Examining Gender Stereotypes in New Work/Family Reconciliation Policies

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Examining Gender Stereotypes in New Work/Family Reconciliation Policies: The Creation of a New Paradigm for Egalitarian Legislation

Rangita de Silva de Alwis

Introduction:

A formal sex equality model assumes equality of opportunity in that it treats women and men as similarly situated. Despite its intentions, the formal equality model often does not produce equal results because of the history of discrimination against women. The effects of such a legacy of discrimination is manifest in the numerous gender stereotypes that subordinate women. It is therefore necessary that formal equality paradigms go further than gender neutrality concepts which tend to perpetuate gender segregation in the workplace and discriminate against women. A second model, the substantive equality model, takes a difference stance in attempting to remedy the effects of past discrimination by demanding that policies and laws take into account such gender differences in order to avoid gender-specific outcomes and results that are considered unfair. Examples of the substantive equality model include affirmative action or reversediscrimination policies which are often designed to boost women’s participation in historically male dominated fields. Maternity leave provisions, child care leave and assistance, and family leave are examples of measures within a substantive equality framework that are intended to guarantee women’s participation in the labor market and neutralize disadvantages. Unfortunately, here too we find that though intended to help women, these policies indirectly reinforce biological differences, reify social expectations and drive women to lower-paying work categories while encouraging their economic dependence on men. These policies indirectly help crystallize historically embedded gender norms including the notion that women are primary caregivers and thus best suited to play a leading role in the private sphere of the family rather than in the public, political and business worlds. Although gender specific legislation such as affirmative action policies have the capacity to alter the power differences and structures

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5 MacKinnon, Catharine A., Feminism Unmodified: Discourses on Life and Law. (1987). MacKinnon argues that a discourse on gender differences serves legitimate disparities of power, even as it seems to criticize them. This does not mean that MacKinnon does not agree that gender differences do not exist, but that it would be undermining women’s interests to use the lenses of domesticity to critique individualistic theory.
between men and women, the outcomes of such legislation may not always ensure just outcomes for women, men and children.

While acknowledging the need for a substantive equality approach that goes well beyond the rigid categories of formal equality, what is necessary here is a more radical substantive equality approach that looks beyond biological differences and socially constructed roles that reinforce women’s subordination in the public sphere and in the marketplace. Such a radical substantive equality approach must ensure that both men and women are similarly situated in protecting both their equal rights to work and family. Consistent with the paradigm’s objective, it is necessary that the substantive equality model guarantees equality of results or outcomes so that these work family policies do not result in unequal treatment of one gender over the other. Outcomes must be taken account, as neutral rules alone do not take into account the extent to which historical stereotypes and material realities impact women’s lives.⁶

The above models of equality reflect the need to combat stereotypes concerning women’s roles in the public and private sphere—stereotypes which share origins in the history of subordination. A history of negative cultural traditions such as practices of son preference, the devaluing of a female child, unequal inheritance rights and lack of freedom of choice in marriage and family life devalue and subordinate women in private life.⁷ In public life, women suffer a different but connected form of inequality including unequal access to employment, services, benefits and retirement policies. The wage gap between men and women, labor market segregation, and the glass ceiling are just a few factors that discriminate against women. The ILO reports that women earn 20-30 percent less than men worldwide, are clustered in the lower rungs of the employment ladder, and are treated differently in terms of remuneration.⁸ Sex segregation in employment leads to men and women being grouped in different occupations or in different sectors of the economy.⁹ Such discriminatory practices in both the public and private spheres can be linked to enduring stereotyped ideas about men and women’s roles, strengths and weaknesses. For example, as women are ghettoized in low paying childcare, education, health care, and personal and household services while men are concentrated in higher paying industries like construction, utilities, transport and communications, over time, these socially constructed roles become stereotypes that are difficult to erase. Stereotypes presume that all members of a certain group possess particular attributes or characteristics whether or not those characteristics match

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⁹ See series Sumitomo Cases, Sumitomo Electric Industries, Ltd. Case, Osaka District Court. CEDAW pre-session working group, Article II: http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/WWN_Japan_44.pdf

Since 1994 nineteen female employees have filed individual law suits against Sumitomo Electric and the government of Japan demanding payment of back wages due to them but denied because of sex-based wage discrimination. The basis of the claims is that the Equal Employment Opportunity Law (EEOL) of Japan violates the CEDAW Convention.
individual attributes or characteristics, thus over simplifying and diminishing what would otherwise be distinct personal attributes.\textsuperscript{10}

The stereotypical attribution of caregiving to women has confined women uniquely to this role, thus not only reducing their societal value in the public sphere, but also inhibiting their rights to full citizenship. The concept of full citizenship recognizes the importance of care to society.\textsuperscript{11} It is therefore imperative that an egalitarian paradigm of care giving be used in evaluating labor market outcomes. This paper will explore the implications of parental leave for both sexes

\textsuperscript{10} NLRB v. Sears, Roebuck & CO., 421 U.S. 132 (1975). The Equal Employment Opportunity Commission (EEOC) claimed that Sears a large department store engaged in a nationwide pattern or practice of sex discrimination by failing to hire female applicants for commission selling on the same basis as male applicants, and by failing to promote female non-commission salespersons into commission sales on the same basis as it promoted male non-commission salespersons into commission sales. Salespersons in retail divisions were paid either on a commission or non-commission basis. Merchandise sold on commission was usually more expensive and more complex than merchandise not sold on commission. Commission selling usually involved big ticket items, meaning high cost merchandise, such as major appliances, furnaces, air conditioners, roofing, tires, sewing machines, etc. Non-commission selling normally involved lower priced “small ticket” items such as apparel, linens, toys and cosmetics. The court held that female applicants most often were interested in selling soft lines of merchandise, such as clothing, jewelry, and cosmetics items generally not sold on commission at Sears. Male applicants were more likely to be interested in hard lines, such as hardware, automotive, supporting goods and the more technical goods, which are more likely to be sold on commission at Sears. Custom draperies were one division in which women were willing to sell on a commission basis, even though it could require some outside selling. The court held that “more women were willing to sell custom draperies on commission because they enjoyed the fashion and creative aspect of the job, most had past experience in the field, and it was a relatively low pressure commission division. Very few men were willing to sell draperies. The expert for Sears testified that women generally prefer to sell soft-line products such as apparel, house wares or accessories sold on a non-commission basis, and are less interested in selling products such as fencing, refrigeration equipment and tires. EEOC relied exclusively on statistics to prove its case and did not include testimony in its evidence. The only evidence introduced by EEOC regarding the interest of women in commission sales is the testimony of several witnesses regarding women’s interests and aspirations in the workforce in general. These witnesses described the general history of women in the workforce and contend essentially that there are no significant differences between the interests and career aspirations of men and women. The expert for EEOC asserted that women are influenced only by the opportunities presented to them and not by their preferences. The court preferred to accept the testimony of Sears’ expert who testified that although differences between men and women have diminished in the past two decades, these differences still exist and may account for different proportions of men and women in various jobs. In the dissenting judgment, Judge Cudahy noted that:

“[The district court’s] conclusions are in accord with the proposition that women by nature are happier, cooking doing the laundry and chauffeuring the children to softball games than arguing appeals or selling stocks. It is disturbing that this sort of thinking is accepted so uncritically by the district court and by the majority. Perhaps they have forgotten that women have been hugely successful in such fields as residential real estate, door-to-door sales and other direct outside merchandising. There are abundant indications that women lack neither the desire nor capacity to compete strenuously.”

Further, Judge Cudahy in his dissent addressed the fact EEOC’s case would have been much stronger if it had produced “even a handful of witnesses to testify that Sears had frustrated their childhood dreams of becoming commission sellers.” The majority too stated that EEOC had relied almost exclusively on statistics to prove its case. Not a single witness was called by EEOC to testify that she had been discriminated against by Sears or had witnessed discrimination at Sears.

within such a framework of citizenship, and offer suggestions of how to design leave so as not to highlight women’s distinct qualities and ensure that the outcomes are more egalitarian.

This paper explores both the adverse and successful outcomes resulting from the formal and substantive equality models of laws by examining family work reconciliation policies internationally. By examining family work reconciliation policies from countries that are rethinking their work family reconciliation laws, we can better assess how to move forward with a more radical substantive equality approach which seeks to protect the rights of both men and women. Such reconciliation policies and laws are keys to combating negative stereotypes that confine women to caregiving only and assume that men cannot provide caregiving. This paper contends that the competing needs of caregiving and gender equality need not be at opposition to each other if it is based on a more egalitarian dual earner/dual career model, developed through concrete lawmaking and effective legislation. While the gendered nature of family leave policies results in subordinating the woman both in the family and in the workplace, this paper will show how gender egalitarian parental leave policies can advance gender equality both in the public and private spheres. This argument helps to resolve the tension in the debate between difference and sameness feminists to posit the theory that both parents have equal rights and duties in care giving.\(^{12}\)

This paper examines numerous laws that have adopted the dual earner/dual career models, thereby transcending distinctions based on gender. This model celebrates and privileges caregiving by both men and women by placing it at the heart of work family reconciliation policies, thus beginning to dismantle many historically embedded gender stereotypes and allotting the special treatment that is traditionally offered to mothers to both men and women who choose to perform child caring duties. This paper advances the notion that new laws and policies must be recreated in the image of both men and women as child care givers. When we celebrate the value of care-giving, cooperation, and responsibility, we should celebrate the responsibility of both sexes to fill caretaking and nurturing roles.\(^{13}\) Part I of this paper will show how these policies can have the effect of advancing women’s employment opportunities and engaging both men and women in caregiving. Part II of this paper looks critically at some comparative norms concerning women and their confinement to the falsely perceived primary role of caregiving. It examines these attitudes in relation to their pervasiveness, emergence, and negative outcomes to both men and women in the public sphere. This is done in an effort to show how gendered roles resulting from pervasive stereotypes can be restructured by the law.

\(^{12}\) Gornick, Rebecca Ray; Janet Gornick; John Schmitt; Who Cares? Assessing generosity and gender equality in parental leave policy designs in 21 countries.  
\(^{13}\) De Alwis De Silva, Rangita, When Gender Differences Become a Trap: The Impact of China’s Labor Law on Women, 14 Yale Journal of Law and Feminism. 92, (2002).
Part I: Current Problems and the How the Law Can be used for Reconciliation

A. Emphasizing Difference Through Unjust Stereotypes:

One of the most prevalent stereotypes in the world is the belief that maternity is women’s natural role. Frances Raday has argued that of the most globally pervasive of the harmful cultural practices “…is the stereotyping of women exclusively as mothers and housewives in a way that limits their opportunities to participate in public life, whether political or economic.”\(^{14}\) As Raday rightly stated, the assumption that women are the primary or sole caregivers of children is often used to exclude women from the public sphere, political life, promotions and high profile employment opportunities.\(^{15}\) As much as gender is socially constructed and shaped by underlying structures of power that delineate the relationships between sexes\(^{16}\), these gendered roles can be restructured by the law.

