



# The Modern Dad's Juggle

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# A Better Balance: The Work and Family Legal Center

# Daddy Duty



- **It's not your father's world anymore!**
  - Dads are doing more childcare and housework than a generation ago: 2.5 hours total per week on childcare in 1965 vs. 14 hours total per week in 2011, and 4 hours vs. 18 hours per week on housework
  - Americans today expect dads to be more emotional comforters and moral teachers to their kids than breadwinners and disciplinarians.
- **Work/family juggle is not just a women's issue**
  - 56% of working moms and 50% of working dads say they find it very or somewhat difficult to balance work and family life.
  - ABB's 2011 survey of professional dads: 75% worried sometimes or often that their jobs prevent them from having as much time to parent as they would like.
- **Workplace policies have not caught up**
  - Men encounter more resistance than women when they buck the breadwinner stereotype and ask for extensive workplace flexibility or extended family leave.
  - As the Supreme Court stated in 2003, "stereotypes about women's domestic roles are reinforced by parallel stereotypes presuming a lack of domestic responsibilities for men."

# Examples

Dads encounter stereotypes that they cannot or should not prioritize caregiving over paid work, and if they do, they are penalized. This can be illegal sex discrimination.

- A male state trooper was denied “nurturing leave” to care for his new infant and wife, who suffered complications from her pregnancy. His employer told him that there was no way he qualified as “primary caregiver” for his wife and child and said, “God made women to have babies, and unless you would have a baby, there is no way you could be the primary caregiver.” The trooper won his case—and over \$600,000 in damages.
- A father-to-be was fired after informing his employer that his girlfriend was pregnant and seeking an afternoon off to help her find a doctor. His manager wrote a negative evaluation saying: *“Lastly, I’m not here to tell you how to live your life but the situation with your girlfriend spells big trouble to me. The distractions you are going to have over the next 10 months are going to be too much ... You need to decide if you want to totally commit yourself to this endeavor. If you don’t want to ‘buy in’ and put a maximum effort into developing your career, do me and Josh a favor and quit now. Don’t waste our time or yours. ... The party is over Anthony. You need to decide what you want to do. I intend to monitor very closely your progress from here on out. If you do not want to work under that kind of scrutiny, leave now.”*
- *“I divide child care pickup/drop-off with my wife, on a more or less 50/50 basis, and take near equal proportion of unexpected day care closures or sick days—but I have been asked (by my CEO and board and directors), ‘Why doesn’t your wife [a high-level, full-time professional] care for your son in these instances?’—as if 50/50 on my end is too high a ratio.”*  
--non-profit professional and father of one child, age two

# Know Your Rights: A State By State Resource

<http://babygate.abetterbalance.org>



# Paternity Leave Abroad

- **International picture:**

- The United States, Papua New Guinea, and Swaziland are the only **3** countries in the world with no national right to paid maternity leave.
- **74** countries around the world ensure the right to paid parental leave for dads.
- Canadian families get **35 weeks** of paid parental leave to split between the parents as they choose.
- In Quebec, fathers get five weeks of non-transferable leave at 70% of their earnings—over half of all eligible dads there take parental leave.



## **Paternity leave is good for dads and families:**

- Dads who take more time off when babies are new end up being more involved in childcare later on in their children's lives.
- Paternity leave can also lead to higher wages for mothers.

# Paternity Leave in the U.S.

## Here at home:

- The U.S. has no national legal right to paid maternity **or** paternity leave.
- Only 12% of private sector workers in the U.S. have access to paid family leave through their employers.
- The Family and Medical Leave Act (FMLA) provides up to 12 weeks of **unpaid** but job-protected leave per year to fathers to bond with a new child. Applies nationwide, although **more than 40% of American workers are excluded**.
- **But** states are starting to fill the void:
  - California and New Jersey (6 weeks) and Rhode Island (4 weeks) have state **paid family leave** programs that offer benefits to new parents. Workers get a percentage (from 1/2 to 2/3) of their average weekly wages up to a cap.
  - In addition to CA, NJ, and RI, 12 states (and D.C.) have **state** laws that provide unpaid family leave to eligible workers to care for a child; these laws typically expand on the FMLA's protections in some way (cover smaller employers, eligible sooner, more time off, etc.)
  - Visit [babygate.abetterbalance.org](http://babygate.abetterbalance.org) for more specifics on your state.

