

Parental — Discrimination

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Nicole R. Rabner

11/24/99 02:21:19 PM

Record Type: Record

To: Ann O'Leary/OPD/EOP@EOP

cc:

Subject: e.o.

I cut out the document but I had tweaked it very slightly -- here it is FYI:

Ending Parental Discrimination in the Federal Workplace. Today, the President will issue an Executive Order to bar discrimination against parents in the Federal workplace. This Executive Order mirrors the bill, "Ending Discrimination Against Parents Act of 1999," which the President announced in his 1999 State of the Union address and was introduced on November 10, 1999, by Senators Dodd and Kennedy. By issuing this Executive Order, the President will hold the government as a model for this important new set of protections. The Executive Order bars discrimination against parents in all aspects of employment, including recruitment, referral, hiring, promotions, discharge, training, and other terms and conditions of employment. The Order also prohibits employers in the federal workforce from acting on mere assumptions that parents, or those with parental responsibilities, cannot satisfy the requirements of a particular job. The Order will not, however, prohibit an employer from making decisions on the basis of a person's job qualifications or performance. It would not, for example, prevent an employer from rejecting an applicant for a job that requires extensive travel if the applicant states that he is unwilling to travel because of his parental responsibilities. The Order will simply ensure that workers are treated fairly and not discriminated against merely because they are parents.

October 28, 1999

MEMORANDUM

**TO: BRUCE REED
 ERIC LIU**

**FROM: NICOLE RABNER
 ANN O'LEARY**

SUBJECT: PROPOSED EXECUTIVE ORDER ON PARENTAL DISCRIMINATION

Attached please find a draft proposal for an executive order on parental discrimination in the Federal workplace. The intent of this executive order is to mirror the Administration's legislative proposal on non-discrimination against parents in the work place specifically with regard to hiring and promotion. The legislation and the executive order are intended to be one-way policies prohibiting discrimination against individuals because of their status as parents. Both are intended to further the Administration's policies on a "family-friendly" workplace.

This executive order would amend Executive Order 11478, "Nondiscrimination in Federal Government." This order currently prohibits discrimination in federal employment on account of race, color, religion, sex, national origin, handicap, age, or sexual orientation. Status as a parent would be added to this list and defined.

In developing this draft executive order, however, the Office of Personnel Management has raised some valid concerns regarding the implications and implementation problems that this EO may cause. Their concerns include:

- **No data to suggest that a problem exists.** The Office of Personnel Management has no record of complaints or cases filed specifically claiming discrimination based on parenthood. This may suggest that the discrimination is being identified or categorized based on other factors or it could suggest that Federal employees are not filing complaints due to the fact that there is no policy in place to rectify such a situation. OPM, however, believes that due to the plethora of family friendly policies (from flexi-schedules to accommodations for nursing mothers to telecommuting options), parents face little discrimination in the Federal workplace. They are currently doing further research to determine the extent of the problem. The real concern, however, is that we are creating a solution in search of a problem that does not appear to exist in the Federal workplace.
- **Concerns about reactions, perceptions, and managing expectations.** In addition, OPM is concerned about the implications for implementation and the expectations of Federal employees (parents and non-parents alike). In terms of managing expectations, there was a real sense among the group that non-parents often feel that they get the short end of the stick in terms of working later hours to finish projects, etc. The concern is that non-parents may

feel that they could not be rewarded for their extra hours and extra work. Additionally, there was some concern that under this EO managers would feel that they could not reward a non-parent for extra work in terms of promotions. It also raises some concerns in terms of implementing flexi-schedules. Managers may feel that they must grant flexi-schedules to parents rather than non-parents and, in the end, would decide not to offer any flexi-schedules so as not to show favoritism. While OPM would certainly put out guidance, they were concerned about these types of interpretations in the implementation phase.

The White House Counsel's office (Eddie Correia) argued that if we are going to put forth legislation then the Federal government should be prepared to take leadership in this area. He argued that it would help to signal the importance of not discriminating against parents and that if, indeed, the Federal government does not have a problem then the policy will not be an additional burden.

There are several options to consider:

- (1) Heed the caution of OPM while we do more to research the problem and develop draft guidance. Dodd will introduce the legislation on the Administration's behalf prior to the end of the session. We could hold off on the EO until a later date while we worked on draft guidance.
- (2) Do not create an EO and, instead, focus energies on passing the legislation with the understanding that the Federal government will be covered by the legislation.

Option #1 allows us time to consider how to manage expectations in the development of draft guidance. Option #2 fully takes OPM's concerns into consideration and does not put us in the position of highlighting an issue that is not particularly problematic in the Federal workforce.

Please advise on how you would like us to proceed.

EXECUTIVE ORDER

FURTHER AMENDMENT TO EXECUTIVE ORDER 11478, EQUAL EMPLOYMENT OPPORTUNITY IN FEDERAL GOVERNMENT

By the authority vested in me as President by the Constitution and the laws of the United States, and in order to provide for a uniform policy for the Federal Government to prohibit discrimination based on an individual's status as a parent, it is hereby ordered that Executive Order 11478, as amended, is further amended as follows:

Section 1. Amend the first sentence of section 1 by substituting "sexual orientation, or status as a parent." for "or sexual orientation."

Sec. 2. Insert the following new sections 6 and 7 after section 5:

"Sec. 6. An individual has the status of a parent, if, with regard to another individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, that individual –

- (a) stands in loco parentis to such other individual; or
- (b) has the status of –
 - (i) a biological parent;
 - (ii) an adoptive parent;
 - (iii) a foster parent
 - (iv) a stepparent;
 - (v) a custodian of a legal ward; or
 - (vi) a person who is actively seeking legal custody or adoption.

"Sec. 7. The Office of Personnel Management shall be responsible for developing and implementing guidance to effectuate the provisions of this order prohibiting discrimination on the basis of an individual's sexual orientation or status as a parent."

Sec. 3. Amend section 4 by substituting "and appropriate to carry out its responsibilities under this Order" for "appropriate to carry out this Order."

Sec. 4. Renumber current sections, 6, 7, and 8 as sections 8, 9, and 10, respectively.

Sec. 5. Add a section 11 to read as follows:

“Sec. 7. This Executive Order does not confer any right or benefit enforceable in law or equity against the United States or its representatives.”

WILLIAM J. CLINTON

THE WHITE HOUSE
[date]



"Hart, Rosemary" <Rosemary.Hart@usdoj.gov>

10/18/99 10:17:30 AM

Record Type: Record

To: Ann O'Leary/OPD/EOP
cc: Edward W. Correia/WHO/EOP
Subject: Parental Discr.--- New draft

Ann: As per our conversation, attached is a new draft Executive Order on parental discrimination that we hope incorporates all of the agreements reached at the Wednesday meeting. I sent this to you and to Eddie Correia on Friday afternoon, but I discovered this morning that it got bounced back on Saturday night as "undeliverable." So, I'm trying again and will also send a hard copy via fax.

Consistent with the Wednesday discussion, we have deleted the second sentence of previously proposed new section 7 (setting forth the responsibilities of OPM under the Order). However, having reviewed EO 11478 again, we would like the group to reconsider the deletion --- the current section 5 of 11478, which sets forth some responsibilities of the EEOC in implementing the order, has language similar to that which we deleted (indeed, we had modelled the language after the current section 5). If we delete it, there might be some confusion as to why there is not a parallel provision with respect to OPM's role vis-a-vis the agencies.

Also, in response to a question raised by Ellen Vargus of EEOC, we added language to current section 4 that would make it clear that section 4 only pertains to EEOC's responsibilities under EO 11478.

We have revised the judicial review section proposed by OPM to make it consistent with the stream-lined version that the "plain language" office prefers and that we think is legally sufficient.

Finally, for everyone's convenience, we note that the current version of EO 11478, including the most recent amendment for sexual orientation, can be found in a note to 42 U.S.C. 2000e (1999 pocket part, pp. 1-2) or on WESTLAW at that same note.

Rosemary Hart
514-2027



- parentalstatus.eo.wpd

Oct 13, 1999 - Amendment to Executive Order 11
3:00 p.m. (Arenth)

		P	F
MAC REED	OMB/OGC	395-3563	395-7294
Ann O'Leary	DPC/OFL	456-6275	456-28
Steven Abow	OPM/OGC	606-1701	606-0082
Suzanne Seiden	OPM/OGC	606-1700	606-26
Steve Cohen	OPH/OWR	606-1918	606-2443
Edward Connor	W H Council	456 2024	456-2256
Rosemary Hart	DOS/OLC	514-2027	514-056
Robin Lenhardt	DOS/OLC	514-1762	514-056
Elen Vargas	EEOC	663-4637	663-463
LISA FAIRHALL	OMB/PPE	395-7766	

DRAFT -- OCTOBER 6, 1999

Ending Discrimination Against Parents

Q. What is the purpose of this Executive Order?

A. Its purpose is to prevent intentional discrimination against employees who are parents because they are parents.

Q. Why is this important?

A. The importance of this directive is highlighted by its placement in an Executive Order signed by the President. It signals his commitment to safeguard the rights of parents and to focus attention on parents' legal rights and remedies.

Q. What else is the Administration doing to support parents?

A. The Administration is supporting legislation that will create even better enforcement remedies for parents.

Q. Does this Executive Order create new legal rights or enforcement remedies?

A. No. That would require an act of Congress.

Q. Meanwhile, what programs are currently available to parents in the Federal Government who need time off from work for family needs?

A. The Federal Government is committed to addressing and promoting family focused initiatives to help its employees balance work and family responsibilities. The Office of Personnel Management provides leadership in developing and implementing Governmentwide policies and programs to help Federal employees who need time off for family needs. Although no policy or program is designed exclusively for a single group, the following Federal Government programs greatly improve the working lives of parents:

- **Alternative Work Schedules.** Federal agencies may establish flexible or compressed work schedules, collectively referred to as “alternative work schedules.” Alternative work schedules allow for a variety of working arrangements tailored to fit the needs of individual employees.
- **Annual leave.** Employees may use annual leave for vacations, school activities, and other family activities.
- **Sick leave for family care and bereavement purposes.** Most employees may use up to 13 days of sick leave each leave year to care for a family member who is incapacitated as a result of physical or mental illness; injury; pregnancy; childbirth; or medical, dental, or optical examination or treatment; or who makes arrangements necessitated by the death of a family member or attends the funeral of a family member.
- **Sick leave for adoption.** Employees may use sick leave for purposes related to the adoption of a child, including court proceedings and required travel.
- **The Family and Medical Leave Act of 1993 (FMLA).** Under the FMLA, an employee is entitled to a total of 12 workweeks of unpaid leave during any 12-month period for the birth, adoption, or foster care of a son or daughter; the care of an employee’s spouse, son or daughter, or parent with a serious health condition; and the employee’s own serious health condition. An employee may substitute annual leave or sick leave, as appropriate, for unpaid leave under the FMLA. An employee retains his or her health insurance while using leave under the FMLA.
- **Expanded Family and Medical Leave.** On April 11, 1997, President Clinton issued a memorandum to the heads of departments and agencies urging them to take immediate action to allow Federal employees to take 24 hours of unpaid leave each year for the following activities:
 - To participate in school activities directly related to the educational advancement of a child, including early childhood education activities;
 - To accompany children to routine medical and dental examinations; and
 - To tend to the needs of older relatives.

- **Leave sharing.** Employees who experience a personal or family medical emergency and who exhaust their available paid leave may receive donated annual leave from other Federal employees through the voluntary leave transfer or leave bank programs. All agencies must have a leave transfer program. In addition, an agency may also choose to establish a leave bank for its employees.
- **Emergency Leave Transfer Program.** Employees who are adversely affected by a major disaster or emergency, as declared by the President, may receive donated annual leave from employees in their agency or other agencies without having to use their own paid leave. OPM has established emergency leave transfer programs for the emergency situations created by the bombings of the U.S. embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania (August 1998); Hurricane Georges (September 1998); the tornadoes in Oklahoma and Kansas (May 1999); and Hurricane Floyd (September 1999).
- **Time Off for Volunteer Activities.** On April 22, 1998, President Clinton signed a memorandum for heads of departments and agencies requesting them to reexamine the ways in which the Federal Government can support employees' commitment to community service and ensure that all employees are aware of the existing flexibility that permits them to participate in volunteer activities. OPM issued guidance to agencies on existing authority to encourage employee participation in volunteer activities, including alternative work schedules, annual leave, leave without pay, credit hours under flexible work schedules, compensatory time off, and excused absence, where appropriate.

Information on these programs is available on OPM's web site at www.opm.gov/oca.

Permitting employees maximum flexibility in scheduling work and time off demonstrates that the Federal Government recognizes the importance of each individual's needs. Employees who are able take time off to deal with family responsibilities and the strains associated with them are productive employees. These policies improve communication and instill a more cooperative attitude between supervisors and employees.

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Demonstrating support of employees through these means fosters goodwill and creates a more compassionate workplace, benefitting parents as well as all other employees.

Q. What remedies do Federal employees have now if they believe management has acted discriminatorily because of their status as parents?

A. The Civil Service Reform Act of 1978 describes prohibited personnel practices. One of them, contained in 5 U.S.C. §2302(b)(10), prohibits any employee who has authority to take certain personnel actions from discriminating for or against employees or applicants for employment on the basis of conduct that does not adversely affect employee performance. This statute prohibits discrimination based on parental status because that status has no bearing on employee performance.

Q. Who hears complaints of this kind?

A. The Office of Special Counsel. But employees may also complain to their agencies using the negotiated grievance procedure for bargaining unit employees or the agency administrative grievance procedure.

Q. May employees file a complaint with the Equal Employment Opportunity Commission if they believe that their agency violated the Executive Order?

A. No. Congress has not passed a law authorizing EEOC to hear such complaints.

Q. Does this initiative limit or affect management's flexibility in directing its employees, for example, by requiring accommodation to employee parents?

A. No. It is designed to put all employees on an equal footing.

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Q. Does this Executive Order mean that employees who are parents will receive advantageous treatment in comparison to other employees?

A. No. The Executive Order is designed to prohibit discrimination against employees solely because they are parents. Its purpose is not to put other employees at a disadvantage in the workplace or to give parents a preference to benefits that are available to all employees.

Q. Can you give an example?

A. Yes. Suppose an agency prescribes flexible work hours. Many employees request the same working hours, say 7:00 am until 4:30 p.m. Some base the request on the need to drop off or pick up their children at school or day care centers. Others who are not parents provide other reasons. Efficient office coverage requires that several employees be at the office performing their duties at all times from 7:00 a.m. to 6:00 p.m.

The Executive Order does not require or authorize an agency to approve or deny employee requests for particular duty hours simply because the employee is or is not a parent. Rather, the agency retains its full management authority to ensure prompt and efficient service. That is, its primary duty is to carry out its mission.

Q. Does it violate the Executive Order merely because an agency's practices have a greater negative impact on parents?

A. No. The purpose of the Executive Order is to prevent parents from being *intentionally* singled out for unfavorable treatment because they are parents.

DRAFT -- OCTOBER 6, 1999

EXECUTIVE ORDER

**FURTHER AMENDMENT TO EXECUTIVE ORDER 11478,
EQUAL EMPLOYMENT OPPORTUNITY IN THE FEDERAL GOVERNMENT**

By the authority vested in me as President by the Constitution and the laws of the United States, and in order to provide for a uniform policy for the Federal Government to prohibit discrimination based on sexual orientation, it is hereby ordered that Executive Order 11478, as amended, is further amended as follows:

Section 1. The first sentence of section 1 is amended by substituting “sexual orientation or parenthood.” for “or sexual orientation.”

Section [.] A new section [] is added: “No Administrative or Judicial Review. This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.”

WILLIAM J. CLINTON

THE WHITE HOUSE,
[date]

DRAFT -- OCTOBER 6, 1999

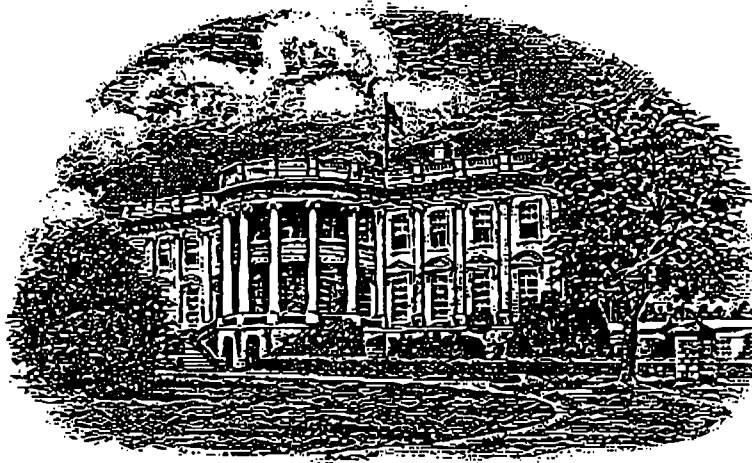
STATEMENT BY THE PRESIDENT

Today I have signed an Executive Order entitled *Further Amendment to Executive Order 11478, Equal Employment Opportunity in the Federal Government*. The Order provides a uniform policy for the Federal Government to prohibit discrimination against its employees simply because they are parents and states that policy for the first time in an Executive Order of the President.