Gender discrimination often appears in the workplace as a form of discrimination against mothers. Scholars in the U.S. have termed this discrimination as care giving discrimination or the "Motherhood Penalty."\(^{17}\) This is characterized by overt denials of promotion to women following childbirth or rejections for new jobs due to a perceived inverse relationship between work productivity and motherhood.\(^{18}\) Studies show that mothers suffer a substantial wage penalty whereas men are not always penalized for being parents, but are in fact, valued more for their parental role. The case of Barbano vs Madison County illustrates how the promotion of unfair stereotypes directly results in discrimination in the workplace.\(^{19}\) During a job interview, an employer asked a female applicant numerous intrusive questions including whether the position

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\(^{14}\) [Source](http://wunrn.com/news/2008/03_08/03_03_08/030308_culture_files/030308_culture.pdf)

\(^{15}\) In *Phillips v. Martin v. Marietta Corporation Supreme Court of the United States* 1971. 400 U.S. 542, 91 S.Ct. 496, 27 L. Ed. 2d 613. Martin Marietta Corp. informed Ms. Phillips that it was not accepting job applications from women with pre-school-age children. At the time of the motion for summary judgment, Martin employed men with pre-school age children. At the time Ms. Phillips applied 70-75% of those hired for the position, assembly trainee were women, hence no question of bias against women as such was presented. The Supreme Court held that there cannot be one hiring policy for men and one policy for women- each having pre-school age children. The Supreme Court further stated that the Company could not show a bona fide occupational qualification that could establish that women with pre-school age children have family responsibilities that interfere with job performance and that men do not usually have such responsibilities. The Supreme Court stated, “When performance characteristics of an individual are involved, even when parental roles are concerned, employment opportunity may be limited only by employment criteria that are neutral as to the sex of the applicant.”


\(^{17}\) [Source](http://www.businessweek.com/careers/workingparents/blog/archives/2009/06/the_motherhood.html)

\(^{18}\) In *Back v. Hastings on Hudson Union Free School District*, 365 F.3d 107 (2d Cir. 2004), a school psychologist who had received outstanding performance reviews until she became a mother and was denied tenure because of her family responsibilities. Comments made by supervisors include it was: “not possible for [her] to be a good mother and have this job,” and stated they “did not know how she could perform her job with little ones.” The Court held that use of stereotypical assumptions about a mother’s commitment to her job

\(^{19}\) In *Barbano V. Madison County*, 922 F.2d 139, 141 (2ndCir. 1990), applied for a position as the director of the county veteran's service. When Barbano was interviewed she was asked about her plans to have a family and whether her husband would object to her transporting male veterans. Although Barbano objected to these questions on the basis that they were discriminatory, the interviewer required her to answer the questions. He said questions were relevant because he didn't want to hire "some woman" who would quit. Though plaintiff was qualified, the county selected a male applicant. The Second Circuit affirmed the trial court's verdict in favor of the plaintiff.
would interfere with her child care arrangements, her childbearing plans, or her relationship with her spouse. These questions represent blatant sex stereotypes which, as evidenced by the case of *Barbano v. Madison County*, can play a powerful role in narrowing women’s career opportunities. As evidenced by this case, sex stereotyping negatively affects the review of a woman’s capabilities and performance.

While honoring the child caring duties and parental leave of women, reforms must be wary of reinforcing traditional gender stereotypes which make it difficult for men and women to develop their own individual identities and destinies based on their own capacities and interests. These stereotypes disadvantage both men and women and discount an individual’s autonomy to choose. Justice Mokgoro of the Constitutional Court of South Africa has observed that through the reliance of stereotypes regarding childcare responsibilities, society has denied fathers the opportunity to participate in child rearing, a practice which is detrimental both to fathers and their children. Thus, these stereotypes disadvantage not just women, but also men who want the equal opportunity to give care. Rebecca Cook agrees with Justice Mokgoro in asserting that: …for example, men, painted with the broad brush of stereotypes are often preconceived to be ill suited to, or unwilling or unable to fulfill care giving roles, notwithstanding that men can fulfill such roles. Yet, owing to the embeddedness of these impersonal generalizations in popular culture, men face considerable obstacles in carving out identities as primary caregivers. Instead they frequently find themselves forced into breadwinning roles with limited opportunities for active care giving.

Just as substantive equality modeled laws are intended to help women but result in disparities for both genders, so too do female targeted stereotypes result in the degradation of a male’s caregiving capacity and role in the private sphere.

Rather than rigid and immutable identities scripted to them by society, in reality both men and women adopt many identities. Identities are dynamic and are constantly evolving grounded on multiple connections including gender, race, religion, ability, and interests. Preconceived notions and stereotypes, on the other hand, reduce men and women to caricatures and limit their ability to perform to their optimal potential. Rebecca Cook argues that:

Yet some of the most… sexist behavior is expressed through paternalism…. The head of a … department who believes women are not physically, physiologically, or mentally able to accept responsibility may hold that belief convinced of his very real concerns for the well being of women…. He may believe women should not be appointed to positions of responsibility because a senior post means late nights back at work, corporate meetings at odd hours or weekend work. …He may think women employees will have to give up activities they prefer, such as

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20 In *Bass v. Chemical Banking Corp.*, 1996 WL 374151 (S.D.N.Y. 1996), the plaintiff claimed that her employer denied her a promotion on the basis that she could not handle the demands of a high responsibility job and being a mother to young children.
21 Justice Yvonne Mokgoro is currently a judge in the Constitutional Court of South Africa, appointed to his position by Nelson Mandela.
meeting the children after school, cooking the evening meal or attending school meetings...[he] may accept a general notion of women appropriately filling the role of nurse rather than doctor, because women prefer the service role.”

Rebecca Cook argues cogently that gendered identities often affect work preferences and that as more women become physicians and more men become nurses, the masculine and feminine connotations of the term physician and nurse respectively will change over time, thus illustrating the fact that identities are indeed constantly evolving.

Consistent with the above line of thinking, unless workplace regulations help re-envision and reconstruct an egalitarian sharing of care giving responsibilities, women will suffer gender bias at recruitment, have unequal access to employment opportunities, and at times be forced to opt out of employment as a result of the gender stereotypes which have shaped our understanding of the public sphere. Traditionally, the private sphere was considered outside the ambit of law. Increasingly, however, new reformist projects are recognizing this concern as pivotal to equality in both the workplace and the home. As a result, such concerns are now being placed at the heart of law reform and revisions in the law are capturing the changing reality of both men and women’s lives and the growing need of children for a greater role of both parents in their lives. In this paper, new developments in the laws that are adopting a more egalitarian approach to work family reconciliation policies are traced. More must be done translate these de jure compliance with equal protection into practice. The laws and policies analyzed throughout this paper reflect a breadth of approaches to reconciling work-family obligations whether by addressing: the root cause of gender inequality, the resulting symptoms of unfair work policies, or both the cause and its symptoms.

Just as in other areas of the law, naming the legal norm of parental care will help both men and women develop a new legal lexicon to vindicate their rights to parental care. The law must serve the purpose of addressing and correcting gender disparities, as unequal care giving policies are incompatible with equal protection of the law. Direct discrimination as well as a complex pattern of hidden barriers and disguises prevent women from getting their share of political influence. 26 For instance, policies that masquerade under the banner of women’s protection, otherwise known as gender specific protectionist laws, disservce women and should be reconceptualized. 27 Only when gender neutral work/family reconciliation policies mandate men

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26 Case of General Electric Co. V. Gilbert, 429 U.S. 125 (1976): Supreme Court rules that discrimination on the basis of pregnancy was not sex discrimination. This was later reversed by the Pregnancy Discrimination Act of 1978 (PDA), which mandates that pregnant employees “shall be treated the same for all employment-related purposes,” (42 U.S.C 2000w (k) (2002).

Case of California Federal Saving and Loan Ass’n v. Guerra, 479 U.S 272 (1987), The Supreme Court upheld the state’s ruling that the law does not reflect stereotypical notions about pregnancy and abilities of workers. In the debate about this case, equal treatment advocates were concerned about allotting special treatment for pregnant women. Wendy Williams wrote that “[t]he reality [is] that conceptualizing pregnancy as a special case permits unfavorable as well as favorable treatment of pregnancy.” The Equality Crisis: Some Reflections on Culture, Courts and Feminism, Women’s RTS. L. Rep 175, 196 (1982).

27 Other international “protectionist” laws which allot special treatment to women include China’s fetal protection policies which prohibit women from participating in environments considered hazardous to the health.
to share care giving duties will the playing field be equalized and a more egalitarian model be achieved. A reconceptualization of equality norms that transform the relationship of market and family work so that both genders, men and women, can fulfill family and work ideals help facilitate the goals of full citizenship. The following section will review and assess several types of work family reconciliation laws including: family responsibilities laws and employment discrimination, laws that specifically attempt to address stereotypes, and law reconciling work family obligations.

B. Family Responsibilities Discrimination:

Family Responsibilities Discrimination (FRD) is discrimination against employees who are caregivers for members of their families including children, elderly parents and ill or disabled spouses or partners. FRD has become the newest category of employment discrimination in the United States. The employer’s action is based on stereotypes and assumptions on how the employee with caregiving responsibilities might act rather than on the employee’s actions and work performance. Not surprisingly, the group most discriminated against are females:

In UAW v. Johnson Control Inc., 499 U.S 187 (1991), the Supreme Court examined a company fetal protection similar to the protection policies in Chinese law. Employee at Johnson Control challenged their employer’s policy of excluding women from jobs. The Supreme Court ruled that the employer’s role was not to control women employees’ individual decisions about family and work.


See Grew v. Kmart, 2006 U.S. Dist. LEXIS 6994 (N.D. Ill. 2006). In this case an employer was found to have terminated a pregnant employee to prevent her from using maternity benefits.

See Smith v. Alexander & Alexander, Inc., 25 F. Supp. 2d 404 (S.D.N.Y. 1998). In this case, a female employee adopted a child were cerebral palsy. Upon returning to work after 6 weeks of FMLA leave, her work responsibilities were reduced significantly. During her absence, employees observed the employer making numerous discriminatory remarks including “It is bad enough when something like this happens to somebody, but to choose this, it is not going to be done on my watch.” The employer later terminated the plaintiff, claiming that she was not doing enough to keep her on staff.

See McGrenaghan v. St. Denis School, et al., 1979 F. Supp. 323 (E.D. Pa. 1997). In this case the employee is the caretaker of a disabled child. Prior to her employment she worked as a full-time school teacher. Soon after the birth of her child, the employee was transferred. Although the employee’s salary and benefits remained the same, the transfer resulted in a half day teaching schedule and a half day resource aide position. In addition the transfer involved diminished job responsibilities despite the fact that the teacher had twelve years of teaching experience. She not permitted to develop lesson plans, hold parent-teacher conferences, or participate in the development of the school’s curriculum. The employee claimed that the transfer was a significant demotion, resulting from reduced expectations as a result of giving birth to a disabled child.

Zimmerman v. Direct Federal Credit Union, 262 F.3d 70 (1st Cir. 2001). Plaintiff, prior to pregnancy, received frequent promotions and bonuses on the basis of excellent work performance. When the plaintiff learned that she was pregnant and was prescribed bed rest, despite initial accommodation at her job, her supervisor then undercut the
pregnant women, mothers, mothers of disabled children, and women who are viewed by their employers as likely to become mothers. Other groups include employees who work part-time or alternative schedules and employees caring for elderly, disabled or ill family members.

In the U.S., scholars argue that family responsibility discrimination is the new incarnation of gender discrimination—family responsibility discrimination now constitutes over 60 percent of

agreement by assigning her tasks to be performed during the allotted rest periods. The plaintiff gave birth to her son in July of 1996. The baby was born prematurely and the plaintiff took maternity leave. When she returned to work in December, she discovered that her job had changed dramatically: she had been stripped of her management role and coworkers had assumed most of her responsibilities. She was given duties of modest importance, and excluded from high-level discussions (including board meetings).

In Bergstrom-Ek v. Best Oil Co., 153 F.3d 851 (8th Cir. 1998), upon learning that one of her assistant managers was pregnant, the store manager repeatedly urged the plaintiff to have an abortion, offered to pay for the abortion, and made many derogatory statements about having and raising a child. The working relationship deteriorated, and the store manager increased the lifting requirements beyond those specified by her position. When she complained about the lifting, her supervisor merely brushed it off and sent her back to lift more heavy items. As a result, she saw no option but to resign.

In Deneen v. Northwest Airlines, Inc., 132 F.3d 431 (8th Cir. 1998), plaintiff suffered discrimination on the ground of pregnancy. Her husband worked at the same company and suffered no such discrimination.