# The Family and Medical Leave Act (FMLA)

**The FMLA guarantees eligible workers up to 12 weeks of unpaid leave during any 12 month period to care for a new child, seriously ill family member, or for self-care. It also covers certain needs of military families.**

- Leave takers are guaranteed continued benefits, like health insurance, while on leave.
- Leave may be taken intermittently, though for bonding with a child employer approval is required.
- Workers are guaranteed the same or equivalent job upon their return. Exception for top 10% of salaries.
- Employers cannot interfere with or retaliate against an employee for exercising his or her rights under the law.

Check out our FMLA fact sheets at [www.abetterbalance.org](http://www.abetterbalance.org)



# FMLA to Care for a New Child

- The FMLA provides leave to care for a **biological** child, a **legally-adopted** child, a **foster** child, a **stepchild**, a **legal ward**, or a child of a person standing “**in loco parentis**” (one who is acting in the place of a parent).
  - “*In loco parentis*” can include an LGBT parent who is raising a child but has no biological or legal relationship to the child.
- Workers can take FMLA leave *before the actual placement or adoption* of a child if an absence is required for the placement/adoption to proceed.
  - Ex: requirements to attend counseling, appear in court, consult with attorney or the birth parent’s doctors, submit to a physical exam, or travel to another country to complete an adoption.

# Employer Leave Policies

- Always check to see what your company provides, as it may go beyond what the law requires. If not—try to negotiate more.
  - Some employers realize the recruiting advantage of generous leave policies. Ex. Blue State Digital increased paid leave from two weeks to six minimum for both men and women in 2013, with three weeks tacked on for each year an employee stays at the company, up to 12 weeks total.
  - If your employer needs some convincing, check out our fact sheet on the business case for leave: ([http://abetterbalance.org/web/images/stories/Documents/fairness/factsheets/BC-2010-A\\_Better\\_Balance.pdf](http://abetterbalance.org/web/images/stories/Documents/fairness/factsheets/BC-2010-A_Better_Balance.pdf))
- Paper vs. Practice:
  - 11% of dads in ABB’s 2011 survey reported that managers directly or indirectly discouraged them from taking leave after their child was born or adopted.

*“When I first asked for the time off the CFO said, ‘If we can do without someone for a whole month, I wonder if we need the position at all’....”*

--non-profit professional and father of one child, age 3

*“I took a month of [partial] family leave for the birth of my son and this led to negative perception regarding my dedication. This is so even though I continued to work about 30 to 35 hours per week (a typical week was about 60 hours).”*

-- finance professional and father of one child, age 3

# Sex/Sexual Orientation Discrimination and Leave

- Different leave for moms vs. dads
  - Employer who provides leave for bonding/caring for a new child cannot give more to mothers than fathers. This is unlawful discrimination based on gender role stereotypes – under federal law and most state laws – because bonding is not exclusive to mothers. See EEOC guidance for more.
  - Employer can provide additional leave to a birth mother solely for pregnancy and recovery from childbirth.
- Different leave for parents based on sexual orientation
  - Where state or local law prohibits discrimination based on sexual orientation, LGBT-identified dads may be able to use these laws to get equal bonding leave to non-LGBT identified dads.
  - CAUTION: More than half of states do not outlaw LGBT employment discrimination, and no explicit federal protection either. Disclosing LGBT relationship and need to care (e.g. for partner's child) could lead to discrimination with no remedy.