It has always been the practice of this Administration to prohibit discrimination in the civilian workforce based on parenthood. This Executive Order, adding parenthood to the list of categories for which discrimination is prohibited in Executive Order 11478, will convey my determination that Federal agencies adhere to existing law prohibiting personnel actions based on non-merit factors such as parenthood and that they carry out existing policies.

This Executive Order states Administration policy but does not and cannot create any new enforcement rights. Nor does it impinge in any way on the authority of agencies to accomplish their mission on behalf of the American people. [I am simultaneously transmitting to the Congress the Ending Discrimination Against Parents Act to secure enforcement rights that will protect employees who are parents without impairing the efficiency of those they serve. I urge Congress to enact this important civil rights legislation to extend basic employment discrimination protections to all parents.] Employees should not be denied a job or lose a job or a promotion based on something that bears no relationship to their ability to perform their work.

The White House



Office of the Counsel to the President
Facsimile Transmission

Date: 5/14/99

To: Ann O'Leary

Facsimile Number: 62875

Total Pages: 3

From: Eddie Correia

Phone: (202) 456-2024

Fax: (202) 456-5055

Note: _____

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[Weekly Compilation of Presidential Documents]

From the 1998 Presidential Documents Online via GPO Access [frwais.access.gpo.gov]
[DOCID:pd01jn98_txt-18]

[Page 994]

Monday, June 1, 1998

Volume 34--Number 22
Pages 957-1002

Week Ending Friday, May 29, 1998

Executive Order 13087--Further Amendment to Executive Order 11478, Equal
Employment Opportunity in the Federal Government

May 28, 1998

By the authority vested in me as President by the Constitution and
the laws of the United States, and in order to provide for a uniform
policy for the Federal Government to prohibit discrimination based on
sexual orientation, it is hereby ordered that Executive Order 11478, as
amended, is further amended as follows:

Section 1. The first sentence of section 1 is amended by
substituting "age, or sexual orientation" for "or age".

Sec. 2. The second sentence of section 1 is amended by striking the
period and adding at the end of the sentence " , to the extent permitted
by law."

William J. Clinton

The White House,
May 28, 1998.

[Filed with the Office of the Federal Register, 8:45 a.m., June 1, 1998]

Note: This Executive order will be published in the Federal Register on
June 2.

[[Page 995]]

Executive Order 11478: Nondiscrimination in Federal Government

Following is the text of Executive Order 11478, initially signed August 8, 1969, as last amended by Executive Order 13087 on May 28, 1998, to include a prohibition against sexual orientation bias. The Executive Order also was amended by Executive Order 12106, effective January 1, 1979. The Order prohibits discrimination in federal employment on account of race, color, religion, sex, national origin, handicap, age, or sexual orientation. Executive Order 12106 transferred to the Equal Employment Opportunity Commission certain functions of the Civil Service Commission (currently the Office of Personnel Management), relating to enforcement of federal equal employment opportunity programs. These provisions supersede Part I of Executive Order 11246 (401:1029).

EQUAL EMPLOYMENT OPPORTUNITY IN THE FEDERAL GOVERNMENT

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

Sec. 1.

It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, age, or sexual orientation and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civil employees of the Federal Government to the extent permitted by law.

Sec. 2.

The head of each executive department and agency shall establish and maintain an affirmative program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in Section 1. It is the responsibility of each department and agency head, to the maximum extent possible, to provide sufficient resources to administer such a program in a positive and effective manner; assure that recruitment activities reach all sources of job candidates; utilize to the fullest extent the present skills of each employee; provide the maximum feasible opportunity to employees to enhance their skills so they may perform at their highest potential and advance in accordance with their abilities; provide training and advice to managers and supervisors to assure their understanding and implementation of the policy expressed in this Order; assure participation at the local level with other employers, schools, and public or private groups in cooperative efforts to improve community conditions which affect employability; and provide for a system within the department or agency for periodically evaluating the effectiveness with which the policy of this Order is being carried out.

Sec. 3.

The Equal Employment Opportunity Commission shall be responsible for directing and furthering the implementation of the policy of the Government of the United States to provide equal opportunity in Federal employment for all employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) and to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, or age.

Sec. 4.

The Equal Employment Opportunity Commission, after consultation with all

affected departments and agencies, shall issue such rules, regulations, orders, and instructions and request such information from the affected departments and agencies as it deems necessary and appropriate to carry out this Order.

Sec. 5.

All departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this Order and shall furnish the Commission such reports and information as it may request. The head of each department or agency shall comply with rules, regulations, orders and instructions issued by the Equal Employment Opportunity Commission pursuant to Section 4 of this Order.

Sec. 6.

This Order applies (a) to military departments as defined in Section 102 of Title 5, United States Code, and executive agencies (other than the General

Accounting Office as defined in Section 106 of Title 5, United States Code, and to the employers thereof (including employees paid from nonappropriated funds), and (b) to those portions of the legislative and judicial branches of the Federal Government and of the Government of the District of Columbia having positions in the competitive service and to the employees in those positions. This Order does not apply to aliens employed outside the limits of the United States.

Sec. 7.

Part I of Executive Order No. 11246 of September 24, 1966, and those parts of Executive Order No. 11376 of October 11, 1967, which apply to Federal employment, are hereby superseded.

Sec. 8.

This Order shall be applicable to the United States Postal Service and to the Postal Rate Commission established by the Postal Reorganization Act of 1970.

non-discrimination & affirmative action

Amending Executive Order 11478 to Prohibit Discrimination
in Federal Employment on the Basis of Status as a Parent

This memorandum outlines a number of possible suggestions for amending E.O. 11478 to prohibit discrimination on the basis of an individual's status as a parent. After consultation with lawyers in the Civil and Civil Rights Divisions, we decided to include in the amendment a definition of "parent" that is consistent with that in the proposed legislation. We also note that as currently drafted, the proposed section 7 suggests that the order would not be effective until OPM develops its policy guidance. We do not take the position that this is the optimum effective date or that it is legally required. We merely flag an issue that the group may wish to discuss.

1. Amend section 1 of E.O. 11478 by omitting the "or" that precedes the term "sexual orientation" and inserting the phrase "or status as a parent," after that term. The amended sentence would read "It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, age, sexual orientation, or status as a parent, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency."

2. Insert the following two sections after section 5:

Sec. 6. "Parent" is defined an individual who, with regard to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability -

(3) has the status of -

- (i) a biological parent;
- (ii) an adoptive parent;
- (iii) a foster parent
- (iv) a stepparent;
- (v) a custodian of a legal ward;
- (vi) a person who is actively seeking legal custody or adoption; or
- (vii) stands in loco parentis to such an individual.

Sec. 7. The Office of Personnel Management shall be responsible for developing and implementing ~~policy~~ guidance to effectuate the provisions of this order prohibiting discrimination on the basis of an individual's status as a parent. ~~Each executive department and agency shall adhere to such guidance in implementing the sections of this order prohibiting discrimination on the basis of an individual's status as a parent.~~

3. Renumber sections 6, 7 and 8 of the current E.O. as sections 8, 9, and 10, respectively..

DRAFT -- OCTOBER 13, 1999

EXECUTIVE ORDER

FURTHER AMENDMENT TO EXECUTIVE ORDER 11478,
EQUAL EMPLOYMENT OPPORTUNITY IN THE FEDERAL GOVERNMENT

By the authority vested in me as President by the Constitution and the laws of the United States, and in order to provide for a uniform policy for the Federal Government to prohibit discrimination based on parenthood [parental status], it is hereby ordered that Executive Order 11478, as amended, is further amended as follows:

Section 1. The first sentence of section 1 is amended by substituting "sexual orientation or parenthood" ["parental status"] for "or sexual orientation."

Section [.] A new section [] is added: "No Administrative or Judicial Review. This order is intended only to improve the internal management of the executive branch. It is not intended to, and does not create, any right to administrative or judicial review, or any other right, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person, except for those provided in sections 3, 4, and 5 of this order."

WILLIAM J. CLINTON

THE WHITE HOUSE,
[date]

DRAFT -- OCTOBER 13, 1999

STATEMENT BY THE PRESIDENT

Today I have signed an Executive Order entitled *Further Amendment to Executive Order 11478, Equal Employment Opportunity in the Federal Government*. The Order provides a uniform policy for the Federal Government to prohibit discrimination against its employees simply because they are parents and states that policy for the first time in an Executive Order of the President.

It has always been the practice of this Administration to prohibit discrimination in the civilian workforce based on parenthood. This Executive Order, adding parenthood to the list of categories for which discrimination is prohibited in Executive Order 11478, will convey my determination that Federal agencies adhere to existing law prohibiting personnel actions based on non-merit factors such as parenthood [parental status] and that they carry out existing policies.

This Executive Order states Administration policy but does not and cannot create any new enforcement rights. Nor does it impinge in any way on the authority of agencies to accomplish their mission on behalf of the American people. [I am simultaneously transmitting to the Congress the Ending Discrimination Against Parents Act to secure enforcement rights that will protect employees who are parents without impairing the efficiency of those they serve. I urge Congress to enact this important civil rights legislation to extend basic employment discrimination protections to all parents.] Employees should not be denied a job or lose a job or a promotion based on something that bears no relationship to their ability to perform their work.

DRAFT -- OCTOBER 13, 1999

Ending Discrimination Against Parents

- Q.** What is the purpose of this Executive Order?
- A.** Its purpose is to prevent intentional discrimination against employees who are parents because they are parents.
- Q.** Why is this important?
- A.** The importance of this directive is highlighted by its placement in an Executive Order signed by the President. It signals his commitment to safeguard the rights of parents and to focus attention on parents' legal rights and remedies.
- Q.** What else is the Administration doing to support parents?
- A.** The Administration is supporting legislation that will create even better enforcement remedies for parents.
- Q.** Does this Executive Order create new legal rights or enforcement remedies?
- A.** No. That would require an act of Congress.
- Q.** Meanwhile, what programs are currently available to parents in the Federal Government who need time off from work for family needs?
- A.** The Federal Government is committed to addressing and promoting family focused initiatives to help its employees balance work and family responsibilities. The Office of Personnel Management provides leadership in developing and implementing Governmentwide policies and programs to help Federal employees who need time off for family needs. Although no policy or program is designed exclusively for a single group, the following Federal Government programs greatly improve the working lives of parents:

- **Alternative Work Schedules.** Federal agencies may establish flexible or compressed work schedules, collectively referred to as “alternative work schedules.” Alternative work schedules allow for a variety of working arrangements tailored to fit the needs of individual employees.
- **Annual leave.** Employees may use annual leave for vacations, school activities, and other family activities.
- **Sick leave for family care and bereavement purposes.** Most employees may use up to 13 days of sick leave each leave year to care for a family member who is incapacitated as a result of physical or mental illness; injury; pregnancy; childbirth; or medical, dental, or optical examination or treatment; or who makes arrangements necessitated by the death of a family member or attends the funeral of a family member.
- **Sick leave for adoption.** Employees may use sick leave for purposes related to the adoption of a child, including court proceedings and required travel.
- **The Family and Medical Leave Act of 1993 (FMLA).** Under the FMLA, an employee is entitled to a total of 12 workweeks of unpaid leave during any 12-month period for the birth, adoption, or foster care of a son or daughter; the care of an employee’s spouse, son or daughter, or parent with a serious health condition; and the employee’s own serious health condition. An employee may substitute annual leave or sick leave, as appropriate, for unpaid leave under the FMLA. An employee retains his or her health insurance while using leave under the FMLA.
- **Expanded Family and Medical Leave.** On April 11, 1997, President Clinton issued a memorandum to the heads of departments and agencies urging them to take immediate action to allow Federal employees to take 24 hours of unpaid leave each year for the following activities:
 - To participate in school activities directly related to the educational advancement of a child, including early childhood education activities;
 - To accompany children to routine medical and dental examinations; and
 - To tend to the needs of older relatives.

- **Leave sharing.** Employees who experience a personal or family medical emergency and who exhaust their available paid leave may receive donated annual leave from other Federal employees through the voluntary leave transfer or leave bank programs. All agencies must have a leave transfer program. In addition, an agency may also choose to establish a leave bank for its employees.
- **Emergency Leave Transfer Program.** Employees who are adversely affected by a major disaster or emergency, as declared by the President, may receive donated annual leave from employees in their agency or other agencies without having to use their own paid leave. OPM has established emergency leave transfer programs for the emergency situations created by the bombings of the U.S. embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania (August 1998); Hurricane Georges (September 1998); the tornadoes in Oklahoma and Kansas (May 1999); and Hurricane Floyd (September 1999).
- **Time Off for Volunteer Activities.** On April 22, 1998, President Clinton signed a memorandum for heads of departments and agencies requesting them to reexamine the ways in which the Federal Government can support employees' commitment to community service and ensure that all employees are aware of the existing flexibility that permits them to participate in volunteer activities. OPM issued guidance to agencies on existing authority to encourage employee participation in volunteer activities, including alternative work schedules, annual leave, leave without pay, credit hours under flexible work schedules, compensatory time off, and excused absence, where appropriate.

Information on these programs is available on OPM's web site at www.opm.gov/oqa.

Permitting employees maximum flexibility in scheduling work and time off demonstrates that the Federal Government recognizes the importance of each individual's needs. Employees who are able take time off to deal with family responsibilities and the strains associated with them are productive employees. These policies improve communication and instill a more cooperative attitude between supervisors and employees. Demonstrating support of employees through these means fosters

goodwill and creates a more compassionate workplace, benefitting parents as well as all other employees.

- Q.** What remedies do Federal employees have now if they believe management has acted discriminatorily because of their status as parents?
- A.** The Civil Service Reform Act of 1978 describes prohibited personnel practices. One of them, contained in 5 U.S.C. §2302(b)(10), prohibits any employee who has authority to take certain personnel actions from discriminating for or against employees or applicants for employment on the basis of conduct that does not adversely affect employee performance. This statute prohibits discrimination based on parental status because that status has no bearing on employee performance.
- Q.** Who hears complaints of this kind?
- A.** The Office of Special Counsel. But employees may also complain to their agencies using the negotiated grievance procedure for bargaining unit employees or the agency administrative grievance procedure.
- Q.** May employees file a complaint with the Equal Employment Opportunity Commission merely because the employer violated the Executive Order's prohibition on discrimination because of parenthood [parental status]?
- A.** No. Congress has not passed a law authorizing EEOC to hear complaints based solely upon parental discrimination. However, EEOC may, in some instances, hear sex discrimination cases under Title VII of the Civil Rights Act of 1964, as amended, that relate to parental issues. An example might be if an agency discriminates against mothers because they have young children but not fathers.
- Q.** Does this initiative limit or affect management's flexibility in directing its employees, for example, by requiring accommodation to employee parents?

A. No. It does not include an accommodation requirement.

Q. Does this Executive Order mean that employees who are parents will receive advantageous treatment in comparison to other employees?

A. No. The Executive Order is designed to prohibit discrimination against employees solely because they are parents. Its purpose is not to put other employees at a disadvantage in the workplace or to give parents a preference to benefits that are available to all employees.

Q. Can you explain this further?

A. Yes. Suppose an agency prescribes flexible work hours. Many employees request the same working hours, say 7:00 am until 4:30 p.m. Some base the request on the need to drop off or pick up their children at school or day care centers. Others who are not parents provide other reasons. Efficient office operation requires coverage from 7:00 a.m. to 6:00 p.m.

The Executive Order does not require or authorize an agency to approve or deny employee requests for particular duty hours simply because the employee is or is not a parent. Rather, the agency retains its full management authority to ensure prompt and efficient service. That is, its primary duty is to carry out its mission.

Q. What would be an example of discrimination based on parenthood?

A. An appointing official denies a promotion because he or she believes that a mother with young children should not work.

Q. Does an agency's practices violate the Executive Order merely because they have a greater negative impact on parents?

A. No. The purpose of the Executive Order is to prevent parents from being *intentionally* singled out for unfavorable treatment because they are parents.

Edward W. Correia

09/30/99 06:10:28 PM

Record Type: Record

To: "Hart, Rosemary" <Rosemary.Hart@usdoj.gov>
cc: Ann O'Leary/OPD/EOP@EOP, McGavock D. Reed/OMB/EOP@EOP
Subject: Re: FW: Parental Discrimination EO 

These are my initial comments on the draft.

