

Protecting Family Caregivers from Employment Discrimination

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Family caregiving is growing more commonplace as baby boomers age and combine work in the paid labor force with unpaid work as caregivers with eldercare responsibilities. This trend underscores the need to develop public and private solutions to ensure that workers with eldercare responsibilities receive equal employment opportunity and are protected from discrimination in the workplace.

Introduction

This report is the first in a series of AARP Public Policy Institute papers on issues of eldercare and the workplace. It highlights the realities of changing demographics and issues affecting working caregivers of older adults. It defines family responsibilities discrimination (FRD), explains why FRD is a policy matter, and describes the types of workplace discrimination encountered by working caregivers.

FRD arises from the unfair treatment of workers with caregiving responsibilities, including workers caring for children, older adults, ill spouses, or other family members with disabilities. While FRD can be applied to workers caring for family members of all ages, this report focuses on workers with eldercare responsibilities.

The report also highlights the limited protections available to working caregivers of older adults under existing federal laws, discusses more expansive protections offered by laws in some

states, and identifies local laws that protect a limited number of workers caring for older adults. Finally, it addresses FRD in eldercare as an emerging policy issue, and recommends ways to develop policy and practice solutions to protect working caregivers of older adults from employment discrimination.

Public policy on family care for older adults has focused on the need for greater recognition of, and supportive services for, family caregivers. This report discusses something even more basic: providing equal employment opportunity.

Without equal opportunity, family caregivers who are in the labor force risk losing their status as trusted workers—or even their jobs—due to bias against workers who provide care for their aging family members or friends. Legal system supports may be critical in helping working caregivers maintain their caregiving role and still hold down a job.

Background

Caring for an older relative or friend is now the “new normal” of family caregiving in the United States. Today, the “average” family caregiver in the United States is a 49-year-old woman who works outside the home and spends the equivalent of an additional half-time job (nearly 20 hours a week) providing unpaid care to her mother for nearly five years. Most family caregivers are female (65 percent); about one in three (35 percent) are male.²

Family caregiving concerns will have an increasing impact on both employees and workplaces because of the aging of the population and the labor force. Today, more than 40 million people, about one in every eight Americans, are age 65 and older, and this number is projected to grow to an estimated one in five Americans, or about 72 million, by 2030.³ Older workers⁴—those most likely to have eldercare responsibilities—are an increasing proportion of the workforce. Due to the prolonged economic downturn, many Americans will need to work longer to prepare for retirement.

Workers age 55 and older were 12 percent of the labor force in 1999. Their share of the workforce grew to 19.5 percent in 2010, and is projected to reach 23.9 percent (nearly one in four) by 2018. Almost all of the growth in the workplace between now and 2018 will be in the 55 and older age group.⁵ These changing workplace demographics have created the potential for greater discrimination against workers with caregiving responsibilities.⁶

Most family caregivers of older adults are women, and more women are in the workplace too. In 2010, nearly half (46.7 percent) of women worked outside

the home, up from only 33 percent in 1960.⁷

Rising labor force participation among women age 55 and older—those most likely to have eldercare responsibilities—is an important factor in the increasing labor force participation among older workers in recent years.⁸ Because women are more likely to be in the workplace and to have family caregiving responsibilities than in the past, their earnings have become increasingly important to their families’ financial stability, retirement security, and to the economy.

Eldercare responsibilities fall disproportionately not only on women, but also on low-wage workers. One study found that families living below the federal poverty level are more than twice as likely as higher income workers to provide more than 30 hours a week of unpaid assistance to parents or parents-in-law.⁹

The vast majority (74 percent) of family caregivers have worked at a paying job at some point during their caregiving experience. More than half (58 percent) are estimated to be currently employed either full time or part time, juggling work with their caregiving role.¹⁰

About 42 percent of U.S. workers have provided eldercare in the past five years. Just under half (49 percent) of the workforce expects to be providing eldercare for a family member or friend in the coming five years.¹¹

Recent research finds that more than one in six (17 percent) Americans who work at full-time or part-time jobs provide care and assistance for an older family member or friend. While more than half of these working caregivers are women (54 percent), men make up 46 percent of the workforce with eldercare responsibilities. More than one in five

(22 percent) workers between the ages of 45 and 64—the highest percentage of any age group—report being caregivers, typically for an aging parent.¹²

The vast majority of older adults with chronic, disabling conditions live at home and in the community, and nearly all receive family care. Research consistently shows that family and friends provide from 80 to 90 percent of care in the community to older adults. Caregiving in today’s economic climate and fragmented systems of health care and long-term services and supports (LTSS) can have a significant impact on the family members who are the caregivers.¹³

How Eldercare Is Different from Childcare

While many American families face work-family conflict, workers with eldercare responsibilities generally experience it differently from those with childcare responsibilities. What makes eldercare especially challenging is that both its onset and its duration often are unpredictable. When an older person becomes ill, roles, relationships, and expectations within the family change.¹⁴ Evidence suggests that more family caregivers are assisting older family members or friends with higher rates of disability than in the past, and are more likely to be providing hands-on and often physically demanding and intimate personal help with activities such as bathing or using the toilet.¹⁵

Eldercare may arise gradually from chronic, degenerative conditions, such as multiple sclerosis, Parkinson’s disease, or Alzheimer’s disease. But very often the need for LTSS arises abruptly as the result of an accident or acute health crisis, such as a broken hip or a stroke.¹⁶ Suddenly, an adult child is thrown into the world of caregiving with little preparation or time to make choices. The

unpredictability of eldercare, and its enormous financial costs, often add to the strain of family caregiving and keeping a job.¹⁷

In eldercare contexts, an adult child may live at a distance from a parent, creating complicated logistics, additional out-of-pocket expenses, and more worries—especially if the adult child has a job in addition to caregiving responsibilities.

Several family members, such as siblings, may be involved in care for an aging parent, which can lead to family conflict. Complex emotions play a role in caring for a parent with serious and advanced illness, especially when family members must make health care decisions in the event of loss of capacity for a parent with dementia. These emotions can arise not only from the sometimes consuming task of providing and coordinating care, but also from facing one’s own mortality, and not knowing what care the parent would want.¹⁸

The Impact of Caregiving on Work

Family caregiving responsibilities at home can lead to negative consequences at work. A recent study found that 30 percent of women caring for an older relative with chronic care needs and functional limitations say they “rarely or never” feel their work and family responsibilities are aligned.¹⁹

The financial impact on working caregivers who leave the labor force due to caregiving demands can be severe. A recent study suggests that family caregivers age 50 and older who leave the workforce to care for a parent lose, on average, nearly \$304,000 in wages and benefits over their lifetime.²⁰

According to the *Caregiving in the U.S. 2009* survey, nearly seven in ten (68 percent) family caregivers of adults age 50 and older report making

accommodations at work. Workers with eldercare responsibilities report the kinds of workplace effects that open up employees to discrimination, most commonly arriving late, leaving early, or taking time off during the day to provide care (64 percent), but also taking a leave of absence (17 percent) or reducing work hours from full to part time (9 percent). An estimated 10 percent of these family caregivers quit their jobs to give care or choose early retirement.²¹

What Is Family Responsibilities Discrimination?

FRD is discrimination against workers caring for children, older adults, or ill or disabled family members.²² FRD arises from treating employees with caregiving responsibilities less favorably than other employees due to unexamined assumptions that their family obligations may mean that they are not committed to their jobs.

To describe the kinds of bias often encountered by employees with family responsibilities, this report relies on the Center for WorkLife Law's database, which contains more than 3,000 cases involving FRD.²³

FRD occurs in all states and across a broad spectrum of levels and occupations. Service occupations are the most commonly represented in filed FRD cases (25 percent),²⁴ perhaps reflecting the larger number of women in service-related jobs. Professionals account for 21 percent of the claimants, and 16 percent are in management, business, and finance jobs. Another 14 percent are in sales, and 13 percent in office and administrative jobs. The remaining 11 percent of cases were filed by workers in a range of other occupations (such as manufacturing, transportation, or construction).

FRD can occur when workers with eldercare responsibilities are criticized or disciplined for taking personal days, while noncaregiving employees are not. Rules may also be applied unequally to working caregivers, such as when working caregivers are required to make up missed hours, while noncaregivers are not.

