

STAFF

Sherry Leiwant
Executive Director

Nancy Rankin
Senior Fellow

Phoebe Taubman
Project Attorney/
Equal Justice Works
Fellow

Yolanda Wu
Co-President

BOARD

Dina Bakst
Board Chair /
Co-President

Risa Kaufman
Treasurer

Roslyn Powell
Secretary

Martha Baker

Anna Wadia

Kathryn Webber

ADVISORY BOARD

Ann Crittenden
Author

Martha Davis
Professor, Northeastern
University School of Law

Marlene Debel
Managing Director,
Merrill Lynch

Deborah Ellis
Asst Dean for
Public Interest Law
NYU School of Law

Janet Gornick
Professor,
Baruch College,
City University of
New York

Deborah Epstein
Henry
President,
Flex-Time Lawyers LLC

Susan Butler Plum
Director, Skadden
Fellowship Program

Richard Revesz
Dean,
NYU School of Law

Joan Williams
Distinguished Professor
and Director, UC Hastings
College of the Law,
Center for WorkLife Law

Protect Working Families in New York City by Prohibiting Discrimination Against Caregivers

Family Responsibilities Discrimination (FRD) is a form of employment discrimination that occurs when an employee is unfairly penalized at work because of his or her obligations to provide care for family members.

- Claims of family responsibility discrimination are on the rise. Over the past ten years, FRD claims have increased 400%, and have shown a greater than 50% success rate for plaintiffs.¹
- FRD has attracted significant national attention² and in May of 2007, the Equal Employment Opportunity Commission issued enforcement guidance to address how unfair treatment of workers with family responsibilities may be illegal, in certain instances, under existing law.³

FRD affects a range of working people, including mothers and fathers, pregnant women, parents of disabled children, adult children caring for aging parents, and workers who care for sick or disabled relatives.

- Stereotyping of mothers—characterizing them as less competent and committed or less deserving of advancement—is all too common. A recent study found that 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.⁴
- Men can also face discrimination when they want to be active caregivers. Studies show that fathers who take parental leave are recommended for fewer rewards and considered less committed than women who do.⁵
- Caring for ailing and aging relatives also carries a stigma in the workplace.⁶ The Equal Employment Opportunity Commission has recognized that sex-based stereotyping about caregiving affects workers caring for sick parents and spouses as well as those caring for children.⁷

No federal law explicitly protects workers who are family caregivers from employment discrimination although those laws can provide some protection under specific circumstances.

- Title VII of the Civil Rights Act of 1964 can be used to challenge unfair treatment based on gender-role stereotypes about motherhood and fatherhood. However, an employer who treats both women and men with children equally poorly, relative to workers without family responsibilities, may be outside the reach of the law. In addition, Federal civil rights statutes only apply to employers of 15 or more employees.

- The Pregnancy Discrimination Act has been an essential tool in redressing discrimination against women who are pregnant or may become pregnant. However, the PDA does not cover discrimination after a baby is born,⁸ so an employer who waits until after a worker's maternity leave to fire her may not be found to have violated the law. The PDA also covers only employers with 15 or more employees.
- The Family and Medical Leave Act provides a remedy for workers whose employers interfere with their requests for leave that is guaranteed under the law, or who discriminate or retaliate against them for taking leave. However, the FMLA is limited in reach, applying only to employers with 50 or more employees, and only those employees who have been employed at least 12 months and worked at least 1,250 hours during that time. Workers in smaller businesses and most part-time workers are excluded from protection, leaving many individuals at risk. Also, individuals claiming discrimination under the law must show that the unfair treatment they experienced was directly related to their taking leave. Thus, employees whose caregiving obligations extend past the period of leave have limited legal recourse if they encounter discrimination after their leave is complete.

A law expressly prohibiting employment discrimination based on family caregiving responsibilities would help to protect the growing number of workers affected by FRD.

- Demand for family-provided eldercare is growing. New York is home to more than 1.3 million citizens over the age of 60 and their number is expected to rise.⁹ Approximately 977,000 New York City residents provide unpaid care for an ill or disabled relative or friend and 51% of them do so while holding down a full-time job.¹⁰ Nationwide, one in four working men and women has eldercare responsibilities,¹¹ and by 2020, 40% of the national workforce expects to care for an elderly relative.¹² Existing law does little to protect these working caregivers and is already being stretched to its limits.¹³
- New York City's Human Rights Law reaches employers who employ four or more people. If amended to include protection for family caregivers, the law would cover a large number of workers who otherwise have no recourse when confronted with discrimination based on their family responsibilities.
- Alaska and Washington, D.C. have already passed laws outlawing FRD.¹⁴ Connecticut law prohibits an employer from requesting or requiring information from an employee or job applicant relating to his/her child-bearing age or plans, pregnancy or familial responsibilities.¹⁵ New York City should be the next to pass this important legislation.