# Caregiver Discrimination

- **WHAT?** Caregiver discrimination occurs when an employee (or job applicant) is unfairly penalized at work because of his or her obligation to provide care for family members.
- **WHO?** Men, women, parents and even childless workers caring for aging parents or disabled relatives may experience this bias.
- **EXAMPLES:**
  - Father of child with chronic asthma is passed over for promotion; employer assumes dad will be distracted by child's condition and be unwilling to travel for new role.
  - New dad asks for one month of paternity leave and employer grants time but says, "I mean really, you're not the one giving birth!" After return, dad seeks to be home each night for bedtime, and employer responds by questioning his dedication and saying: "You should be focused on supporting your family now."

# States & Localities with Explicit Protection for Caregivers

- **Alaska** prohibits discrimination at work based on parenthood.
- **Washington, D.C.** prohibits discrimination based on an employee's family responsibilities.
- **Connecticut** employers cannot request or require information from employees or applicants about their family obligations or plans.
- **Federal employees** are protected from discrimination based on their status as a parent.
- Over 60 cities in 22 states say employers may not discriminate against caregivers/workers with family responsibilities on the job.
  - Check out [www.babygate.abetterbalance.org](http://www.babygate.abetterbalance.org) to see if you live in one of these cities and visit [www.worklifelaw.org](http://www.worklifelaw.org) for more info.

# Expanding the Definition of Caregiver & Family

Family structures in the U.S. are changing in a dramatic fashion. It's a myth that two-parent, nuclear families are the norm. Families come in all shapes and sizes!

- Blended families
- Single-parent families
- LGBTQ families
- Multi-generational families
- Multi-national families
- Chosen families



As our families evolve, we are working to make sure that our labor laws do as well—especially workplace leave laws.

A Better Balance has launched a project to expand family definitions and make sure they are more inclusive. Contact us to get involved or to share your story on why we need broad family definitions.

# Workplace Flexibility



# Paid Sick Time

**163 countries guarantee paid sick time. Nearly 40% of workers in the U.S. lack a single paid sick day. Among those workers who *do* have sick time, about 70% cannot use it to care for a sick child.**

Three states and 18 cities now have sick time laws on the books. Of these 21 laws, **15** have passed since 2014, a year where more than 9.5 million workers in the U.S. gained the right to paid sick time! (Check out [babygate.abetterbalance.org](http://babygate.abetterbalance.org) for more info).

- Statewide: Connecticut, California and Massachusetts
- Seattle and Tacoma (WA)
- San Francisco and Oakland (CA)
- Portland and Eugene (OR)
- New York City
- Washington, DC
- Philadelphia
- **Nine** cities in New Jersey, including Jersey City and Newark
- Nine states (CA, CT, HI, ME, MD, MN, OR, WA, WI) require employers who provide paid sick time (or paid time off) to allow employees to use some or all of that time to care for family members.



# Other Workplace Flex Laws



- **Educational involvement leave**
  - 13 states and Washington, D.C. have laws that offer varying amounts of time off to parents to attend their children's school-related events, including teacher conferences. (States are CA, CO, HI, IL, LA, MA, MN, NV, NC, RI, TN, TC, VT).
- **Right to Request Flexible Work**
  - San Francisco and Vermont allow certain workers the right to request flexible work arrangements without fear of penalty.
  - Although they do not guarantee a change in schedule, these laws encourage open communication between employers and employees, which often results in more flexibility.
  - Employer must give substantiated business reason for denying an employee request.

# FMLA “Intermittent” Leave

12 weeks of leave can be used in smaller chunks of time. For serious illness, no employer approval is required.

- *Ex. Father with a 20-month old autistic son sought time to care for his child and attend therapy appointments. Couldn't find a babysitter to handle his son's special needs. Asked for leave until son old enough (24 months) to attend a special school. Employer initially said no, because autism is "mental" and not a medical condition. With help from union, father was able to get the intermittent leave he needed to work part-time (20 hours per week) for six months, and then return to his full-time job.*

FMLA makes it illegal for your employer to interfere with your right to take leave and/or retaliate against you for exercising your rights under the law.

# Join Us!

**Join us in the fight for working families!**

Call our free hotline with questions about your workplace rights -- (212) 430-5982.

[www.abetterbalance.org](http://www.abetterbalance.org)

[babygate.abetterbalance.org](http://babygate.abetterbalance.org)

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