1. Where did we come out on including marital status in this order? As long as we are stating administration policy on employment discrimination, wouldn't we include that, too?
2. We should take this opportunity to change "handicap" to "disability" in section 1.
3. It seems to me the recommended new section 7 could be a freestanding provision in the new order rather than an addition to 11478, unless we want OPM to develop guidance on all the standards in section 1.
4. The explanatory statement by the President can include the point that no affirmative action efforts based on parental status (and perhaps marital status) are authorized. As you may recall, that point was made in a subsequent letter from Chuck Ruff in regard to the sexual orientation executive order.
5. I still believe we need a provision that says something like: 'Nothing in this order shall prevent an executive branch agency from providing accommodations to parents in scheduling, employment benefits, or other terms of employment, which are related to parental or family responsibilities.'

Handwritten notes:
- "Hart" circled
- "OPD" circled
- "EOP" circled

Handwritten notes:
- "What is being done?"
- "Why?"

Handwritten initials:
- "EW"

Handwritten notes:
- "Why do we need additional steps?"



"Suzanne B. Seiden" <SBSEIDEN@opm.gov>

10/06/99 05:34:22 PM

Record Type: Record

To: ellen.vargyas@eeoc.gov, Ann O'Leary/OPD/EOP, rosemary.hart@usdoj.gov, Edward W. Correia/WHO/EOP

cc: sbseiden@opm.gov

Subject: Parental Discrimination EO

Folks:

Attached for your review are:

1. draft Executive Order
2. draft POTUS Statement
3. draf Q & As

These documents are in word and word perfect. I apologize for the delay in sending these and not being able to be collaborate on the development. These are intended to be draft documents to facilitate and flesh out the policy issues that were raised on the conference call.

Also, please let me know who else should be added to this distribution list. Please call me at 606-1700 if you have any questions. thanks,
suzanne

-- E-Mail scanned for viruses. --



- parent.doc



- parent.wpd



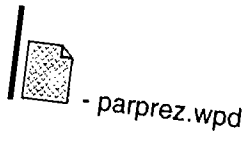
- pareo.doc



- pareo.wpd



- parprez.doc



- parprez.wpd

DRAFT -- OCTOBER 6, 1999

Ending Discrimination Against Parents

Q. What is the purpose of this Executive Order?

A. Its purpose is to prevent intentional discrimination against employees who are parents because they are parents.

Q. Why is this important?

A. ~~The importance of this directive is highlighted by its placement in an Executive Order signed by the President.~~ It signals his commitment to safeguard the rights of parents and to focus attention on parents' legal rights and remedies.

Family friendly workplace

*Speakers
forwards
into show he
is not a
parent*

Q. What else is the Administration doing to support parents?

Far more place

A. The Administration is supporting legislation that will create even better enforcement remedies for parents.

*→ FMLA
→ tax issues*

Q. Does this Executive Order create new legal rights or enforcement remedies?

A. No. That would require an act of Congress.

What we are actually

Q. Meanwhile, what programs are currently available to parents in the Federal Government who need time off from work for family needs?

A. The Federal Government is committed to addressing and promoting family focused initiatives to help its employees balance work and family responsibilities. The Office of Personnel Management provides leadership in developing and implementing Governmentwide policies and programs to help Federal employees who need time off for family needs. Although no policy or program is designed exclusively for a single group, the following Federal Government programs greatly improve the working lives of parents:

- **Alternative Work Schedules.** Federal agencies may establish flexible or compressed work schedules, collectively referred to as “alternative work schedules.” Alternative work schedules allow for a variety of working arrangements tailored to fit the needs of individual employees.
- **Annual leave.** Employees may use annual leave for vacations, school activities, and other family activities.
- **Sick leave for family care and bereavement purposes.** Most employees may use up to 13 days of sick leave each leave year to care for a family member who is incapacitated as a result of physical or mental illness; injury; pregnancy; childbirth; or medical, dental, or optical examination or treatment; or who makes arrangements necessitated by the death of a family member or attends the funeral of a family member.
- **Sick leave for adoption.** Employees may use sick leave for purposes related to the adoption of a child, including court proceedings and required travel.
- **The Family and Medical Leave Act of 1993 (FMLA).** Under the FMLA, an employee is entitled to a total of 12 workweeks of unpaid leave during any 12-month period for the birth, adoption, or foster care of a son or daughter; the care of an employee’s spouse, son or daughter, or parent with a serious health condition; and the employee’s own serious health condition. An employee may substitute annual leave or sick leave, as appropriate, for unpaid leave under the FMLA. An employee retains his or her health insurance while using leave under the FMLA.
- **Expanded Family and Medical Leave.** On April 11, 1997, President Clinton issued a memorandum to the heads of departments and agencies urging them to take immediate action to allow Federal employees to take 24 hours of unpaid leave each year for the following activities:
 - To participate in school activities directly related to the educational advancement of a child, including early childhood education activities;
 - To accompany children to routine medical and dental examinations; and
 - To tend to the needs of older relatives.

- **Leave sharing.** Employees who experience a personal or family medical emergency and who exhaust their available paid leave may receive donated annual leave from other Federal employees through the voluntary leave transfer or leave bank programs. All agencies must have a leave transfer program. In addition, an agency may also choose to establish a leave bank for its employees.
- **Emergency Leave Transfer Program.** Employees who are adversely affected by a major disaster or emergency, as declared by the President, may receive donated annual leave from employees in their agency or other agencies without having to use their own paid leave. OPM has established emergency leave transfer programs for the emergency situations created by the bombings of the U.S. embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania (August 1998); Hurricane Georges (September 1998); the tornadoes in Oklahoma and Kansas (May 1999); and Hurricane Floyd (September 1999).
- **Time Off for Volunteer Activities.** On April 22, 1998, President Clinton signed a memorandum for heads of departments and agencies requesting them to reexamine the ways in which the Federal Government can support employees' commitment to community service and ensure that all employees are aware of the existing flexibility that permits them to participate in volunteer activities. OPM issued guidance to agencies on existing authority to encourage employee participation in volunteer activities, including alternative work schedules, annual leave, leave without pay, credit hours under flexible work schedules, compensatory time off, and excused absence, where appropriate.

Information on these programs is available on OPM's web site at www.opm.gov/oca.

Permitting employees maximum flexibility in scheduling work and time off demonstrates that the Federal Government recognizes the importance of each individual's needs. Employees who are able take time off to deal with family responsibilities and the strains associated with them are productive employees. These policies improve communication and instill a more cooperative attitude between supervisors and employees.

- -

Demonstrating support of employees through these means fosters goodwill and creates a more compassionate workplace, benefitting parents as well as all other employees.

Q. What remedies do Federal employees have now if they believe management has acted discriminatorily because of their status as parents?

A. The Civil Service Reform Act of 1978 describes prohibited personnel practices. One of them, contained in 5 U.S.C. §2302(b)(10), prohibits any employee who has authority to take certain personnel actions from discriminating for or against employees or applicants for employment on the basis of conduct that does not adversely affect employee performance. This statute prohibits discrimination based on parental status because that status has no bearing on employee performance.

Q. Who hears complaints of this kind?

A. The Office of Special Counsel. But employees may also complain to their agencies using the negotiated grievance procedure for bargaining unit employees or the agency administrative grievance procedure.

Q. May employees file a complaint with the Equal Employment Opportunity Commission if they believe that their agency violated the Executive Order?

A. No. Congress has not passed a law authorizing EEOC to hear such complaints.

Q. Does this initiative limit or affect management's flexibility in directing its employees, for example, by requiring accommodation to employee parents?

A. No. It is designed to put all employees on an equal footing.

- -

Q. Does this Executive Order mean that employees who are parents will receive advantageous treatment in comparison to other employees?

A. No. The Executive Order is designed to prohibit discrimination against employees solely because they are parents. Its purpose is not to put other employees at a disadvantage in the workplace or to give parents a preference to benefits that are available to all employees.

Q. Can you give an example?

A. Yes. Suppose an agency prescribes flexible work hours. Many employees request the same working hours, say 7:00 am until 4:30 p.m. Some base the request on the need to drop off or pick up their children at school or day care centers. Others who are not parents provide other reasons. Efficient office coverage requires that several employees be at the office performing their duties at all times from 7:00 a.m. to 6:00 p.m.

The Executive Order does not require or authorize an agency to approve or deny employee requests for particular duty hours simply because the employee is or is not a parent. Rather, the agency retains its full management authority to ensure prompt and efficient service. That is, its primary duty is to carry out its mission.

Q. Does it violate the Executive Order merely because an agency's practices have a greater negative impact on parents?

A. No. The purpose of the Executive Order is to prevent parents from being *intentionally* singled out for unfavorable treatment because they are parents.

DRAFT -- OCTOBER 6, 1999

EXECUTIVE ORDER

**FURTHER AMENDMENT TO EXECUTIVE ORDER 11478,
EQUAL EMPLOYMENT OPPORTUNITY IN THE FEDERAL GOVERNMENT**

By the authority vested in me as President by the Constitution and the laws of the United States, and in order to provide for a uniform policy for the Federal Government to prohibit discrimination based on sexual orientation, it is hereby ordered that Executive Order 11478, as amended, is further amended as follows:

Section 1. The first sentence of section 1 is amended by substituting "sexual orientation or parenthood." for "or sexual orientation."

Section [.] A new section [] is added: "No Administrative or Judicial Review. This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person."

WILLIAM J. CLINTON

THE WHITE HOUSE,
[date]

DRAFT -- OCTOBER 6, 1999

STATEMENT BY THE PRESIDENT

Today I have signed an Executive Order entitled *Further Amendment to Executive Order 11478, Equal Employment Opportunity in the Federal Government*. The Order provides a uniform policy for the Federal Government to prohibit discrimination against its employees simply because they are parents and states that policy for the first time in an Executive Order of the President.

It has always been the practice of this Administration to prohibit discrimination in the civilian workforce based on parenthood. This Executive Order, adding parenthood to the list of categories for which discrimination is prohibited in Executive Order 11478, will convey my determination that Federal agencies adhere to existing law prohibiting personnel actions based on non-merit factors such as parenthood and that they carry out existing policies.

This Executive Order states Administration policy but does not and cannot create any new enforcement rights. Nor does it impinge in any way on the authority of agencies to accomplish their mission on behalf of the American people. [I am simultaneously transmitting to the Congress the Ending Discrimination Against Parents Act to secure enforcement rights that will protect employees who are parents without impairing the efficiency of those they serve. I urge Congress to enact this important civil rights legislation to extend basic employment discrimination protections to all parents.] Employees should not be denied a job or lose a job or a promotion based on something that bears no relationship to their ability to perform their work.



"Hart, Rosemary" <Rosemary.Hart@usdoj.gov>

09/30/99 01:49:59 PM

Record Type: Record

To: Ann O'Leary/OPD/EOP

cc: "EdwardW.Correia@who.eop.gov"

<"/S=EdwardW.Correia#064#who.eop.gov/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/"@intmail.usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

Subject: RE: Parental Discrimination EO

Ann: Attached is the OLC draft of a possible amendment to EO 11478 that would prohibit discrimination in federal employment on the basis of status as a parent. We have coordinated this draft with the Civil Division and the Civil Rights Division at DOJ.

Please let me know if you have any questions. Has a meeting time been set?
Rosemary Hart 514-2027



- parental.Sept30.wpd

① update on Status Legislation/EO

② walk thru EO
Mental Status

③ Policy document

④ Review/permissions & employees
on records

→ Edward W. Correia

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT

From the Office of the Director

Ann O'Leary
Office of the First Lady

Here's some material on the Equal
Opportunity Executive Order and guide
that may be of help to you on the
parental discrimination front.

Mary O'Hara
606-1000

Chief of Staff

THE WHITE HOUSE

WASHINGTON

July 22, 1998

The Honorable Janice R. Lachance
Director, Office of Personnel Management
Theodore Roosevelt Federal Building
1900 E Street, N.W.
Washington, D.C. 20415

Dear Ms. Lachance:

On May 28, 1998, the President issued Executive Order 13087. It amends Executive Order 11478, which pertains to discrimination against federal civilian employees. Federal law has long prohibited discrimination for or against an employee or applicant based on "conduct which does not adversely affect the performance of the employee or applicant or the performance of others." 5 U.S.C. 2302(b)(10). In the case of civilian employees and applicants, OPM has interpreted this statute to prohibit discrimination based on sexual orientation, and that has been the policy of this Administration from the outset. Most federal agencies and departments have issued regulations or other directives to implement this bar on discrimination. The new executive order is intended to restate and make uniform across the executive branch the pre-existing policy prohibiting discrimination based on sexual orientation in federal civilian employment. I am writing to provide guidance on the intent behind this order.

Definition of Sexual Orientation

It is intended that the term "sexual orientation" have the common meaning stated in the Employment Non-Discrimination Act, "homosexuality, bisexuality, or heterosexuality."

Responsibilities of Agencies

The purpose of Executive Order 13087 is to confirm and make uniform the existing bar on discrimination based on sexual orientation by amending Section 1 of Executive Order 11478 to add sexual orientation to the categories for which discrimination has been expressly prohibited. Executive Order 13087 does not authorize affirmative action policies, such as recruitment, reporting, or goal-setting based on sexual orientation. As a result of this executive order, it is not intended that agencies take steps to determine the sexual orientation of current or prospective employees or to keep tallies regarding the sexual orientation of current or prospective employees.

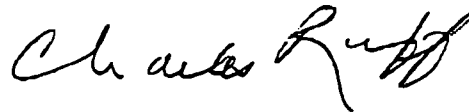
Hon. Janice R. Lachance
July 22, 1998
Page 2

Procedures for Enforcing Prohibition

The executive order does not create any rights to file a complaint alleging discrimination on the basis of sexual orientation with a court or with the EEOC. The order leaves intact the current procedures for dealing with such complaints. An employee who believes he or she has suffered adverse action may seek redress under procedures now available within each agency. The order does not authorize appeals of agency actions to the EEOC.

The President appreciates your assistance in furthering the policy of this important order. OPM can play a useful role in informing federal employees about applicable procedures, including the way in which claims may be raised by individual employees. Please let me know if you have any questions about the meaning or appropriate implementation of Executive Order 13087.

Sincerely,



Charles F.C. Ruff
Counsel to the President

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

May 28, 1998

EXECUTIVE ORDER

- - - - -

FURTHER AMENDMENT TO EXECUTIVE ORDER 11478,
EQUAL EMPLOYMENT OPPORTUNITY IN THE FEDERAL GOVERNMENT

By the authority vested in me as President by the Constitution and the laws of the United States, and in order to provide for a uniform policy for the Federal Government to prohibit discrimination based on sexual orientation, it is hereby ordered that Executive Order 11478, as amended, is further amended as follows:

Section 1. The first sentence of section 1 is amended by substituting "age, or sexual orientation" for "or age".

Sec. 2. The second sentence of section 1 is amended by striking the period and adding at the end of the sentence ", to the extent permitted by law."

WILLIAM J. CLINTON

THE WHITE HOUSE,
May 28, 1998.

#

Proclamations and Executive Orders

programs to employees of other agencies (excepted by section 4102(b)(1) of Title 5, United States Code) and assign his employees to this will result in better training, improvement of facilities in areas of substantive management; and use of resources as appropriate.

SEC. 401. The authority vested in the President by section 4101(6)(B) of Title 5, United States Code, to designate a foreign government or international organization or instrumentality of either as eligible to provide training, is hereby delegated to the head of each agency for his employees except that each such designation shall be made only after the agency head concerned has obtained and given due consideration to the advice of the Department of State thereon prior to the first use of such training facility and thereafter periodically but not less often than every three years.

[Sec. 401 amended by EO 12107 of Dec. 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p. 264]

SEC. 402. The authority vested in the President by section 4101(6)(B) of Title 5, United States Code, to designate a foreign government or international organization or instrumentality of either as eligible to provide training, is hereby delegated to the head of each agency for his employees except that each such designation shall be made only after the agency head concerned has obtained and given due consideration to the advice of the Department of State thereon prior to the first use of such training facility and thereafter periodically but not less often than every three years.

SEC. 403. The authority vested in the President by section 4101(6)(B) of Title 5, United States Code, to designate a foreign government or international organization or instrumentality of either as eligible to provide training, is hereby delegated to the head of each agency for his employees except that each such designation shall be made only after the agency head concerned has obtained and given due consideration to the advice of the Department of State thereon prior to the first use of such training facility and thereafter periodically but not less often than every three years.

SEC. 404. The authority vested in the President by section 4101(6)(B) of Title 5, United States Code, to designate a foreign government or international organization or instrumentality of either as eligible to provide training, is hereby delegated to the head of each agency for his employees except that each such designation shall be made only after the agency head concerned has obtained and given due consideration to the advice of the Department of State thereon prior to the first use of such training facility and thereafter periodically but not less often than every three years.