The following examples of FRD are based on real cases:

- An employee is fired when he asks for leave to care for his chronically ill father.
- After being told that his employer has "paid enough" for his ailing wife already, an employee is terminated when he refuses to take his wife off of the employer's insurance plan.
- An employee is denied leave when her employer asserts that it is not her responsibility to care for her ailing mother as long as her father is still alive.
- An employee is called lazy and then fired after taking leave to care for his mother, who is near death.

Claims of FRD in eldercare include denial of leave and retaliation for taking leave. They usually involve employees' needs for periodic time off to take an aging parent to medical or other appointments, to administer medications, or to perform other health care tasks in the home, such as wound care. Blocks of time off may be requested to care for an older family member who is hospitalized unexpectedly. Flexible schedules may be requested to help a grandparent who may need personal care at home (such as dressing, bathing, eating), or need advanced illness care.²⁵ In addition, some employees have brought claims related to leave requests to take care of their own health problems caused by the strain of being a caregiver for a frail older parent.²⁶

FRD has caught the attention not only of attorneys and human resources professionals, but also of unions, employers, courts, policymakers, caregiver advocates, and the press.²⁷ The number of FRD lawsuits grew from about 444 cases in 1989 to about 2,207 cases in 2008, an increase of nearly 400 percent over the two decades. The dramatic rise in the number of FRD cases heightens attention to the extent of this type of discrimination, during an era in which the number of employment discrimination lawsuits heard by federal courts overall has been decreasing.²⁸

To date, only a small—but growing—number of FRD cases involve workers caring for older family members, because current public policy does not offer as much protection for workers with eldercare responsibilities as they need. An analysis of 204 eldercare cases found that only 23 cases were filed before 2000. The other 181 cases were filed between 2000 and 2009.²⁹

Lawsuits show the kinds of problems that American workers with eldercare responsibilities face.

The largest individual jury verdict in an FRD case to date (\$11.65 million) involved a hospital maintenance worker, Chris Schultz, who was fired while caring for his father with Alzheimer's disease and mother with congestive heart problems and severe diabetes. To help manage his parents' care, he asked to take intermittent leave, to which he was entitled under the federal Family and Medical Leave Act (FMLA). While he was on leave to care for his parents, his supervisor suddenly instituted a new quota system that was impossible for Schultz to meet (and may have been designed to drive Schultz out). As a result, Schultz was fired for poor performance after 26 years as a dedicated employee with a record of

excellent evaluations—the year before he began taking leave, his picture hung in the lobby as the hospital's outstanding worker of 1999.³⁰

While Schultz's situation was covered by the FMLA, that of many family caregivers is not. (see page 9 for an overview of the FMLA.) Many employees lack protection, even if they work for employers that are covered by the FMLA. For example, when Karen Chambers, a paralegal, was fired within minutes of saying she needed to leave work because her father had suffered a stroke, her lawsuit was thrown out of court because she had not worked for her employer for the full year required under the FMLA.³¹

Not only is FMLA coverage limited, the protections it provides also are limited: Employers often treat employees with caregiving responsibilities differently for reasons that relate more to their need to alter (or keep) their schedule than to take a period of leave.

One caller to WorkLife Law's employee hotline³² took intermittent FMLA leave to care for his wife. After he informed his employer that his wife would be going on long-term disability, his new supervisor told him that he must be in the office from 8 a.m. to 5 p.m. and that he could no longer flex his hours, telecommute, or work from home—despite the fact that the employer permitted and even encouraged all similarly situated employees to do so. The caller had been telecommuting, working from home, and flexing his hours for well over a decade with no detriment to his performance. He was neither asking for, nor did he need, special privileges to care for his wife. He simply wanted to be treated *no differently* than other employees, yet he was targeted because of his family responsibilities.

Why Is Family Responsibilities Discrimination a Policy Matter?

With very few exceptions, most federal and state statutes do not expressly prohibit FRD. No laws protect working caregivers of older adults or people with family responsibilities as a specific group or class from discrimination. Rather, FRD-related claims in the workplace have been framed from other legal theories in federal and state law—for example, as sex discrimination, discrimination based on association with a person with a disability, or a violation of state or federal family and medical leave laws.

While the majority of American workers have to balance work with family responsibilities, today’s workplaces are still designed around the breadwinner-homemaker workforce of the 1950s. This outdated workplace model assumes that workers have someone at home to take care of family caregiving and domestic responsibilities. Changing workplace demographics have led to more working parents and more workers with eldercare responsibilities.

New research shows that workers who make their caregiving responsibilities known on the job, for example by requesting family leave or a flexible work schedule, often encounter bias based on assumptions that they are less competent than other workers or not committed to their jobs.³³

This mismatch between today’s workplace and today’s workforce is an important public policy issue. Americans rely heavily on family members to provide care for children, relatives with disabilities, and older adults—without the kinds of leaves or subsidies available in most other industrialized countries. In addition, the American health care and LTSS systems rely on family members to provide substantial, complex, and

Changing workplace demographics have led to more working parents and more workers with eldercare responsibilities.

often time-consuming care for adult relatives or friends with chronic conditions or disabilities. The estimated value of their unpaid contributions was approximately \$450 billion in 2009, more than total Medicaid spending (\$361 billion) that year.³⁴

For many workers experiencing FRD, “opting out” of the workforce is not a viable option, and for some, losing their job may mean living in poverty.³⁵

In this context, it is imperative that employers not impose job penalties and job loss on workers who have eldercare responsibilities. This imperative is all the more important in an era of high unemployment. It may no longer be an option, for someone who lost a job due to workplace bias, to simply get another job.

Below are examples of lawsuits brought by working caregivers of older adults in federal and state courts.

➤ **Penalizing Family Caregivers for Requesting or Taking Job-protected Leave to Which They Are Entitled**

Randall Francin was working as an associate database editor in a drug consulting department when his wife was diagnosed with amyotrophic lateral sclerosis. He notified his then-supervisor and discussed his FMLA rights with his human resources representative. The following year, a new supervisor came in and interviewed the employees. During Francin’s interview, he

informed his new supervisor of his wife's illness; in a later meeting, he discussed his need to take FMLA leave and asked for part-time work. Francin was subsequently discharged.³⁶

➤ **Stereotyping Caregivers as Less Competent and Committed Workers**

A factory worker, Jonathan Bell, was laid off after taking several days of FMLA leave to care for his father, who was in a coma and eventually died. His supervisor yelled at Bell for taking time off, called him "lackadaisical," and later fired him. The employer maintained that the time off Bell took was not "care" for his father because his father didn't even know he was present and no medical decisions needed to be made.³⁷ (Note that being called "lackadaisical" signals stereotyping. Research suggests that employees who take time off to care for family often are stereotyped as less competent and committed workers.³⁸)

➤ **Sending the Message That Caring for Parents Is Not an Adult Child's Responsibility**

An hourly worker, Melinda Maher, requested FMLA leave after her father was diagnosed with lung cancer; her mother also was ill. Maher was told she was ineligible for leave because her parents were married and living together. This was inaccurate: Employees are entitled to take FMLA leave to care for a parent regardless of whether the other parent is alive. Because Maher was afraid of losing her job, she did not accompany her father when he was transported to the hospital; he died shortly afterward. Maher was fired seven days after suffering a miscarriage, which required her to take additional time off.³⁹

➤ **Treating Employees Caring for Older Relatives Differently than Others**

A senior sales representative, Rachel Robinson, took pregnancy leave and was promoted when she returned. Then she took intermittent FMLA leave to care for her mother, who had been partially paralyzed by a brain tumor. Robinson said her employer questioned the severity of her mother's illness and urged her to take only intermittent leave, as her leave was "killing him." According to Robinson, her employer told her to choose between her personal life and her professional life. Robinson did take leave, but when she returned her supervisor began hyperscrutinizing her performance and ultimately fired her.⁴⁰

Jorge Solorzano, a welder who had worked for his company for more than 26 years, traveled to Mexico to care for his mother, who had suffered a stroke. When Solorzano explained this to his employer, he was not told that he would be penalized for his absence, but instead that he "should do what he needed to do." He called his employer while in Mexico but received no response. When he returned to work, he was fired for job abandonment.⁴¹

➤ **Schedule Changes Designed to Penalize Adults Caring for Family Members**

Maria Altobello-Gallagher, a human resources specialist, was working successfully on an alternative work schedule. Her employer stopped the work schedule and overburdened her with heavily scrutinized assignments, which caused her to cancel a leave and bring work home, and that interfered with caring for chronically ill parents.