In Dimino v. NY City Transit, 64 F.Supp.2d 136 (E.D.N.Y. 1999), was unlawfully removed from her job as a police officer to forced medical leave because of her pregnancy.

In EEOC v. Warshawsky and Co., 768 F.Supp. 647 (N.D. Ill. 1991) the court ruled against an employer on the ground that its policy of discharging all first-year employees who requested long-term sick leave had a disproportionately negative effect on women (because of their ability to become pregnant) and was not justified. In Gallina v. Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, 2005 US App. LEXIS 1710 (4th Cir. 2005), it was found that the defendant treated female workers more harshly and gave unfounded critical performance evaluations after they had announced pregnancies or given birth. In Fleming v. Ayers & Associates, 948 F.2d 993 (6th Cir. 1991) ERISA was violated where applicant was not hired because employer expected high medical costs for applicant’s sick child

30 37th Annual Institute on Employment Law Joan C. Williams Consuela A. Pinto; Center for Work Life Law; University of California; Hastings College of Law.

Gonzalez v. New York State Office of Mental Health 2010 NY Slip Op 50282 - NY: Supreme Court 2010. In this case, the female plaintiff Dr. Gonzalez alleged that her supervisor became hostile towards her she told him about her pregnancy. Discrimination include an onslaught of verbal assaults, assignment of unrealistic deadlines, and locking the plaintiff in her office against her will. When she returned from maternity leave, she faced discriminatory questions from her supervisor including questions concerning whether her husband wanted the baby and whether she would prescribe to a weight loss plan.


31 Van Diest v. Deloitte & Touche, 2005 U.S. Dist. LEXIS 22106 (N.D. Ohio 2005) (employee laid off following leave to care for sick mother), despite the fact the plaintiff alleges that work performance remained on par.
the cases on gender discrimination. The U.S. Equal Employment Opportunity Commission (EEOC) guidance on caregiver discrimination issued in 2007 advises that discrimination can severely discredit women in the workforce. For instance, mothers with young children might be placed at a disadvantage if fathers but not mothers were selected for a training program on the basis of the stereotypical attitude that a woman’s responsibility would be primarily to her young children. The EEOC also advises that discrimination can take the form of stereotyping, such as giving less desirable assignments to mothers on the assumption that they are not as committed to their jobs.

FRD is just one instance in a plethora of cases in the United States which demonstrate a pattern whereby motherhood has become a key trigger for gender stereotyping and for presumptions of incompetence among women with young children and family needs. The Family and Medical Leave Act (FMLA) is yet another instance in which women suffer disadvantages in comparison

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33 http://www.eeoc.gov/policy/docs/caregiving.html
Abdel-Khalek v. Ernst & Young, 1999 WL 190790 (SDNY1999) recognized that discrimination based on an individual’s association with a disabled person is prohibited, after a female of a disabled daughter was fired due to her association with the severely disabled child.
Assumption she would no longer be able to perform her job if she had to raise a disabled child.
Senuta v. City of Groton, 2002 U.S. Dist LEXIS 10792 (D. Conn. 2002). In this case, the plaintiff was asked a number of discriminatory questions in her interview based on the false assumption that she would not be as committed to her job since she was a mother. Questions include how her fire fighter job would impact her life, the nature of her child care arrangement, and what would happen to her children if she was ever held up at work.
35 Further see: Lettieri v. Equant, 478 F.3d 640 (4th Cir. 2007): Plaintiff was informed that her application for a promotion was unsuccessful because of her family responsibilities. Sivieri v. Commonwealth of Massachusetts, Department of Transitional Assistance, 21 Mass. L. Rep. 97; 2006 Mass. Super LEXIS 297 (Mass. Sup Ct., June 22, 2006): Sivieri alleged that she was passed over for a promotion while pregnant and that a less qualified female with no children was selected. Further, once she returned from maternity leave, Sivieri saw a negative attitude against women with small children. The manager stated that he was “surprised she was upset at not getting promoted considering her family obligations at home.” He also explained that the more junior employees without small children were promoted because they could put in extra hours. Sivieri alleged that she was “discriminate[ed] against based on gender stereotypes; namely, the belief that a woman cannot be both a good mother and a committed worker.” The court held that “stereotypical remarks about the incompatibility of motherhood and employment can be evidence of gender discrimination” and that “basing employment decisions on such sex-based overgeneralizations constitutes gender discrimination...”.

In Santiago-Ramos v. Centennial P.R. Wireless Corp., 217 F.3d 46, 57-58 (1st Cir. 2000) a senior executive was told by the vice-president that they have “nothing against you,” but that he preferred unmarried, childless women because they would give 150 percent to the job. Other comments made by company executives included comments such as: “hires females in the child-bearing years.”

In Bailey v. Scott-Gallaher, Inc., 480 S.E. 2d 502 (Va. 1997), a mother of a newborn was told she was not dependable despite fulfilling all job-related duties, Cerrato v. Durham, 941 F. Supp. 388 (S.D.N.Y. 1996) a mother was terminated because her employer viewed her pregnancy related symptoms (nausea, cramping, dizziness) as a disability.
with their male coworkers. Due to historically embedded stereotypes mentioned above, there is also an assumption that parenting, especially motherhood, is incompatible with being an effective employer. The negative assumptions work both ways: a working mother is not only considered a bad employee, but a neglectful mother. There is also a perception that working mothers are generally not competitive and would prefer non-travel and less-stressful assignments. Finally, employers assume that if a husband makes sufficient money working women are not in need of promotions, bonuses, or even work. Assumptions that fathers are

37 In *Batka v. Prime Charter, LTD.*, 301 F. Supp.2d 308 (S.D.N.Y. 2004): The plaintiff sued her former employer primarily on the grounds that she was terminated in retaliation for taking FMLA leave. The plaintiff claimed that her supervisor became hostile toward her and critical of her work after she told him that she was pregnant and intended to return to work at the end of her maternity leave. While the plaintiff was on maternity leave, her employer sent her a severance package. Her employer claimed that it was terminating Batka based on both an economic downturn and Batka’s poor performance. The plaintiff provided evidence that she was terminated two weeks before she was scheduled to return from FMLA leave. The court found the timing of the employer’s decision telling and denied the defendant’s motion for summary judgment on plaintiff’s FMLA retaliation claim.

38 In *Chadwick v. Wellpoint, Inc.*, 2009 U.S. App. LEXIS 6426 (1st Cir. 2009), the plaintiff was denied promotion despite the fact that she had been receiving excellent evaluations on her job. When Chadwick subsequently asked why she had not received the promotion, Miller stated that, “It wasn’t anything you did or didn’t do. It was just that you’re going to school, you have the kids and you just have a lot on your plate right now.” In that same discussion, Miller stated to Chadwick that, “if [the interviewers] were in your position, they would feel overwhelmed.” This was despite the fact that her husband was full-time father.

In *Back v. Hastings on Hudson Union Free School District*, 365 F.3d 107 (2d Cir. 2004), Elana Back was a school psychologist who had received outstanding performance reviews until she became a mother. She was denied tenure by supervisors who allegedly made comments to her such as it was “not possible for [her] to be a good mother and have this job,” and they “did not know how she could perform her job with little ones.” The court ruled that “stereotypical remarks about the incompatibility of motherhood and employment ‘can certainly be evidence that gender played a part’ in an employment decision....As a result, stereotyping of women as caregivers can by itself and without more be evidence of an impermissible, sex-based motive.”

39 In *Plaetzer v. Borton Automotive, Inc.*, No. 02-3089, 2004 U.S. Dist. LEXIS 19095 (D. Minn. Aug. 13, 2004) the plaintiff, a car salesperson, was married with four children. Her supervisor stated she should “do the right thing” and stay home with her children and that as a woman with a family she would always be at a disadvantage at Borton. The court found that plaintiff was making a “sex-plus parenthood” claim and in so doing stated that “discrimination law has long been directed at eliminating precisely this type of sex stereotyping from employment decisions.”

40 In *Sura v. Stearns Bank, N.A.*, 2002 U.S. Dist. LEXIS 25376 (D. Minn. 2002), the plaintiff alleged that tension beginning during her pregnancy about the terms of her maternity leave culminated in a discriminatory restructuring of her job upon her return to work. The court placed a temporal limit on the protection of the PDA, holding that because the plaintiff had returned from maternity leave about six weeks before the adverse employment action occurred, she no longer was a member of the protected class. (17)

41 In *Trezza v. Hartford, Inc.*, No. 98 Civ. 2205, 1998 WL 912101 (S.D.N.Y. Dec. 30, 1998) an attorney and mother of two young children claimed that her employer failed to consider her for promotions because she was a mother. Despite her consistently excellent job evaluations, the higher position was offered to less qualified men with children and to a woman without children. The plaintiff was told that she was not considered for the promotion because the new management position required extensive traveling, in which she presumably would not be interested because of her family. In addition, the senior vice-president of her company complained to her about the “incompetence and laziness of women who are also working mothers.” He also noted that women are not good planners, especially women with kids. The general counsel of the legal department in which she worked stated that
secondary caregivers hurt both men and women as it stereotypes women while shutting men out of the care giving benefits afforded to women workers.\textsuperscript{42} Retaliation based on care giving is yet another form of discrimination that arises from unequal care giving policies.\textsuperscript{43}

working mothers cannot be both good mothers and good workers, saying, “I don't see how you can do either job well.” Finally, the senior vice-president also commented to her that if her husband, who also was an attorney, won another big verdict, then she’d be sitting at home eating bon bons. The court also considered that only seven of the forty-six managing attorneys were females and that none of them were mothers with school age children, whereas many of the male managing attorneys were fathers. The employer's motion to dismiss was denied.

\textsuperscript{42} Knussman v. Maryland, 65 F. Supp. 2d 353 (D. Md. 1999), in this case a father took leave to take care of his baby and his wife who had fallen ill post partum. Pursuant to the new Maryland statute, Knussman requested an extension of his leave on the basis that he was the primary caregiver for his child. His request was denied. In so doing, the Human Resources department explained that the State Police Department interpreted that definition of a “primary caregiver” to include women only. Knussman's wife was bedridden as a result of complications related to childbirth. Accordingly, Knussman, who had ample sick leave, requested four to eight weeks of paid leave to care for his wife and newborn daughter. His request was denied in-part. He was given two weeks of leave. While on leave, Knussman was performing the duties in caring for his newborn daughter. During the leave period, Maryland enacted a statute the allowed the use of paid sick leave by state employees to care for their newborns. The statute permitted “primary care givers” to “use, without certification of illness or disability, up to 30 days of accrued sick leave to care for a child...immediately following ... the birth of the employee’s child.” The statute defined “primary care giver” as “an employee who is primarily responsible for the care and nurturing of a child.” By contrast, “a secondary caregiver was an employee who is secondarily at his wife needed to be “in a coma or dead” for him to qualify for extended leave. Knussman claimed that his leave request was denied as a result of gender discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. The court stated that “a gender classification is subject to heightened scrutiny and will fail unless it serves an important government. objective and [is] substantially related to achievement of those objectives.” The Court held that the Department's interpretation of “primary caregiver” was an invidious gender classification based on stereotypes.

\textsuperscript{43} Sheehan v. Donlen Corp., 173 F.3d 1039 (7th Cir. 1999). In this case, an employee was terminated after she announced that she was pregnant with her third child. The court found that remarks made by her manager at the time of firing both the plaintiff and her co-workers that she would be happier at home with her children were direct evidence of discrimination. In addition, the court found that comments made by the plaintiff's direct supervisor over the years, such as “If you have another baby, I'll invite you to stay home”; “Oh, my God, she's pregnant again”; and “you're not coming back after this baby” also provided circumstantial evidence of discriminatory bias.