SEC. 405. The authority vested in the President by section 4101(6)(B) of Title 5, United States Code, to designate a foreign government or international organization or instrumentality of either as eligible to provide training, is hereby delegated to the head of each agency for his employees except that each such designation shall be made only after the agency head concerned has obtained and given due consideration to the advice of the Department of State thereon prior to the first use of such training facility and thereafter periodically but not less often than every three years.

SEC. 406. The authority vested in the President by section 4101(6)(B) of Title 5, United States Code, to designate a foreign government or international organization or instrumentality of either as eligible to provide training, is hereby delegated to the head of each agency for his employees except that each such designation shall be made only after the agency head concerned has obtained and given due consideration to the advice of the Department of State thereon prior to the first use of such training facility and thereafter periodically but not less often than every three years.

SEC. 407. The authority vested in the President by section 4101(6)(B) of Title 5, United States Code, to designate a foreign government or international organization or instrumentality of either as eligible to provide training, is hereby delegated to the head of each agency for his employees except that each such designation shall be made only after the agency head concerned has obtained and given due consideration to the advice of the Department of State thereon prior to the first use of such training facility and thereafter periodically but not less often than every three years.

SEC. 408. The authority vested in the President by section 4101(6)(B) of Title 5, United States Code, to designate a foreign government or international organization or instrumentality of either as eligible to provide training, is hereby delegated to the head of each agency for his employees except that each such designation shall be made only after the agency head concerned has obtained and given due consideration to the advice of the Department of State thereon prior to the first use of such training facility and thereafter periodically but not less often than every three years.

SEC. 409. The authority vested in the President by section 4101(6)(B) of Title 5, United States Code, to designate a foreign government or international organization or instrumentality of either as eligible to provide training, is hereby delegated to the head of each agency for his employees except that each such designation shall be made only after the agency head concerned has obtained and given due consideration to the advice of the Department of State thereon prior to the first use of such training facility and thereafter periodically but not less often than every three years.

SEC. 410. The authority vested in the President by section 4101(6)(B) of Title 5, United States Code, to designate a foreign government or international organization or instrumentality of either as eligible to provide training, is hereby delegated to the head of each agency for his employees except that each such designation shall be made only after the agency head concerned has obtained and given due consideration to the advice of the Department of State thereon prior to the first use of such training facility and thereafter periodically but not less often than every three years.

SEC. 411. The authority vested in the President by section 4101(6)(B) of Title 5, United States Code, to designate a foreign government or international organization or instrumentality of either as eligible to provide training, is hereby delegated to the head of each agency for his employees except that each such designation shall be made only after the agency head concerned has obtained and given due consideration to the advice of the Department of State thereon prior to the first use of such training facility and thereafter periodically but not less often than every three years.

SEC. 412. The authority vested in the President by section 4101(6)(B) of Title 5, United States Code, to designate a foreign government or international organization or instrumentality of either as eligible to provide training, is hereby delegated to the head of each agency for his employees except that each such designation shall be made only after the agency head concerned has obtained and given due consideration to the advice of the Department of State thereon prior to the first use of such training facility and thereafter periodically but not less often than every three years.

SEC. 413. The authority vested in the President by section 4101(6)(B) of Title 5, United States Code, to designate a foreign government or international organization or instrumentality of either as eligible to provide training, is hereby delegated to the head of each agency for his employees except that each such designation shall be made only after the agency head concerned has obtained and given due consideration to the advice of the Department of State thereon prior to the first use of such training facility and thereafter periodically but not less often than every three years.

DELEGATIONS

SEC. 414. The authority vested in the President by section 4101(6)(B) of Title 5, United States Code, to designate a foreign government or international organization or instrumentality of either as eligible to provide training, is hereby delegated to the head of each agency for his employees except that each such designation shall be made only after the agency head concerned has obtained and given due consideration to the advice of the Department of State thereon prior to the first use of such training facility and thereafter periodically but not less often than every three years.

SEC. 415. The authority vested in the President by section 4101(6)(B) of Title 5, United States Code, to designate a foreign government or international organization or instrumentality of either as eligible to provide training, is hereby delegated to the head of each agency for his employees except that each such designation shall be made only after the agency head concerned has obtained and given due consideration to the advice of the Department of State thereon prior to the first use of such training facility and thereafter periodically but not less often than every three years.

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Chapter 5—Federal Civilian Personnel

awards, and payments referred to in that section may be made to and accepted by employees.

[Sec. 401 amended by EO 12107 of Dec. 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p. 264]

SEC. 402. The authority vested in the President by section 4101(6)(B) of Title 5, United States Code, to designate a foreign government or international organization or instrumentality of either as eligible to provide training, is hereby delegated to the head of each agency for his employees except that each such designation shall be made only after the agency head concerned has obtained and given due consideration to the advice of the Department of State thereon prior to the first use of such training facility and thereafter periodically but not less often than every three years.

PART V—REVOCATION OF PRIOR ORDER

SEC. 501. Executive Order No. 10800 of January 15, 1959, is hereby revoked.

Executive Order 11478—Equal employment opportunity in the Federal Government

SOURCE: The provisions of Executive Order 11478 of Aug. 8, 1969, appear at 34 FR 12985, 3 CFR, 1966-1970 Comp., p. 803, unless otherwise noted.

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

SECTION 1. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, or age, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government.

[Preamble deleted and sec. 1 amended by EO 12106 of Dec. 28, 1978, 44 FR 1053, 3 CFR, 1978 Comp., p. 263]

SEC. 2. The head of each executive department and agency shall establish and maintain an affirmative program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in section 1. It is the responsibility of each department and agency head, to the maximum extent possible, to provide sufficient resources to administer such a program in a positive and effective manner; assure that recruitment activities reach all sources of job candidates; utilize to the fullest extent the present skills of each employee; provide the maximum feasible opportunity to employees to enhance their skills so they may perform at their highest potential and advance in accordance with their abilities; provide training and advice to managers and supervisors to

Codification of Presidential Proclamations and Executive Orders

assure their understanding and implementation of the policy expressed in this Order; assure participation at the local level with other employers, schools, and public or private groups in cooperative efforts to improve community conditions which affect employability; and provide for a system within the department or agency for periodically evaluating the effectiveness with which the policy of this Order is being carried out.

SEC. 3. The Equal Employment Opportunity Commission shall be responsible for directing and furthering the implementation of the policy of the Government of the United States to provide equal opportunity in Federal employment for all employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) and to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, or age.

[Sec. 3 amended by EO 12106 of Dec. 28, 1978, 44 FR 1053, 3 CFR, 1978 Comp., p. 263]

SEC. 4. The Equal Employment Opportunity Commission, after consultation with all affected departments and agencies, shall issue such rules, regulations, orders, and instructions and request such information from the affected departments and agencies as it deems necessary and appropriate to carry out this Order.

[Sec. 4 amended by EO 12106 of Dec. 28, 1978, 44 FR 1053, 3 CFR, 1978 Comp., p. 263]

SEC. 5. All departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this Order and shall furnish the Commission such reports and information as it may request. The head of each department or agency shall comply with rules, regulations, orders and instructions issued by the Equal Employment Opportunity Commission pursuant to Section 4 of this Order.

[Sec. 5 amended by EO 12106 of Dec. 28, 1978, 44 FR 1053, 3 CFR, 1978 Comp., p. 263]

SEC. 6. This Order applies (a) to military departments as defined in section 102 of title 5, United States Code, and executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code, and to the employees thereof (including employees paid from nonappropriated funds), and (b) to those portions of the legislative and judicial branches of the Federal Government and of the Government of the District of Columbia having positions in the competitive service and to the employees in those positions. This Order does not apply to aliens employed outside the limits of the United States.

SEC. 7. Part I of Executive Order No. 11246 of September 24, 1965, and those parts of Executive Order No. 11375 of October 13, 1967, which apply to Federal employment, are hereby superseded.

SEC. 8. This Order shall be applicable to the United States Postal Service and to the Postal Rate Commission established by the Postal Reorganization Act of 1970.

[Sec. 8 added by EO 11590 of Apr. 23, 1971, 36 FR 7831, 3 CFR, 1971-1975 Comp., p. 558]

Chapter 5—Federal Civilian

Executive Order 11491—Labor-management Service

SOURCE: The provisions of Executive Order 11491, 17605, 3 CFR, 1966-1970 Comp., p. 861, unless otherwise indicated.

WHEREAS the public interest requires improved performance and the continual development of modern and progressive work practices to foster performance and efficiency; and

WHEREAS the well-being of employees of the Government are benefited by providing them the opportunity to participate in the formulation and implementation of policies and practices affecting the conditions of their employment;

WHEREAS the participation of employees in the management of the Government through the maintenance of constructive relationships between labor organizations and management;

WHEREAS subject to law and the parameters of the Federal civilian service, effective labor-management relations require a clear statement of the respective rights and responsibilities of labor organizations and agency management;

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, and 7301 of title 5 of the United States Code, I hereby direct that the following officers and agencies of the executive branch shall, in their dealings with Federal employees and organizations representing employees:

GENERAL PROVISIONS

SECTION 1. *Policy.* (a) Each employee of the Federal Government has the right, freely and without fear of reprisal, to form, join, and assist a labor organization for the exercise of this right. Except as otherwise provided in this Order, the right to assist a labor organization in the management of the organization and to exercise the capacity of an organization representative in expressing its views to officials of the executive branch shall be exercised through appropriate authority. The head of each agency shall be required to assure that employees in the agency are not discriminated against on the basis of their rights under this section and that no interference or discrimination is practiced within his agency against age membership in a labor organization.

(b) Paragraph (a) of this section does not prohibit the management of a labor organization or the representation of such an organization by a supervisor, except as provided in this Order, or by an employee when the action would result in a conflict or apparent conflict of interest or be incompatible with law or with the official duties of the employee.

SEC. 2. *Definitions.* When used in this Order

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*A*DDRESSING
SEXUAL ORIENTATION
DISCRIMINATION
IN FEDERAL
CIVILIAN EMPLOYMENT

*A Guide to
Employees'
Rights*



United States
Office of
Personnel
Management

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*A*DDRESSING SEXUAL ORIENTATION DISCRIMINATION IN FEDERAL CIVILIAN EMPLOYMENT

*A Guide to
Employees'
Rights*



United States
Office of
Personnel
Management

Edward W. Correia

09/30/99 06:10:28 PM

Record Type: Record

To: "Hart, Rosemary" <Rosemary.Hart@usdoj.gov>
cc: Ann O'Leary/OPD/EOP@EOP, McGavock D. Reed/OMB/EOP@EOP
Subject: Re: FW: Parental Discrimination EO 

These are my initial comments on the draft.

1. Where did we come out on including marital status in this order? As long as we are stating administration policy on employment discrimination, wouldn't we include that, too?

2. We should take this opportunity to change "handicap" to "disability" in section 1.

3. It seems to me the recommended new section 7 could be a freestanding provision in the new order rather than an addition to 11478, unless we want OPM to develop guidance on all the standards in section 1.

4. The explanatory statement by the President can include the point that no affirmative action efforts based on parental status (and perhaps marital status) are authorized. As you may recall, that point was made in a subsequent letter from Chuck Ruff in regard to the sexual orientation executive order.

5. I still believe we need a provision that says something like: 'Nothing in this order shall prevent an executive branch agency from providing accommodations to parents in scheduling, employment benefits, or other terms of employment, which are related to parental or family responsibilities.'

Edward W. Correia

10/08/99 11:58:57 AM

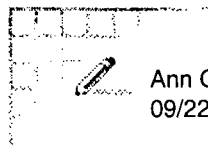
Record Type: Record

To: Ann O'Leary/OPD/EOP@EOP

cc:

Subject: Re: Parental Discrimination EO 

I think the documents submitted by OPM need a lot of work. Wasn't OLC going to draft the order? I thought OPM's role was to do a policy statement or at least discussion of how federal employees would be affected. I would suggest asking OLC to take a look at OPM's draft and work with OPM to come up with a revised one in advance of our meeting.



Ann O'Leary
09/22/99 12:15:09 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc: Nicole R. Rabner/WHO/EOP@EOP, Ruby Shamir/OPD/EOP@EOP
bcc: Records Management@EOP
Subject: Re: Parental Discrimination EO 

Last week, we discussed meeting at the end of this week to go over both the policy document that OPM is developing as well as the proposed language for the EO that DOJ is developing.

The latest update on timing is that we may have a bit more flexibility. Bruce Reed thought that it might be helpful to transmit the legislation and then at a later date release the EO, but that being said he wanted us to be prepared with the EO if that decision changes.

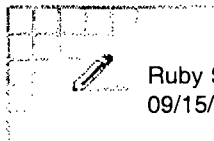
Suzanne Seiden and I just touched based and agreed that given a bit more time, we could wait to meet until next week in order to give her folks more time to finish drafting the document and circulating it to the group.

Lets plan on meeting Wed or Thursday of next week. I'll touch base with Suzanne at the start of the week to get a sense of the development of the document and then set a time for the meeting.

Please let me know if you have questions in the meantime.

Thanks.

-Ann (456-6275)
Ruby Shamir



Ruby Shamir
09/15/99 12:35:28 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Parental Discrimination EO

We will have a conference call today at 3:30 to discuss a potential Parental Discrimination Executive Order. Please dial 456-6777, and enter the code #7222. Thanks.

Message Sent To:

Edward W. Correia/WHO/EOP@EOP
McGavock D. Reed/OMB/EOP@EOP
ellen.vargas@eeoc.gov @ inet
Ann O'Leary/OPD/EOP@EOP
rosemary.hart@usdoj.gov @ inet
mastrand@opm.gov @ inet

Message Sent To:

edward w. correia/who/eop@eop
mcgavock d. reed/omb/eop@eop
ellen.vargas@eeoc.gov @ inet
rosemary.hart@usdoj.gov @ inet
mastrand@opm.gov @ inet
sbseiden@opm.gov

Wednesday, September 22, 1999

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Janet R. Forsgren (for) Assistant Director for Legislative Reference

OMB CONTACT: Melinda D. Haskins
PHONE: (202)395-3923 FAX: (202)395-6148

SUBJECT: **2ND Revision: Draft Bill on Ending Discrimination Against Parents Act of 1999**

DEADLINE: 10 A.M. Friday, September 24, 1999

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS: Attached is the proposed "final" for the EDAPA draft bill for possible presidential transmittal. **We will accept "must changes" only.**

THIS DEADLINE IS FIRM. IF WE DO NOT HEAR FROM YOU BY THE COMMENT DEADLINE, WE WILL ASSUME THAT YOU HAVE NO OBJECTION.

DISTRIBUTION LIST

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30-EDUCATION - Jack Kristy - (202) 401-8313
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117 & 340-TRANSPORTATION - Tom Herlihy - (202) 366-4687
118-TREASURY - Richard S. Carro - (202) 622-0650

EOP:

Joshua Gotbaum
Bruce N. Reed
Karen Tramontano
Robert L. Nabors
Wendy A. Taylor

ENDING DISCRIMINATION AGAINST PARENTS ACT OF 1999

FACT SHEET

The President today transmitted to the Congress the “Ending Discrimination Against Parents Act of 1999.” This legislative proposal would prohibit employment discrimination against private and public employees because they are parents or exercise parental responsibilities.

The Need for this Legislation

Federal law protects working parents from employment discrimination in a number of important areas. Under title VII of the Civil Rights Act of 1964, for example, employees are protected from discrimination on the bases of race, color, sex, national origin, and religion. The Pregnancy Discrimination Act of 1978 further prohibits discrimination against workers on the basis of pregnancy.

Despite these critical protections, there is no existing federal law that protects all workers from employment discrimination that is based on their status as parents. Such protection is well warranted, however. Where an employer, an employment agency, or a labor organization acts on the basis of unsubstantiated assumptions that parents – or those who have caretaking responsibilities for children or for others who are physically or mentally incapable of taking care of themselves – are unwilling or unable to make a commitment to their jobs, it injures not only the individuals concerned, but the economy as a whole.

For the individual who is subject to such discrimination, the consequences can be harsh and immediate. Discrimination against parents or those with parental responsibilities is unfair. Such discrimination deprives the victim of employment opportunities and undermines a person’s ability to control the progress of his or her career. Such discrimination can also reduce the income received by the millions of families who rely on the wages of working parents to make ends meet. It can thus limit opportunities for American families.

The economy is similarly hurt by discrimination against parents or those with parental responsibilities. Such discrimination prevents the best use of available labor resources and is an unfair method of competition in commerce. Because such discrimination is spread and perpetuated through commerce, moreover, it is a problem that is national in scope.

Ending Discrimination Against Parents Act of 1999

Acting to respond to this problem, President Clinton proposed legislation prohibiting employment discrimination against workers because they are parents or because they have parental responsibilities. The legislation would apply to private and public employers, as well as to employment agencies and labor organizations. The legislation would protect individuals who are biological, adoptive, or foster parents, stepparents, or custodians of -- as well as those who are actively seeking custody or adoption of, and those who stand in loco parentis for -- individuals who are under the age of 18 or who are 18 or over but incapable of self-care because

of a mental or physical disability. The legislation would bar discrimination against parents in all aspects of employment, including recruitment, referral, hiring, promotions, discharge, training, and other terms and conditions of employment.