These examples highlight how working caregivers—across a wide range of jobs and job responsibilities—encounter bias when caring for older relatives.

American workers deserve public policies that protect them from this kind of unfair treatment.

Limited Protections under Federal Employment Laws

Federal equal opportunity policies explicitly prohibit employers from discriminating against employees on the basis of sex, race, religion, disability, national origin, and age. Federal law does not explicitly prohibit discrimination based on caregiver status.⁴² Rather, FRD claims are actionable only when discrimination against family caregivers qualifies as discrimination under other federal statutes.⁴³

As described on page 9, a patchwork of federal protections provide limited coverage to family caregivers who experience FRD. Yet federal law often fails to protect employees who need or have taken leave, because only about half of the workforce is covered by the FMLA.⁴⁴ In addition, federal law completely fails those who need accommodations other than leave, such as reduced or flexible schedules, or even minor workplace adjustments to meet the needs of workers in their caregiving role, such as the need to communicate during the workday with a parent's health care provider.

What protections do exist for family caregivers under federal law come from the FMLA, the Americans with Disabilities Act (ADA), the Rehabilitation Act, and the Employee Retirement Income Security Act of 1974 (ERISA). Caregivers who can show that they were treated worse on the basis of their sex or their age are also protected by Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 (ADEA). (See box.)

Recognizing the growing scope of FRD, in 2007 the U.S. Equal Employment Opportunity Commission (EEOC)⁴⁵

issued enforcement guidance on the topic of caregiver discrimination, including pregnancy discrimination, discrimination against parents caring for their children, and discrimination against workers who care for aging parents or ill or disabled spouses or family members. In 2009, the EEOC followed up with a second report on this issue. This report provided examples of best practices for employers to decrease the likelihood of employment discrimination complaints. In February 2012, the EEOC held a meeting to examine recent trends in discrimination against pregnant workers and workers with caregiving responsibilities.⁴⁶

Despite these laws and federal guidance—and despite the rapid growth in the number of FRD cases over the past two decades—federal legal protections for employees caring for older adults are severely limited. Because of a lack of legal protections for working families, fewer than one-tenth (about 8 percent) of the cases in WorkLife Law's case law database of more than 3,000 FRD cases involve adults caring for older relatives. Common situations in which employees would have no protection under federal law include the following examples:

- A phone company customer representative lost her job when she failed to meet her sales quota due to the stress of caring for her mother, who had died by the time of her union hearing.⁴⁷
- A factory worker was disciplined for failing to show up for overtime work on a Saturday because he had no one to stay with his wife, who had cancer and was severely depressed.⁴⁸
- An employer denied sick leave for a surgical supply coordinator who requested leave to travel out of state to care for her mother during and after a surgery.⁴⁹

Federal Employment Laws

- **The Family and Medical Leave Act (FMLA)**⁵⁰ provides certain employees the right to 12 weeks of unpaid, job-protected leave per year to care for, among other things, a parent or spouse with a “serious health condition”—an illness or injury requiring inpatient care or a short period of incapacity followed by continuing medical care. To be covered, an employee must have worked for at least one year and at least 1,250 hours in the year prior to the leave for an employer of 50 or more employees within a 75-mile radius of the employee’s work site. Employers are prohibited from interfering with a covered employee’s request for FMLA leave, for example by denying or discouraging an employee from taking FMLA leave, and from retaliating against someone who has taken FMLA leave.
- **The Americans with Disabilities Act (ADA)**⁵¹ prohibits, among other things, discrimination based on “association with” an individual with a “disability” as defined by the ADA; recent amendments to the ADA expand the range of conditions that qualify as disabilities. This association provision of the ADA provides individuals caring for people with disabilities protection against discrimination only, not a right to reasonable accommodation (which is required for individuals who themselves have disabilities).
- **The Rehabilitation Act of 1973**⁵² prohibits discrimination on the basis of disability by federal government agencies, federal contractors, and recipients of federal financial assistance. Though the Rehabilitation Act does not contain an express association provision, courts have interpreted it as utilizing the same standard as the ADA, including with respect to association.⁵³ Like the ADA, the Rehabilitation Act affords accommodations only for an employee’s disability, not for those of someone to whom an employee is giving care.
- **The Employee Retirement Income Security Act of 1974 (ERISA)**⁵⁴ prohibits, among other things, firing, disciplining, or discriminating against an employee who is a participant in a covered employer-provided health or other “welfare benefit plan” (for example, disability insurance) for exercising a right under the plan, or for the purpose of interfering with a benefit to which the employee is entitled under the plan. In the context of family caregiving, employers may not, for example, fire an employee to avoid paying the health care costs of the employee’s dependent spouse or child.
- **Title VII of the Civil Rights Act of 1964** prohibits discrimination because of race, color, religion, sex, and national origin. Most relevant in the context of family caregiving is discrimination based on sex due to gender stereotyping.⁵⁵ Because women do the bulk of family caregiving, and women with caregiving responsibilities are often seen as less committed and competent workers,⁵⁶ caregiving employees may be able to allege sex discrimination when they have been treated worse based on stereotypes of female caregivers or treated worse than male employees whose behavior was similar to theirs. Studies show that motherhood triggers the strongest form of gender discrimination.⁵⁷ This bias may carry over into situations where women care for frail or ill older family members.
- **The Age Discrimination in Employment Act of 1967 (ADEA)**⁵⁸ prohibits discrimination because of age against individuals 40 years of age or older. The ADEA protects against discrimination in hiring, firing, and all other “terms, conditions, and privileges of employment,” as well as retaliation for reporting age discrimination. Older working caregivers may believe that their family caregiving responsibilities have triggered discrimination based on age, particularly when they have been treated worse than a younger coworker who had behaved in similar (or identical) ways.

Federal Policy Considerations

Given the limited protections in current federal law, a starting point in improving federal policy to protect family caregivers from employment discrimination would be for the EEOC to ensure enforcement of its 2007 guidance.⁵⁹ The EEOC and the Department of Labor could also conduct a campaign to raise awareness about caregiver discrimination in the workplace.⁶⁰

Other federal policy considerations should include—

- Improving the FMLA, such as by expanding its scope to cover all primary caregivers, regardless of family relationship, and to cover workers in smaller businesses
- Providing paid leave to permit working caregivers to care for an ill child, spouse, or parent or to accompany family members to routine medical appointments
- Requiring employers to provide workers with a reasonable number of paid sick days to care for themselves or a loved one

Another way to address FRD might be to enact legislation to promote a federal “right to request” law. Such laws, already in place in the United Kingdom, New Zealand, and Australia, require employers to set up a process to negotiate workplace flexibility and allow employers to turn down flexible work arrangement requests only for certain business reasons.⁶¹

Limited Protections under State Employment Laws

Protections from FRD have emerged from innovative use of existing statutes by employment lawyers. The result is a complex patchwork of protections under 17 different legal theories using state and

federal law.⁶² This places employers in a difficult situation. On the one hand, outlets such as *Business Insurance* are urging employers to take proactive measures to protect themselves from liability for this new legal risk.⁶³ On the other hand, the laws are so complex that employers may well find it difficult to predict when they are likely to be sued, or to train employees how to avoid liability in this arena.

Four states and the District of Columbia have enacted laws providing explicit protections to family caregivers that go beyond federal protections. Though Connecticut’s law applies in limited circumstances, only that state and the District of Columbia provide protection for all workers with “family responsibilities,” which can be construed to include workers caring for aging family members.