\textit{Lewis v. School District #70}, No. 06-4435, 2008 U.S. App. LEXIS 8248 (7th Cir. April 17, 2008). In this case, a federal court of appeals found that a school district wrongfully retaliated against an employee for taking intermittent FMLA leave. During a school year, Lewis was absent nearly one-third of the time because she was sole caretaker of her terminally ill mother. Despite this fact, the school district did not allow her to take FMLA—she was allotted a flexible schedule instead. When she required absences again the following academic year, the school district permitted her to take FMLA leave. That same year, the school district asked that the employee leave. The court found that a reasonable jury would conclude that Lewis's intermittent leave was a substantial and motivating factor for her replacement.

\textit{Walsh v. National Computer Systems}, 332 F.3d 1150 (8th Cir. 2003): The plaintiff alleged that she was a victim of a hostile work environment in violation of the law because she had been pregnant and had taken maternity leave. Her supervisor told her “you better not get pregnant again,” threw a telephone book at her with instructions to find a pediatrician that was open after hours and refused to allow her to leave to pick up her sick child and posted notes on her cubicle when she was absent stating “child was sick.” Further, the supervisor denied Walsh's request for flexible scheduling so that she could leave the office at 4:30 pm to pick up her child before the childcare center closed at 5:00 pm. The court supported a jury verdict for the plaintiff based on a violation of the PDA where she showed that
All over the world, women are concentrated in the lower strata of employment or in the informal sector. Many post socialist countries such as China, Belarus, Uzbekistan, Turkey, Moldova and Tajikistan restrict women from travel related jobs, night time and over time work. The result of this is that often women are relegated to traditionally female jobs and shut out from non-traditional opportunities.

C. Addressing Gender Stereotypes and Direct/Indirect Discrimination Through International Jurisprudence:

Law is an important and necessary means of dismantling harmful stereotypes of women and curbing the reinforcement and perpetuation of these stereotypes. The lack of shared care giving policies, for instance, constitutes both direct and indirect discrimination against women who traditionally bare the brunt of care giving responsibilities. It is imperative that laws transform the social value attached to child care to include the role of both parents in caregiving equally. There are times when certain gender specific policies can serve a legitimate purpose. However, this must be determined on a case by case basis and must withstand scrutiny under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Gender stereotypes can be maintained only if they are legitimate, serve a compelling reason and are proportionate to the object sought. Until these criteria are met, the law must be utilized to serve justice to women who endure the brunt of unfair policies.

The CEDAW Committee has identified several categories of stereotypes and has addressed the correlation between stereotypes and gender discrimination both in the public and private spheres, and the way they legitimize and normalize unequal gender roles. In General Recommendation 23, for example, the Committee stated that sex role stereotyping has helped confine women into the role of caregivers and homemakers. This has constrained women’s active participation in public life. General Recommendation 25 of the CEDAW affirms that combating wrongful gender stereotypes is pivotal to States Parties’ efforts to eliminate all forms of discrimination against women.

her supervisor discriminated against her because she had been pregnant, had taken maternity leave, and might become pregnant again.

44 The Convention on the Elimination of All Forms of Discrimination Against Women is an international convention adopted by the United National General Assembly, having come into force on 3 September 1987. The CEDAW is widely acknowledged as the international Bill of Rights for women, and is the only international institution of its kind. Link to the CEDAW: [http://www.un.org/womenwatch/daw/cedaw/](http://www.un.org/womenwatch/daw/cedaw/).


The quintessential power of CEDAW lies in Articles 2 (f) and 5, as they call for fundamental changes in the traditional roles of men and women in bringing about gender equality. Article 2 (f) of the Convention states that the counsel should: Take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. Further, Article 5 (a) of CEDAW calls for state parties to take appropriate measures “to modify the social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudice and all other practices based on the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.” This provision is similarly significant in that it is one of first to challenge cultural patterns of conduct and prejudice against women.

In 2007, in its Concluding Observations for the Democratic People’s Republic of Korea, the CEDAW Committee observed that:

The persistence of traditional and stereotyped assumptions and attitudes in respect of the roles and responsibilities of women and men, which are discriminatory against women and have a pronounced impact, particularly in the areas of education and employment on the basis of spheres suitable to their characteristics. The Committee is concerned that such expectations of women have serious consequences preventing them from accessing rights and entitlements on an equal basis with men and creating a dependency on men, husbands and family for housing, food entitlements and other services.

In this recommendation, CEDAW acknowledged that stereotyped laws that view women only or primarily in their caregiving functions negatively affect women’s advancement in the public and private spheres. One such stereotyped law includes one adopted by several countries granting a mother with young children special benefits. Although this is welcome, it is necessary that these be extended to the father as well. In the absence of such provisions applying to the father, such substantive modeled laws reinforce stereotypes of women as sole caregivers of children. Equal opportunities must be provided for both men and women to fulfill their caregiving roles and men in order that men not suffer disadvantages.


http://www.eeoc.gov/policy/docs/caregiving.html

53 Shafer v. Board of Public Education of the School District of Pittsburgh, 903 F.2d 243 (3d Cir. 1990). In this case, the plaintiff claimed that he was denied a one year childrearing leave which was available to female employees. Further, the plaintiff alleged that as a result of the denial of leave, he was forced to resign from his position as a teacher. This case is illustrative of the fact that stereotyping women as primary care-giving not only inhibits women but men as well.
Equal opportunities called for in the CEDAW are often inhibited by protectionist policies. Around the world, special protection for women have sometimes been used to justify the exclusion of women from holding certain jobs based on paternalistic and sexist views of employers. In some countries these perceptions have prevented women from employment in jobs that require business travel related or night work on the basis that women are the primary care givers. Other forms of protectionist policies include preventing women from working in certain environments. Although it is important to regulate hazardous employment environments, if these protections are not extended to both men and women, women will be perceived as fragile and more deserving of work at home rather than advancing toward managerial positions. Protective measures are sometimes perpetuated to bar women from employment and the reasons can be over inclusive. Gender neutral protective legislation, on the other hand, will create more opportunities not just for women, but also for men to assume more equal family responsibilities.

It is evident that there is a tension between protecting the special needs of women and achieving equality of employment between men and women. The key to effectively using law to defeat stereotypes and attaining more egalitarian outcomes involves a more dynamic conceptualization of women’s roles. Gender equality must be shaped by laws that envision both women and men’s roles in gender neutral terms.

Among the countries which harbor protectionist policies, in China, women are prohibited from underground over ground and under water work. Women’s employment opportunities are limited by laws that shut them out from performing jobs considered physically arduous such as hazardous to health.

See also, Law Safeguarding Women’s Rights of Interests of People’s Republic of China, ch. IV, art 25 (1992). In Lus v. Sealy, 383 F.3d 580 (7th Cir. 2004), female Plaintiff’s supervisor admitted that though these plaintiff qualified, he did not consider her for the promotion because she had children and he assumed she did not want to relocate her family and/or would be unable to travel distances for work. Plaintiff reported that when she asked why she was not promoted, the supervisor allegedly stated, "because you have kids."

Supra, see case of UAW v. Johnson.

Tanja Kreil v. Federal Republic of Germany Case C-285/98. This case ruled based on European Community Law to require the Federal Republic of Germany to allow a woman to be allowed to work in positions involving armaments especially on weapons electronics. The European Court of Justice ruled that the European Community’s Equal Treatment Directive could not allow women to be excluded from certain types of employment. The court decided that women should not be given greater protection than men against risks. This decision exploded the stereotype that women are more vulnerable to risk and harm than men and therefore require laws to protect them against physical dangers.

Butner v. Commonwealth, # 98-1778E (Mass. Super. 2002). Four female troopers became pregnant while employed. In accordance with the police department’s policies, the plaintiffs were sent to physicians to determine whether they were still fit for duty. The doctors determined that the plaintiffs were not fit to perform the tasks on the police department’s list. Plaintiffs argued that the task list was never adopted by the union, and that the list was in fact very discriminatory. In addition, tasks included on the list include those that state troopers rarely if ever performed. The Court ruled in favor of the plaintiff for pregnancy discrimination resulting in emotional stress.

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scaffolding, logging timber and high altitude work carrying weight over 25 kilos. Paternalistic laws restrict work according to female biological functions including lactating or menstruating women. Women’s groups are attempting to address such overprotective, inhibiting legislation. In a famous case in Argentina, a traditional chain of ice cream stores employed only men on the ground that repairing ice cream machinery would be challenging physical labor for women. Although it is important to regulate hazardous employment environments, these regulations must extend to both men and women. Laws must reflect this necessity as jobs include not just manual work, but scientific and technological work opportunities.

In contrast to the family needs blind policies of certain laws, Tajikistan’s Article 7 of the Gender Equality Law indicates that the rights and guarantees belonging to a “person of either sex with family obligations” should be taken into consideration when hiring, promoting, training, and establishing labor regimes, or during retirement of such persons. Though Article 7 is consistent with CEDAW’s Article 11 in its equal application to both men and women who can take time off to care for a sick child or family, the stereotypical image of a woman might nonetheless render the term “family obligation” to be used against her in considering job promotion etc. Similarly, other provisions in the Tajik laws calling for “breaks in labor for birth,” raising children, etc., might have a negative impact on women. Laws and policies that call for family responsibility to be taken into consideration (if these laws are directed only towards female employees), will result in gender discrimination.

Women’s disproportionate share of family and caretaking responsibilities relates directly to the discrimination they face in the labor market and subsequent inequalities in their social and economic progress. Sex selective hiring even when female applicants outperform men is rampant across the world. The presumption of family responsibility and the female caregiver stereotypes act as barriers to hiring and promotion of women with family responsibility. Recognizing the negative implications that stem from stereotype inflicted laws, more and more countries are outlawing discrimination on the ground of family responsibilities.

61 Supra, Article…
62 Supra, Article 25.
63 Case of Muheres en Igualad (MEI) v. FREDDO. When a report found that the ice cream shop employed 1007 men and only 26 women, it was ordered to pay fines. The case was filed by a woman’s organization, Muheres en Iguald (MEI), and litigated by a clinic at the Law School of Palermo.

See also: Yilmaz- Dogan v. The Netherlands (Communication No. 1/1984). This case provided an example of a multiple stereotype: The case came before the Committee on the Elimination of Racial Discrimination. This case suggested that Yilmaz was terminated because of her employers stereotypical belief that there was a greater absenteeism among foreign female workers with dependent children. The employer believed that foreign women have neighbors and family members take care of their children and at the slightest set back disappear under the terms of the Sickness Act.

64 Taj. [Constitution] article 7, On State Guarantees’ of Equal Rights for Men and Women and Equal Opportunities for their Implementation.
65 Draft Law of the Republic of Tajikistan, On State Guarantees of Equal Rights for Men and Women and Equal Opportunities for their Implementation, Article 11.
66 Among numerous cases throughout his article which illustrate this principle, see Parker v. Delaware Dept. of Public Safety, 11 F. Supp. 2d 467 (D. Del. 1998). The court held that refusing to give a woman a fixed, rather than rotating, work schedule for childcare reasons when men were given fixed work schedules for other reasons was disparate treatment.
According to the European Union Policy, the revised Equal Opportunity Directive, both direct and indirect discrimination are not only prohibited, but also strictly defined. Article 2 of the law defines direct discrimination as: “Where one person is treated less favorably on grounds of sex than another is, has been or would be in comparable circumstances.” The law also defines indirect discrimination as: “where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless the provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.” In a similar vein, the Republic of Lithuania’s Equal Opportunities’ Article 2 provides that both direct and indirect discrimination on the grounds of sex will constitute a violation of equal rights for women and men under the law.