This legislation would prohibit employers from acting based on assumptions that parents, or those with parental responsibilities, cannot satisfy the requirements of a particular position. It would thus, for example, prohibit employers:

- * from taking a parent off the “fast track” due to unsubstantiated concerns that parents cannot meet the requirements of demanding jobs;
- * from preferring applicants without children over equally or better qualified working parents; or
- * from refusing to hire single parents under any circumstances.

This legislation would not, on the other hand, prohibit employers from making decisions on the basis of a person’s job performance. The legislation would not, for example, prevent an employer from disciplining workers who arrive late, even if an individual is late because of childcare responsibilities. The legislation also would not bar an employer from rejecting, for a job that requires extensive travel, an applicant who states that he is unwilling to travel because of his parental responsibilities. Thus, the legislation would not interfere with an employer’s ability to select workers who are able to perform the jobs in question; the legislation would simply ensure that workers are not discriminated against simply because they are parents.

The scope of this problem has been recognized in the states, eight of which (Alaska, Kentucky, Michigan, Nebraska, New Hampshire, New Jersey, Pennsylvania, and South Dakota), plus the District of Columbia prohibit, or authorize prohibition of, discrimination based on familial status. The federal government should do no less.

ENDING DISCRIMINATION AGAINST PARENTS ACT OF 1999

SECTION-BY-SECTION ANALYSIS

Short Title

Section 1 assigns the draft bill the short title “Ending Discrimination Against Parents Act of 1999.”

Findings

Section 2 sets forth findings regarding the problems caused by, and the benefits of Federal protection against, employment discrimination against parents and those with parental responsibilities. The findings state that no existing federal law protects all workers from discrimination based on their status as parents; that such discrimination has occurred in both the private and the public sectors and has been largely unremedied; that such discrimination reduces family incomes and interferes with commerce; and that elimination of such discrimination would benefit both families and the economy as a whole.

Purposes

Section 3 states that the purposes of the Act are to prohibit employers, employment agencies, and labor organizations from discriminating against parents and persons with parental responsibilities based on an assumption that they cannot satisfy the requirements of a particular job. The Act bars covered entities from treating parents and those with parental responsibilities unfavorably. The Act does not require, but does not prevent, covered entities from making accommodations for parents and those with parental responsibilities, by, for example, allowing flexible work schedules or offering employee benefits that provide advantages to families.

Where employment discrimination against parents or those with parental responsibilities occurs, it is the purpose of the Act to provide meaningful and effective remedies for that discrimination.

Definitions

Section 4 contains definitions.

Subsection (a) defines “Commission” as the Equal Employment Opportunity Commission.

Subsection (b) defines “Complaining party” to include all of those authorized to bring administrative or judicial actions under the Act.

Subsection (c) defines “Covered entity” to mean employers, employment agencies, labor organizations, or joint labor-management committees.

Subsection (d) defines “Demonstrates” to mean meeting the burdens of production and persuasion.

Subsection (e)(1) defines “Employee” to mean individuals covered under title VII of the Civil Rights Act of 1964; the Government Employee Rights Act of 1991; the Congressional Accountability Act of 1995; or section 411(c)(1) of title 3, United States Code. Subsection (e)(2) states that the term “employee” covers applicants for employment and former employees.

Subsection (f)(1) defines “Employer” to mean entities covered by section 701 or section 717 of title VII of the Civil Rights Act of 1964; the Government Employee Rights Act of 1991; the Congressional Accountability Act of 1995; or section 411(c)(2) of title 3, United States Code. Section (f)(2) states that the term “employer” does not include a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of title 26, United States Code.

Subsection (g) defines “Employment agency” as it is defined in title VII of the Civil Rights Act of 1964.

Subsection (h) defines “Incapable of self-care” to mean that an individual requires active assistance or supervision to provide daily self-care in three or more of the “activities of daily living” (ADLs) or “instrumental activities of daily living” (IADLs). Subsection (h) gives examples of ADLs and IADLs.

Subsection (i) defines “Labor organization” as it is defined in title VII of the Civil Rights Act of 1964.

Subsection (j) defines “Office of Compliance” as it is used in the Congressional Accountability Act of 1995.

Subsection (k) defines “Parent” to mean a person who, with regard to an individual who is under the age of 18 or who is 18 or over but incapable of self-care because of a physical or mental disability, (1) has the status of a biological parent; an adoptive parent; a foster parent; a stepparent; or a custodian of a legal ward; (2) is actively seeking legal custody or adoption; or (3) stands in loco parentis to such an individual. Persons who are “actively seeking legal custody or adoption” are those who have been pursuing the requirements to obtain legal custody or to adopt and whose custody or adoption of an individual described above reasonably appears to be imminent. Persons who are “in loco parentis” include those with day-to-day responsibilities to care for and financially support a child.

Subsection (l) defines “Person” as it is defined in title VII of the Civil Rights Act of 1964.

Subsection (m) defines “Physical or mental disability” to mean a physical or mental impairment that substantially limits one or more of the major life activities of an individual.

Subsection (n) defines “State” as it is defined in title VII of the Civil Rights Act of 1964.

Discrimination Prohibited

Section 5 sets forth prohibited discrimination.

Subsection (a) describes unlawful employment practices by employers. It mirrors the prohibitions of title VII of the Civil Rights Act of 1964, as applied to discrimination against parents.

Subsection (b) describes unlawful employment practices by employment agencies. It mirrors the prohibitions of title VII of the Civil Rights Act of 1964, as applied to discrimination against parents.

Subsection (c) describes unlawful employment practices by labor organizations. It mirrors the prohibitions of title VII of the Civil Rights Act of 1964, as applied to discrimination against parents.

Subsection (d) bars discrimination against parents in training programs. It mirrors the prohibitions of title VII of the Civil Rights Act of 1964.

Retaliation and Coercion Prohibited

Subsection 6(a) bars retaliation against an employee because that employee has opposed acts made unlawful by this Act or because the employee has participated in any way in filing a charge or assisting in an investigation or proceeding under this Act.

Subsection 6(b) prohibits a covered entity from coercing, intimidating or threatening an employee because that individual has exercised, or planned to exercise, or assisted another in exercising, rights protected by this Act.

These sections mirror the prohibitions of the Americans with Disabilities Act.

Other Prohibitions

Subsection 7(a) states that notwithstanding any other provision of this Act, the Commission may not collect, or require covered entities to collect, statistics on their employment of parents unless such statistics are to be used in investigation, litigation, or resolution of a claim of discrimination under this Act.

Subsection 7(b) bars covered entities from adopting or implementing quotas with respect to their employment of parents.

Mixed Motive Discrimination

Subsection 8(a) states that an unlawful employment practice is established where a

complaining party demonstrates that an individual's status as a parent, or retaliation, coercion, threats, intimidation, or interference, was a motivating factor for an employment practice, even if other factors also motivated the practice.

Subsection 8(b) states that when an individual proves a violation under this section and a respondent demonstrates that it would have taken the same action in the absence of the prohibited factor, a court or other entity authorized by this Act to award relief may grant declaratory and injunctive relief, as well as attorney's fees and costs attributable only to the claim of discrimination, and may not award damages or order admission, reinstatement, hiring, promotion, or payment.

This section mirrors the provisions of title VII of the Civil Rights Act of 1964.

Disparate Impact

Section 9 states that, notwithstanding any other provision of this Act, the fact that an employment practice has a disparate impact on parents, as "disparate impact" is defined in title VII of the Civil Rights Act of 1964, shall not establish a violation of this Act.

Defenses

Subsection 10(a) permits a covered entity to take action otherwise prohibited under this Act against an employee in a workplace in a foreign country if compliance with the Act would cause the covered entity to violate the law of the country in which the workplace is located.

Subsections 10(b)(1)-(3) state that if a covered entity controls a corporation that is incorporated in a foreign country, any prohibited actions taken by that corporation will be presumed to be the actions of the covered entity. Conversely, the Act will not apply with respect to the foreign operations of a corporation that is a foreign person not controlled by an American covered entity. For purposes of evaluating control, the Act incorporates the factors set forth in title VII of the Civil Rights Act of 1964.

Subsection 10(c) states that this Act shall not apply to a covered entity with respect to the employment of aliens outside any State.

Enforcement

Section 11 describes the ways in which the Act will be enforced and the remedies that will be available for a violation of the Act.

Subsection (a) authorizes the Equal Employment Opportunity Commission, the Attorney General, the Librarian of Congress, the Office of Compliance and its Board of Directors, the Merit Systems Protection Board, the President, the courts, and/or any other person alleging a

violation of this Act to exercise, obtain, and use, as applicable, the powers, remedies, procedures, and jurisdiction set forth in specified sections of title VII of the Civil Rights Act of 1964; sections 7121, 7701, 7702, and 7703 of title 5, United States Code; specified sections of the Government Employee Rights Act of 1991; specified sections of the Congressional Accountability Act of 1995; and sections 411(b)(1), 435, and 451-56 of title 3, United States Code. This subsection is not intended to authorize the Commission to require or monitor, or covered entities to implement, an affirmative program of equal employment opportunity for parents.

Subsection (b)(1) states that notwithstanding any limitation on the remedies incorporated by reference in subsection (a), and except as provided otherwise in this Act, covered entities that violate this Act will be liable for appropriate compensatory and punitive damages.

Subsection (b)(2) states that, notwithstanding subsection (b)(1), absent its consent to a monetary remedy, a State may be liable for monetary relief only in an action brought by the Attorney General in a federal court, and will not be liable for punitive damages.

Subsection (b)(3) states that, notwithstanding any limitations in this section, an individual may bring an action in federal court for declaratory or injunctive relief against any appropriate State official for a violation of this Act, and that the Attorney General may bring an action for such relief against any appropriate State official or State.

Federal Immunity

Section 12 states that, notwithstanding any other provision of this Act, remedies under this Act will be available against the United States to the same extent that remedies are available against a private entity, except that punitive damages are not available.

Posting Notices

Section 13 requires covered entities to post notices for individuals covered by the Act that describe the applicable provisions of the Act. Section 13 incorporates the posting requirements and penalties for failure to meet this obligation set forth in title VII of the Civil Rights Act of 1964.

Regulations

Section 14 identifies the entities that are authorized to issue regulations to carry out this Act. The Commission is authorized to issue regulations except as explicitly provided in this section; the Librarian of Congress is authorized to issue regulations with respect to employees of the Library of Congress; the Board of the Office of Compliance is authorized to issue regulations with respect to employees covered by the Congressional Accountability Act of 1995; and the President is authorized to issue regulations with respect to employees covered under section 411(c)(1) of title 3, United States Code. The Commission and the Merit Systems Protection Board (MSPB) are each authorized to issue regulations with respect to individuals covered by

sections 7121, 7701, 7702, and 7703 of title 5, United States Code. It is intended that the Commission and the MSPB coordinate their regulations to ensure consistency.

Relationship to Other Laws

Section 15 states that nothing in this Act shall affect the interpretation of application of, and that this Act shall not invalidate or limit the rights, remedies, or procedures available to an individual claiming discrimination under, other Federal, state, or local laws.

Severability

Section 16 states that if any provision of this Act, or any application of a provision of this Act, is held to be invalid, the remainder of this Act, and the application of the provision to other persons and circumstances, will not be affected.

Appropriations

Section 17 states that there are authorized to be appropriated such sums as may be necessary to carry out this Act.

Effective Date

Section 18 states that this Act shall take effect 60 days after enactment and will not apply to conduct occurring before the effective date.

TO THE CONGRESS OF THE UNITED STATES:

I am pleased to transmit today for immediate consideration and prompt enactment the “Ending Discrimination Against Parents Act of 1999.” This legislative proposal would prohibit employment discrimination against parents and those with parental responsibilities.

My proposal builds on our nation’s longstanding commitment to equal opportunity. It follows in the footsteps of anti-discrimination laws like title VII of the Civil Rights Act of 1964, which prohibits job bias on the basis of race, color, sex, religion, and national origin, and the Pregnancy Discrimination Act of 1978, which bars employment discrimination against pregnant women.

This bill would, for the first time, include parents and those with parental responsibilities as a protected class with respect to job discrimination. While the bill would not prohibit employers from making hiring and promotion decisions on the basis of job performance, it would ensure that workers are not discriminated against simply because they are parents or exercise parental responsibilities. It would prohibit, for example, employers from taking a parent off the “fast track” due to unsubstantiated concerns that parents cannot meet the requirements of demanding jobs. Similarly, it would bar employers from preferring applicants without children over equally or better qualified working parents, or from refusing to hire single parents. It would cover discrimination in hiring, promotions, and firing, as well as in pay and other conditions of employment.

Such protections are increasingly important as more and more mothers join fathers in participating in the workforce and contributing to their families’ economic security -- and as more and more families rely on the earnings of single parents, both male and female. Indeed, a 1998 survey revealed that 38 percent of all American workers are parents. Nearly one in five working parents is unmarried; a fifth of these are single dads. As a nation, we can’t afford to lose the talents and labor of these working parents due to unfounded assumptions about their capacity to work. Parents who are dedicated to meeting their responsibilities both at home and at work should be valued and celebrated, rather than targeted for discrimination.

In recognition of this problem, eight states (Alaska, Kentucky, Michigan, Nebraska, New Hampshire, New Jersey, Pennsylvania, and South Dakota) and the District of Columbia have enacted laws prohibiting, or authorizing the prohibition of, discrimination on the basis of parental or family status.

I urge the Congress to give this legislation prompt and favorable consideration.

WILLIAM J. CLINTON

A BILL

To prohibit employment discrimination on the basis of parental status, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE. -- This Act may be cited as the “Ending Discrimination Against Parents Act of 1999.”

SECTION 2. FINDINGS.

(a) XX percent of American workers are parents of children under the age of 18;

(b) Federal law protects working parents from employment discrimination in a number of important areas. For instance, title VII of the Civil Rights Act of 1964 prohibits discrimination against workers on the basis of sex; the Americans with Disabilities Act of 1990 prohibits discrimination against workers on the basis of disability; and the Pregnancy Discrimination Act of 1978 prohibits discrimination against workers on the basis of pregnancy. Also, the Family and Medical Leave Act of 1993 provides covered workers with job protection when they take time off for certain family responsibilities.

(c) However, no existing federal statute protects all workers from employment discrimination on the basis of their status as parents.

(d) Such discrimination against parents occurs where, for example, employers refuse to hire or promote both men and women who are parents based on unwarranted stereotypes or overbroad assumptions about their level of commitment to the work force.

(e) Such discrimination has occurred in the workplace and has been largely unremedied.

(f) Such discrimination occurs in both the private and the public sectors.

(g) Such discrimination –

(1) reduces the income earned by families who rely on the wages of working parents to make ends meet;

(2) prevents the best use of available labor resources;

(3) has been spread and perpetuated, through commerce and the channels and instrumentalities of commerce, among the workers of several States;

(4) burdens commerce and the free flow of goods in commerce;

(5) constitutes an unfair method of competition in commerce;

(6) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and

(7) interferes with the orderly and fair marketing of goods in commerce.

(h) Elimination of such discrimination would have positive effects, including –

(1) solving problems in the economy created by unfair discrimination against parents;

(2) promoting stable families by enabling working parents to work free from discrimination against parents; and

(3) remedying the effects of past discrimination against parents.

SECTION 3. PURPOSES

The purposes of this Act are –

(a) to prohibit employers, employment agencies, and labor organizations from discriminating against parents and persons with parental responsibilities based on the assumption that they cannot satisfy the requirements of a particular position; and

(b) to provide meaningful and effective remedies for employment discrimination against parents and persons with parental responsibilities.

SECTION 4. DEFINITIONS

In this Act:

(a) “Commission” means the Equal Employment Opportunity Commission.

(b) “Complaining party” means the Commission, the Attorney General, or any other person who may bring an action or proceeding under this Act.

(c) “Covered entity” means an employer, employment agency, labor organization, or joint labor-management committee.

(d) “Demonstrates” means meets the burdens of production and persuasion.

(e) (1) The term “employee” means:

(i) an individual to whom section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f)) applies;

(ii) an individual to whom section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16(a)) applies;

(iii) an individual to whom section 302(a)(1) of the Government Employee Rights Act of 1991 (2 U.S.C. 1202(a)(1)) applies;

(iv) a covered employee as defined in section 101(3) of the Congressional Accountability Act of 1995 (2 U.S.C. 1301(3)); and

(v) a covered employee as defined in section 411(c)(1) of title 3, United States

Code.

(2) The term “employee” includes applicants for employment and former employees.

