Sloan Network Encyclopedia Entry

Discrimination Against Employees Who Are Also Family Caregivers (2003)

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Basic Concepts & Definitions

Modern workers often suffer adverse employment actions, such as termination, lack of promotion or lower pay, because of their family caregiving responsibilities. An important legal trend finds mothers- and fathers- challenging these adverse actions as unfair discrimination. Job practices that relate to hiring, promotion, and termination have been the subject of lawsuits alleging discriminatory treatment of pregnant women, women with children and men in the role of family caregiver. Through claims of gender discrimination and gender stereotyping, these cases make a number of distinct legal arguments for potential recovery under both federal and state law.

This legal trend conceptualizes the work/family conflict in a "discrimination" framework. The discrimination model, reflects the notion that workers have legal rights protecting them from adverse employment actions based on their family caregiver role (See Joan C. Williams & Nancy Segal, Beyond the Maternal Wall: Relief for Family Caregivers Who Are Discriminated Against on the Job, 26HARV. WOMEN'S L.J. 77(Spring 2003).) Lawsuits successfully brought under existing law challenge gender stereotypes that disadvantage employees who are also family caregivers. By interpreting the work/family conflict through the lens of discrimination, women and men who assume the role of family caregiver can begin to view their workplace disadvantages as reflecting discrimination rather than their own choices or their own personal inadequacies.

Importance of Topic to Work-Family Studies

Economists have documented the negative impact on women's economic stability caused by the lack of family friendly workplaces. (See e.g., Jane Waldfogel, The Family Gap for Young Women in the U.S. and Britain; 5 Employee Rts. & Emp. Pol'y J. 273 (2001); The Effects of Children on Women's Wages, 62 Am. Soc. Rev. 209 (1997); and Anne Crittenden, The Price of Motherhood (2001).) The traditional economic and ethical arguments in support of family friendly work environments are being joined by gender equality arguments emerging in the area of legal rights, which is the subject of this article. The potential for
employer liability is starting to be seen as an integral part of a strategy for creating workplaces that are truly responsive to family caregivers' needs. The law helps fuel social change by shaping people's interpretations of who owes what to whom. As labor and employment practices are highly regulated by the law, legal developments in these areas reflect an on-going shift in the social understandings surrounding work.

The traditional notion that an employer is entitled to an "ideal worker," who works full time and overtime while supported by a flow of family work from a spouse, is being challenged by the model of the "balanced worker," who has other personal commitments and family obligations. While ethical grounds are often cited for this shift, employers are increasingly recognizing the economic justification, or the "business case," for adopting family friendly policies that improve the bottom line. These ethical and economic arguments are being joined by legal arguments addressing the "rights" of workers- women and men- who serve as family caregivers. Substantial awards and settlements are making employers take notice of what may prove a major new trend in gender discrimination law.

State of the Body of Knowledge

Legal theorists have typically assumed that the needs of family caregivers should be conceptualized within the framework of "accommodation." This formulation of the work/family conflict asks whether employers should be required to accommodate women's family responsibilities, even if such accommodation proves expensive (See, e.g., Kathryn Abrams, Gender Discrimination and the Transformation of Workplace Norms, 42 VAND. L. REV. 1183, 1220-26 (1989).) Several commentators have offered explicit arguments in favor of the accommodation model. This entry, however, argues that the "accommodation, though it's expensive" model is a flawed way to conceptualize work/family issues, and that the more helpful model is one of "discrimination, backed up by the business case" (Williams & Segal, 2003).

The Accommodation Model

Several variations of the accommodation model have been suggested. One commentator has recently argued that employers should have a duty to accommodate parental obligations that conflict with work obligations when this accommodation can be achieved without incurring an "undue hardship" (See Peggie R. Smith, Accommodating Routine Parental Obligations in an Era of Work-Family Conflict: Lessons From Religious Accommodations, 2001 WIS. L. REV. 1443, 1446 (2001).) The accommodation model that provides the best blueprint to address work/family concerns, according to this commentator, is the religious accommodation provision in the Title VII of the Civil Rights Acts of 1964. Several inherent problems exist with this proposed approach. First, it would be necessary to pass a new statute that specifically prohibits discrimination on grounds of parenting. Furthermore, this statute would need to be
interpreted less narrowly by the courts than the religious accommodation requirement has been interpreted if this strategy was to prove effective.

