
Evolving Employment Law: Addressing Family Responsibilities Discrimination With New Legislation & Existing Statutes

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What is Caretaker of Family Responsibilities Discrimination?

- **Discrimination against female or male employees based on their status as a caretaker of family members.**
- **Can include**
 - Pregnant women
 - Parents of young children
 - Parents of disabled children
 - Children of aging parents
 - Spouses of disabled individual
 - Spouses/Parents of seriously ill persons
 - Spouse of Wounded Military

Why Important

- **EEOC issued guidelines in May 2007 directed to Caretaker discrimination**
 - Indicated increased enforcement policy
 - Focus
 - Title VII
 - Pregnancy Discrimination Act
 - Combo of Race/Sex Discrimination
 - Americans with Disabilities Act
- **States over which EEOC does not have jurisdiction**
- **State statutes**
 - Alaska Stat. § 18.80.220
 - protects against discrimination in employment because of marital status, changes in marital status, pregnancy or parenthood.
 - D.C. Code Ann. § 2-1401.01-02
 - protects against discrimination on the basis of marital status, familial status and family responsibilities.
 - Connecticut General Statute § 46a-60(a)(9)
 - prohibits employers from requesting or requiring information from an applicant or employee relating to the individual's child-bearing age or plans, pregnancy or "familial responsibilities."

The Statistics

- **Increased litigation**
 - 400 percent increase in FRD claims in the last decade
 - 1991 amendment to Title VII
 - 30 percent increase in pregnancy discrimination claims filed with EEOC from 1992 to 2005
 - Greater than 50% success rate for FRD cases (includes settlement and jury verdicts)
- **FRD plaintiffs have received substantial awards and settlements**
 - Average award is slightly over \$100k
 - Largest award to single plaintiff is \$11.65M
 - Largest award to multiple plaintiffs \$25M

Source: Mary C. Shill, LITIGATING THE MATERNAL WALL: U.S. LAWSUITS CHARGING DISCRIMINATION AGAINST WORKERS WITH FAMILY RESPONSIBILITIES, available at http://www.uhastings.edu/site_files/WLLFRDreport.



The Statistics

- **Employment rates for women have grown dramatically over the last 30 years**
 - 46% of workforce female as of 2005
- **Caregiving responsibilities disproportionately affect working women**
 - Mothers are
 - 79% less likely to be recommended for promotion
 - 100% less likely to be promoted
 - Offered an average of \$11k less for same position
- **Family dynamics changing**
 - Sex roles within families changing



The Statistics

- **Increase in "Sandwich Generation"**
 - Between ages of 30 and 60
 - Increasing percentage of workforce is being called upon to care for their children and aging parents
- **1/3 of all families have a family member with a disability**
 - 1 out of 10 have a child with a disability
- **Between 1986 and 2003, the amount of time spent by men caring for children nearly tripled and the time spent on household chores more than doubled**



FRD

▪ **Family Responsibility Discrimination**

- Label placed on a growing subset of discrimination claims
- Not a new protected class
- No federal law protects status specifically as caregiver
 - Federal statutes protect other characteristics of employee
 - Sex/gender, pregnancy
 - Federal statutes protect affiliation with members of a certain group
 - Disabled (ADA)
 - Deployed or seriously injured Military (FMLA)
 - Care for spouse, child or parent with serious health condition (FMLA)

FRD

▪ **Behavior Actionable as FRD:**

- Stereotyping
 - Sex roles
 - Women should be at home
 - Takes less time to be a good father than a good Mother
 - Effectiveness of workers who have caretaking duties
 - "Mommy track"
- Benevolent Stereotyping
 - Not promoting a female candidate to a position that requires travel
 - Holding open a part time position for a female caretaker
 - Not giving complex assignments to new mother
- Refusal to Modify Duties for Pregnant Worker
- Forced leave
- Denial of leave

FRD: Examples of Caregiver Discrimination

- Employers asking female job applicants, but not male applicants, whether they are married, have young children, or about their other caregiving responsibilities;
- Firing, demoting or refusing to promote pregnant employees because they will take maternity leave;
- Treating fathers or female employees without caregiving responsibilities more favorably than female caregivers, for example promoting them over more qualified mothers;
- Steering or assigning workers with caregiving responsibilities to less prestigious or lower-paid positions;

Discrimination

- Making stereotypical comments about caregivers being less committed to their jobs than workers without such responsibilities;
- Denying male employees' requests for leave for childcare purposes while granting similar requests from female employees;
- Harassing and penalizing workers who take time off to care for sick spouses/partners and aging parents.