(f) (1) The term “employer” means:

- (i) a person engaged in an industry affecting commerce (as defined in section 701(h) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(h))) who has fifteen or more employees (as defined in section 701(f) of such Act (42 U.S.C. 2000e(f))) for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person;
- (ii) an entity to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16(a)) applies;
- (iii) an employing authority to which section 302(a)(1) of the Government Employee Rights Act of 1991 (2 U.S.C. 1202(a)(1)) applies;
- (iv) an employing office, as defined in section 101(9) of the Congressional Accountability Act of 1995 (2 U.S.C. 1301(9)); and
- (v) an employing office as defined in section 411(c)(2) of title 3, United States Code.

(2) The term “employer” does not include a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of title 26, United States Code.

(g) “Employment agency” has the meaning given that term in section 701(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(c)).

(h) “Incapable of self-care” means that the individual needs active assistance or supervision to provide daily self-care in three or more of the “activities of daily living” or “instrumental activities of daily living.” Activities of daily living include adaptive activities such as caring appropriately for one’s grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, and similar activities.

(i) “Labor organization” has the meaning given that term in sections 701(d) and (e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(d), (e)).

(j) “Office of Compliance” has the meaning given that term in the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.).

(k) “Parent” means a person who, with regard to an individual who is under the age of 18, or who is 18 or older but is incapable of self-care because of a physical or mental disability --

(1) has the status of --

- (i) a biological parent;
 - (ii) an adoptive parent;
 - (iii) a foster parent;
 - (iv) a stepparent; or
 - (v) a custodian of a legal ward;
- (2) is actively seeking legal custody or adoption; or
- (3) stands in loco parentis to such an individual.

(l) “Person” has the meaning given that term in section 701(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(a)).

(m) “Physical or mental disability” means a physical or mental impairment that substantially limits one or more of the major life activities of an individual.

(n) “State” has the meaning given that term in section 701(i) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(i)).

SECTION 5. DISCRIMINATION PROHIBITED.

(a) **Employer Practices.** -- It shall be an unlawful employment practice for an employer--

(1) to fail or refuse to hire, or to discharge, any individual, or otherwise to discriminate against any individual with regard to the compensation, terms, conditions, or privileges of employment of the individual, because such individual is a parent; or

(2) to limit, segregate, or classify employees in any way that would deprive, or tend to deprive, any individual of employment opportunities or otherwise adversely affect the status of the individual as an employee, because such individual is a parent.

(b) **Employment Agency Practices.** -- It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because such individual is a parent or to classify or refer for employment any individual because such individual is a parent.

(c) **Labor Organization Practices.** -- It shall be an unlawful employment practice for a labor organization –

(1) to exclude or expel from its membership, or otherwise to discriminate against, any individual because such individual is a parent;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect the status of the individual as an employee, because such individual is a parent; or

(3) to cause or attempt to cause an employer to discriminate against an individual

in violation of this Act.

(d) **Training Programs.** -- It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because such individual is a parent in admission to, or employment in, any program established to provide apprenticeship or other training.

SECTION 6. RETALIATION AND COERCION PROHIBITED.

(a) **Retaliation.** -- A covered entity shall not discriminate against an employee because the employee has opposed any act or practice prohibited by this Act or because the employee made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

(b) **Interference, Coercion, or Intimidation.** -- A covered entity shall not coerce, intimidate, threaten, or interfere with any employee in the exercise or enjoyment of, or on account of the employee's having exercised or enjoyed, or on account of the employee's having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this Act.

SECTION 7. OTHER PROHIBITIONS.

(a) **Collection of Statistics.** -- Notwithstanding any other provision of this Act, the Commission shall not collect statistics from covered entities on their employment of parents, or compel the collection of such statistics by covered entities, unless such statistics are to be used in investigation, litigation, or resolution of a claim of discrimination under this Act.

(b) **Quotas.** -- A covered entity shall not adopt or implement a quota with respect to its employment of parents.

SECTION 8. MIXED MOTIVE DISCRIMINATION.

(a) An unlawful employment practice is established under this Act when the complaining party demonstrates that --

(1) an individual's status as a parent; or

(2) retaliation, coercion, or threats against, intimidation of, or interference with an individual as described in section 6 of this Act

was a motivating factor for any employment practice, even though other factors also motivated the practice.

(b) When an individual proves a violation under this section, and a respondent demonstrates that the respondent would have taken the same action in the absence of the prohibited motivating factor, a court or any other entity authorized in section 11(a) of this Act to award relief –

(1) may grant declaratory relief, injunctive relief (except as provided in clause (2) below), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under this section; and

(2) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment.

SECTION 9. DISPARATE IMPACT. – Notwithstanding any other provision of this Act, the fact that an employment practice has a disparate impact on parents, as the term “disparate impact” is used in section 703(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2(k)), shall not establish a violation of this Act.

SECTION 10. DEFENSES WHERE ACTIONS TAKEN IN A FOREIGN COUNTRY

(a) It shall not be unlawful under this Act for a covered entity to take any action otherwise prohibited under this Act with respect to an employee in a workplace in a foreign country if compliance with this Act would cause such entity to violate the law of the foreign country in which such workplace is located.

(b) (1) If a covered entity controls a corporation whose place of incorporation is a foreign country, any practice prohibited by this Act engaged in by such corporation shall be presumed to be engaged in by such covered entity.

(2) This Act shall not apply with respect to the foreign operations of a corporation that is a foreign person not controlled by an American covered entity.

(3) For purposes of this subsection, the determination of whether a covered entity controls a corporation shall be based on the factors set forth in section 702(c)(3) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1(c)(3)).

(c) This Act shall not apply to a covered entity with respect to the employment of aliens outside any State.

SECTION 11. ENFORCEMENT AND REMEDIES

(a) **Incorporation of Powers, Remedies, and Procedures in Other Civil Rights Statutes.** -- With respect to the administration and enforcement of this Act in the case of a claim alleged by an individual for a violation of this Act, the following statutory provisions are hereby incorporated, and shall, along with the provisions in subsection (b), establish the powers,

remedies, procedures, and jurisdiction that this Act provides to the Equal Employment Opportunity Commission, the Attorney General, the Librarian of Congress, the Office of Compliance and its Board of Directors, the Merit Systems Protection Board, the President, the courts of the United States, and/or any other person alleging a violation of any provision of this Act --

(1) for individuals who are covered under title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e et seq.), sections 705, 706, 707, 709, 710, 711, and 717 of that Act (42 U.S.C. 2000e-4, 2000e-5, 2000e-6, 2000e-8, 2000e-9, 2000e-10, and 2000e-16), and sections 7121, 7701, 7702, and 7703 of title 5, United States Code, as applicable;

(2) for individuals who are covered under section 302(a) of the Government Employee Rights Act of 1991 (2 U.S.C. 1202(a)), sections 302(b)(1) and 304(b) - (e) of that Act (2 U.S.C. 1202(b)(1), 1220(b)-(e));

(3) for individuals who are covered under section 101(3) of the Congressional Accountability Act of 1995 (2 U.S.C. 1301(3)), sections 201(b)(1), 225, and 401-416 of that Act (2 U.S.C. 1311(b)(1), 1361, 1401-1416); and

(4) for individuals who are covered under section 411(c)(1) of title 3, United States Code, sections 411(b)(1), 435, and 451-456 of that title.

(b) Additional Remedies. --

(1) Notwithstanding any express or implied limitation on the remedies incorporated by reference in subsection (a), and except as provided in subsection (b)(2) of this section, section 8, or section 12 of this Act, any covered entity that violates this Act shall be liable for such compensatory or punitive damages as may be appropriate.

(2) Notwithstanding subsection (b)(1),

(i) absent its consent to a monetary remedy, a State may be liable for monetary relief only in an action brought by the Attorney General in a court of the United States; and

(ii) a State shall not be liable for punitive damages.

(3) Notwithstanding any express or implied limitation on the remedies incorporated by reference in subsection (a) or included in subsection (b)(2) above,

(i) an individual may bring an action in a district court of the United States for declaratory or injunctive relief against any appropriate State official for a violation of this Act; and

(ii) the Attorney General may bring an action in a district court of the United States for declaratory or injunctive relief against any appropriate State official or State for a violation of this Act.

SECTION 12. FEDERAL IMMUNITY. – Notwithstanding any other provision of this Act, in an action or administrative proceeding against the United States for a violation of this Act, remedies (including remedies at law and in equity, and interest) are available for a violation to the same extent as the remedies are available against a private entity, except that punitive damages are not available.

SECTION 13. POSTING NOTICES. – A covered entity shall post notices for individuals to whom this Act applies that describe the applicable provisions of this Act in the manner prescribed by, and subject to the penalty provided under, section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10).

SECTION 14. REGULATIONS.

(a) **In General.** Except as provided in subsections (b), (c), (d), and (e) below, the Commission shall have authority to issue regulations to carry out this Act.

(b) **Librarian of Congress.** The Librarian of Congress shall have authority to issue regulations to carry out this Act with respect to employees of the Library of Congress.

(c) **Board.** The Board of the Office of Compliance shall have authority to issue regulations to carry out this Act, in accordance with sections 303 and 304 of the Congressional Accountability Act of 1995 (2 U.S.C. 1383, 1384), with respect to covered employees as defined in section 101(3) of such Act (2 U.S.C. 1301(3)).

(d) **President.** The President shall have authority to issue regulations to carry out this Act with respect to covered employees as defined in section 411(c)(1) of title 3, United States Code.

(e) **Commission and Merit Systems Protection Board.** The Commission and the Merit Systems Protection Board shall each have authority to issue regulations to carry out this Act with respect to individuals covered by sections 7121, 7701, 7702, and 7703 of title 5, United States Code.

SECTION 15. RELATIONSHIP TO OTHER LAWS. – Nothing in this Act shall affect the interpretation or application of, and this Act shall not invalidate or limit the rights, remedies, or procedures available to an individual claiming discrimination prohibited under, any other Federal law or any law of a State or political subdivision of a State.

SECTION 16. SEVERABILITY. – If any provision of this Act, or the application of such provision to any person or circumstances, is held to be invalid, the remainder of this Act and the application of such provision to other persons and circumstances shall not be affected.

SECTION 17. APPROPRIATIONS. -- There are authorized to be appropriated such sums as

may be necessary to carry out this Act.

SECTION 18. EFFECTIVE DATE. – This Act shall take effect 60 days after enactment and shall not apply to conduct occurring before the effective date.

Nicole R. Rabner

09/22/99 04:25:54 PM

Record Type: Record

To: Ann O'Leary/OPD/EOP@EOP

cc:

Subject: Proposed "Final" Draft Bill on Ending Discrimination Against Parents -- Comments Due 10 A.M., 9/24/99

----- Forwarded by Nicole R. Rabner/WHO/EOP on 09/22/99 04:25 PM -----

From: Melinda D. Haskins on 09/22/99 04:08:26 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Proposed "Final" Draft Bill on Ending Discrimination Against Parents -- Comments Due 10 A.M., 9/24/99

Attached below is the proposed "final" for the Ending Discrimination Against Parents draft bill for possible presidential transmittal shortly. (Red-lined and "clean" versions of the draft bill, sectional analysis, and fact sheet are attached.) **Please provide me with "must change" edits only no later than 10 a.m., Friday, September 24th.**

The comment deadline is firm. If we do not hear from you by the deadline, we will assume that you have no objection to the transmittal of the draft bill.

EXOP: You will not receive a faxed copy of this LRM.

----- Forwarded by Melinda D. Haskins/OMB/EOP on 09/22/99 03:12 PM -----

LRM ID: MDH116

ATTACHMENTS (total 20 pages):



parentalstatustransmisstal.wpc



parentalstatusfinalleg.wpd



parentalstatusfactsheetfinal.wpc



redlinefinalleg.wpd



redlinefactsheet.wpd

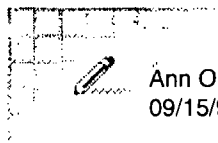


redline2sectionbysection.wpc



finalsectionbysection.wpd

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001**



Ann O'Leary
09/15/99 08:36:43 AM

Record Type: Record

To: Ruby Shamir/OPD/EOP@EOP

cc:

Subject: Conference Call re: EO on Parental discrimination

Ruby -

Thanks so much for helping me out by organizing this conference call.

If you could call (or email for internal) the following folks and ask them if they could do a conference call at 3:30 p.m. today:

Eddie Correria: 6-2024

Mark Hunter, OPM - 606-1000 *7 Mary Smith*

Mack Reed, OMB

Rosemary Hart, DOJ - 514-2027 *7 OLC*

Ellen Vargas, EEOC - 663-7191

The issue is that Bruce would like to be able to have the President announce an EO on non-discrimination against parents in the Federal workforce at the same time that we transmit the legislation to the Hill. He would like to do it in a radio address in the next few weeks. The intent of the conference call is to discuss both the substantive issues (e.g. do we amend the current Executive Order 11478 on Nondiscrimination in Federal Government or do we need to create a new EO. If we do amend, what language needs to be in the EO and what needs to be in guidance or report language?) as well as logistical issues (e.g. what is the timing on drafting and releasing).

If 3:30 does not seem to work for folks, I am basically free anytime after 3:00 p.m. today.

Thanks, Ruby!!!!

-Ann

P.S. Also - if Nicole is back it would be great to have her on the call too.

*MM-down Technology group
Sandra*

→ Mack Reed

→ OLC

*Anti-discrimination in context of the
Federal workforce*

Cannot just add parental discrimination →

since employer business

also common to

Confusing agency

2:00 PM - Mark Hunter

EEOC enforcement

Charmant

to hand

*→ no new legal action
or rights*

11478 → employment

add additional language

*→ not taking what after the
the process is
the work*

*→ letter from Council to be
previous*

① Posing - Eo
2007 witnesses

② Suzanne
thompson

~~Presented~~
to
Cousins guide
OPM guide
Rep's use
Guidance
→ Eo ←

Suzanne was did not want Sec. of
Clarity that OPM

* Suzanne Seiden OPM → Ellen

606-1700
5/seiden@opm.gov already at OPM have schedule
available policies

Murray declines to use

11/4/78 → all employees denied
parallel

Implementing Guidelines
not in text

- Parent & minor status

Issue 1:

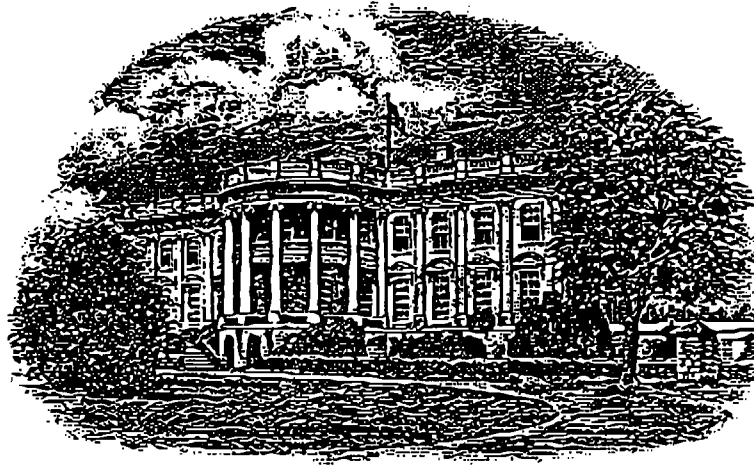
① Address form
+ Personal
marital
status

② parent
status

Expectations &
Fed. gov't

→ Murray requires
today

The White House



Office of the Counsel to the President
Facsimile Transmission

Date: 5/14/99

To: Ann O'Leary

Facsimile Number: 62878

Total Pages: 3

From: Eddie Correia

Phone: (202) 456-2024

Fax: (202) 456-5055

Note: _____

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[Weekly Compilation of Presidential Documents]

From the 1998 Presidential Documents Online via GPO Access [frwais.access.gpo.gov]
[DOCID:pd01jn98_txt-18]

[Page 994]

Monday, June 1, 1998

Volume 34--Number 22
Pages 957-1002

Week Ending Friday, May 29, 1998

Executive Order 13087--Further Amendment to Executive Order 11478, Equal
Employment Opportunity in the Federal Government

May 28, 1998

By the authority vested in me as President by the Constitution and
the laws of the United States, and in order to provide for a uniform
policy for the Federal Government to prohibit discrimination based on
sexual orientation, it is hereby ordered that Executive Order 11478, as
amended, is further amended as follows:

Section 1. The first sentence of section 1 is amended by
substituting "age, or sexual orientation" for "or age".

Sec. 2. The second sentence of section 1 is amended by striking the
period and adding at the end of the sentence "", to the extent permitted
by law."

William J. Clinton

The White House,
May 28, 1998.

[Filed with the Office of the Federal Register, 8:45 a.m., June 1, 1998]

Note: This Executive order will be published in the Federal Register on
June 2.