District of Columbia. The District of Columbia law provides broad protection for family caregivers. It prohibits employment discrimination against adults with “family responsibilities.”⁶⁴ Under D.C. law, family responsibilities are defined as “the state of being, or the potential to become, a contributor to the support of a person or persons in a dependent relationship....”⁶⁵

Connecticut. While Connecticut law does not establish family caregivers as a protected classification, its employment antidiscrimination provisions prohibit employers from requesting or requiring employee information related to “familial responsibilities” unless the information is directly related to a bona fide occupational qualification.⁶⁶ Rather than D.C.’s general prohibition against employment discrimination on the basis of familial responsibilities, this statute is a limitation on an employer’s right to collect personal information that could be used for a discriminatory purpose.⁶⁷

Three states limit protection for workers with childcare, but not eldercare, responsibilities:

- **Alaska**, like D.C., includes a specific protected classification for family caregivers in its state employment antidiscrimination law, but uses the term “parenthood” rather than a term that encompasses all family caregiving responsibilities.⁶⁸
- **New Jersey** also provides additional protections without including family caregivers as a protected classification. The regulations accompanying the state employment antidiscrimination law expressly prohibit state—but not private—employers from discriminating against or harassing their employees based on “familial status,” which is defined in the statute as a parent-child relationship.⁶⁹ The regulation also prohibits retaliation against an employee who complains of such discrimination.⁷⁰
- **Oregon**, too, proscribes employment discrimination based on “familial status,” the definition of which is limited to parents with children.⁷¹

Prohibiting discrimination based on childcare, but not eldercare, responsibilities is an inequity in public policy, given the aging of the population and the increasing prevalence of older workers with eldercare responsibilities.

In addition to these state laws, legislation that would expressly prohibit FRD—including discrimination against workers with eldercare responsibilities—is currently pending⁷² in California and New York City.⁷³ In January 2012, **California** legislators introduced a bill that attempts, for the third time,⁷⁴ to clarify that employers may not discriminate against employees on the basis of family caregiving

responsibilities, including eldercare for a spouse, domestic partner, parent, parent-in-law, sibling, or grandparent. The bill was referred to the Senate Committee on Rules on May 31, 2012.⁷⁵ That same day, an amendment to the administrative code of **New York City** was proposed that would prohibit employment discrimination on the basis of an individual’s status as a caregiver, including as a caregiver to anyone related by blood or “with whom the caregiver lives in a familial relationship.”⁷⁶

Legislators in New Jersey, Pennsylvania, and Michigan recently introduced legislation prohibiting FRD, but these proposals pertain only to childcare.⁷⁷ In January 2012, the **New Jersey** legislature introduced both A.B. 580 and S.B. 334, to revise “the Law Against Discrimination” to include protection for familial status in employment and extend familial status protection to private employers.⁷⁸ In January 2011, the **Pennsylvania** legislature introduced S.B. 280, which would amend the Pennsylvania Human Relations Act to prohibit discrimination in employment, housing, and public accommodations on the basis of familial status.⁷⁹ In April and May 2011, the **Michigan** legislature introduced both H.B. 4611 and S.B. 340 to preclude discrimination on the basis of familial status.⁸⁰

Finally, on January 17, 2012, the **Arizona** legislature introduced a bill containing FRD-related provisions, which would prohibit an employer from terminating or threatening to terminate a parent or guardian who left work to attend to a child’s emergency.⁸¹

A Complex Patchwork of Protections under Local Laws

Local laws are currently the most common form of employment protection for working Americans caring for older adults. At least 67

localities in 22 different states have laws that prohibit discrimination against employees with certain family caregiving responsibilities. (See appendix A.) Local laws are important to employees because they often apply to the smallest of employers: Two-thirds of these laws cover businesses too small to be covered by federal statutes. For example, the FMLA applies only to employers of 50 or more within a 75-mile radius, and Title VII applies only to employers with 15 or more employees.⁸²

Some local governments enacted FRD legislation because existing state and federal laws inadequately protect workers from discrimination. Today, local governments are the primary protectors of workers with caregiving responsibilities.⁸³

Of the 67 local ordinances, more than half (37, or 55 percent) cover only childcare. Of the remaining 30 laws, 23 do not define family responsibilities, which leaves room for using those laws to protect employees caring for older adults. Seven have language that explicitly defines family responsibilities in ways that protect working caregivers with eldercare responsibilities. (See appendix B.)

Model State Statutory Language

The patchwork of federal, state, and local laws presents a complicated legal environment for employers and employees alike. The lack of consistent policy leaves many working caregivers unprotected from FRD. It also leaves many managers and supervisors unaware of how eldercare affects their employees.

State policymakers should consider whether a single statewide law would simplify and clarify the legal environment for employers while filling gaps in legal protections for employees

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with family responsibilities. Because each state currently has its own statute prohibiting employment discrimination based on protected classifications—such as sex, race, national origin, religion, and disability—the most efficient means of addressing FRD is to add family caregivers as a protected class to existing state law, rather than introducing a stand-alone statute. A stand-alone statute likely would sharply limit the scope of antidiscrimination protections offered as the result of the legislative process.

An amended state statute addressing FRD would benefit employees by filling the gaps in legal protections, most notably by adding protections for employees responsible for the care of older adults. Such a state statute might well benefit employers, too.

Employers typically avoid legal risk by training their supervisors on the law with a series of clear dos and don'ts. Given the current complexities of FRD law, this is very difficult to accomplish. Indeed, some employment lawyers who defend employers have opined that the legal landscape surrounding FRD is so confusing that employers might be better off with a simple, straightforward state law clearly prohibiting discrimination against employees because of their family caregiver status.⁸⁴

Legislation to prohibit workplace discrimination against family caregivers would not give any group special rights. It would simply require employers to treat workers with caregiving responsibilities the same way they treat other employees. Such legislation would address the fact that employers sometimes impose unwarranted penalties on workers with caregiving responsibilities due to stereotypes that such employees are less competent or less committed to work.

Under an antidiscrimination law, employers would have to treat employees with family responsibilities the same as other employees. Thus, an employer who readily allows students' work schedules to be shaped around their class schedules could not refuse to show similar flexibility for an employee caring for an older adult. Anti-discrimination law simply requires equal treatment.

Confusion often arises between statutes addressing FRD and statutes requiring family leaves. An important point is that equal employment law to protect family caregivers does not require employers to provide employees with family or medical leave. A simple, straightforward state statute would—

1. Add the term “family caregiver status” to the list of status characteristics upon which employers are prohibited from basing discriminatory employment decisions under state law;
2. Define the term “family caregiver” for the purposes of employment antidiscrimination protections as “a person who cares for a family member”;
3. Define “family member” as “a person who is related by blood, legal custody, or marriage, a domestic

partner, or a person with whom the caregiver lives in a familial relationship”; and

4. Ensure that antiretaliation provisions that protect discrimination complaints based on other protected classifications apply to protect family caregivers as well.⁸⁵

Best Practices for Removing Barriers to Equal Employment Opportunity for Working Caregivers

In addition to public policy solutions, employers can provide equal employment opportunity for employees with family responsibilities by adopting six key practices.

1) Adopt a model policy for preventing FRD.

A model policy for preventing FRD is a crucial first step. Adopting this policy—and incorporating it in the employer's personnel manual—can send a clear message that employees with family responsibilities, including eldercare, should be judged on the basis of their job performance, rather than on outdated assumptions that they are not committed to their jobs.

2) Provide workplace flexibility.

Workplace flexibility differs from FRD. FRD involves discrimination prohibited by public policy—treating employees with caregiving responsibilities less favorably than similarly situated employees due to unexamined assumptions that their family commitments mean that they are not committed to their jobs. Workplace flexibility refers to a panoply of alternative work arrangements commonly implemented by employers for business reasons. The following are the most common practices:

- *Flex-time* allows employees to vary their starting and stopping times,

typically with a core time span (often 11 a.m. to 2 p.m.) when everyone must be at work.

- *Compressed workweeks* allow employees to work the same number of hours in fewer days a week; a typical schedule is four 10-hour days.
- *Part-time and part-year work* allows employees to work fewer hours than full time or to work full time for only part of the year.
- *Telecommuting* allows employees to work part or all of their work hours from home.

