their employers make personnel decisions based on stereotypical notions of how they will or should act given their family responsibilities.

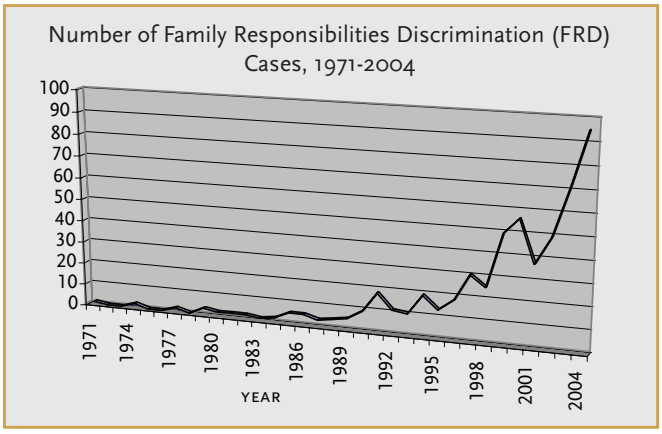
Examples:

- Firing well-performing employees because they are pregnant or plan to take maternity or paternity leave
- Failing to promote qualified employees who are mothers and instead giving promotions to women who do not have children or to fathers
- Harassing or penalizing workers who have lawfully taken family leave to care for their aging parents or ill spouses or partners

WHY IS FRD A POLICY MATTER?

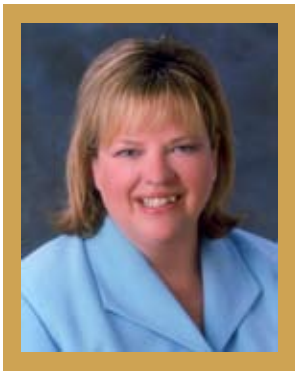
Changing workplace demographics have led to more working parents and workers with elder-care responsibilities. The dramatic rise of nearly 400% in the number of FRD cases filed between 1995 and 2005 as compared to the previous decade underscores the prevalence of this type of discrimination.[1]

- The recent enforcement guidance issued by the U.S. Equal Employment Opportunity Commission (EEOC) highlights the steadily growing problem of employment discrimination against family caregivers.[2]
- There is currently no federal law and only two state laws (Alaska and the District of Columbia) that expressly prohibit FRD. Instead, employers are being sued by employees for FRD under approximately 17 different legal theories pursuant to almost every federal employment law, state leave and antidiscrimination laws, and common law causes of action.[3]
- Policy makers in several states have introduced new legislation explicitly prohibiting FRD.[4]



Source: Still, M.C. (2006). *Litigating the maternal wall: U.S. lawsuits charging discrimination against workers with family responsibilities.* San Francisco: Center for WorkLife Law. Retrieved October 1, 2008, from http://www.worklifelaw.org/pubs/FRDreport.pdf.

This chart represents an analysis of 613 FRD cases collected as of 2005. The Center for WorkLife Law will be releasing an update to this data in 2009, available when published at http://www.worklifelaw.org.



"I FEEL VERY STRONGLY THAT EMPLOYEES SHOULD NOT BE DISCRIMINATED AGAINST FOR ANY LEGAL BEHAVIOR OR LIFESTYLE CHOICES CONDUCTED OUTSIDE OF THE WORKPLACE, INCLUDING FAMILY STATUS. FAMILY STATUS SHOULD BE TREATED NO DIFFERENTLY THAN GENDER, RACE, OR RELIGION, AND THE INTENTION OF LEGISLATION TO SAFEGUARD AGAINST FAMILY RESPONSIBILITIES DISCRIMINATION IS TO FURTHER UPHOLD THE BASIC CIVIL RIGHTS OF ALL CITIZENS, IN THE WORKPLACE AND OUT. WHETHER SOMEONE IS NEWLY EXPECTING, RAISING A FAMILY OF FIVE, OR CARING FOR AN AGING OR ILL FAMILY MEMBER, THEY SHOULD NOT HAVE TO FEAR REPERCUSSIONS FROM THEIR EMPLOYER THAT COULD JEOPARDIZE THE VERY INCOME THAT THEIR FAMILY DEPENDS ON."

MICHIGAN SENATOR DEB CHERRY ON SENATE BILL 462

FRD IS A GROWING PROBLEM.

Today, the majority of American workers have some family caregiving responsibilities outside of work—a reality that has significant impacts on both employees and their employers.