[[Page 995]]

Executive Order 11478: Nondiscrimination in Federal Government

Following is the text of Executive Order 11478, initially signed August 8, 1969, as last amended by Executive Order 13087 on May 28, 1998, to include a prohibition against sexual orientation bias. The Executive Order also was amended by Executive Order 12106, effective January 1, 1979. The Order prohibits discrimination in federal employment on account of race, color, religion, sex, national origin, handicap, age, or sexual orientation. Executive Order 12106 transferred to the Equal Employment Opportunity Commission certain functions of the Civil Service Commission (currently the Office of Personnel Management), relating to enforcement of federal equal employment opportunity programs. These provisions supersede Part I of Executive Order 11246 (401:4023).

EQUAL EMPLOYMENT OPPORTUNITY IN THE FEDERAL GOVERNMENT

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

Sec. 1.

It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, age, or sexual orientation and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government to the extent permitted by law.

Sec. 2.

The head of each executive department and agency shall establish and maintain an affirmative program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in Section 1. It is the responsibility of each department and agency head, to the maximum extent possible, to provide sufficient resources to administer such a program in a positive and effective manner; assure that recruitment activities reach all sources of job candidates; utilize to the fullest extent the present skills of each employee; provide the maximum feasible opportunity to employees to enhance their skills so they may perform at their highest potential and advance in accordance with their abilities; provide training and advice to managers and supervisors to assure their understanding and implementation of the policy expressed in this Order; assure participation at the local level with other employers, schools, and public or private groups in cooperative efforts to improve community conditions which affect employability; and provide for a system within the department or agency for periodically evaluating the effectiveness with which the policy of this Order is being carried out.

Sec. 3.

The Equal Employment Opportunity Commission shall be responsible for directing and furthering the implementation of the policy of the Government of the United States to provide equal opportunity in Federal employment for all employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) and to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, or age.

Sec. 4.

The Equal Employment Opportunity Commission, after consultation with all

affected departments and agencies, shall issue such rules, regulations, orders, and instructions and request such information from the affected departments and agencies as it deems necessary and appropriate to carry out this Order.

Sec. 5.

All departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this Order and shall furnish the Commission such reports and information as it may request. The head of each department or agency shall comply with rules, regulations, orders and instructions issued by the Equal Employment Opportunity Commission pursuant to Section 4 of this Order.

Sec. 6.

This Order applies (a) to military departments as defined in Section 102 of Title 5, United States Code, and executive agencies (other than the General

Accounting Office) as defined in Section 105 of Title 5, United States Code, and to the employees thereof (including employees paid from nonappropriated funds), and (b) to those portions of the legislative and judicial branches of the Federal Government and of the Government of the District of Columbia having positions in the competitive service and to the employees in those positions. This Order does not apply to aliens employed outside the limits of the United States.

Sec. 7.

Part I of Executive Order No. 11246 of September 24, 1965, and those parts of Executive Order No. 11375 of October 11, 1967, which apply to Federal employment, are hereby superseded.

Sec. 8.

This Order shall be applicable to the United States Postal Service and to the Postal Rate Commission established by the Postal Reorganization Act of 1970.

148

Pete T. Reed

Eddie
K

Nicole R. Rabner

09/13/99 01:42:02 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP@EOP
cc: karin kullman/opd/eop@eop, Ann O'Leary/OPD/EOP@EOP
bcc:
Subject: Re: parental discrimination

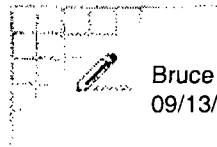
Eddie
Caveira
6-2024

We're looking into the E.O. now (with OPM and OMB -- any other suggestions?). I agree that the transmittal of the leg combined with the E.O. would make a strong event.

Bruce N. Reed



Sexual Orientation Executive Order



Bruce N. Reed
09/13/99 01:31:19 PM

Record Type: Record

To: Karin Kullman/OPD/EOP@EOP, Nicole R. Rabner/WHO/EOP@EOP
cc:
Subject: parental discrimination

Any progress on the EO we talked about for the federal workforce? That might be a good radio address. We need to introduce that legislation sometime before Congress leaves.

Nicole R. Rabner

09/13/99 12:13:20 PM

Record Type: Record

To: Ann O'Leary/OPD/EOP@EOP

cc:

Subject: REVISED Draft Bill on Ending Discrimination Against Parents Act of 1999 -- Comments Due 8/19/99

----- Forwarded by Nicole R. Rabner/WHO/EOP on 09/13/99 12:13 PM -----

From: Melinda D. Haskins on 08/05/99 04:18:14 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: REVISED Draft Bill on Ending Discrimination Against Parents Act of 1999 -- Comments Due 8/19/99

Attached below is the revised draft bill package, for possible presidential transmittal, the "Ending Discrimination Against Parents Act of 1999." **Please provide me with comments no later than 4 p.m., August 19th.**

EXOP: You will not receive a faxed copy of this LRM.

----- Forwarded by Melinda D. Haskins/OMB/EOP on 08/05/99 03:48 PM -----

LRM ID: MDH105

ATTACHMENTS:



redlinedbill.wpd



parentalstatustransmisstal.wpc



recircparentalstatusleg.wpc



parentalstatusfactsheet2.wpd



sectionbysection.wpd



sectionbysectionredline.wpc

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001**

Thursday, August 5, 1999

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Janet R. Forsgren (for) Assistant Director for Legislative Reference
OMB CONTACT: Melinda D. Haskins
PHONE: (202)395-3923 FAX: (202)395-6148
SUBJECT: **REVISED Draft Bill on Ending Discrimination Against Parents Act of 1999**

DEADLINE: **4 P.M. Thursday, August 19, 1999**

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS: Attached for your review is the revised draft bill, for possible presidential transmittal, the "Ending Discrimination Against Parents Act of 1999." Please provide your comments to OMB on the revised draft bill in writing.

THIS DEADLINE IS FIRM. IF WE DO NOT HEAR FROM YOU BY THE COMMENT DEADLINE, WE WILL ASSUME THAT YOU HAVE NO OBJECTION.

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118-TREASURY - Richard S. Carro - (202) 622-0650

EOP:

Joshua Gotbaum
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Prohibiting Discrimination Against Parents

Policy: The President will send Congress legislation that prohibits discrimination on the basis of parental status in employment. Parental status would cover parents of children and those seeking legal custody of children. The animating principle of this policy is that those who choose to have a family should not be discriminated against in employment, both in the character of their job and in terms of hiring and advancement, because of their status as parents. }

Rather than amend Title VII of the Civil Rights Act, the legislation will stand alone. As is the case with the Americans with Disabilities Act as enacted and the Employment Non-Discrimination Act as proposed, such legislation would contain the mandate that prohibits employment discrimination against parents, though it would refer to definitions and clauses within Title VII.

Examples of conduct that would be prohibited:

- * Employers who take a mother or father off career-advancing paths (e.g., partnership track) out of some belief that parents as a class are not capable of committing to the work requirements of the job, though there is no discernable difference in the work product of those employees who are parents.
- * The hiring of a woman without children over a more qualified man with children because the hired employee did not have children. In the case of hiring a less qualified woman without children over a more qualified woman with children, the claimant need not prove that men similarly situated would be hired.

Background:

Prohibiting employment discrimination based on parental or family status is the law of some states and many municipalities. (Federal law currently prohibits discrimination based on family status in the provision of Housing. See Fair Housing Act.) In addition, a number of municipalities prohibit employment discrimination based on family status, including the District of Columbia, New York, Miami-Dade County, and Pittsburgh.

Other issues:

The legislation would clearly state that no disparate impact analysis will apply. The legislation would be drafted so that it will not work to the detriment of workers who are covered by the definition (e.g. workers without children).

Case Examples of Parental Discrimination

Discrimination in Hiring

The appellant applied for a full-time teaching position, which also included coaching responsibilities. The district chose another female applicant, without children, for the position with less teaching and coaching experience. Consequently, the appellant sued the district, asserting a discrimination claim under the Minnesota Human Rights Act. Specifically, she claimed that the district had a hiring policy that treated women and men with young children differently. However, she did not prove that men similarly situated were treated differently (though such proof is generally required by gender discrimination law). The Minnesota Court of Appeals found that the appellant had a cause of action under the Minnesota Human Rights Act even though the act does not prohibit familial status discrimination. (*Pullar v. Independent School District No. 701*, 582 N.W.2d 273, 1998 Minn.) The President's proposal would clearly prohibit such discrimination, and would allow people in every state to claim such a protection.

Discrimination in Demotion/Termination

Appellant, a new mom, was demoted to a job with fewer responsibilities and half the salary, after she returned to work from maternity leave because the employer believed that new mothers could not take their work responsibility seriously. (*Piantanida v. Wyman Center*, 116 F.3d 340, (1997) Appealed from the Eastern District of Missouri) Though the court ruled she had no protection under the Pregnancy Discrimination Act (which is part of Title VII), she would be protected under our proposed statute. The court in that case stated that there was no relief for the plaintiff, because "[a]n employer's discrimination against an employee who has accepted this parental role -- reprehensible as this discrimination might be -- is therefore not based on the gender-specific biological functions of pregnancy and child-bearing, but rather is based on a gender-neutral status potentially possessible by all employees, including men and women who will never be pregnant."

Discrimination in Promotion

Appellant, a married woman with two children aged six and eleven who had spotless record of job performance, was passed up for a significant promotion, which was instead given to single women with no children. Her employers specifically stated on several occasions that women with children could not do either job well and questioned her commitment to the job. (*Trezza v. The Hartford Inc.*, 1998 W.L. 912101 (Southern District of New York). While under present law she would have to prove that a man received promotions who was in the same situation she was in, a heavy burden to meet (that the court recognized was often impossible to meet), our proposed law would simply prohibit such actions.

Demotion/ constructive termination

While plaintiff was on maternity leave, her job was given to a new employee. When plaintiff returned from maternity leave, she was offered a job that was a demotion to an hourly wage job from a salaried position. She refused the position and alleged that she was discriminated against because she had a family. The court held that discrimination based on new parenthood does not state a claim under the Pregnancy Discrimination Act, nor is it cognizable gender discrimination. (*Santrizos v. Aramark Corporation*, 1998 U.S. Dist. LEXIS 15946 (U.S. Northern District of Illinois))

TO THE CONGRESS OF THE UNITED STATES:

~~4~~ I am pleased to transmit today for immediate consideration and prompt enactment the “Ending Discrimination Against Parents Act of 1999.” This legislative proposal would prohibit employment discrimination against workers simply because they are parents.

My proposal builds on our nation’s longstanding commitment to equal opportunity. It follows in the footsteps of anti-discrimination laws like Title VII of the Civil Rights Act, which prohibits job bias on the basis of race, color, sex, religion, and national origin, and the Pregnancy Discrimination Act, which bars employment discrimination against pregnant women.

This bill would, for the first time, include parents as a protected class with respect to job discrimination. While the bill would not prohibit employers from making hiring and promotion decisions on the basis of job performance, it would ensure that workers are not discriminated against simply because they are parents. It would prohibit, for example, employers from taking a parent off the “fast track” due to unsubstantiated concerns that parents cannot meet the requirements of demanding jobs. Similarly, it would bar employers from preferring applicants without children over equally or better qualified working parents or from refusing to hire single parents. It would cover discrimination in hiring, promotions, and firing — as well as in pay and other conditions of employment.

Such protections are increasingly important as more and more mothers join fathers in participating in the workforce and contributing to their families’ economic security -- and as more and more families rely on the earnings of single parents, both male and female. Indeed, a 1997 survey revealed that 46 percent of all American workers are parents. Nearly one in five working parents is single; more than a quarter of these are single dads. [CK: FINAL STATS TO COME] As a nation, we can’t afford to lose the talents and labor of these working parents due to unfounded assumptions about their capacity to work. Parents who are dedicated to meeting their responsibilities both at home and at work should be valued and celebrated, rather than targeted for discrimination.

In recognition of this problem, eight states (Alaska, Kentucky, Michigan, Nebraska, New Hampshire, New Jersey, Pennsylvania, South Dakota) and the District of Columbia have enacted laws prohibiting or authorizing the prohibition of discrimination on the basis of parental or family status.

I urge the Congress to give this legislation prompt and favorable consideration.

WILLIAM J. CLINTON

A BILL

To prohibit employment discrimination on the basis of parental status, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE. -- This Act may be cited as the “Ending Discrimination Against Parents Act of 1999.”

SECTION 2. FINDINGS.

(a) XX percent of American workers are parents of children under the age of 18;

(b) Federal law protects working parents from employment discrimination in a number of important areas. For instance, title VII of the Civil Rights Act of 1964 prohibits discrimination against workers on the basis of sex; the Americans with Disabilities Act of 1990 prohibits discrimination against workers on the basis of disability; and the Pregnancy Discrimination Act of 1978 prohibits discrimination against workers on the basis of pregnancy. Also, the Family and Medical Leave Act of 1993 provides covered workers job protection when they take time off for certain family responsibilities. Nothing in this Act is intended to affect the interpretation or application of these laws.

(c) However, no existing federal statute protects workers from employment discrimination on the basis of their status as parents.

(d) Such discrimination against parents occurs where, for example, employers refuse to hire or promote both men and women who are parents based on unwarranted stereotypes or overbroad assumptions about their level of commitment to the work force.

(e) Such discrimination has occurred in the workplace and has been largely unremedied.

(f) Such discrimination occurs in both the private and the governmental sectors.

(g) The existence of such discrimination –

(1) depresses the income earned by families who rely on the wages of working parents to make ends meet;

(2) prevents the optimum utilization of available labor resources;

(3) has been spread and perpetuated, through commerce and the channels and instrumentalities of commerce, among the workers of several States;

(4) burdens commerce and the free flow of goods in commerce;

(5) constitutes an unfair method of competition in commerce;

(6) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and

(7) interferes with the orderly and fair marketing of goods in commerce.

(h) Elimination of such discrimination would have positive effects, including –

(1) providing a solution to problems in the economy created by unfair discrimination against parents;

(2) promoting stable families by enabling working parents to work free from discrimination against parents; and

(3) remedying the effects of past discrimination against parents.

SECTION 3. PURPOSES

The purposes of this Act are –

(a) to prohibit employers, employment agencies, and labor organizations from discriminating against parents based on the assumption that they cannot satisfy the requirements of a particular position; and

(b) to provide meaningful and effective remedies for employment discrimination against parents.

SECTION 4. DEFINITIONS

In this Act:

(a) “Commission” means the Equal Employment Opportunity Commission.

(b) “Complaining Party” means the Commission, the Attorney General, or any other person who may bring an action or proceeding under this Act.

(c) “Covered Entity” means an employer, employment agency, labor organization, and joint labor-management committee.

(d) “Demonstrates” means meets the burdens of production and persuasion.

(e) “Employee” means:

(1) an individual to whom section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f)) applies;

(2) an individual to whom section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16(a)) applies;

(3) an individual to whom section 302(a)(1) of the Government Employee Rights Act of 1991 (2 U.S.C. 1202(a)(1)) applies;

(4) a covered employee as defined in section 101(3) of the Congressional Accountability Act of 1995 (2 U.S.C. 1301(3)); and

(5) a covered employee as defined in section 411(c)(1) of title 3, United States

Code.

The term “employee” includes applicants for employment and former employees.

(f) “Employer” means:

(1) a person engaged in an industry affecting commerce (as defined in section 701(h) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(h)) who has fifteen or more employees (as defined in section 701(f) of such Act (42 U.S.C. 2000e(f)) for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person;

(2) an entity to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16(a)) applies;

(3) an employing authority to which section 302(a)(1) of the Government Employee Rights Act of 1991 (2 U.S.C. 1202(a)(1)) applies;

(4) an employing office, as defined in section 101(9) of the Congressional Accountability Act of 1995 (2 U.S.C. 1301(9)); and

(5) an employing office as defined in section 411(c)(2) of title 3, United States Code.

The term “employer” does not include a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of title 26, United States Code.

(g) “Employment Agency” has the meaning given the term in section 701(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(c)).

(h) “Incapable of Self-Care” means that the individual requires active assistance or supervision to provide daily self-care in three or more of the “activities of daily living” (ADLs) or “instrumental activities of daily living” (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one’s grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, and similar activities.

(i) “Labor Organization” has the meaning given the term in sections 701(d) and (e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(d), (e)).

(j) “Office of Compliance” has the meaning given the term in the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.).

(k) “Parent” means a person who, with regard to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability --

(1) has the status of --

(i) a biological parent;

(ii) an adoptive parent;

- (iii) a foster parent;
- (iv) a stepparent;
- (v) a custodian of a legal ward; or
- (vi) a person who is actively seeking legal custody or adoption; or

(2) stands in loco parentis to such an individual.

(l) "Person" has the meaning given the term in section 701(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(a)).

(m) "Physical or Mental Disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual.

(n) "State" has the meaning given the term in section 701(i) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(i)).

SECTION 5. DISCRIMINATION PROHIBITED.