The business benefits of workplace flexibility are extensively documented.⁸⁶ Caregiving has economic consequences not only for the family caregiver but also for employers: There are costs to accommodating and supporting caregiving, but there are also costs to *not* accommodating and supporting it. A recent survey found that working caregivers of older adults are forced to miss an average of 6.6 days of work a year because of their eldercare responsibilities, and estimated that U.S. businesses lose up to \$25 billion annually from full-time working caregivers due to absenteeism alone.⁸⁷ Properly designed and implemented programs—

- *Increase retention* of valued employees
- *Reduce absenteeism*
- *Tap the full talent pool*, given that many employees have family responsibilities that make it difficult or impossible for them to work a traditional full-time schedule
- *Improve morale and employee engagement*
- *Improve productivity*
- *Reduce stress and burnout.*

3) Establish effective and predictable scheduling of hourly jobs.

Workplace flexibility was designed with professional jobs in mind. Hourly employees typically face very different issues, notably jobs with schedules that are both rigid and unstable. Rigid schedules, in which employees have to punch in and out, typically are accompanied by no-fault absenteeism policies that provide for termination of employees after a certain number of tardies and absences regardless of the reasons. Such systems may result in the firing of a worker who encounters a period of intense eldercare tasks, such as when a parent is hospitalized.

Low-wage workers often face a different problem: just-in-time schedules that change from day to day and week to week, often with very little advance notice, as employers attempt to maintain a tight fit between labor supply and labor demand. These types of schedules, even more than mandatory overtime, make it extremely difficult for families to arrange consistent eldercare.

Changes would be good for employers as well as employees. The business reasons for shifting to more effective scheduling techniques are much the same as those for adopting workplace flexibility. Just-in-time scheduling, in particular, leads to extraordinarily high, and extraordinarily expensive, rates of absenteeism and turnover.

4) Develop and provide education and training to supervisors and managers.

Unlike childcare issues, the challenges faced by workers juggling the demands of both work and caregiving for aging family members are not well understood and recognized by employers. Caregiving employees' needs are not usually a "top of mind" issue for

employers. Educating managers and supervisors about what constitutes caregiver discrimination, including eldercare, is a critical step forward. Another strategy might be to incorporate training about stereotypes and assumptions that underlie FRD into existing diversity training in the workplace.⁸⁸

5) Offer eldercare support, resources, and referral services to employees.

Caregiver-related information and resources for employees can help them better manage their caregiving responsibilities. Studies have shown benefits to employers with workplace eldercare programs, including worker retention, improved productivity, lower stress, and improved health among workers.⁸⁹ Examples of such programs may include referral to caregiver resources in the community, on-site support groups for working caregivers, or discounted backup home care for emergency needs.

6) Implement recruitment practices for people with eldercare responsibilities.

Designing and implementing recruitment practices that target individuals with eldercare responsibilities who are looking to enter or return to the workplace is an innovative strategy to recruit skilled and talented workers.⁹⁰ Some midlife and older individuals may quit their jobs to care for a parent, and then wish to return to work later on. People who disrupt their careers for full-time caregiving responsibilities can lose substantial benefits and retirement

security. Such positions could be advertised in publications that target midlife, aging, and caregiving readers, websites, and senior employment job fairs, for example.

Conclusion

As both the workforce and the U.S. population age, the workplace will include more employees who need to combine eldercare responsibilities with the jobs upon which their economic futures depend. Given the prolonged economic downturn, it is important that family caregivers with eldercare responsibilities—especially midlife and older workers who are in their peak earning years—do not lose their jobs due to stereotypes and unfair treatment.

Recent research emphasizes the importance of legal system supports to family caregivers, including protection from FRD, in addition to caregiver supportive services (such as respite care). Both are fundamental elements of a high-performing LTSS system.⁹¹

The trend toward more American families experiencing the “new normal” of working and eldercare underscores the need to develop public and private solutions to both help workplaces adapt and support caregiving families. Such solutions should ensure that working family caregivers with eldercare responsibilities receive equal opportunity in the workplace and are protected from employment discrimination.

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Appendix A. Local FRD Laws by State

Data on Local FRD Laws

This report relies, in part, on an earlier WorkLife Law report—a survey of 3,700 localities’ laws—for the finding that at least 67 localities in 22 different states have local laws that prohibit discrimination against employees.⁹² A list of these localities, by state, is provided below.⁹³

To conduct a nationwide survey of local laws is a difficult endeavor. In contrast to readily available 50-state surveys of *state* laws, there is no one database that collects and publishes all *city and county* laws in the country. Indeed, it is even difficult to estimate accurately the number of localities (cities, counties, and municipalities) in the United States: According to the U.S. Census Bureau, in 2000, there were more than 3,200 counties

and more than 25,000 “places” (defined as “all Incorporated and Census Designated places in the 50 states, the District of Columbia and Puerto Rico as of the January 1, 2000”).⁹⁴ As a result, **it is important to note that the list of 67 local FRD laws below is *not* exhaustive.**

To conduct the original survey, the authors searched four key databases of local laws,⁹⁵ as well as the individual codes of any state capital or state’s most populous city not encompassed in the four key databases. The survey authors were able to review approximately 3,700 local government codes. Thus, because the survey reached only a portion of localities in the country, any locality that was not a part of the 3,700 surveyed may or may not include a prohibition against family responsibilities discrimination.⁹⁶

Local Family Responsibilities Discrimination (FRD) Laws by State and Protected Classification

States	Local Government	Key Term	Ordinance Citation
Alaska	Soldotna	Parenthood	Soldotna Code §§ 2.28.010-.290
Arizona	Tucson	Familial status	Tucson Code §§ 10-1 to -22, 17-1, 17-11 to -16
Colorado	Crested Butte	Family responsibility	Crested Butte Code §§ 2-4-20, 10-1-10 to -11-60
Florida	Cutler Bay	Familial status	Cutler Bay Code §§ 11A-25 to -28
	Jupiter	Familial status	Jupiter Code §§ 15-11 to -69.6
	Key West	Parental status	Key West Code §§ 38-191 to -227
	Leon County	Familial status	Leon County Code §§ 9-25 to -26 to -27
	Miami Beach	Familial status	Miami Beach Code §§ 62-31 to -113
	Miami-Dade County	Familial status	Miami-Dade County Code §§ 11A-1 to -10, 11A-25 to -28
	Monroe County	Familial status	Monroe County Code §§ 13-101 to -123
	Orange County	Familial status	Orange County Code §§ 22-26 to -28
	Palm Beach County	Familial status	Palm Beach County Code §§ 2-261 to -313
	Tampa	Familial status	Tampa Code §§ 12-16 to -51
	Volusia County	Familial status	Volusia County Code §§ 36-26 to -27
West Palm Beach	Familial status	West Palm Beach Code §§ 42-31 to -46	
Georgia	Atlanta	Familial and parental status	Atlanta Code §§ 94-110 to -114, 94-10 to -41

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Local Family Responsibilities Discrimination (FRD) Laws by State and Protected Classification