Existing Federal Laws Used to Address ERD

- **Title VII**
- **Family Medical Leave Act ("FMLA")**
 - Recently amended by National Defense Authorization Act
- **Equal Pay Act ("EPA")**
- **Americans with Disabilities Act ("ADA")**
- **ERISA**

Existing Federal Laws Used to Address ERD

- **Section 501 of the Rehabilitation Act**
 - provides the same protections as the ADA to federal workers
- **Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681, et. seq. ("Title IX")**
 - prohibits sex discrimination in programs that receive federal funds.
 - In Tenth Circuit, protection coextensive with Title VII
- **42 U.S.C. § 1983**
 - to enforce rights under the Equal Protection clause or the Fourteenth Amendment

Title VII

▪ **The Civil Rights Act of 1964, as amended ("Title VII"), 42 U.S.C. § 2000e et seq.**

- Applicable to employers with 15 or more employees
- Forbids discrimination on the basis of race, color, religion, sex, pregnancy, or national origin



Title VII

▪ **Civil Rights Act of 1991**

- The Civil Rights Act of 1991 amended Title VII to provide:
 - The right to a jury trial
 - The right to compensatory damages
 - The right to punitive damages



Title VII

▪ **Pregnancy Discrimination Act of 1978 ("PDA")**

- Amended Title VII to clearly include pregnancy
- Discrimination on the basis of pregnancy, childbirth or related medical conditions constitutes unlawful gender discrimination under Title VII
- Includes women who could become pregnant



Title VII

▪ PDA of 1978 (cont.)

- Employer cannot refuse to hire a woman because of her pregnancy related condition as long as she is able to perform the essential functions of the job
- If the employee is temporarily unable to perform her job due to pregnancy, employer must treat her the same as any other temporarily disabled employee
 - Modified tasks, alternative assignments, disability leave

Title VII

▪ Title VII pregnancy related protections

- Might become pregnant or is pregnant
- Hiring
 - Can't ask pregnancy, married, or family plans
- Pregnancy and Maternity Leave
 - An employer may not single out pregnancy-related conditions for special procedures or rules to determine an employee's ability to work
 - Pregnancy test
 - Pre-set leave time periods
 - Same as any other temporarily disabled employee
 - Must hold job open for a pregnancy related absence the same as for employees on sick or disability leave

Title VII

▪ Title VII pregnancy related protections

- Health Insurance
 - Any health insurance provided by an employer must cover expenses for pregnancy-related conditions on the same basis as costs for other medical conditions
- Fringe Benefits
 - Employees with pregnancy-related disabilities must be treated the same as other temporarily disabled employees for accrual and crediting of seniority, vacation calculation, pay increases, and temporary disability benefits

Title VII

▪ **Successful plaintiff cases must prove**

- Plaintiff treated different based on sex
- "Sex plus" theory
 - Employee subjected to disparate treatment not based on sex, but on sex plus some other characteristic.
 - See *Phillips v. Martin Marietta Corp.*, 400 U.S. 542, 544 (1971)
- NOTE: The EEOC guidance provides that there need not be a comparator of the opposite sex.
 - However, in the Tenth Circuit, a successful case based on a sex-plus theory must have a comparator of the opposite sex. See *Coleman v. B-G Maint. Mgmt. of Colo., Inc.*, 108 F.3d 1199, 1203 (10th Cir. 1997).
- Employer intended to discriminate

Title VII

▪ **Disparate treatment established by direct or indirect evidence**

- Direct evidence proves intentional discrimination without inference or presumption
 - "Women belong at home"
 - "Mothers burden the business"
- Indirect evidence or circumstantial evidence
 - Plaintiff must first establish a prima facie case of discrimination

Title VII

▪ **Prima facie elements of discrimination**

- Elements will vary depending on the facts of the particular case
 - Protected Class
 - Qualified or performing satisfactorily
 - Adverse employment action
 - Under circumstance which give rise to an inference of unlawful discrimination

Title VII

- EEOC guidance also focused on Retaliation under Title VII.
- Employers prohibited from retaliating against workers for opposing unlawful discrimination – complaining, filing a charge, or participating in an investigation.
 - Individuals are protected against action that would deter them from making a complaint about discrimination.
- An action normally unlikely to deter a worker from making a complaint, might be likely to deter a caretaker because of the challenges they face balancing family and work.
 - Caregivers more vulnerable to shift changes and work location changes.
 - “A schedule change in an employee’s work schedule may make little difference to many workers, but may matter enormously to a young mother with school age children.” *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 69 (2006).