Another model mentioned by several commentators is the Americans with Disabilities Act (ADA) (See Smith, at 1460-65; Laura Kessler, *The Attachment Gap: Discrimination Law, Women's Cultural Caregiving, and the Limits of Economic and Liberal Legal Theory*, 34 U. Mich. J.L. Reform 371 (2001).) This proposal builds on a long line of articles that argue for accommodating pregnancy based on the ADA. A major drawback of the ADA model is the U.S. Supreme Court's narrow interpretation of its provisions. Moreover, individuals with disabilities should be accommodated to the maximum extent possible on a case by case basis, given the wide range of disabilities. In the work/family context, however, the key issue is whether workplaces will continue to be designed around the bodies and life patterns of men, with "accommodations" offered to women- or whether workplace norms will be redesigned to take into account the reproductive and social roles of women as well as men. What women need is not accommodation, but equality. Equality is not achieved when women are offered equal opportunity to live up to ideals framed around men.

Another difficulty with the "accommodation" model lies with the perpetuation of the conventional wisdom that "accommodating" women costs employers money (Jolls, 2001). The rapidly developing literature on the business case for work/family policies finds otherwise. As discussed extensively by one co-author in another context, family-friendly policies constitute potentially effective cost-saving techniques for businesses (Williams, *Unbending Gender* at 84-94). Key elements of the business case in this context include not only costs of attrition, but recruiting, quality control, increase in productivity, and decreases in absenteeism. Once the focus is shifted away from employer-financed maternity leaves to family-responsive workplaces, the business case for restructuring workplaces to take family care into account can be well documented.

**The Discrimination Model**

Because the accommodation model presents significant drawbacks to alleviating the work/family conflict, the model should be replaced with a new theoretical formulation that links "discrimination" to the business case. The discrimination model is persuasive for the simple reason that difficulties experienced by family caregivers fall into documented patterns of bias. Specific gender stereotypes emerge to disadvantage family caregivers at work. Mothers with caregiving responsibilities are assumed to be less present, less competent, and less committed than they really are. A supervisor to a woman eight months pregnant told her: "I was going to put you in charge of that office, but look at you now" (*Moore v. Alabama State University*).
Motherhood is often seen as all-consuming, which has given rise to the perception that women cannot be good workers and good mothers. A Boston lawyer relates that "When I returned from maternity leave, I was given the work of a paralegal. I wanted to say, 'I had a baby, not a lobotomy" (Williams, 2000). (See also Santiago-Ramos v. Centennial P.R. Wireless Corp; Trezza v. Hartford, Inc.).

Stereotyping affects fathers as well as mothers. Fathers who assume, or seek to assume, active caregiving roles are not viewed as good fathers- often they are treated as losers (Malin, 1994). They are performing gender in an unconventional fashion that finds them living up neither to the ideal-worker norm nor ideals of masculinity, in which manliness is closely linked with work success. A striking element found in many of the cases alleging discrimination against men as well as women engaged in family care is the openness of gender stereotyping that views mothers as not belonging in the workplace, and fathers are not belonging in the traditionally feminine role of family caregiver. This type of open bias is one reason workers have succeeded in the courts.

The discrimination model for addressing the work/family conflict experienced by both men and women is built on the concept that workers have legal "rights" protecting them from adverse employment actions based on their family caregiver role. While rights talk, with its accompanying discussion of inappropriate gender stereotyping, will not lead to immediate widespread workplace restructuring under court order, it may well begin to fuel social and institutional change. Rights talk can change what people feel they are entitled to from their employers and what employers feel they need to provide to their employees. If discrimination language and rights talk in the work/family context is successful in the court of public opinion, it may help spur courts of law and legislators to ensure that family caregivers’ rights are protected by the law. A discrimination analysis redefines work/family conflict, so that is no longer seen as a personal inability to balance one's responsibilities, but as a structural problem that requires a structural solution (Williams & Segal, 2003).

**Implications for Policy and Practice**

While a discrimination analysis is important in a social or cultural context, the crucial role of this analysis in court cases cannot be overlooked. Family caregivers already are suing, and employers are becoming increasingly aware of the potential for legal liability. A survey of recent court decisions reveals roughly twenty cases where mothers and fathers have successfully challenged the discrimination they face at work due to family care responsibilities. Ten different legal theories have emerged, offering the potential for recovery based on federal and state anti-discrimination and labor statutes, federal and state constitutions, and state common law (see Williams & Segal, 2003, for an exhaustive discussion of these cases).
While no federal statute specifically protects workers from adverse employment actions based on their family caregiving responsibilities, federal and state statutes and common law principles have been used in innovative ways to obtain remedies for these workers. Under federal law, workers have relied on Title VII of the Civil Rights Act of 1964, the Equal Pay Act (EPA), the Family and Medical Leave Act (FMLA) [see Encyclopedia entry, Family and Medical Leave Act], and the Americans with Disabilities Act (ADA).