Employing a variation on the European Union’s definition of direct and indirect discrimination, article 2 of this act provides that: “direct discrimination on grounds of sex means passive or active conduct expressing humiliation and contempt, also restriction on rights or granting of privilege by reason of the person’s sex (Article 2, 3). The Article further provides that “indirect discrimination on the grounds of sex means action or inaction, legal norm or evaluation criterion which being formally equal to both men and women, when implemented or applied have different factual impact on one of sexes in terms of restriction of rights or granting of privileges, preference or advantage.” This means that if a law that is facially neutral or meant to benefit women results in a disproportionate impact or an unintended consequence on women, this constitutes discrimination.

Article 5 (1) of the Romanian Law on Equal Opportunities between Women and Men also prohibits both direct and indirect gender discrimination. Under Article 4 (a) of the law, direct gender discrimination is defined as any disadvantageous treatment inflicted by reason of one’s gender, pregnancy, maternity, birth or when a paternity leave is granted. Indirect discrimination occurs where apparently neutral criteria or practices affect people belonging to one gender. An exception to this prohibition of indirect discrimination is provided when the criteria or practice can be justified by objective factors, unrelated to gender.

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68 Supra, Article 2
69 Supra, Article 2 Definitions Section
71 Supra, Article 2 and 3.
72 Supra, Article 2 Definition
73 Romania, Law on Equal Opportunities for Women and Men (202/2002), Article 5 (1)
74 Supra, Article 4.
75 Care giving has now become a pivotal policy issue. See the relevant provisions of Japan’s The Basic Law for a Gender-equal Society (Law No. 78 of 1999). (Compatibility of Activities in Family Life and Other Activities), Article 6 states that formation of a Gender-equal Society shall be promoted so that women and men can perform their roles smoothly as household members in home-related activities, including child-raising and nursing of family members through mutual cooperation and social support, and can thus perform activities other than these. The inclusion of men in the home-related activities, including child rearing activities is an important addition.
The following laws represent effective ways the law can be used to correct discrimination and injustice in both the private and public spheres. If more egalitarian outcomes are expected, then it is necessary that discrimination against women resulting from existing laws be the first issue to be addressed. Additionally, the law must explicitly define the terms for both direct and indirect discrimination.

D. Laws Reconciling Work/ Family Obligations:

New revisions in laws are trying to capture the changing reality of both men and women, and attempting to give voice to the needs of working women and caregiving men. Historically, laws were drafted by males and caregiving was thought to be outside the lawmaking arena, a trend that is changing as new laws are taking into account the construction of the image of both men and women as equal professionals and caregivers. Work/family obligations, traditionally thought to be private sphere activities outside the realm of the law, are now becoming the lynchpin of gender equality in employment. This is a most necessary task—reformist agendas must re-imagine laws in the image of both women and men. Laws that view women only or primarily in their care giving functions not only fail to conform to changing times, but more significantly, these laws disadvantage women. What is needed instead is a more dynamic conceptualization of women’s roles around which gender equality must be shaped. This can be achieved through work family reconciliation laws that are gender neutral. The nexus between gender discrimination in the home and workplace subordination can be changed only by workplace policies that facilitate greater male engagement in family care. Thus, workplace regulations that support both fathers and mothers in taking more responsibility for caring for children is a key pre-determinant of gender equality in the workplace. These family reconciliation policies are in fact the most critical determinant of gender equality.

The Economist recently argued that work family balance will be one the biggest challenges as more and more women enter the work force. The United Kingdom’s Equality Act of 2006 states that the lack of shared caring responsibilities between women and men (even as these women enter the workforce in increasing number) remains the single biggest cause of the gender gap. In light of this fact, the 2006 act requires all public authorities to have “due regard” for the promotion of equality between the sexes. The law states that the lack of shared caring responsibilities between women and men is often the single biggest cause of the pay gap. Women’s disproportionate share of family and caretaking responsibilities relate directly to the

76In Kuest v. Regent Assisted Living, Inc., 43 P.3d 23 (Wash. App. 2002), an employee was hired as a general manager and received positive feedback for several months. Two weeks after admitting to her supervisors under questioned in a meeting that she planned to have children she was fired and replaced by a 60 year old woman. The plaintiff alleged that the employer assumed that her primary role after giving birth would be motherhood. This assumption severely disadvantaged Kuest, as she was removed from her job.

77 http://www.economist.com/node/15174418/comments?page=2


80In Lovell v. BBNT Solutions, LLC, 295 F.Supp.2d 611, Plaintiff Linda Lowell sued BBNT when reduced her hours to thirty hours a week and her employer cut her pay more than what was proportionate. She sued under the EPA and won her claim.
discrimination they face in the labor market and the subsequent inequalities they endure in their economic progress.

As previously stated, in attempting to equalize the playing ground there is a tension between achieving equality of employment between men and women and protecting the special needs of women. When creating a more egalitarian workplace, it is important that workplace policies do not reinforce conventional gender roles that have hamstrung gender equality. Care giving laws are being re-envisioned in the image of both men and women. Thus work family obligations, traditionally thought to be private sphere activities outside the domain of the law are now being placed at the heart of law reform. Harmonizing work family obligations for both men and women appear to be the rallying cry for many new laws. Unequal care giving policies undermine the rights of everyone in the family and directly create the feminization of poverty, trapping women in low-paying, low ranking jobs.

Several laws are attempting to reconcile work family obligations. The European Union first stated in 1986 that sharing of family responsibilities and occupational responsibilities was pivotal to the promotion of true equality at work.  

Sweden was one of the first countries to alter the way in which men and women’s roles in the family had been traditionally normalized. Responding to a United Nations request to report on the status of women, Sweden argued: “No decisive change in the distribution of functions and status as between the sexes can be achieved if the duties of the male in society are assumed to be unaltered.” Sweden’s questioning of sex role stereotypes and socialization of boys and girls created a paradigm shift around the world in the thinking of the dual roles of men and women in work and family. The objective of the Swedish Gender Equality Policy is that if women and men are to enjoy human rights on equal terms, it is necessary to be aware of and work against power structures that allocate a superior position to men and a subordinate position to women. Special measures for women and girls are also necessary in pursuit of gender equality and in the fight to eliminate discrimination of women and girls.

Sweden’s latest efforts at family work reconciliation policies include a government submitted Bill to the Riksdag in March of 2006 (Government Bill 2005/06:155)—it was passed by the Riksdag on the 16th of May 2006. The Bill proposed new objectives for gender equality policy including creative measures such as introducing paid parental leave, reflecting a desire to change male attitudes and behavior. Its overarching objective was for men and women to have equal power to shape not only society but also their own lives. The Bill highlights that women and men must take the same responsibility for household work and have the same opportunities to

84 Sweden Act on Equality Between Women and Men, The Equal Opportunities Act (SFS1 1993:433)
85 Sweden Government Bill 2005/06:155)
86 Supra.
give care on equal terms. What is seen here is that the equal distribution of unpaid care and household duties is critical in achieving gender equality in the public sphere.

The Bill also confirms that gender mainstreaming remains the optimal strategy for achieving gender equality objectives. Additionally, the government cites proactive measures for enforcement including its intention to establish a public agency with responsibility for contributing to effective gender equality policy. Other initiatives include the government’s intention to strengthen gender equality work not only at the national policy level, but also at the local and regional levels. This will be done by studying gender equality between different groups in society as part of its follow-up of the subsidiary objectives of the Bill. The Bill goes further to address deeply embedded stereotypes that threaten equality from a young age. The law states that gender equality policies apply to everyone, in different situations and stages of life. “There are to be no systematic differences in women’s and men’s opportunities to shape society and their own lives. Nor are there to be systematic differences in the conditions in which girls and boys grow up, either with regard to their share of society’s resources or their opportunities to grow up free from the limitations imposed by gender stereotypes.”

Iceland’s Gender Equality Law of 2000 also puts work/family reconciliation and the concept of the freedom to grow up free of limitations at the forefront of the national agenda. The Act states that it must apply Relevant Provisions on Iceland’s Act on Maternity/Paternity Leave and Parental Leave, 2004. The Act emphasizes not only gender equality in coordinating family life but also includes a provision of assurance to a child’s access to both his/her father and mother. Relevant Provisions of the Iceland Act on the Equal Status and Equal Rights of Women and Men (Article I) state that the aim and scope of the Act is to “establish and maintain equal status and equal opportunities for women and men, and thus promote gender equality in all spheres of the society.” This aim shall be reached by, among other things, “enabling both women and men to reconcile their occupational and family obligations.” The Iceland Gender Equality law contains a special provision on the reconciliation of family and occupational obligations and a provision stating that institutions and enterprises with more than 25 employees must develop equality programs or make special provisions regarding gender equality in their employment policies. This is intended to meet the rising demand by women to be accepted as fully valid members of the workforce, and of men to play a greater role in their families. The law provides that the measures to be taken by employers include increasing flexibility in working hours in order to take account of their employees’ needs regarding their occupational and family

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87 Supra
88 Find provision
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91 Supra
92 Iceland’s Act on the Equal Status and Equal Rights of Men and Women (Act No. 95/2000)
93 Supra, Article 16
94 Supra, Article 1
95 Supra, Part II. Article 5
96 Supra, Article 1 (C).
97 How to cite/prove intent?
obligations, including measures to facilitate their return to work following maternity/paternity or parental leave.\(^{98}\)

Finland’s Act on Equality between Women and Men, 2004 takes equal care giving in family a priority.\(^{99}\) The law recommends that: “The development of working conditions such as flex time so that that they allow both men and women to play an equal role in family life and facilitate the reconciliation of working life and family life for women and men.”\(^{100}\) Such a provision is reflective of the growing necessity to make family/work reconciliation policies a priority in the national agenda, as are evidently the cases in Iceland and Sweden. Finland’s law uses both a formal and substantive equality model in lawmaking—while the law seeks to promote equality between women and men, it also makes clear its intention to improve the status of women.\(^{101}\) In Section 6 the law articulates that working conditions should be developed so as to facilitate the reconciliation of work and family life for both men and women.\(^{102}\) The fact that men have a right and obligation to reconcile work/family obligations advances the equal rights of women in the family and at work, and also privileges the rights of men to have an equal caregiving role in the private sphere.

In addition to Sweden, Iceland, and Finland, several other countries such as Slovenia and the Ukraine enshrine in their gender equality laws that workplace equality is dependent on equality at home and family life. Slovenia’s law on Equal Opportunities for Men and Women, 2002 Article 4, refers to the term “private life” and denotes that equal opportunities must extend to private life as well.\(^{103}\) Several laws including the law of the Republic of Tajikistan\(^{104}\) and the Kyrg Republic law\(^{105}\) have included directly in legislation the need for the consideration of family responsibilities of employees of both sexes. The Kyrg Republic’s Basics of the State Guarantees of Gender Equality of 2003 is specific about the provision on sharing household work, focusing on the principle that gender equality in labor can also apply to household work.\(^{106}\) A special provision of Article 19 of the law focuses on “Sharing of Household” which states that: “Persons of both sexes shall bear equal obligations with regard to household work.”\(^{107}\) Sensitive to the way in which gender segregated housework can reinforce women’s subordination in the public sphere, the law states that: “household work may not be used as a means of gender discrimination, and it may be performed equally by men and women.”\(^{108}\) Further fortifying this

\(^{98}\) Supra, Article 16  
\(^{100}\) Supra, Section 6 (3)  
\(^{101}\) Section 1 of the Law. The aim of the Act is to prevent discrimination on the basis of sex and to promote equality between women and men, and, for this purpose, to improve the status of women, particularly in working life.  
\(^{102}\) Section 6.2  
\(^{103}\) Slovenia Act on Equal Opportunities Between Men and Women (Act No 700/ 2002). Article 4 on Gender Equality.  
\(^{104}\) The law of the Republic of Tajikistan, 2005 in Article 7 calls for the consideration of family responsibilities of employees of either sex while carrying out service and labor duties.  
\(^{105}\) Law of the Kyrgyzstan Republic, On the Basics of the State Guarantees of Gender Equality Law on Gender Equality in Labor (No 2003)  
\(^{106}\) Supra, Article 1 definition, and Article 19 provision on “Sharing Household Work.”  
\(^{107}\) Supra, Article 19  
\(^{108}\) Supra, Article 20.
provision, Article 20 provides that household work will be regarded as a form of social, productive work. Although this is a novel concept, it remains unclear how this provision will factor into the actual law. One way to understand this concept is to take household work into account in property allocation and contributions to the marriage at divorce.