29 U.S.C. §§ 2602-2654

- Covers employers with 50 or more employees within a 75 mile radius of the employee’s work locations.
- “Eligible employees” have been employed 12 or more months, worked at least 1,250 hours and not exhausted FMLA leave.

29 U.S.C. §§ 2602-2654

- Employees must grant eligible employee up to 12 weeks of unpaid leave per year
 - For birth and care of a newborn
 - For placement with employee of adopted or foster child
 - To care for immediate family member with a serious health condition

29 U.S.C. §§ 2612-2614

- **Employer obligated to reinstate employee to former or comparable position with equivalent pay, benefits, terms and conditions**
- **Employer not obligated to reinstate employee, if employee's leave lasts longer than 12 weeks**

29 U.S.C. §§ 2602-2654

- **Amended in January 2008 by National Defense Authorization Act, P.L. 110-181**
- **Final DOL Regulations: 29 CFR § 825**
- **Changes effective January 16, 2009**
- **"Military Caregiver Leave"**
 - 26 weeks unpaid leave in 12 month period
 - Does not change 12 weeks total for other causes
 - 26 weeks total FMLA leave
 - Care of family members with serious injuries or illnesses incurred in military duty.
 - Covers wide range of family members:
 - Spouse, children, parents
 - "Next of kin" – the nearest blood relative of the service member

29 U.S.C. §§ 2602-2654

- **"Qualifying Exigency" Leave**
 - Employee may take FMLA leave to handle various **non-medical** exigencies arising out of the fact that the employee's spouse, child or parents on active duty or on call to active duty status.
- **Qualifying Emergency Leave Subject to maximum 12 weeks per 12 months**

FRD

- **Qualifying Exigency Leave related to FRD:**
 - **Childcare and School activities:** leave to arrange or provide
 - **Counseling:** leave to attend counseling from a non health care provider
 - **Rest and Recuperation:** leave to spend time with a covered military member who is on short-term, temporary, rest and recuperation leave (up to five days)
 - **Additional Activities:** leave to address other events arising from military duty agreed upon between employer and covered employee

FMLA


- **Two types of cases can be brought by employees under the FMLA**
 - If employer interferes, refuses to authorize or discourages the employee from using leave
 - If employer discriminates or retaliates against employee for requesting or taking leave
- **Successful plaintiffs must prove**
 - Plaintiff was entitled to take leave and employer interfered 29 U.S.C §§ 2612 (a), 2614 (a)
 - Plaintiff must show that he or she engaged in FMLA-protected activity, that he or she suffered an adverse employment action, and that a causal link exist between the two. *Cline v. Wal-Mart Stores, Inc.*, 144 F.3d 294, 301 (4th Cir. 1998)

EPA

- **The Equal Pay Act of 1963 ("EPA") is part of Fair Labor Standards Act**
- **Prohibits wage discrimination on the basis of sex**
- **Successful plaintiff must prove**
 - Men and women paid different wages for "Equal Work" in jobs which require substantially
 - Equal skill
 - Equal effort
 - Equal responsibility
 - Performed under equal working conditions.
 - 29 U.S.C. § 206(d)(1) (2005). 29 U.S.C. § 206(d)(1) (2005).


EPA

- **Mixed results using as tool to address FRD**
- **A caregiver who works part time, but is paid less than comparable workers of opposite sex.**
- **Example:**
 - Part time female employee with caregiver duties is paid less than full time male employee, even though their jobs require "equal skill, effort and responsibility" and "are performed under equal working conditions."