Title VII, which prohibits employment discrimination on the basis of sex, has been relied on more than any other statute when challenging employers' treatment of family caregivers. Claims under Title VII can be brought under many different legal theories: disparate treatment, disparate impact, hostile work environment and retaliation. Other legal theories will undoubtedly be tested as this legal trend continues.

As employers increasingly conceptualize the work/family conflict as discrimination, they will begin to recognize that they may be perpetuating workplace practices that are creating a chilly climate for adults with family caregiving responsibilities- a climate at odds with values that command widespread support in American life.

References


Crittenden, A. (2001). The price of motherhood: Why the most important job in the world is still the least valued. New York, NY: Metropolitan Books


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Williams, Joan & Segal, Nancy. *Beyond the Maternal Wall: Relief for Family Caregivers Who are Discriminated Against on the Job*, 26 HARV. WOMEN'S L.J.77 (Spring 2003).


**Locations in the Matrix of Information Domains of the Work-Family Area of Studies**

The Editorial Board of the Teaching Resources section of the Sloan Work and Family Research Network has prepared a Matrix as a way to locate important work-family topics in the broad area of work-family studies. ([More about the Matrix ...](#)).

Concepts related to adult development are relevant to all of the "Individual" domains in the Matrix of Information Domains of the Work-Family Area of Study. In addition, theories of adult development are relevant to Domain F: Theoretical Underpinnings.

Note: The domain areas most closely related to the entry's topic are presented in full color. Other domains, represented in gray, are provided for context.
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**Domain F: Theoretical Underpinnings to All Domains**
Introduction

It was appropriate that the members of the Founding Editorial Board of the Resources for Teaching began their work in 2000, for their project represented one of the turning points in the area of work and family studies. This group accepted the challenge of developing resources that could support the efforts of teaching faculty from different disciplines and professional schools to better integrate the work-family body of knowledge into their curricula. The Virtual Think Tank began its work with a vision, a spirit of determination, and sense of civic responsibility to the community of work-family scholars.

A fundamental challenge emerged early in the process. It became clear that before we could design resources that would support the teaching of those topics, we would first need to inventory topics and issues relevant to the work-family area of studies (and begin to distinguish the work-family aspect of these topics from "non work-family" aspects).

The members of the Virtual Think Tank were well aware that surveying the area of work and family studies would be a daunting undertaking. However, we really had no other choice. And so, we began to grapple with the mapping process.

Purpose

1. To develop a preliminary map of the body of knowledge relevant to the work-family area of study that reflects current, "across-the-disciplines" understanding of work-family phenomena.

2. To create a flexible framework (or map) that clarifies the conceptual relationships among the different information domains that comprise the work-family knowledge base.

It is important to understand that this mapping exercise was undertaken as a way to identify and organize the wide range of work-family topics. This project was not intended as a meta-analysis for determining the empirical relationships between specific variables. Therefore, our map of the work-family area of study does not include any symbols that might suggest the relationships between specific factors or clusters of factors.
Process

The Virtual Think Tank used a 3-step process to create the map of the work-family area of studies.

1. Key Informants: The members of the Virtual Think Tank included academics from several different disciplines and professions who have taught and written about work-family studies for years. During the first stage of the mapping process, the Virtual Think Tank functioned as a panel of key informants. Initially, the Panel engaged in a few brainstorming sessions to identify work-family topics that could be addressed in academic courses. The inductive brainstorming sessions initially resulted in the identification of nearly 50 topics.

Once the preliminary list of topics had been generated, members of the Virtual Think Tank pursued a deductive approach to the identification of work-family issues. Over the course of several conversations, the Virtual Think Tank created a conceptual map that focused on information domains (see Table 1 below).

The last stage of the mapping process undertaken by the Virtual Think Tank consisted of comparing and adjusting the results of the inductive and deductive processes. The preliminary, reconciled list was used as the first index for the Online Work and Family Encyclopedia.

2. Literature review: Members of the project team conducted literature searches to identify writings in which authors attempted to map the work-family area of study or specific domains of this area. The highlights of the literature review will be posted on February 1, 2002 when the First Edition of the Work-Family Encyclopedia will be published.