- Seventy percent of U.S. families with children have all adults in the labor force.[5] Women now make up almost half of the U.S. labor force (46%),[6] and most women in the United States have children (81% by age 44).[7]
- One in four families takes care of elderly relatives,[8] who are living increasingly longer because of advances in science and medicine.[9]
- One in ten employees is a member of the "sandwich generation," with caregiving responsibilities for both children and elderly parents.[10]

WHICH CONSTITUENTS ARE AFFECTED BY FRD?

Individuals

Any person who has both a job and family caregiving responsibilities can be affected by FRD. FRD suits have been brought by men and women across the income spectrum in a wide array of industries—from grocery clerk to executive.[11]

- Working mothers experience the highest incidence of FRD. In a recent study, mothers were 79% less likely to be recommended for hire, 100% less likely to be promoted, and offered an average of $11,000 less in salary for the same position as similarly qualified non-mothers.[12]

Businesses

Businesses are often caught off guard by lawsuits caused by employment actions they may not have known were illegal.

- Employers involved in FRD lawsuits have been subject to verdicts as high as $11.65 million in an individual case[13] and $49 million in a class action.[14]
- Employers who win FRD lawsuits may still be subject to substantial litigation costs—including attorneys' fees, administrative resources spent on litigation support, and damage to the business' reputation in the community.

Businesses also face significant turnover costs—including recruiting and training costs and lost productivity—if they do not recognize the needs of their employees with caregiving responsibilities.[15] Clear guidance on what does and does not constitute unlawful discrimination can also help businesses implement useful prevention strategies such as policies prohibiting FRD, complaint procedures, and training programs for managers.

WHAT STEPS HAVE POLICY MAKERS TAKEN TO ADDRESS FRD?

Existing Law

- Alaska prohibits employment discrimination based on "parenthood" (Alaska Statute § 18.80.220).
- The District of Columbia prohibits employment discrimination based on "family responsibilities" (D.C. Human Rights Act §§ 2-1401.01, 2-14101.02, 1-2502(12)).
- The federal government prohibits employment discrimination against federal government employees on the basis of their "status as a parent" (Federal Executive Order 13152).
- Over 55 localities prohibit employment discrimination based on "familial status," "family responsibilities," "parenthood," or "parental status."[16]

In addition:

- Connecticut prohibits employers from requesting or requiring information relating to "familial responsibilities" from an applicant or employee (Conn. General Statute § 46a-60(a)(9)).

Proposed Legislation

Since 2007, legislation has been proposed in eight states and New York City related to the issue of family responsibilities discrimination.

- New Jersey is considering legislation to add "familial status" to its employment discrimination protections (A2292 & S234 (2008-2009)).
- California considered legislation to add "familial status," which it defined to include caregiving for family members, to its employment discrimination protections (SB 836 (2007-2008)).
- Florida considered legislation to add "familial status" (among other categories) to its employment discrimination protections (S572 & H191 (2008)).
- Iowa considered legislation to add "marital or family status" to its employment discrimination protections (HF 532 (2007)).

WHAT STEPS HAVE POLICY MAKERS TAKEN TO ADDRESS FRD? (CONTINUED)

- Michigan considered legislation to add "familial status" to its employment discrimination protections (SB 462 (2007-2008)).
- New York considered legislation to add "family responsibilities" to care for children to its employment discrimination protections (A3214 (2007-2008)).
- Pennsylvania considered legislation to add "familial status" and "marital status" to its employment discrimination protections (HB 280 & SB 280 (2007-2008)).

In addition:

- Montana considered legislation to add "family responsibilities" (among other categories) as a basis for a hostile work environment employment discrimination claim (HB 213 (2007)).
- New York City is considering a measure to add "caregiver status" to its employment discrimination protections and require reasonable accommodations for caregivers (Int. No. 565 (2007)).

WHERE CAN I GET MORE INFORMATION?

The Center for WorkLife Law – http://www.worklifelaw.org

- "The Center for WorkLife Law is a nonprofit research and advocacy organization based at the University of California, Hastings College of the Law that takes a 360 degree approach, working with employees, employers, attorneys, unions, legislators, researchers, and the press to prevent and address the problem of family responsibilities discrimination." Website includes numerous publications on FRD, as well as information on existing and pending public policy to address FRD.

Equal Rights Advocates – http://www.equalrights.org

- "Equal Rights Advocates (ERA) is a public interest law center whose mission is to protect and secure equal rights and economic opportunities for women and girls through litigation and advocacy."

A Better Balance – http://www.abetterbalance.org

- "A Better Balance is a legal advocacy organization dedicated to empowering individuals to meet the conflicting demands of work and family. It has a project addressing family responsibilities discrimination against low-income workers in New York City."

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