ADA

- **The Americans with Disabilities Act of 1990, as amended ("ADA"), 42 U.S.C § 12101 et seq.**
- **Applicable to employers with 15 or more employees**
- **Forbids discrimination on the basis of disability or on the basis of an individual's "relationship or association" with an individual with a disability**
- **EEOC interprets "association" to include**
 - A caregiver who takes time off from work to care for a family member or friend with a disability



ADA

- **However, a caretaker of an individual with disabilities is not entitled to a reasonable accommodation, like the individual with the disability would be**
- **Instead, actionable in situations**
 - Stereotype
 - Termination due to Association/Failure to Hire
 - Denial of time off to care for individual with disability, when otherwise entitled to time off under applicable policy
 - Denial of part time position, where other individuals not associated with an individual with disabilities is allowed part time position.



ADA

▪ **Three types of "association claims" under the ADA:**

- Expense: child or spouse's illness is costly to the employer
- Disability by Association: an employer fears employee has, or may develop, a disabling condition because spouse or child has one
- Distraction: An employee is distracted at work because of a relative's disability

See *Larimer v. Int'l Bus. Machs. Corp.*, 370 F.3d 698 (7th Cir. 2004).

ERISA

▪ **The Employment Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132 et seq.**

▪ **Used by caregivers in three situations:**

- to obtain pension credits denied due to personnel policies that ended employment due to pregnancy;
- to challenge refusals to hire or terminations based on high health insurance premiums of employee's with disabled children or expensive, high risk pregnancies
- obtain relief from unlawful termination to prevent a pregnant employee from using maternity leave benefits

Title IX

▪ **Prohibits sex discrimination in educational programs that receive federal funding**

▪ **Applies to employees and students**

▪ **Regulations implemented at 34 CFR §106.57 (2005) explicitly prohibit discrimination based on:**

- Parental or family status
- Pregnancy
- Any other distinction based on sex

Title IX

- Tenth Circuit has limited the scope of 34 CFR § 106.57 and held that the scope of Title IX is coextensive with that of Title VII.
 - Only prohibited inasmuch as based on sex or gender.
 - See *Mabry v. State Bd. Of Community Coll. & Occupational Education*, 813 F.2d 311 (10th Cir. 1987).

EEOC Enforcement Guidance

- Guidance is largely expressed through 20 fact-specific examples
- Breakdown
 - Disparate treatment of female caregivers
 - Stereotyping
 - Pregnancy issues
 - Hostile work environment
 - Retaliation

EEOC Example

UNLAWFUL DISCRIMINATION AGAINST WOMEN WITH YOUNG CHILDREN

Charmaine, a mother of 2 preschool-age children, is rejected for an opening in her employer's executive training program. Employer asserts it rejected Charmaine for candidates that had better performance appraisals or more managerial experience and that she was not "executive material." Employer also contends that half of the selectees were women, therefore her rejection couldn't have been based on sex. Charmaine had more managerial experience or better performance appraisals than several selectees and was better qualified than some selectees, including both men & women. While the employer elected both men & women, the only selectees with preschool age children were men.

EEOC Examples

UNLAWFUL STEREOTYPING DURING HIRING PROCESS

Patricia, a recent business school graduate, was interviewed for a position as a marketing assistant for a public relations firm. At the interview, Bob, the manager of the department with the vacancy, noticed Patricia's wedding ring and asked how many children she had. Patricia said none yet, but planned to once her and her husband's careers were underway. Bob explained that the job duties were very demanding and asked how she would balance work and childcare responsibilities. Patricia explained that they would be shared with her husband, but Bob responded that men were not reliable caregivers. Bob later told his secretary that he was concerned hiring a young married woman who might have kids and didn't believe being a mother was "compatible with a fast-paced business environment." Patricia was not hired, and the employer reposted the position after rejecting Patricia claiming that none of the applicants had a satisfactory experience level.



EEOC Examples

Same facts as the previous example, except that the employer did not repost the position but rather hired Tom from the same round of candidates that Patricia was in. Other than Tom's greater experience, Tom & Patricia had similar qualifications but that the employer consistently used relevant experience as a tiebreaker in filling marketing positions.



EEOC Examples

UNLAWFUL SEX-BASED ASSUMPTIONS ABOUT WORK PERFORMANCE

Anjali, a police detective, had received glowing performance reviews during her first 4 years with the City's police department and was assumed to be on a fast track for a promotion. However, after she returned from leave to adopt a child during her 5th year with the department, her supervisor frequently asked how she was going to manage to stay on top of her case load while caring for an infant. Although Anjali continued to work the same hours and close as many cases as she had before the adoption, her supervisor pointed out that none of her superiors were mothers, and he moved her from her high-profile cases, assigning her smaller, more routine cases normally handled by inexperienced detectives.