States	Local Government	Key Term	Ordinance Citation
Illinois	Champaign	Family responsibilities	Champaign Code §§ 17-1 to -5, 17-76 to -77, 17-101 to -104, 17-121 to -128
	Chicago	Parental status	Chicago Code §§ 2-160-010 to -120, 4-404-010 to -080, §§ 2-74-010 to -160
	Cook County	Parental status	Cook County Code §§ 42-30 to -42, §§ 44-41 to -56
Indiana	Lafayette	Familial status	Lafayette Code §§ 2.07.010-.050
Kansas	Leavenworth	Familial status	Leavenworth Code §§ 58-36 to -45, 58-66 to -72
	Topeka	Familial status	Topeka Code §§ 86-111 to -137
	Winfield	Familial status	Winfield Code §§ 42-1 to -2, 42-61 to -64
Kentucky	Ashland	Familial status	Ashland Code §§ 35.01-.13
	Paducah	Familial status	Paducah Code §§ 58-1 to -3, 58-61 to -63
Maryland	Cumberland	Familial status	Cumberland Code §§ 9-26 to -30
	Frederick County	Familial status	Frederick County Code §§ 2-2-1 to -69
	Howard County	Familial status	Howard County Code §§ 12.200-.218
	Montgomery County	Family responsibilities	Montgomery County Code §§ 27-1 to -21
	Prince George's County	Familial status	Prince George's County Code §§ 2-186, 2-222
Massachusetts	Boston	Parental status	Boston Code §§ 12-9.1 to .15
	Cambridge	Family status	Cambridge Code §§ 2.76.030, 2.76.120, 2.76.160
	Medford ⁹⁷	Familial status	Medford Code §§ 2-541 to -548
Michigan	Albion	Family status	Albion Code §§ 54-26 to -60
	Ann Arbor	Family responsibilities	Ann Arbor Code §§ 9:150-:164
	Shelby	Familial status	Shelby Code §§ 2-141 to -179
	Wayne County	Familial status	Wayne County Code §§ 120-191 to -193
	Ypsilanti	Familial status	Ypsilanti Code §§ 58-61 to -79
Minnesota	St. Paul	Familial status	St. Paul Code § 183
Missouri	Kansas City	Familial status	Kansas City Code §§ 38-1 to -6
New Jersey	Monroe ⁹⁸	Familial status	Monroe Code §§ 50-1 to -7
	Newark ⁹⁹	Familial status	Newark Code §§ 2:2-84.4
	Passaic	Familial status	Passaic Code §§ 35-1 to -15
	Rocky Hill	Familial status	Rocky Hill Code §§ 24-1 to -20
	Wanaque	Familial status	Wanaque Code §§ 29-1 to -24
New York	Ithaca	Familial status	Ithaca Code §§ 215-1 to -36
	Rye Brook	Parental status	Rye Brook Code §§ 24-1 to -9
	Westchester County	Familial status	Westchester County Code §§ 700.01-.18; Exec. Work Order No. 5-2002
Ohio	Xenia	Familial status	Xenia Code §§ 604.01, 620.01-.99

Local Family Responsibilities Discrimination (FRD) Laws by State and Protected Classification

States	Local Government	Key Term	Ordinance Citation
Oregon	Beaverton	Familial status	Beaverton Code §§ 5.16.010-.060
	Benton County	Familial status and family responsibilities	Benton County Code §§ 28.005-.115
	Corvallis	Familial status	Corvallis Code §§ 1.23.010-.120
	Eugene	Familial status	Eugene Code § 4.613 et seq.
	Beaverton	Familial status	Beaverton Code §§ 5.16.010-.060
	Benton County	Familial status and family responsibilities	Benton County Code §§ 28.005-.115
	Corvallis	Familial status	Corvallis Code §§ 1.23.010-.120
	Eugene	Familial status	Eugene Code § 4.613 et seq.
	Hillsboro	Familial status	Hillsboro Code §§ 9.34.010-.040
	Multnomah County	Familial status	Multnomah County Code §§ 9.010-.260
Pennsylvania ¹⁰⁰	Portland	Familial status	Portland Code § 23.01.050(B)
	Salem	Familial status	Salem Code Ch. 97
	Harrisburg	Familial status	Harrisburg Code §§ 4-101 to -115
	Lancaster	Familial status	Lancaster Code §§ 125-1 to -18
	Lansdowne	Familial status	Lansdowne Code §§ 38-1 to -5
	Philadelphia	Familial status	Philadelphia Code §§9-1100 to -1108
Texas	State College	Familial status	State College Ordinance 1887 (Dec. 17, 2007)
	West Chester	Familial status	West Chester Code § 37A-1 to -7
Texas	Chico	Familial status	Chico Code §§ 31.40-.41
Washington	Tacoma	Familial status	Tacoma Code §§ 1.29.010-.090
Wisconsin	Milwaukee	Familial status	Milwaukee Code §§ 109-1 to -25
	Racine	Familial status	Racine Code §§ 62-26 to -48

Appendix B. Which Local FRD Laws Protect Employees Who Care for Older Adults?

The following is a list of the seven local FRD laws in five states that explicitly define their protected classification in ways that protect working caregivers of older

adults. The list also identifies the 23 local FRD laws that do not define their key term, which leaves room for using those laws to protect employees caring for older adults.

Local FRD Laws Where Familial Status Protects Employees with Eldercare Responsibilities

State	Ordinance (citation)	Protection on the Basis of	Key Term Defined
Florida	Monroe County, Fla. Code §§ 13-101 to -123 (2008).	Familial status	“‘Familial status’ means the status of living alone or in any familial relationship whatsoever, including, but not limited to, living with a partner, whether maintaining the legal status of being single, married, divorced, separated or widowed, and whether the partner is same sex or opposite sex, and of living with one (1) or more dependents, whether minor or disabled children or parents.” § 13-102.
Illinois	Champaign, Ill. Code §§ 17-1 to -5, 17-76 to -77, 17-101 to -104, 17-121 to -128 (2008).	Family responsibilities	“‘Family responsibilities’ means the state of being, or the potential to become, a contributor to the support of a person or persons in a dependent relationship, irrespective of their number, including single parents.” § 17-3.
Maryland	Montgomery County, Md. Code §§ 27-1 to -21 (2007).	Familial responsibilities	“‘Family responsibilities’ means “the state of being financially or legally responsible for the support or care of a person or persons, regardless of the number of dependent persons or the age of any dependent person.” § 27.6.
Michigan	Ann Arbor, Mich. Code §§ 9:150-164 (2007).	Family responsibilities	“‘Family responsibilities’ means the state of being or the potential to become a contributor to the support of a person or persons in a dependent relationship.” § 9:151.
	Ypsilanti, Mich. Code §§ 58-61 to -79 (2007).	Familial status	“‘Familial status’ means the state of being related by blood or affinity to the fourth degree.” § 58-62.
Pennsylvania	State College, Pa. Ordinance 1887 (Dec. 17, 2007).	Familial status	“‘Familial status’ means the state of being married, single, divorced, separated, widowed, or a parent, a person who is pregnant or in the process of securing legal custody of any Person, of any Person who has not attained the age of 18 years, stepparent, foster parent, or grandparent of a minor child, or the state of being a provider of care to a person or persons in a <i>dependent relationship as defined by state law</i> , whether in the past, present, potentially in the future, or pursuant to employer perception.” § 903 (emphasis added). Pennsylvania state law defines a “care-dependent person” as “any adult who...requires assistance to meet his needs for food, shelter, clothing, personal care or health care.” 18 Pa. Const. Stat. Ann. § 2713. A “caretaker” is defined as “an individual ... that has assumed the responsibility for the provision of care needed to maintain the physical or mental health of an older adult.” <i>Id.</i>
	Philadelphia Code §§9-1100 to – 1108 (March 10, 2010).	Familial status	“‘Familial status’ means the state of being or becoming a provider of care or support to a family member. Family member shall include the individual’s spouse, life partner, parents, grandparents, siblings, or in-laws; and children, grandchildren, nieces, or nephews (including through adoption or other dependent or custodial relationship). § 9-1102.