This series of laws enforcing the egalitarian model of outcomes is critical for positioning women to succeed both socially and economically. Women’s disproportionate share of family and caretaking responsibilities relate directly to the discrimination they face in the labor market and subsequent inequalities in their social and economic progress. As evidenced by the laws outlined above, gender discrimination in the home and workplace can be combated by workplace policies that facilitate greater male engagement as caregivers in the lives of children. Labor laws that equalize employment opportunities for men and women by redistributing family leave benefits create an environment in which women are neither discriminated against nor stereotyped and men are better able to share family and care giving responsibilities.

The recently drafted Gender Equality Law in Vietnam, which became operationalized in July 2006, is a valuable case study as it provides insights into holistic systems of support services for family and work and for defeating stereotypes that vitiate both parents need for engagement. It also articulates the principles of gender equality in family life. The stated goal of this law is as follows: “Formation of a gender-equal society shall be promoted so that women and men can perform their roles smoothly as household members in home-related activities, including child-raising and nursing of family members through mutual cooperation and social support.” Article 1 of the law explicitly states that the law provides for principles of gender equality in all fields of social and family life, measures ensuring gender equality, and responsibilities of agencies, organizations, families, and individuals in exercising gender equality. This law is especially unique in its solicitation of equal cooperation between men and women. The basic principles on gender equality set forth in Article 6 state that: “Man and woman are equal in all fields of social and family life” and that “Exercising gender equality is the responsibility of agencies, organizations, families and individuals.” State policies on gender equality in Article 7 take such a comprehensive approach to address the root causes of gender inequality by ensuring that the various social and governmental organizations address cultural stereotypes that hamstrung women. This approach encourages agencies, organizations, families and individuals to take part in gender equality promoting activities.

109 McGrenaghan v. St. Denis School, et al., 1979 F. Supp. 323 (E.D. Pa. 1997) (ADA). In this case, the plaintiff suffered endured penalties by her supervisors due to the fact that she was sole caregiver of her child with disabilities.

110 Smith v. Alexander & Alexander, Inc., 25 F. Supp. 2d 404 (S.D.N.Y. 1998) (ADA, FMLA, ERISA). In this case, the plaintiff also suffered penalties by her supervisor due to the fact that she was the primary caregiver to her disabled child.

111 An English translation of this law is with the author. Name of Translator, National Assembly of the Socialist Republic of Vietnam Law of Gender Equality [No73/2006/QH11].

112 Find article with aim stated, not in law.

113 Supra, Article 1

114 Supra, Article 6
Not only is the wife and husband’s relationship seen based on a postulate of equality in Vietnam’s law, but under Article 18 of the law, the wife and husband have equal rights in using appropriate family planning measures and taking care of sick children. Article 18 further provides for an egalitarian approach beginning from youth stating that “male and female members in the family have the responsibility to share housework,” and “Boys and girls are given equal care, education and provided with equal opportunities to study, work, enjoy, entertain and develop by the family.” Further emphasizing the egalitarian approach to the law, in order to ensure that the law is beneficial to all families, Article 7 of the law focuses on the need to pay special attention to ethnic minority groups in areas of extremely difficult socio-economic conditions and to provide necessary supports to increase GDI in the industries, fields, and localities where GDI is lower than the average level of the entire country. Moreover, the law charges the “Central Committee of Vietnam Fatherland Front” along with the “Central Vietnam Women’s Union” to direct concerned agencies in communication, dissemination and education of the law and in raising the public awareness on gender equality.

Although Vietnam’s Gender Equality Law is a constitutive force that can be hortatory in effect, it is weakened by the absence of strong implementing mechanisms. In addition, though the law is unique in its gender egalitarian approach, further implementation policies are necessary to ensure unintended stereotyping of females. For instance, one of the most complicated provisions is Article 14 pertaining to gender equality in the field of education and training. The law calls for “female officials, public servants bringing along their children at less than 36 months of age when participating in the training and fostering courses are given assistance and support as provided by the Government.” Though the law provides for accommodation, the conflict emerges in that the benefit is only provided to female officials and not to their male counterparts. This once again perpetuates the notion that women are the sole caregivers. This provision of the law would be enhanced if this benefit was extended to both men and women. In conclusion, even in countries which have taken the lead in passing egalitarian based legislation, much is left to be done in the area of attaining egalitarian outcomes.

Part II: Necessary Provisions and Methods to Address Injustices in the Public/Private Sphere and to Establish Family-Work Reconciliation Policies

A. Mandatory Parental Leave Should be Necessary for Fathers:

Work Family policies are sometimes a double edged sword. Does parental leave, even when job protected, influence gender inequality? Furthermore, does the length of leave inform gender
inequalities in care giving? Although job protected parental leave enhances women’s labor market opportunities, extended parental leave (over one year) ghettoize women and increase gender inequality.\textsuperscript{124} Women who spend extended lengths of time in care giving activities lose value in the labor market.\textsuperscript{125}

The US government has adopted a laissez faire approach to care giving and work family reconciliations.\textsuperscript{126} In 1993, the U.S. passed the Family Leave and Medical Leave Act (FMLA).\textsuperscript{127} This was a historic moment for American families. For the first time, the federal government required employers to provide twelve weeks of job-protected leave for new parents and caregivers. This was a pivotal moment because for the first time, the US government recognized the competing demands of work and family obligations and endorsed the need for flexibility for workers.

As significant as this act was for the US, European countries nonetheless have a history of more generous provisions than the U.S. FMLA law. Since 1979, Germany has offered federal paid maternity leave for at least 14 weeks.\textsuperscript{128} In 1986 these policies were revised to allow nearly a year’s leave, of which, nearly two-thirds is paid.\textsuperscript{129} Germany provided compensation for middle to high earning families for income loss incurred by leave taking and, most importantly, the policy encouraged fathers to share equally in child rearing. This relieved Germany of the consequences of the double edged sword resulting in unintentional stereotyping, as in the case of Vietnam. In the post-communist regime of the Czech Republic work-family policies have historically encouraged women to stay at home with young children.\textsuperscript{130} Apart from twenty eight weeks of maternal leave, the Czech Republic’s parental leave affords mothers time for caregiving. Parental leave in the Czech Republic was recently extended for up to three and a half years.\textsuperscript{131} Still, the adverse consequences resulting from prolonged maternal leave are obvious from the above analysis of gender-specific legislation, and are unfortunate at say the least. Becky Pettit and Jennifer Hook wrote that “Germany’s lengthy federally supported parental leave is associated with dramatic labor force withdrawals by women with young children across the economic spectrum.”\textsuperscript{132} Though the law is intended to encourage both men and women to share parental leave responsibilities, the burden nonetheless falls disproportionately to women.
Research reveals that not all men make use of family leave policies. For example, although French law allows both parents to take time off or work reduced hours during the first three years of a child’s life, 97 percent of workers who did so were women.\footnote{The Way We Live Now, The New York Times Magazine, October 24, 2010.}

Given that not all men make avail of the benefits of parental leave, many countries have revised their laws in an attempt to encourage fathers to participate more actively in the care of their children and to undo leave policies that place an unequal emphasis on female parental leave. Transferable leave, for instance, often reinforces gender hierarchies as the tendency is to transfer the leave to the parent earning less.\footnote{Supra Note 133.} The “use it or lose it” approach compels fathers who are otherwise reluctant to take leave to assert their equal rights and duties to caregiving. Non-transferable leave for men results in what is called “fatherhood by gentle force”—such mandated leave that is exclusively for men is compatible with a gender egalitarian parental leave, as laws that differ in what is offered to mothers undermine gender equality. Currently, Sweden, Finland and Norway have the most gender egalitarian policies mandating transferable leave to fathers.\footnote{Iceland Act on Maternity/Paternity Leave and Parental Leave (No. 95/2000).} Although Sweden’s laws are currently some of the most progressive in this area, it took much time before men made use of these equal protection guarantees. Although these provisions were introduced in 1974, only 4 percent of fathers took any leave at all. In 2002, the total of leave available for fathers increased to 480 days. If men don’t take this leave before a child’s eighth birthday, they stand to lose the dates. Since 2002, approximately 80 percent of fathers in Sweden take some time off for care giving of children.\footnote{Supra, Section 4 Article 36.}

In Norway, fathers are allowed four weeks of leave of absence—if they don’t take it, they lose it.\footnote{Iceland Act on Maternity/Paternity Leave and Parental Leave (No. 95/2000).} Similarly, in Iceland, fathers’ independent non-transferable entitlement is now sixty days.\footnote{Supra Note 133.} Both parents can extend this leave for up to a total of seven months in the case of the illness of a child.\footnote{Iceland Act on Maternity/Paternity Leave and Parental Leave (No. 95/2000).} The Kosovo law goes even further to embody the principles of gender equality in child care responsibilities by taking into consideration the need for parental leave for both parents in the event that a child is hospitalized due to sickness. Iceland’s Maternity/Paternity Leave and Parental Leave Act which entered into force in 2000, aims to create conditions in which both men and women are able to participate equally in paid employment and other work outside the home.\footnote{Iceland Act on Maternity/Paternity Leave and Parental Leave (No. 95/2000).} Additionally, the law guarantees children time with both parents.\footnote{Supra, Section 4 Article 36.} This is intended to make it easier for both parents working outside the home to strike a balance between the demands of their careers and those of their families, thus promoting a sharing of parental responsibilities and gender equality in the labor market.

Other programs in Iceland that have attempted to equalize parental responsibilities are the guidance and pre-natal preparation programs aimed at enabling fathers to be present at the birth
of their children, assuming that the delivery proceeds normally.\(^{142}\) One of the roles of the present program of action is to establish special preparatory materials to offer to prospective fathers. A special campaign is planned to ensure that health service employees are aware of the importance of fathers as active participants during prenatal care, childbirth, and postnatal care of their children.

It is evident that Iceland has taken the lead in making family leave neutral. Fathers’ independent non-transferable entitlement was thirty days in 2001, but another month was added to it in 2002, making the leave period sixty days in total.\(^{143}\) Maternity/paternity leave can consequently be lengthened up to a total of seven months in the case of the illness of a child.\(^{144}\) The mother’s maternity leave can also be extended by up to two months due to a serious illness suffered in connection with the birth.\(^{145}\) Maternity/paternity leave taken in accordance with the Act is calculated as working time for purposes of calculating employment-related rights, e.g. for vacation entitlement, rights connected with length of service, sick leave, etc.\(^{146}\) Benefits in regards to child care are also gender neutral. Iceland’s Act guarantees parents who are not active in the labor market or who are in formal studies an independent right to a birth grant for up to three months each in connection with the birth, first-time adoption, or permanent fostering of a child.\(^{147}\) Furthermore, such parents have a joint right to receive a birth grant for a further three months. This may be paid to either parent or divided between both.