EEOC Examples

UNLAWFUL STEREOTYPING BASED ON PARTICIPATION IN FLEXIBLE WORK ARRANGEMENT

Emily, an assistant professor of math at the University for the past 7 years, applied for tenure after she returned from 6 months of leave to care for her father. The University's flexible work program allowed employees to take leave for a year without penalty. Before taking leave, Emily had always received excellent performance reviews and had published 3 highly regarded books in her field. After returning, however, Emily believed she was held to a higher standard of review than her colleagues who were not caregivers or had not taken advantage of the leave policies. Emily applied for tenure and was denied by the Dean, who had a history of criticizing female faculty members who had taken time off from their careers and was heard commenting, "She's just like the other women who think they can come and go as they please to take care of their families." The University claimed that while Emily was eligible for tenure, it was denied for a decline in her performance. Emily's post-leave work performance and reviews were comparable to prior to her leave. In addition, the University did not identify any specific deficiencies in her performance.



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EEOC Examples

EMPLOYMENT DECISION LAWFULLY BASED ON ACTUAL WORK PERFORMANCE

After Carla, an associate in a law firm, returned from maternity leave, she began missing work frequently because of her difficulty in obtaining childcare and was unable to meet several important deadlines. As a result, the firm lost a big client, and Carla was given a written warning about her performance. Carla's continued childcare difficulties resulted in her missing further deadlines for several important projects. Two months later, the firm transferred Carla to another department where she would be excluded from most high-profile cases but would perform work with fewer time constraints. Carla was treated comparably to other employees, both male and female, who had missed deadlines on high-profile projects or otherwise performed unsatisfactorily and had failed to improve within a reasonable period of time.



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EEOC Examples

STEREOTYPING UNLAWFUL EVEN IF FOR BENEVOLENT REASONS

Rhonda, a CPA at a mid-size accounting firm, mentioned to her boss that she had become the guardian of her niece and nephew and they were coming to live with her, so she would need a few days off to help them settle in. Rhonda's boss expressed concern that Rhonda would be unable to balance her new family responsibilities with her demanding career, and was worried that Rhonda would suffer from stress & exhaustion. Two weeks later, he moved her from her lead position on 3 of the firm's biggest accounts and assigned her to supporting roles handling several smaller accounts. He said she "would have more time to spend with her new family," despite the fact that Rhonda had not asked for any additional leave and had been completing her work in a timely & satisfactory manner. At the end of the year, Rhonda, for the 1st time in 7 years was denied a pay raise, even though many other workers did receive raises. When asked for an explanation, the firm said she needed to be available to work on bigger accounts if she wanted raises.



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EEOC Examples

**EMPLOYER UNLAWFULLY DENIED BENEFIT TO MALE WORKER
BECAUSE OF GENDER-BASED STEREOTYPE**

Eric, an elementary school teacher, requests unpaid leave for the upcoming school year for the purpose of caring for his newborn son. Although the school has a collective bargaining agreement that allows for up to 1 year of unpaid leave for various personal reasons, including to care for a newborn, the Personnel Director denies the request. When Eric points out that women have been granted childcare leave, the Director says, "That's different. We have to give childcare leave to women." He suggests that Eric instead request unpaid emergency leave, though that is limited to 90 days.



EEOC Examples

**EMPLOYER UNLAWFULLY DENIED PART-TIME
POSITION TO MALE WORKER BECAUSE OF SEX**

Tyler, a service technician for a communications company, requests reassignment to a part-time position so that he can help care for his 2-year old daughter when his wife returns to work. Tyler's supervisor, however, rejects the request, saying that the department has only one open slot for a part-time technician, and he has reserved it in case it is needed by a female technician. Tyler's supervisor says that Tyler can have a part-time position should another one open up.



EEOC Examples

**UNLAWFUL STEREOTYPING BASED ON ASSOCIATION WITH AN
INDIVIDUAL WITH A DISABILITY**

An employer is interviewing applicants for a computer programming position. The employer determines that one of the applicants, Arnold, is the best qualified, but is reluctant to hire him because he disclosed during the interview that he is a divorced father and has sole custody of his son, who has a disability. Because the employer concludes that Arnold's caregiving responsibilities for a person with a disability may have a negative effect on his attendance and work performance, it decides to offer the position to the 2nd best qualified candidate, Fred, and encourages Arnold to apply for any future openings if his caregiving responsibilities change.