Local Laws Where Familial Status Is Undefined¹⁰¹

State	Ordinance (citation)	Protection on the Basis of	Key Term Defined
Colorado	Crested Butte, Colo. Code §§ 2-4-20, 10-1-10 to -11-60 (2009).	Family responsibility	Not defined in Chapter 10, §§ 10-1-10 to -11-60.
Florida	Cutler Bay, Fla. Code §§ 11A-25 to -28 (2008). Jupiter, Fla. Code §§ 15-11 to -69.6 (2008). Orange County, Fla. Code §§22-26 to -28 Tampa, Fla. Code §§ 12-16 to -51 (2008).	Familial status Familial status Familial status Familial status	Not defined in Article IV, §§ 11A-25 to -28. Not defined in Article II, §§ 15-11 to -69.5. Not defined in Orange County Code. Not defined in Article II, Employment Discrimination, §§ 12-16 to -51.
Kansas	Leavenworth, Kan. Code §§ 58-36 to -45 (setting forth powers of human relations commission), 58-66 to -72 (prohibiting FRD in employment) (2007). Topeka, Kan. Code §§ 86-111 to -137 (2007).	Familial status Familial status	Not defined in Article III, §§ 58-67 to -72. Not defined in Division 2 of Article IV, §§ 86-111 to -120. See § 82-291 (defining “familial status” for purposes of the housing code provisions).
Kentucky	Paducah, Ky. Code §§ 58-1 to -3 (setting forth policy, definitions, and penalty), 58-61 to -63 (prohibiting FRD in employment) (2007).	Familial status	Not defined in Article I, §§ 58-1 to -3, or Article III, §§ 58-61 to -63.
Massachusetts	Medford, Mass. Code §§ 2-151 to -548 (2007).	Familial status	Not defined in Medford Code.
Michigan	Albion, Mich. Code §§ 54-26 to -60 (2007). Shelby, Mich. Code §§ 2-141 to -179 (2007). Wayne County, Mich. Code §§ 120-191 to -193 (prohibiting FRD by county contractors) (2007).	Familial status Familial status Familial status	Not defined in Article II, §§ 54-26 to -60. Not defined in Article IV, §§ 2-141 to -179. Not defined in the Wayne County Code.
New Jersey	Monroe, N.J. Code §§ 50-1 to -7 (2008). Newark, N.J. Code § 2:2-84.4 Passaic, N.J. Code §§ 35-1 to -15 (2008). Rocky Hill, N.J. Code §§ 24-1 to -20 (2008). Wanaque, N.J. Code §§ 29-1 to -24 (2008).	Familial status Familial status Familial status Familial status Familial status	Not defined in Chapter 50, §§ 50-1 to -7. Not defined Not defined in Chapter 35, §§ 35-1 to -15. Not defined in Chapter 24, §§ 24-1 to -20. Not defined in Chapter 29, §§ 29-01 to -24.
New York	Rye Brook, N.Y. Code § 24-1 to -9 (2008). Westchester County, N.Y. Code §§ 700.01-.18 (2008). Exec. Work Order No. 5-2002	Parental status Familial status	Not defined in Chapter 24, §§ 24-1 to -9. Not defined in the Westchester County Code.
Oregon	Beaverton, Or. Code §§ 5.16.005 - .060 Benton County, Or. Code §§ 28.005 – 115 (2009)	Familial status Familial status and family responsibilities	Not defined in chapter 5.16 Not defined in Chapter 28.
Pennsylvania	Lansdowne, Pa. Code §§ 38-1 to -5 (2008). West Chester, Pa. Code § 37A-1 to -7 (2008).	Familial status Familial status	Not defined in the Borough of Lansdowne code. Not defined in the Borough of West Chester code.

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- ⁴² U.S. Equal Employment Opportunity Commission, *Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities*. (Washington, DC: Equal Employment Opportunity Commission, May 2007).
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- ⁴⁴ United States Department of Labor, Wage and Hour Division, *Families and Employers in a Changing Economy*, <http://www.dol.gov/whd/fmla/1995Report/summary.htm#researchfindings>.
- ⁴⁵ The U.S. Equal Employment Opportunity Commission is the federal agency charged with interpreting, implementing, and enforcing federal employment discrimination laws.
- ⁴⁶ See U.S. Equal Employment Opportunity Commission, *Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities* (2007), <http://www.eeoc.gov/policy/docs/caregiving.html#ada>; *Employer Best Practices for Workers with Caregiving Responsibilities* (2009), <http://www.eeoc.gov/policy/docs/caregiver-best-practices.html>; and *Meeting on Unlawful Discrimination Against Pregnant Workers and Workers with Caregiving Responsibilities* (February 15, 2012), <http://www.eeoc.gov/eeoc/meetings/2-15-12/index.cfm>.
- ⁴⁷ *Sprint/Central Telephone Company of Texas, Inc.*, 117 Lab. Arb. Rep. (BNA) 1321 (2002) (Baroni, Arb.) (arbitrator upheld the discharge of a customer service representative who had cared for a dying mother because the grievant did not have the skills and temperament to do her job well).
- ⁴⁸ *Allied Paper*, 80 Lab. Arb. Rep. (BNA) 435(1983) (Mathews, Arb.) (arbitrator reduced the suspension to a written warning).
- ⁴⁹ *Puget Sound Hospital*, 109 Lab. Arb. Rep. (BNA) 659 (1997) (Monat, Arb.) (arbitrator upheld denial of sick leave).
- ⁵⁰ Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 *et seq.* (2012).
- ⁵¹ Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.* (2012).
- ⁵² Rehabilitation Act, 29 U.S.C. §§ 701 *et seq.* (2012).
- ⁵³ See, e.g., *Oliveras Sifre v. Dep’t of Health*, 38 F. Supp. 2d 91, 100 n3 (D.P. R. 1999).
- ⁵⁴ Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.* (2012); 26 U.S.C. §§ 401-415, 4972-4975 (2012).
- ⁵⁵ Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2000e-17 (2012).
- ⁵⁶ A. J. C. Cuddy and C. M. Frantz, “Race, Work Status, and the Maternal Wall,” unpublished paper presented at Gender Roles: Current Challenges, an invited symposium conducted at the 79th annual meeting of the Midwestern Psychological Association, Chicago, IL, May 3, 2007 (on file with authors); S. Benard, I. Paik, and S. J. Correll, “Cognitive Bias and the Motherhood Penalty,” *Hastings Law Journal* 59 (2008): 1359; S. J. Correll, S. Benard, and I. Paik, “Getting a Job: Is There a Motherhood Penalty?” *American Journal of Sociology* 112 (2007): 1316; “The Maternal Wall: Research and Policy Perspectives on Discrimination Against Mothers,” eds. Monica Biernat, Faye J. Crosby, and Joan C. Williams, *Journal of Social Issues*, special issue, 60 (2004): 667.
- ⁵⁷ *Ibid* (all publications).

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⁵⁸ Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621-664 (2012).

⁵⁹ U.S. Equal Employment Opportunity Commission, *Enforcement Guidance*.

⁶⁰ H. Boushey and A. O’Leary, *Our Working Nation: How Working Women Are Reshaping America’s Families and Economy and What It Means for Policymakers: A Policy Roadmap* (Washington, DC: Center for American Progress, March 2010).

⁶¹ Boushey and O’Leary, *Our Working Nation*.

⁶² Joan C. Williams, *Statement before the Meeting of April 17, 2007, Washington D.C. on Perspectives on Work/Family Balance and the Federal Equal Employment Opportunity Laws*, U.S. Equal Employment Opportunity Commission, <http://www.eeoc.gov/eeoc/meetings/archive/4-17-07/williams.html>.

⁶³ See, e.g., Gloria Rodriguez, “Benefits Management: Family Care Bias Suits Rise as Workers Assert Rights,” *Business Insurance* (June 19, 2006): 11.

⁶⁴ D.C. Code Ann. §§ 2-1401.01, 2-14101.02, 1-2502(12) (2007).

⁶⁵ *Ibid.* at §§ 2-1401.02(12).

⁶⁶ Conn. Gen. Stat. § 46a-60(a)(9) (2012).

⁶⁷ See *ibid.* at § 46a-60(a)(1) (omitting the term “familial status” from the list of protected classifications).

⁶⁸ See Alaska Stat. § 18.80.220(a) (2007).

⁶⁹ N.J. Admin. Code § 4A:7-3.1(a) (2008); N.J. Stat. Ann. §§ 10:5-4; 10:5-5 (2010).

⁷⁰ N.J. Admin. Code § 4A:7-3.1(h) (2008).

⁷¹ Or. Rev. Stat. §§ 659A.006(a); 659A.001(6)(a)-(b) (2011).

⁷² A number of bills seeking to preclude discrimination due to family caregiving obligations have been proposed in recent years, but have then stalled or been vetoed. In addition to California (discussed below), states and localities where this has occurred include Florida (2009 FL S.B. 2012 (introduced February 23, 2009); 2009 FL H.B. 397 (introduced January 15, 2009); Pennsylvania (2009 PA S.B. 280 (introduced March 6, 2009); 2009 PA H.B. 280 (introduced February 27, 2009)); Maine (2009 ME L.D. 962/ H.P. 664 (introduced March 10, 2009)); New Jersey (2010 NJ A.B. 684 (introduced January 12, 2010)); New York (2009 NY A.B. 6333 (introduced March 2, 2009)); Iowa (2007 IA H.F. 532 (introduced February 26, 2007)); Michigan (2007 MI S.B. 462 (introduced April 26, 2007)); Maryland (2010 MD H.B. 463 (introduced January 29, 2010)); and New York City (NYC Int 565 - April 23, 2007). Montana legislators also unsuccessfully sought passage of a bill containing FRD-related provisions (2007 MT H.B. 213 (introduced January 5, 2007)).