It is important that egalitarian family/work reconciliation policies take into account the role of parents in the home. Laws that view women only or primarily in their maternal function disservice women’s advancement in both the public and private spheres. For example, the BiH Labour Code may grant a mother at her request special leave to care for a child until the child reaches his/her third birthday, with payment of a monthly state allowance during that period.\(^{148}\) Because the law lacks a similar provision for the father, these provisions reinforce stereotypes of women as sole caregivers of children. According to The Belarus Labor Code the same benefits granted by law to working mothers is granted to fathers only if they are raising children without their mother (owing to her death, deprivation of parental rights, extended hospital stay – exceeding one month, or on other grounds).\(^{149}\) In Bosnia and Herzegovina, the Law on Labor similarly only allows for a father of the child to use the right to maternity leave only in cases including: the child's mother's death, the abandonment of the child by the mother, or if the mother is prevented from exercising this right due to valid reasons.\(^{150}\) As evidenced from the provisions described above, this law does not comprehend the possibility of both parents sharing parental leave.

\(^{142}\) Haataja, Anita. “Father’s Use of Paternity and Parental Leave in Nordic Countries.” 7. (The Social Insurance Institution of Finland Research Department, 2009)

\(^{143}\) Supra, 8.

\(^{144}\) Iceland Act on Maternity Paternity Leave and Parental Leave (No. 95/2000), Article 17.

\(^{145}\) Supra, Article 14 “Accumulation and Protection of Right.”

\(^{146}\) Supra, Article 19 “Maternity/Paternity Grant to Parents Attending Full-Time Educational Programmes.”

\(^{147}\) Law on Gender Equality Bosnia and Herzegovina. (No. 161/ 2003).

\(^{148}\) 1999 Code of the Republic of Belarus (No. , 1999)

\(^{150}\)
The problem of stereotypes in laws also emerges in the Uzbekistan Law. The law provides that all benefits granted to women may also be provided to fathers, guardians, grandmothers, grandfathers and other relatives who take actual care of a child in relation to child care. Such benefits include the limitation of night labor and overtime work during the weekends, business trips, provision of additional leave, etc. This law is severely limited in that the above state provisions only come into force in the instance when the child is deprived of the mothers care. This significantly undermines the notion of the joint care of children and equal parenting rights and duties as enshrined in the CEDAW. Here again, in the case of the Uzbek law, the law reinforces the stereotype of women as primary caregivers. For the following reason, it is vital that the laws be reformulated to view both parents in their equal care giving role and provide equal opportunities for work and family responsibilities to both genders.

Countries including Tajikistan, Kosovo and the Kyrg Republic have directly addressed the need to consider family responsibilities of both sexes. The Kosovo Law on Gender Equality of 2004 allows for parental leave to both parents even if engaged in the informal sector or part time work, i.e., persons who are engaged in less than 25 percent of active labor. This act also applies to parents who are not active in the labor market and parents attending full-time educational programs. These parents are eligible to receive a maternity/paternity grant. In addition, Kosovo’s law provides for leave for both parents in the event that the child is sick. The Vietnam Gender Equality Law of 2007 similarly mandates that household duties should be the shared responsibility of both men and women, thus addressing gender stereotypes in the family. It directs the state to set up support services for both men and women and encourages both parents to take time off to care for sick children. The law allows for male employees to have full paid leave when wives give birth, in effect encouraging men to fulfill the caregiving role. Spain’s law of 2007 too takes the lead in transforming gender roles. Paternity leave is mandatory and it cannot be transferred. In Turkey a draft law on parental leave proposes to extend six to 12 months to be shared by both men and women. Ukraine also has a draft law to extend leave for 30 days.

Constructing care as a policy issue must become central to the issue of work-family reconciliations and must animate any revision or lawmaking on gender equality. Men must serve

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152 Find Czech Law
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156 Law on the Republic of Tajikistan on State Guarantees of Equal Rights for Men and Women and Equal Opportunities In the Exercise of Such Rights ( No. x, 2005).
157 Kyrgyzstan Republic Law on the Basics of State Guarantees of Gender Equality (No x, 2003).
158 Law on Gender Equality in Kosovo (No , 2004)
159
160 Supra, Kosovo Law 13.9.
161 National Assembly of the Socialist Republic of Vietnam (No. 73, 2006)
162 Spain Constitutional For Effective Equality Between Women and Men (No 3, 2007)
an integral part in the construction of these equalizing policies. By asking the Fatherland Front of Bulgaria to engage in gender mainstreaming to achieve equality of the sexes, for example, the law is valuing the importance of the Fatherland Front in the equalizing effort. Furthermore the law is recognizing the engagement of men in actualizing both gender equality and equal participation in family responsibility.

B. Prohibiting Retaliation and Unequal Treatment Upon Parental Leave

Despite the availability of family leave, women are reluctant to take advantage of those opportunities for fear of perceived risks to their career advancement. Unless the law addresses this reality, these intended benefits will do more harm than good. The prevention of retaliation and punishment must be legislated by law if these laws are to benefit both sexes.

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163 Vietnam Fatherland Front constitutes a part of the political system of the Socialist Republic of Vietnam, led by the Communist Party of Vietnam; and constitutes a political base of the people’s administration, a place where the people express their will and aspirations, the entire people’s great solidarity bloc is built up, the people’s mastery is brought into full play, where its members hold consultative meetings, and coordinate and unify their actions, thus contributing to the firm maintenance of national independence, sovereignty and territorial integrity, and successfully carrying out the cause of national industrialization and modernization, so as to achieve the objective of a prosperous people, a strong country and an equitable and civilized society. See Article 1 of the Law on the Vietnam Fatherland Front.

164 Washington v. Illinois Dept. of Revenue, 420 F.3d 658 (7th Cir. 2005). In this case Vivian Hoffelt worked with the City of Chicago as an aviation security officer at O'Hare International Airport. Her superior officer, Sgt. Christopher Disandro, allegedly began a pattern of inappropriate conduct toward her. Hoffelt told Disandro to leave her alone and Disandro began retaliation toward petitioner that negatively affected her treatment on the job and caused her to fear for her personal safety. When Disandro was suspended in August 2002 for violating the City’s residency requirement http://www.lexisone.com/lx1/caselaw/freecaselaw?action=OCLGetCaseDetail&format=FULL&sourceID=jife&searchTerm=eNfX.ZCEa.UWUW.gcec&searchFlag=y&l1loc=FCLOW

165 Schultz v. Advocate Health and Hospitals Corp., No. 01 C 0702 (N.D. Ill. 2002). In this case, a male employee asked for FMLA leave to care for his ailing parents. The employer granted this leave but soon began instill new performance goals for the plaintiff departments, resulting in workers working longer shifts among other penalties. The plaintiff, as a result of his care giving role, was unable to work these shift, and was terminated from his result. The plaintiff sued his employers on the basis of retaliation in violation of the FMLA. The Court ruled in the favor of the plaintiff.

Troy v. Bay State Computer Group, Inc., 141 F.3d 378 (1st Cir. 1998). In this case, the plaintiff became pregnant while working for the Bay State Computer Group, Inc. After taking sick days for illnesses relating and not relating to her pregnancy the plaintiff was told by her employer that “her body was trying to tell her something.” The employer further suggested that the plaintiff accept a discharge from Bay State. The plaintiff then filed a complaint with the Massachusetts Commission Against Discrimination and with the EEOC. In response, Bay State said that Alexandra Troy had been terminated for poor attendance.

Lehmuller v. Sag Harbor, 944 F. Supp. 1087 (E.D.N.Y. 1996). The plaintiff alleged that the defendants discriminated against her as a result of her back disability and pregnancy. Following the birth of her child and the accident resulting in a back injury on the job, the plaintiff was reassigned to clerical cases within an office, work which differed from the tasks the plaintiff was normally assigned. The plaintiff claimed that the retaliatory action taken against her in response to her discrimination claim filed with the Equal Employment Opportunity Commission, which she contends is her protected right to petition the government for a redress of grievances under the First Amendment.
Several countries have prohibited retaliation due to family responsibilities. The Swedish Gender Equality Act of 2000 contains a special provision that prohibits against any punitive elements as a consequence of taking time off for family responsibilities. This provision applies to both men and women. The Gender Equality Law in Bosnia and Herzegovina of 2003, in Article 8, prohibits gender discrimination and prohibits, among other things, the employees failure to return to the “same job or another job of the same seniority with equal pay after the expiry of maternity leave...” Norway’s Gender Equality Act now includes an absolute prohibition against actions that place a woman or a man in a weaker position due to the exercise of leave-of-absence entitlements.

The Gender Equality Law in Bosnia and Herzegovina of 2003 similarlly outlaws any unfavorable treatment of a parent or guardian in balancing their commitments in family and professional life...” Under the act, a person may not be made redundant solely because of the family responsibilities he/she bears.

The above analysis illustrates that there are three principal conditions which must be met to demonstrate the existence of family responsibilities on the part of an employee. Firstly, the responsibilities must be towards the employee’s own children, spouse or close relatives. Secondly, the persons concerned must live in the employee’s own home, and lastly, the person or persons involved must require the care or guardianship of the employee himself in connection with, e.g., illness, disability or comparable circumstances.

C. Gender Quotas and Affirmative Action in Employment:

While hortatory legal reform will remain weak, a carrot and stick approach will help with strict compliance with law. An example of the way in which laws can be normative as well as effective is the Norwegian law. In 2002, Norway passed a law requiring all companies to

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*Burlington Northern and Santa Fe Railway Company v. White*, 2006 U.S. LEXIS 4895 (2006). In this case, Sheila White was assigned the job of a track laborer, responsible for cleaning debris, replacing track components, etc. White alleged that her supervisor made a number of discriminatory remarks against her including, “women should not be working in the maintenance way department.” White later filed two complaints with the EEOC. In retaliation, supervisors ordered that White be suspended without pay. White defended herself by filing a third complaint to the EEOC. White was awarded in Court.

166  Sweden Act on Equality between Men and Women, The Equal Opportunities Act (SFS 2000:773)
167  Supra, Section 22.
168  Law on Gender Equality in Bosnia and Herzegovina (Act 26/ 2003).
169  Norway’s Act Relating to Gender Equality (No 38/ 2005).
170  Japan Law Concerning the Welfare Of Workers Who Take Care of Children or Other Family Member, Including Child Care and Family Care Leave (2001). Article 3.
172  Norway Act relating to Gender Equality (No 21/ 2002)
ensure that women comprise 40 percent of their boards.\textsuperscript{173} If the board has two or three members, both sexes must be represented. Under these rules, the Register of Business Enterprises can refuse to register a company board if its composition does not meet the statutory requirements. Companies that do not comply with this regulation faced closure in 2008.\textsuperscript{174}

Other countries mandating quotas in their laws include Tajikistan, Kyrgyz, Lithuania, Spain and Kosovo. Article 3 of the Tajik Gender Equality Law, for instance, provides an exception to the prohibition of discrimination for “practical measures undertaken for the implementation of provisions of the law.”\textsuperscript{175} Article 6 of the Kyrgyz Gender Equality Law states that gender discrimination does not include the “adoption of temporal special measures based on this law with the view to achieve actual equality in gender relationships.”\textsuperscript{176} The Lithuanian Equal Opportunity Law provides for an exception to the definition of direct discrimination for those special temporary measures foreseen in the laws, which are applied to accelerate the implementation of de facto equality between women and men and are to be cancelled when equal opportunities for women and men are realized.\textsuperscript{177}

Relevant quota provisions of the Law of Gender Equality in Kosovo 2004, provides for the extension of parental leave and the joint right to the extension of maternity/paternity leave by three months for each child after the first in a multiple birth, illness of a child or its mother.\textsuperscript{178} Upon illness of the child or mother resulting in a hospital stay for more than seven days directly following the birth, the law permits the parents extension of maternity/paternity leave by the number of days the child has to stay in hospital, prior to its first homecoming, by up to four months.\textsuperscript{179} It is also permitted to extend the parent’s joint rights to maternity/paternity leave by up to three months in the case of a serious illness of the child which requires more intensive parental attention and care.\textsuperscript{180}

Legislation like the newly promulgated Law on Guaranteeing Equality between Women and Men in Spain, passed in March 2007, stipulates that Spanish companies which achieve a more balanced male-female ratio among their executives and at lower levels staffing will receive favorable treatment when they bid for government contracts.\textsuperscript{181} Moreover the law obligates all companies with more than 250 employers to put in place gender equal policies and to have forty percent of women on their boards within eight years or they face foreclosure.\textsuperscript{182} The new regulations also attempt to achieve a reconciliation of work-life balance by allowing parents the right to reduce work time by as much as half in order to care for children under the age of twelve years and for family members with disabilities.