INT. NO 565-A – What will this bill do?

- Int. No. 565-A would expressly prohibit employment discrimination based on an individual's actual or perceived status as a caregiver and would thereby add caregivers to the protected classes in the workplace under the New York City Human Rights Law.
- A worker may face discrimination based on his/her caregiver status when one is rejected for employment, passed over for promotion, subjected to hostile work environments, or terminated based solely on employers' negative assumptions about the value and performance of employees who have care obligations outside of work.

Who is considered a “caregiver” as defined by Int. 565-A?

- a person who is a contributor to the ongoing care of a child for whom the person has assumed parental responsibility; **or**
- a person who is a contributor to the ongoing care of a person who suffers from a physical, medical, mental or psychological impairment and is related by blood, legal custody, marriage, or domestic partnership or living in a familial relationship with the caregiver.

¹ Mary C. Still, *Litigating the Maternal Wall: U.S. Lawsuits Charging Discrimination Against Workers with Family Responsibilities* 7 (Center for WorkLife Law, University of California Hastings College of the Law 2006), available at <http://www.worklifelaw.org/pubs/FRDreport.pdf>

² See, e.g., Grant Barrett, *Buzzwords 2007: All We Are Saying*, (Dec. 23, 2007), available at <http://www.nytimes.com/2007/12/23/weekinreview/23buzzwords.html> (naming “maternal profiling”—defined as employment discrimination against a woman who has, or will have, children—as one of the top buzzwords of 2007).

³ *Enforcement Guidance on Unlawful Disparate Treatment of Workers with Caregiving Responsibilities*, 2 EEOC compl. Man. (BNA) § 615 (May 23, 2007), available at <http://www.eeoc.gov/policy/docs/caregiving.html>.

⁴ Shelly J. Correll, Stephen Bernard & In Paik, *Getting a Job: Is There a Motherhood Penalty?*, 112 Am. J. Sociol. 1297 (2007).

⁵ Joan C. Williams and Stephanie Bornstein, *The Evolution of “FRd”: Family Responsibilities Discrimination and Developments in the Law of Stereotyping and Implicit Bias*, 59 Hast. L.J. 1311, 1331 (June 2008).

⁶ Carole Fleck, *Double Bind: As Boomers Juggle Work and Caring for Aging Parents, Business Pays the Price*, AARP BULLETIN TODAY (May 19, 2006) (President and CEO of the National Alliance For Caregiving, Gail Hunt, explains that “people are afraid that when their companies are downsizing, they’ll be remembered for taking time off to care for their mother.”), available at http://bulletin.aarp.org/yourhealth/caregiving/articles/cost_elder_care.html.

⁷ *EEOC Enforcement Guidance on Unlawful Disparate Treatment of Workers with Caregiving Responsibilities*.

⁸ See, e.g., *Piantanida v. Wyman Ctr., Inc.*, 116 F.3d 340 (8th Cir. 1997)(dismissing claim of discrimination on the grounds that a “new mother” is not a protected category under the Pregnancy Discrimination Act).

⁹ *Hearing on Int. No. 565-A before the New York City Council, Committee on General Welfare* (Dec. 6, 2007) (statement of Chairperson Bill DeBlasio).

¹⁰ United Hospital Fund, *NYC Family Caregivers Report Lack of Essential Training, According to New Survey*, Press Release, July 24, 2000, available at http://www.uhfnyc.org/press_release3159/press_release_show.htm?doc_id=98080.

¹¹ Jodie Levin-Epstein, *Getting Punched: The Job and Family Clock*, Center for Law and Social Policy, July 2006, at 3, http://www.clasp.org/publications/getting_punched_fullnotes.pdf.

¹² Peggine R. Smith, *Elder Care, Gender, and Work: The Work-Family Issue of the 21st Century*, 25 Berkeley J. Emp. & Lab. L. 351, 353 (2004).

¹³ Joan C. Williams and Consuela A. Pinto, *Family Responsibilities Discrimination: Don’t Get Caught Off Guard*, 22 Lab. Law. 293, 327 (Winter/Spring 2007) (“Elder care cases are stretching FRD and FMLA protections to new limits. Elder care and its implications for the workplace is an issue to watch.”); see also Smith, *Elder Care, Gender, and Work*.

¹⁴ See ALASKA STAT. § 18.80.200 (prohibiting employment discrimination based on “parenthood”); D.C. Humans Rights Act, D.C. CODE § 2-1402.11 (prohibiting employment discrimination based on “family responsibilities”).

¹⁵ CONN. GEN. STAT. § 46a-60(9).