EEOC Examples

HOSTILE WORK ENVIRONMENT BASED ON PREGNANCY

Ramona, an account rep, had been working at a computer software company for 5 years when she became pregnant. Until then, she had been considered a "top performer," and had received multiple promotions and favorable evaluations. During Ramona's pregnancy, her supervisor, Henry, frequently made pregnancy-related comments such as, "You look like a balloon; why don't you waddle on over here?" and, "Pregnant workers hurt the company's bottom line." She was also treated differently from other account reps, for example, asked to give advance notification of medical appointments, a request not made of others or her before her pregnancy. After her return from maternity leave, Henry continued to treat her differently, including being excluded from certain office functions. He also continued to make pregnancy-related comments on a regular basis, including "I suppose you'll be pregnant again soon," and "we'll be picking up the slack for you just like the last time."



Proactive Family-Friendly Workplace Options

▪ EEOC hopes Guidance will serve to inspire new policies

▪ Examples of policies:

- Time Stresses/Life Balance
 - On-site services – dry cleaning valet, errand runner or gym
 - Employee Assistance Program that will assist employees in emergencies during work hours: place phone calls to find replacement hot water heater prices, plumbers, emergency veterinary care, etc.
- Increased leave options
 - Paid time off instead of vacation and sick leave
 - Leave banks
 - Donation of leave by coworkers
- Increased flexibility regarding hours of work
 - Alternate Workweek: 4/10 hour days
 - Flextime
 - Job sharing



TITLE VII CASES

▪ *Lust v. Sealy, Inc.*, 383 F.3d 580 (7th Cir. 2004)

- Tracey Lust worked as a highly regarded sales representative for Sealy Mattress for eight years. She repeatedly expressed her interest in being promoted, knowing that she may have to relocate to do so. She even filled out a chart indicating where she would be willing to move. In response to her interest in a promotion, her male supervisor – who often made blonde jokes and sexist remarks to her – asked why her husband "wasn't going to take care of her." When a manager's position opened up, her supervisor recommended a man over her, explaining that he didn't consider her for the position "because she had children and he didn't think she'd want to relocate her family." Lust sued for gender discrimination and won: A jury awarded her \$1,100,000 in compensatory and punitive damages (reduced by the court to \$301,500 because of a statutory cap on damages), and Sealy promoted her to a manager's position.



TITLE VII CASES

Pregnancy Discrimination

- **Sheehan v. Donlen Corp., 173 F.3d 1039 (7th Cir. 1999)**
 - For three years, Regina Sheehan worked for a company that leased cars to corporate clients. During this time she had two children. When she informed her female supervisor that she was pregnant for a third time, the supervisor said "Oh, my God, she's pregnant again." A few months later the supervisor shook her head at Sheehan and said "you're not coming back after this baby." When Sheehan was five months pregnant with her third child, she was fired by a manager, who said "Hopefully this will give you some time to spend at home with your children." The next day, the manager told coworkers "we felt this would be a good time for [Sheehan] to spend some time with her family." Sheehan sued for gender discrimination and was awarded \$116,913.40 in total damages, which the Court upheld.

TITLE VII CASES

- **Orr v. City of Albuquerque, 531 F.3d 1210 (10th Cir. 2008).**
 - Female police officers sought time off under FMLA. The personnel director told the employees they would have to exhaust their accrued sick leave before tapping into vacation time, and they could not use accrued compensatory time. Under the department's policy, sick days could be saved and used for early retirement, and vacation time and compensatory time expired yearly. The officer's inability to use compensatory time also effectively prevented them from working overtime when they returned after giving birth.

TITLE VII CASES

- **(cont).**
 - Other employees who were covered under FMLA used vacation and compensatory time regularly for illnesses before using sick leave. The department claimed that it was merely applying a policy; however, evidence showed that the policy was still in draft form at the time the women took maternity leave. The department also claimed that the personnel director simply made a mistake. The Court found the evidence undermined the defendant's explanations such that a reasonable jury could find discrimination, reversed the grant of summary judgment, and remanded for trial.