\textsuperscript{173} Supra, Section 21.
\textsuperscript{175} Tajik Gender Equality Law, Article 3.
\textsuperscript{177} Law of the Republic of Lithuania On Equal Opportunities (No 8-947, 1998).
\textsuperscript{178} Law of Gender Equality in Kosovo (No 2, 2004), Section 18.
\textsuperscript{179} Supra, Article 17.
\textsuperscript{180} Supra, Art. 33.
\textsuperscript{181} Spain Constitutional Act For Effective Equality Between Women and Men (No 3, 2007). Art. 33.
\textsuperscript{182} Supra, Art. 33.
The following quota provisions not only privilege childcare as a workplace obligation but also help to promote full citizenship rights of both men and women.

D. Fighting Injustice with Equal Education:

Policymaking on caregiving alone is inadequate to address deeply entrenched stereotypes. Along with effective egalitarian policies and laws, education is one of the primary and effective means by which to combat gender stereotypes. Several recent law reform initiatives have included creative provisions to address gender stereotypes through education.183 The Vietnam Gender Equality Law states that, “Boys and girls must be given equal care, education and provided with equal opportunities to study, work, enjoy, entertain and develop by the family.”184 It goes on to state that: “family members must be educated on the responsibilities for sharing house work and to appropriately allocate house work to family members.”185 The law also requires that families “provide equal opportunities to sons and daughters in their study, work and participation in all activities” as a way of achieving equality.186 The focus on education to address discriminatory customary practices extends to ethnic minority groups and rural communities.187

The Ukraine Law on the State Guarantees of Equal Rights and Opportunities for Men and Women provides “for the equal opportunities of men and women in education.”188 Ukraine’s Equal Opportunities law asks schools and other educational institutions to treat favorably applicants who might help create gender balance in any occupation or trade and transform trades which were once considered male or female.189 The law provides for concrete suggestions in calling for equal opportunities for men and women regarding education.190 Requirements include providing equal conditions for women and men in training and acquiring further education by granting sabbatical leaves etc. In the event that women and men are treated

183 Haines v. Leves- Australia ((1987) EOC 92-167)
The New South Wales Court of Appeals affirmed a decision of the Equal Opportunity Tribunal and ruled that sex role stereotypes of men as breadwinners and women as homemakers because this constricted future choices of education, vocation and career.
Melinda Leves, a female student at Canterbury Girls High School was offered a choice of home economics subjects and not offered the same subjects of industrial arts offered to Melinda’s twin brother, Rhys who attended the nearby Canterbury Boys School.
The Court of Appeals agreed with the Equal Opportunity Tribunal which held that the limited choice offered to girls was “founded in a stereotype of post-education roles for male and female stereotype of post-education roles for male and female students.”
The Court of Appeals stated: The industrial arts have traditionally been seen as appropriate for females…..This stereotyping assumes girls are more likely to spend the larger and more important part of their adult lives in the home. Therefore they will be interested in home economic subjects of industrial arts fall outside this domestic image. Those subjects are appropriate for boys, who will be the future breadwinners, rather than for girls, who will be the future home keepers.”

185 Supra. Article 33: Responsibilities of the Family.
186 Supra. Article 33: Responsibilities of the Family
187 Supra. Article 35.
188 Supra. Article 35.
189 Law of Ukraine on Equal Rights and Opportunities for Women and Men (No x /2005). Section 5, art. 21
190 Supra, Section 5 Article 21. Equal Rights and Opportunities for Women and Men in Education.
differently, the employer should be able to prove that it is not related to the sex of the worker. Furthermore, 35 (3) calls for educational institutions to provide equal conditions for men and women in relation to educational institutions as well as vocational guidance and advice on trades which were considered as male or female. Given that textbooks play a powerful role in shaping gender roles, the law asks that all educational publications be developed with due account of the principle of gender equality.

Croatia’s Gender Equality Act’ (2003) Article 14 is an integral part of the system of elementary, secondary and tertiary education as well as life-long learning. The law calls for educational programs that allow the participation of both genders in all areas of life. It asks that apart from the gender studies curricula, educational institutions should stimulate new non-discriminatory knowledge about women and men, aim to abolish all gender/sexual inequalities and gender stereotypes at all levels of education, recognize gender aspects in all educational areas and adopt measures to ensure equal representation of both genders among students as well as among teaching staff. Furthermore, the law states that: “All government bodies, legal entities vested with public authority and especially all educational institutions and other legal entities that participate in the promotion and realisation of gender equality shall be obliged to systematically engage in education and awareness raising in gender equality.”

The Bulgaria Act of 2002 on Equal Opportunities for Women and Men too provides ways to address negative stereotypes especially those dealing with the roles of women and men in all spheres of public life, including the family. Article 38, for instance, provides “education and training, as well as authors of textbooks and study materials to present information and apply training methods aiming at removal of the negative stereotypes of the roles of women and men in all spheres of public life, including the family.” According to Article 38.2, these provisions on gender equality apply to education at all levels including in kindergartens and schools.

The Vietnam Gender Equality Law provides a more radical reconstruction of gender roles along the lines of equality. Under the law, boys and girls must be given equal care, education and provided with equal opportunities to study, work, enjoy, entertain and develop by the family. Educational equality extends even to education on the responsibilities for sharing housework and allocating housework to family members and to provide equal opportunities for sons and daughters for them to participate in all activities equally.

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191 Supra, Section 35 (3).
192 Supra, Article 21.
194 Supra, Article 14 (1).
195 Supra, Article 14 (2).
196 Supra. Article 14 (3).
197 Bulgaria: Act on Equal Opportunities for Men and Women (No x/ 2002).
198 Supra, Section 5, Art. 35.
199 Supra, Article 38.2.
201 Supra, Article 14 (1-5).
202 Supra, Article 33.
Croatia’s Gender Equality Act of 2003 and Bulgaria’s Law on Equal Opportunities for Women and Men 2002 provide for gender sensitive changes in teaching and pedagogical methods; the introduction of gender studies curricula to combat gender stereotypes at all levels of education; gender sensitive text books and teaching aids.\textsuperscript{203}

Tajik’s Gender Equality Law (Article 6) guarantees ensuring equal opportunities for men and women in the sphere of education and science.\textsuperscript{204} The law instructs men and women to ensure equal conditions for men and women in access to “main, general, secondary professional and higher education to all forms of professional education and qualification for advancement, and to participation in the fulfillment of educational and scientific progress...”\textsuperscript{205} The law also calls for incorporating gender studies courses in educational curriculums and calls for the inclusion of research on questions of gender equality in order to promote gender sensitive citizenship.\textsuperscript{206}

E. Legislating State Responsibility for Childcare:

State mandated child care enhances both the participation of women in the labor market and the wellbeing of the child. In fact child care is seen as a critical gender equality issue in many countries. In contrast to part time work availability which marginalizes women from full participation in the market, publicly provided child care is more likely to foster women’s labor market inclusion by providing real and symbolic support to working parents, both men and women.

Denmark leads the way in child care provisions. Forty eight percent of Denmark’s children under the age of three are in public day care.\textsuperscript{207} In France nearly one third of the children are in some sort of a public supported day care.\textsuperscript{208} Publicly provided child care socializes the costs of children by shifting some of the burdens to the employer. Other countries are attempting to establish such child care provisions by setting dated targets. In 2002, the Barcelona European Council set child care targets, recommending that member states provide care for at least 90 percent of the children between three years old and mandatory school age, and mandatory care for at least 33 percent of the children under three years of age by 2010.\textsuperscript{209}

As mentioned above, under the Vietnam Law, female officials, public servants etc. can bring along their children at less than 36 months of age when participating in the training and fostering courses are given assistance and support as provided by the government. Although this is a positive step, here again it is necessary that lawmakers be weary of laws which stereotype

\textsuperscript{203} Croatia: Gender Equality Law (2003). Section 5, art. 14.
\textsuperscript{205} Supra.
\textsuperscript{206} Supra.
\textsuperscript{209} http://www.europarl.europa.eu/sides/getDoc.do?pubid=134658&language=EN
women as the sole care givers of children. As illustrated in this article, at time even good faith efforts to achieve gender equality can have the reverse effect of reinstating gender stereotypes. By not extending these benefits to male employees the law is reinforcing the construct that women are the primary care givers.

In 1985, Sweden passed a law mandating that all children between 18 months and school age receive access to childcare by 1991. This law has helped to transform gender roles and increase women’s participation in the market place. A recent survey of Sweden revealed that 76 percent of mothers with children under the age of six work outside the home. This has also contributed to changes in the father’s role in the family and instituting child rearing as a parental right and duty of men and women. Today, most children in Sweden are raised in families where child caring and child rearing are shared responsibilities.

III. Conclusion

It is imperative that the workplace be transformed to recognize the role that both parents play in child bearing and child rearing responsibilities. It is equally important to transform gender roles so that parenting becomes a shared responsibility and both parents are able to claim their equal rights to give care. Law making must take the lead in transforming gender roles by shaping both men and women’s work and family aspirations in a way that correlate to equality in the workplace. In this regard, far reaching and pro active steps must be taken to transform gender roles both in the family and at work. Furthermore, education concerning gender equality from youth must be provided for in new legislation.

Historically, male hierarchies drafted laws in their image and created a divide between the public and the private spheres. It is important to re-envision laws in the image of the woman and child and reshape public attitudes. Personal laws, family laws, and labor laws should embody personal narratives and must capture the reality of women’s lives.

Special measures for women established in labor laws play a protective function and do not necessarily facilitate equal participation of men and women. A look at the protective labor regulations reveals an analogous cause and effect relationship between protective labor laws and gender bias in the hiring and firing of employees. Protectionist provisions can only reinforce notions that motherhood is the natural role for women. These laws continue to confine women to the homes and men to their offices.

Although a significant sector of the economic markets accommodate women’s dual roles, these work family obligations, if gender specific, disadvantage women in the marketplace. Women tend to self select work that allows them to balance such dual roles. Men on the other hand are not always confined to jobs that need to balance family. Joan Williams states: “School teachers and mothers who own small businesses do not run the world.”

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employment mostly due to their real or presumed caregiving roles. Only if the market place helps both men and women balance these dual roles will this inequality be redressed.

As a result of all the above, a paradigm shift must occur to restructure the workplace to allow fathers as well as mothers the opportunity to perform and compete equally in the workplace. Both women and men should be able to advance in the public sphere and undertake traditional care giving roles. Women have long entered the market and men are increasingly playing an equal role in care giving. Translating these realities into the language of feminist theory, this generational shift means that the time is ripe to challenge the masculine norms that frame market work. The provision of parental care is not only about equal opportunities in the workplace but it is also about equal care giving opportunities for both men and women. It is for the following reasons that in order to destabilize domesticity’s gender roles, laws drafted to protect caregivers should be designed to give rights to all caregivers despite their sex. Joan Williams further argues that “If we as a society take seriously children’s need for parental care, it is time to stop marginalizing the adults who provide it.” It is important to deconstruct the image of the traditional care giver and the ideal worker in market work and recreate the worker in a gender neutral image who has to both work full times in the public and private spheres. Family friendly policies that help balance these roles advance the full citizenship of both men and women. The journey to gender empowerment must allow women to compete equally with men in the labor market and men the right to care for their children and families. Only then will men and women enjoy full citizenship in the family and in the public sphere.

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