3. Peer review: On October 1, 2001, the Preliminary Mapping of the work-family area of study was posted on the website of the Sloan Work and Family Research Network. The members of the Virtual Think Tank invite work-family leaders to submit suggestions and comments about the Mapping and the List of Work-Family Topics. The Virtual Think Tank will consider the suggestions and, as indicated, will make adjustments in both of these products. Please send your comments to Marcie Pitt-Catsoughes at pittcats@bc.edu

Assumptions

Prior to identifying the different information domains relevant to the work-family area of study, members of the Virtual Think Tank adopted two premises:
1. Our use of the word "family" refers to both traditional and nontraditional families. Therefore, we consider the term "work-family" to be relevant to individuals who might reside by themselves. Many work-family leaders have noted the problematic dimensions of the term "work-family" (see Barnett, 1999). In particular, concern has been expressed that the word "family" continues to connote the married couple family with dependent children, despite the widespread recognition that family structures and relationships continue to be very diverse and often change over time. As a group, we understand the word "family" to refer to relationships characterized by deep caring and commitment that exist over time. We do not limit family relationships to those established by marriage, birth, blood, or shared residency.

2. It is important to examine and measure work-family issues and experiences at many different levels, including: individual, dyadic (e.g., couple relationships, parent-child relationships, caregiver-caretaker relationships), family and other small groups, organizational, community, and societal. Much of the work-family discourse glosses over the fact that the work-family experiences of one person or stakeholder group may, in fact, be different from (and potentially in conflict with) those of another.

Outcomes

We will publish a Working Paper, "Mapping the Work-Family Area of Study," on the Sloan Work and Family Research Network in 2002. In this publication, we will acknowledge the comments and suggestions for improvement sent to us.

Limitations

It is important to understand that the members of the Virtual Think Tank viewed their efforts to map the work-family area of study as a "work in progress." We anticipate that we will periodically review and revise the map as this area of study evolves.

The members of the panel are also cognizant that other scholars may have different conceptualizations of the work-family area of study. We welcome your comments and look forward to public dialogue about this important topic.

Listing of the Information Domains Included in the Map

The members of the Virtual Think Tank wanted to focus their map of work-family issues around the experiences of five principal stakeholder groups:
1. individuals,
2. families,
3. workplaces,
4. communities, and
5. society-at-large.

Each of these stakeholder groups is represented by a row in the Table 1, Information Domain Matrix (below).

**Work-Family Experiences:** The discussions of the members of the Virtual Think Tank began with an identification of some of the salient needs & priorities/problems & concerns of the five principal stakeholder groups. These domains are represented by the cells in Column B of the Information Domain Matrix.

- Individuals' work-family needs & priorities
- Individuals' work-family problems & concerns
- Families' work-family need & priorities
- Families' work-family problems & concerns
- Needs & priorities of workplaces related to work-family issues
- Workplace problems & concerns related to work-family issues
- Needs & priorities of communities related to work-family issues
- Communities' problems & concerns related to work-family issues
- Needs and priorities of society related to work-family issues
- Societal problems & concerns related to work-family issues

**Antecedents:** Next, the Virtual Think Tank identified the primary roots causes and factors that might have either precipitated or affected the work-family experiences of the principal stakeholder groups. These domains are highlighted in Column A of the Information Domain Matrix.

- Individual Antecedents
- Family Antecedents
- Workplace Antecedents
- Community Antecedents
- Societal Antecedents

**Covariates:** The third set of information domains include factors that moderate the relationships between the antecedents and the work-family experiences of different stakeholder groups (see
Column C in Table 1).

- Individual Covariates
- Family Covariates
- Workplace Covariates
- Community Covariates
- Societal Covariates

**Decisions and Responses:** The responses of the stakeholder groups to different work-family experiences are highlighted in Column D.

- Individual Decision and Responses
- Family Decisions and Responses
- Workplace Decisions and Responses
- Community Decisions and Responses
- Public Sector Decisions and Responses

**Outcomes & Impacts:** The fifth set of information domains refer to the outcomes and impacts of different work-family issues and experiences on the principal stakeholder groups (see Column E).

- Outcomes & Impacts on Individuals
- Outcomes & Impacts on Families
- Outcomes & Impacts on Workplaces
- Outcomes & Impacts on Communities
- Outcomes & Impacts on Society

**Theoretical Foundations:** The Virtual Think Tank established a sixth information domain to designate the multi-disciplinary theoretical underpinnings to the work-family area of study (noted as Information Domain F).
### Table 1: Matrix of Information Domains (9/30/01)

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