EPA CASES

▪ **Lovell v. BBNT Solutions, LLC, 295 F.Supp. 2d 611 (E.D. Va. 2003)**

- Linda Lovell worked as the only female materials engineer for a technology research and development company. She chose to work a reduced schedule of 30 hours per week for which she received \$77,500 annually. In contrast, her male colleague who performed the same work but on a full-time schedule of 40 hours per week earned \$107,500 - \$4,200 more annually that the full-time equivalent of her salary or \$2 more per hour. Lovell sued for gender discrimination in pay and raises, and jury awarded her \$500,000 in damages. In another groundbreaking decision, the Court held that part- and full-time work can be compared in cases under the Equal Pay Act, ruling, "The key is...a difference in duties, not a difference in hours." The Court upheld her pay claims, but dismissed her raise claim and ordered a new trial on the amount of damages or a reduction to \$3,125

FMLA CASES

▪ **Knussman v. Maryland, 272 F.3d 625 (4th Cir. 2001)**

- "God made women to have babies and, unless [plaintiff] could have a baby, there is no way [plaintiff] could be a primary care [giver.]"

- Ultimately \$40k in damages; \$600k in attorneys fees

FMLA CASES

▪ **Fejes v. Gilpin Ventures, Inc., 960 F.Supp. 1487, 1495-95 (D. Colo. 1997)**

- Plaintiff worked in a casino and took FMLA leave. While she was on leave, her gaming license expired and her employer terminated her because she was unable to work. The court found that under the FMLA, an employer is required to allow an employee a reasonable opportunity upon return to work to renew licensure that lapsed as a of leave. The court denied defendant's summary judgment on the FMLA claim.

FMLA CASES

- **Schultz v. Advocate Health, No. 01 C 702 (N.D. Ill. 2002).**
 - Plaintiff was hospital employee who was well thought of, had received a merit award, and had his picture hanging in the hospital lobby. The employee applied for and received intermittent leave, in order to take care of his father who suffered from Alzheimer's disease and his mother whose health was also declining. After he began taking leave, his supervisors implemented a monthly performance policy that evaluated employees based on volume of work completed within a set period of time. The policy punished employees who had been granted legitimate time off, including those on sick or disability leave. The plaintiff joined his FMLA claim with other state law claims, including one for intentional infliction of emotional distress. After a seven day trial, the jury found for the plaintiff and awarded him \$11.65 million.

ADA CASES

- **Trujillo v. PacifiCorp, 524 F3d 1149 (10th Cir. 2008).**
 - Plaintiffs' son had a brain tumor that later metastasized to his spine, and his medical bills were quite large. Their employer was self insured and scrutinized high-users' claims. Plaintiffs' son had a relapse, and eleven days later, the company began investigating plaintiffs for time theft. They were fired for some 34 unaccounted for hours between them, despite the fact that other employees who were investigated for the same violations got off without warnings. The employees brought suit under FMLA and ERISA, and presented evidence that the company knew about the cost of the medical treatment, had monitored plaintiffs' health benefits, was concerned about healthcare costs and had taken steps to decrease the costs. The court reversed summary judgment, finding that a reasonable jury could infer that PacifiCorp terminated plaintiffs because they were expensive.

ADA CASES

- **Abdel-Khalek v. Ernst & Young, LLP, 1999 WL 190790 (S.D.N.Y. 1999).**
 - Plaintiff was an employee of a company acquired by Ernst & Young. At the time the company was acquired, she was on unpaid leave after giving birth to a child with severe health problems. The plaintiff offered evidence that she had been the only technical staff not hired when Ernst & Young acquired her former employer, and that both companies were aware that she had a disabled daughter. The court denied summary judgment and allowed the suit under the ADA, finding that a jury could reasonably find that she was not hired on the basis of her daughter's disability.

VOLUNTEERS

- **The Center for WorkLife Law – <http://www.worklifelaw.org>**
 - Website includes numerous publications on FRD, as well as information on existing and pending public policy to address FRD.
- **A Better Balance – <http://abetterbalance.org>**
 - Legal advocacy organization dedicated to empowering individuals to meet the conflicting demands of work and family. It has a project addressing family responsibilities discrimination against low-income workers in New York City.
- **The Sloan Work and Family Research Network - www.bc.edu/wfnetwork**
 - Website includes publications on FRD, as well as information on existing and pending public policy to address FRD.

