

FACT SHEET:

FAMILY RESPONSIBILITIES DISCRIMINATION

What is Family Responsibilities Discrimination (FRD)?

FRD is a form of employment discrimination that occurs when an employee (or job applicant) is unfairly penalized at work because of his or her obligation to provide care for family members. Often the discrimination **grows out of stereotypes** about parents and other caregivers being less committed or capable employees.

- *Ex. A school psychologist with a record of excellent evaluations was denied tenure after she became a mother. Once she returned from maternity leave her supervisors ask how she planned to space out her children. They told her it was “not possible for [her] to be a good mother and have this job,” and that they “did not know how she could perform [her] job with little ones.”*

Individuals with caregiving obligations have won in court because they’ve been rejected for employment, passed over for promotion, subjected to hostile work environments and terminated based solely on their employers’ negative assumptions about their value and performance.

Who is at risk?

Although **pregnant women and working mothers** are prime targets for FRD, it affects a range of working people:

- **Fathers face discrimination** for being active caregivers, when employers expect them to be dedicated to work above all else.
 - *Ex. A male state trooper was denied “nurturing leave” to care for his new infant and wife who had complications from her pregnancy. His employer told him that “God made women to have babies and, unless you would have a baby, there is no way you could be the primary care giver.”*
- **Parents of disabled children** encounter bias from employers who assume they will be costly employees because of the time and resources required to care for their disabled kids.
- **Adult children caring for aging parents** must contend with the stigma that caring elicits in the workplace.
 - *Ex. An employee requested a few days of family leave to care for his father who was suffering from Leukemia. His supervisor asked why the father needed so much attention, required the employee to make up the time he spent at the hospital, and then fired the employee when he asked for additional leave that he had earned.*

Family caregivers who work in inflexible jobs are also likely to experience intense work-family conflict.

- **Strict absenteeism and mandatory overtime policies** pose a significant challenge to parents when their childcare falls through at the last minute or they experience a family health emergency.

Is there a law that makes this kind of discrimination illegal?

Unlike discrimination based on race or sex, there is no federal law that explicitly prohibits employers from discriminating against their employees on the basis of their family status or family caregiving responsibilities. However, other employment laws do protect individuals from some forms of FRD.

Here are some examples:

- An employer may not refuse to promote a woman because she is a mother, even if the employer thinks that it would be better for the woman to have more time with her children.
- If an employer allows women to take caregiving leave, it must also allow men to do the same (and may not punish them for doing so). Assuming that men are breadwinners and not caregivers for their families is illegal sex-role stereotyping.
- An employer may not refuse to hire a candidate with a disabled spouse because he assumes that the individual will be too distracted to be a good employee.

Can my employer retaliate against me for taking time off to care for my family?

If you are covered by the Family and Medical Leave Act,ⁱ your employer cannot discriminate or retaliate against you for taking leave to which you are entitled under the law. If you are not covered by the FMLA but you return from taking caregiving time off to find that your shift has been moved from peak day hours to night hours, or your job has been otherwise changed to be less desirable for you, try to find out if others who have taken time off (for caregiving or non-caregiving reasons) have been treated differently.

What kind of family discrimination is NOT prohibited under current law?

- An employer can treat both men and women with children equally poorly, relative to their co-workers without children, and not violate existing law.
- Many workers are not protected from losing their job if they stay home with a sick child.ⁱⁱ
- An employer may penalize an employee who takes time to care for an ill parent if the employee (like 55% percent of all workers) fails to qualify for Family and Medical Leave.ⁱⁱⁱ
- Although an employer may not fire a woman because she is pregnant, the law offers less protection after her baby is born.



the work and family legal center

80 Maiden Lane, Suite 606, New York, NY 10038 | t: 212.430.5982 | f: 212.430.5983 | info@abetterbalance.org | abetterbalance.org

What about state or local law? Do they protect family caregivers from workplace discrimination?

Two states do explicitly outlaw FRD.

- Alaska law prohibits discrimination in employment based on parenthood.
- The District of Columbia prohibits discrimination based on family responsibilities.

In addition, at least 63 cities, towns and counties around the country prohibit employment practices that target people with family responsibilities. To learn more about your rights where you live, visit <http://www.worklifelaw.org/pubs/LocalFRDLawsReport.pdf>.

What should I do if I think I may be a victim of FRD?

- To learn more about FRD, read the Equal Employment Opportunity Commission's guidance on caregiver discrimination, which is available at <http://www.eeoc.gov/policy/docs/caregiving.html>.
- If you think your employer is treating you unfairly because of your family responsibilities, you can access free advice from anywhere in the country by sending an email to hotline@worklifelaw.org, or by calling 1-800-981-9495 or 202-680-8964.
- If you are in New York, you can contact the Families @ Work Legal Clinic by calling (212) 430-5982 or sending an e-mail to info@abetterbalance.org.
- If you need to find an employment attorney to represent you, visit the National Employment Lawyers Association at www.nela.org.

ⁱ For more information, please see our fact sheet on the FMLA at www.abetterbalance.org

ⁱⁱ Only two cities in the country, San Francisco and Washington, D.C., protect workers from being fired or otherwise retaliated against in this situation.

ⁱⁱⁱ The Family and Medical Leave Act covers government agencies and only those private employers who have 50 or more employees within a 75 miles radius of each other. Employees are further only eligible if they have worked at least 12 months for their covered employer and 1,250 hours in the previous 12-month period.