⁷³ 2011 CA A.B. No. 1999 (introduced February 23, 2012); NYC Int 0863-2012 (introduced May 31, 2012).

⁷⁴ A California bill that would have added “familial status,” defined as including some caregiving responsibilities, to employment antidiscrimination protections passed through the entire legislature in 2007, but was ultimately vetoed by the governor. S.B. 836, 2007-2008 Sess. (Ca. 2007); Complete bill history, S.B. No. 836, http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb_0801-0850/sb_836_bill_20080114_history.html. In April 2009, a similar, but not identical bill to prohibit employment discrimination based on familial status was introduced in the State Assembly, but ultimately died as it stalled in the Assembly Appropriations Committee. See A.B. 1001, 2009-2010 Sess. (Ca. 2009).

⁷⁵ 2011 CA A.B. 1999.

⁷⁶ NYC Int 0863-2012.

⁷⁷ In these three states (New Jersey, Pennsylvania, and Michigan), the statutory definition of “familial status” is limited to parent-child relationships.

⁷⁸ 2012 NJ A.B. 580 (introduced January 10, 2012); 2012 NJ S.B. 334 (introduced January 10, 2012).

⁷⁹ 2011 PA S.B. 280 (introduced January 26, 2011).

⁸⁰ 2011 MI S.B. 340 (introduced April 26, 2011); 2011 MI H.B. 4611 (introduced May 4, 2011).

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⁸¹ 2012 AZ H.B. 2352.

⁸² Family Medical Leave Act of 1993, 29 U.S.C. § 2611(2) (2012); Title VII, Civil Rights Act of 1964, 42 U.S.C. § 2000e(b) (2012).

⁸³ See, e.g., Westchester, N.Y. Code § 700.01 (“Notwithstanding provisions of federal and state law, there have been repeated instances of intolerance and discrimination committed in Westchester County. The Board of Legislators affirms that the County of Westchester has the duty and responsibility to act to assure that every individual within the County is afforded an equal, fair and timely opportunity to enjoy a full and productive life”); Hillsboro, Or. Code § 9.34.005 (“It is the intent of the council to supplement the state protections against discrimination”); see also S. Bornstein and R. J. Rathmell, *Caregivers as a Protected Class? The Growth of State and Local Laws Prohibiting Family Responsibilities Discrimination* (San Francisco, CA: Center for WorkLife Law, University of California, Hastings College of Law, December 2009), <http://www.worklifelaw.org/pubs/LocalFRDLawsReport.pdf>.

⁸⁴ E-mail from Judith Droz Keyes, partner, Employment Law Department, Davis Wright Tremaine LLP (May 9, 2012) (on file with authors).

⁸⁵ Antiretaliation provisions prohibit employers from retaliating against employees who attempt to exercise their rights under the antidiscrimination statutes, and against coworkers who stand up for a coworker who is attempting to exercise his or her rights under the statute.

⁸⁶ See J. Williams and P. Huang, *Improving Work-Life Fit in Hourly Jobs: An Underutilized Cost-Cutting Strategy in a Globalized World* (San Francisco, CA: Center for WorkLife Law, University of California, Hastings College of Law, 2011), <http://www.worklifelaw.org/pubs/ImprovingWork-LifeFit.pdf>; K. Rose and L. Steele, *Balancing Elder Care and a Career*, <http://www.theglasshammer.com/news/2011/05/17/balancing-elder-care-and-a-career/>; F. Van Deusen, J. James, N. Gill, and S. McKechnie, *Overcoming the Implementation Gap: How 20 Leading Companies Are Making Flexibility Work* (Chestnut Hill, MA: Boston College Center for Work & Family, 2007), <http://www.bc.edu/content/dam/files/centers/cwf/research/publications/pdf/BCCWF%20Flex%20Study%202007.pdf>; *Elder Care: A Responsibility That Requires a Collaborative Effort* (WorldatWork, 2006), Washington, DC: http://awlp.org/awlp/pub/nwfm_Elder_Care_Collaborative_Effort.pdf; MetLife Mature Market Institute National Alliance for Caregiving, *The MetLife Caregiving Cost Study: Productivity Losses to U.S. Business* (Westport, CT: MetLife, 2006), <http://www.caregiving.org/data/Caregiver%20Cost%20Study.pdf>; E. Galinsky, J. T. Bond, S. S. Kim, L. Backon, E. Brownfield, and K. Sakai, *Overwork in America: When the Way We Work Becomes Too Much* (New York, NY: Families and Work Institute, 2004).

⁸⁷ Gallup, Inc., *The Cost of Caregiving to the U.S. Economy*, Gallup-Healthways Well-Being Index (December 2011), <http://gmj.gallup.com/content/151049/cost-caregiving-economy.aspx>.

⁸⁸ U.S. Equal Employment Opportunity Commission, *Employer Best Practices for Workers with Caregiving Responsibilities* (Washington, DC: Equal Employment Opportunity Commission, 2009), <http://www.eeoc.gov/policy/docs/caregiver-best-practices.html>.

⁸⁹ D. L. Wagner, A. Lindemer, K. N. Yokum, and M. DeFreest, *Best Practices in Workplace Eldercare* (Bethesda, MD: National Alliance for Caregiving, March 2012).

⁹⁰ U.S. Equal Employment Opportunity Commission, *Employer Best Practices for Workers with Caregiving Responsibilities*.

⁹¹ Reinhard et al., *Raising Expectations*.

⁹² For a complete discussion of local FRD laws, please see the original survey report, *Caregivers as a Protected Class? The Growth of State and Local Laws Prohibiting Family Responsibilities Discrimination* (San Francisco, CA: Center for WorkLife Law, University of California, Hastings College of Law, December 2009), <http://www.worklifelaw.org/pubs/LocalFRDLawsReport.pdf>.

⁹³ For detailed analysis of each state and local FRD law, or for data by which to compare state and local laws, please visit the companion webpage to the original report, <http://www.worklifelaw.org/pubs/LocalFRDLawsDetail.html>. The original report does not include the four new local laws that have been passed since the report was published.

⁹⁴ U.S. Census Bureau, *Census 2000 U.S. Gazetteer Files* (Washington, DC: U.S. Census Bureau, June 8, 2009), <http://www.census.gov/geo/www/gazetteer/places2k.html>.

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⁹⁵ These databases were LexisNexis Municipal Code Database, Municode, American Legal Publishing, and General Code E-Code.

⁹⁶ For a complete description of the research methodology, including how to access a comprehensive list of the 3,700 localities searched, please see appendix B: Methodology in *Caregivers as a Protected Class?*

⁹⁷ Section 2-541 of the Medford, MA Code articulates a policy of providing “equal opportunity to each person regardless of ... familial status ... where unlawful discrimination exists in housing, employment, education, public accommodations, services, and facilities,” but it does not include a separate section prohibiting familial status discrimination in employment. That notwithstanding, the ordinance must be construed liberally for the accomplishment of its purposes, and it establishes a Medford Human Rights Commission with enumerated functions, duties, and powers, which include initiating investigations into unlawful discrimination in employment. See Medford, MA Code §§ 2-545 and 2-542.

⁹⁸ The Monroe Township, NJ, ordinance does not expressly prohibit familial status discrimination in employment but charges the Monroe Township Human Relations Commission with the duty to adopt policies and procedures that aid in the elimination of “all types of discrimination,” presumably including employment discrimination. See Monroe, NJ Code § 50-5(A).

⁹⁹ The Newark, NJ, ordinance announces a policy for the city as an employer that it must adhere to state nondiscrimination policies and not discriminate against any employee or applicant for employment because of familial status. Newark, NJ Code § 2:2-84.4.

¹⁰⁰ Also collected, but omitted from this table, is an ordinance from Pittsburgh, PA. Although the policy statement in Pittsburgh, PA Code § 651.02(b) supports a broad prohibition against discrimination that *expressly* includes familial status in employment, the exclusion of the term in section 659.02 raises a question as to whether the prohibition expressly applies in employment discrimination. Compare Pittsburgh, PA Code § 651.02. with id. § 659.02.

¹⁰¹ As noted above, these laws do not define their key term, leaving room to use the laws to protect employees caring for older adults.

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