(a) **Employer Practices.** -- It shall be an unlawful employment practice for an employer--

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with regard to the compensation, terms, conditions, or privileges of employment of the individual, because such individual is a parent; or

(2) to limit, segregate, or classify employees in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the status of the individual as an employee, because such individual is a parent.

(b) **Employment Agency Practices.** -- It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because such individual is a parent or to classify or refer for employment any individual because such individual is a parent.

(c) **Labor Organization Practices.** -- It shall be an unlawful employment practice for a labor organization --

(1) to exclude or expel from its membership, or otherwise to discriminate against, any individual because such individual is a parent;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect the status of the individual as an employee, because such individual is a parent; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this Act.

(d) **Training Programs.** -- It shall be an unlawful employment practice for any

employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because such individual is a parent in admission to, or employment in, any program established to provide apprenticeship or other training.

SECTION 6. RETALIATION AND COERCION PROHIBITED.

(a) **Retaliation.** -- A covered entity shall not discriminate against an employee because the employee has opposed any act or practice prohibited by this Act or because the employee made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

(b) **Interference, Coercion, or Intimidation.** -- A covered entity shall not coerce, intimidate, threaten, or interfere with any employee in the exercise or enjoyment of, or on account of the employee's having exercised or enjoyed, or on account of the employee's having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this Act.

SECTION 7. OTHER PROHIBITIONS.

(a) **Collection of Statistics.** -- Notwithstanding any other provision of this Act, the Commission shall not collect statistics from covered entities on their employment of parents, or compel the collection of such statistics by covered entities, unless such statistics are to be used in investigation, litigation, or resolution of a claim of discrimination under this Act.

(b) **Quotas.** -- A covered entity shall not adopt or implement a quota with respect to its employment of parents.

SECTION 8. MIXED MOTIVE DISCRIMINATION. -- An unlawful employment practice is established under this Act when the complaining party demonstrates that an individual's status as a parent, or retaliation, coercion, intimidation, threats, or interference with an individual as described in section 6 of this Act, was a motivating factor for any employment practice, even though other factors also motivated the practice.

SECTION 9. DISPARATE IMPACT. -- Notwithstanding any other provision of this Act, the fact that an employment practice has a disparate impact on parents, as the term "disparate impact" is used in section 703(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2(k)), shall not establish a violation of this Act.

SECTION 10. DEFENSES WHERE ACTIONS TAKEN IN A FOREIGN COUNTRY

(a) It shall not be unlawful under this Act for a covered entity to take any action otherwise prohibited under this Act with respect to an employee in a workplace in a foreign country if compliance with this Act would cause such entity to violate the law of the foreign country in which such workplace is located.

(b) If a covered entity controls a corporation whose place of incorporation is a foreign country, any practice prohibited by this Act engaged in by such corporation shall be presumed to be engaged in by such covered entity.

(1) This Act shall not apply with respect to the foreign operations of a corporation that is a foreign person not controlled by an American covered entity.

(2) For purposes of this subsection, the determination of whether a covered entity controls a corporation shall be based on the factors set forth in section 702(c)(3) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1(c)(3)).

(c) This Act shall not apply to a covered entity with respect to the employment of aliens outside any State.

SECTION 11. ENFORCEMENT AND REMEDIES

(a) **Incorporation of Powers, Remedies, and Procedures in Other Civil Rights Statutes.** -- With respect to the administration and enforcement of this Act in the case of a claim alleged by an individual for a violation of this Act, the following statutory provisions are hereby incorporated, and shall, along with the provisions in subsection (b), establish the powers, remedies, procedures, and jurisdiction that this Act provides to the Equal Employment Opportunity Commission, to the Attorney General, to the Librarian of Congress, to the Office of Compliance and its Board of Directors, to the Merit Systems Protection Board, to the President, to courts of the United States, and/or to any other person alleging a violation of any provision of this Act --

(1) for individuals who are covered under title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e et seq.), sections 705, 706, 707, 709, 710, 711, and 717 of that Act (42 U.S.C. 2000e-4, 2000e-5, 2000e-6, 2000e-8, 2000e-9, 2000e-10, and 2000e-16), and sections 7121, 7701, 7702, and 7703 of title 5, United States Code, as applicable;

(2) for individuals who are covered under section 302(a) of the Government Employee Rights Act of 1991 (2 U.S.C. 1202(a)), sections 302(b)(1) and 304(b) - (e) of that Act (2 U.S.C. 1202(b)(1), 1220(b)-(e));

(3) for individuals who are covered under section 101(3) of the Congressional Accountability Act of 1995 (2 U.S.C. 1301(3)), sections 201(b)(1), 225, and 401-416 of that Act (2 U.S.C. 1311(b)(1), 1361, 1401-1416); and

(4) for individuals who are covered under section 411(c)(1) of title 3, United

States Code, sections 411(b)(1), 435, and 451-456 of that title.

(b) Additional Remedies. --

(1) Notwithstanding any express or implied limitation on the remedies incorporated by reference in subsection (a), and except as provided in subsection (b)(2) and in section 12, any covered entity that violates this Act shall be liable for such compensatory or punitive damages as may be appropriate.

(2) Notwithstanding subsection (b)(1),

- (i) absent its consent to a monetary remedy, a State may be liable for monetary relief only in an action brought by the Attorney General in a court of the United States; and
- (ii) a State shall not be liable for punitive damages.

(3) Notwithstanding any express or implied limitation on the remedies incorporated by reference in subsection (a) or included in subsection (b)(2) above,

- (i) an individual may bring an action in a district court of the United States for declaratory or injunctive relief against any appropriate State official for a violation of this Act; and
- (ii) the Attorney General may bring an action in a district court of the United States for declaratory or injunctive relief against any appropriate State official or State for a violation of this Act.

SECTION 12. FEDERAL IMMUNITY. – Notwithstanding any other provision of this Act, in an action or administrative proceeding against the United States for a violation of this Act, remedies (including remedies at law and in equity, and interest) are available for a violation to the same extent as the remedies are available against a private entity, except that punitive damages are not available.

SECTION 13. POSTING NOTICES. – A covered entity shall post notices for individuals to whom this Act applies, that describe the applicable provisions of this Act in the manner prescribed by, and subject to the penalty provided under, section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10).

SECTION 14. REGULATIONS.

(a) **In General.** Except as provided in subsections (b), (c), and (d) below, the Commission shall have authority to issue regulations to carry out this Act.

(b) **Librarian of Congress.** The Librarian of Congress shall have authority to issue regulations to carry out this Act with respect to employees of the Library of Congress.

(c) **Board.** The Board of the Office of Compliance shall have authority to issue regulations to carry out this Act, in accordance with sections 303 and 304 of the Congressional Accountability Act of 1995 (2 U.S.C. 1383, 1384), with respect to covered employees as defined in section 101(3) of such Act (2 U.S.C. 1301(3)).

(d) **President.** The President shall have authority to issue regulations to carry out this Act with respect to covered employees as defined in section 411(c)(1) of title 3, United States Code.

SECTION 15. RELATIONSHIP TO OTHER LAWS. – This Act shall not invalidate or limit the rights, remedies, or procedures available to an individual claiming discrimination prohibited under any other Federal law or any law of a State or political subdivision of a State.

SECTION 16. SEVERABILITY. – If any provision of this Act, or the application of such provision to any person or circumstances, is held to be invalid, the remainder of this Act and the application of such provision to other persons and circumstances, shall not be affected.

SECTION 17. APPROPRIATIONS. -- There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SECTION 18. EFFECTIVE DATE. – This Act shall take effect 60 days after the date of enactment of this Act and shall not apply to conduct occurring before the effective date.

ENDING DISCRIMINATION AGAINST PARENTS ACT OF 1999

FACT SHEET

The President today transmitted to the Congress the “Ending Discrimination Against Parents Act of 1999.” This legislative proposal would ban discrimination against private and public employees on the basis of their status as parents.

The Need for this Legislation

Federal law protects working parents from employment discrimination in a number of important areas. Under Title VII of the Civil Rights Act of 1964, for example, employees are protected from discrimination on the bases of race, color, sex, national origin, and religion. The Pregnancy Discrimination Act of 1978 further prohibits discrimination against workers on the basis of pregnancy.

Despite these critical protections, there is no existing federal law that protects workers from employment discrimination that is based on their status as parents. Such protection is well warranted, however. Where an employer, an employment agency, or a labor organization acts on the basis of unsubstantiated assumptions that parents – or those who have caretaking responsibilities for others who are physically or mentally incapable of taking care of themselves – are unwilling or unable to make a commitment to their jobs, it injures not only the individuals concerned, but the economy as a whole.

For the individual who is subject to such discrimination, the consequences can be harsh and immediate. Discrimination on the basis of parental status is unfair. Such discrimination deprives the targeted individual of employment opportunities and undermines the person’s ability to control the progress of his or her career. Such discrimination can also depress the income received by the millions of families who rely on the wages of working parents to make ends meet. It can thus limit opportunities for American families.

The economy is similarly disadvantaged by discrimination based on parental status. Such discrimination prevents the optimum utilization of available labor resources and constitutes an unfair method of competition in commerce. Because such discrimination is spread and perpetuated through commerce, moreover, it is a problem that is national in scope.

Ending Discrimination Against Parents Act of 1999

Acting to respond to this problem, President Clinton announced legislation prohibiting employment discrimination against workers because they are parents. The legislation applies to private and public sector employers, as well as employment agencies and labor organizations. The legislation protects individuals who are biological, adoptive, foster, stepparents, or custodians of -- as well as those who are actively seeking custody or adoption of and those who stand in loco parentis to -- individuals who are under the age of 18 or who are 18 or over but incapable of self-care because of a mental or physical disability. The legislation bars

discrimination against parents in all aspects of employment, including recruitment, referral, hiring, promotions, discharge, training, and other terms and conditions of employment. While this legislation would not prohibit employers from making hiring and promotion decisions on the basis of job performance, it would ensure that workers are not discriminated against simply because they are parents.

The legislation will offer a remedy where, for example, an employer takes a parent off the “fast track” due to unsubstantiated concerns that parents cannot meet the requirements of demanding jobs. Similarly, it will bar employers from preferring applicants without children over equally or better qualified working parents or from refusing to hire single parents.

The scope of the problem has been recognized in the states, eight of which (Alaska, Kentucky, Michigan, Nebraska, New Hampshire, New Jersey, Pennsylvania, and South Dakota), plus the District of Columbia prohibit or authorize prohibition of discrimination based on familial status. The federal government should do no less.

ENDING DISCRIMINATION AGAINST PARENTS ACT OF 1999

SECTION-BY-SECTION ANALYSIS

Short Title

Section 1 assigns the draft bill the short title “Ending Discrimination Against Parents Act of 1999.”

Findings

Section 2 sets forth findings regarding the problems caused by, and the benefits of Federal protection against, employment discrimination against parents. The findings state that this Act is not intended to affect interpretation or application of existing federal statutes prohibiting employment discrimination on other bases.

Purposes

Section 3 states that the purposes of the Act are to prohibit employers, employment agencies, and labor organizations from discriminating against parents based on an assumption that they cannot satisfy the requirements of a particular job. The Act bars covered entities from treating parents unfavorably. The Act does not require, but does not prevent, covered entities from making accommodations for parents, by, for example, allowing flexible work schedules or offering employee benefits that provide advantages to families.

Where employment discrimination against parents occurs, it is the purpose of the Act to provide meaningful and effective remedies for that discrimination.

Definitions

Section 4 contains definitions.

Subsection (a) defines “Commission” as the Equal Employment Opportunity Commission.

Subsection (b) defines “Complaining Party” to include all of those authorized to bring administrative or judicial actions under the Act.

Subsection (c) defines “Covered Entity” to mean employers, employment agencies, labor organizations, and joint labor-management committees.

Subsection (d) defines “Demonstrates” to mean meeting the burdens of production and persuasion.

Subsection (e) defines “Employee” to mean individuals covered under title VII of the Civil Rights Act of 1964; the Government Employee Rights Act of 1991; the Congressional

Accountability Act of 1995; or section 411 of title 3, United States Code. “Employee” is explicitly defined to cover applicants for employment and former employees.

Subsection (f) defines “Employer” to mean entities covered by section 701 or section 717 of title VII of the Civil Rights Act of 1964; the Government Employee Rights Act of 1991; the Congressional Accountability Act of 1995; or section 411 of title 3, United States Code. The term “Employer” does not include a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of title 26, United States Code.

Subsection (g) defines “Employment Agency” as it is defined in title VII of the Civil Rights Act of 1964.

Subsection (h) defines “Incapable of Self-Care” to mean that an individual requires active assistance or supervision to provide daily self-care in three or more of the “activities of daily living” (ADLs) or “instrumental activities of daily living” (IADLs). Subsection (h) gives examples of ADLs and IADLs.

Subsection (i) defines “Labor Organization” as it is defined in title VII of the Civil Rights Act of 1964.

Subsection (j) defines “Office of Compliance” as it is used in the Congressional Accountability Act of 1995.

Subsection (k) defines “Parent” to mean a person who, with regard to an individual who is under the age of 18 or over 18 but incapable of self-care because of a physical or mental disability, has the status of a biological parent; an adoptive parent; a foster parent; a stepparent; a custodian of a legal ward; or a person who is actively seeking legal custody or adoption; or who stands in loco parentis to such an individual. Persons who are “actively seeking legal custody or adoption” are those who have been pursuing the requirements to obtain legal custody or to adopt and whose custody or adoption of an individual described above reasonably appears to be imminent. Persons who are “in loco parentis” include those with day-to-day responsibilities to care for and financially support a child.

Subsection (l) defines “Person” as it is defined in title VII of the Civil Rights Act of 1964.

Subsection (m) defines “Physical or Mental Disability” to mean a physical or mental impairment that substantially limits one or more of the major life activities of an individual.

Subsection (n) defines “State” as it is defined in title VII of the Civil Rights Act of 1964.

Discrimination Prohibited

Section 5 sets forth prohibited discrimination.

Subsection (a) describes unlawful employment practices by employers. It mirrors the prohibitions of title VII of the Civil Rights Act of 1964, as applied to discrimination against parents.

Subsection (b) describes unlawful employment practices by employment agencies. It mirrors the prohibitions of title VII of the Civil Rights Act of 1964, as applied to discrimination against parents.

Subsection (c) describes unlawful employment practices by labor organizations. It mirrors the prohibitions of title VII of the Civil Rights Act of 1964, as applied to discrimination against parents.

Subsection (d) bars discrimination against parents in training programs. It mirrors the prohibitions of title VII of the Civil Rights Act of 1964.

Retaliation and Coercion Prohibited

Subsection 6(a) bars retaliation against an employee because that employee has opposed acts made unlawful by this Act or because the employee has participated in any way in filing a charge or assisting in an investigation or proceeding under the Act.

Subsection 6(b) prohibits a covered entity from coercing, intimidating or threatening an employee because that individual has exercised, or planned to exercise, or assisted another in exercising, rights protected by this Act.

These sections mirror the prohibitions of the Americans with Disabilities Act.

Other Prohibitions

Subsection 7(a) states that notwithstanding any other provision of this Act, the Commission may not collect, or require covered entities to collect, statistics on their employment of parents unless such statistics are to be used in investigation, litigation, or resolution of a claim of discrimination under this Act.

Subsection 7(b) bars covered entities from adopting or implementing quotas with respect to their employment of parents.

Mixed Motive Discrimination

Section 8 states that an unlawful employment practice may be established where a complaining party demonstrates that an individual's status as a parent, or retaliation, coercion, threats, intimidation, or interference, was a motivating factor for the practice, even if other factors also motivated the practice. It mirrors the prohibitions of title VII of the Civil Rights Act

of 1964.

Disparate Impact

Section 9 states that, notwithstanding any other provision of this Act, the fact that an employment practice has a disparate impact on parents, as “disparate impact” is defined in title VII of the Civil Rights Act of 1964, shall not establish a violation of this Act.

Defenses

Subsection 10(a) permits a covered entity to take action otherwise prohibited under this Act against an employee in a workplace in a foreign country if compliance with the Act would cause the covered entity to violate the law of the country in which the workplace is located.

Subsection 10(b) states that actions taken by a corporation that is incorporated in a foreign country will be presumed to be covered by the Act if the corporation is controlled by a covered entity. For purposes of making this determination, the Act incorporates the factors for evaluating control that are set forth in title VII of the Civil Rights Act of 1964.

Subsection 10(c) states that this Act shall not apply to a covered entity with respect to the employment of aliens outside any State.

Enforcement

Section 11 describes the ways in which the Act will be enforced and the remedies that will be available for a violation of the Act.

Subsection (a) authorizes the Equal Employment Opportunity Commission, the Attorney General, the Librarian of Congress, the Office of Compliance and its Board of Directors, the Merit Systems Protection Board, the President, the courts, and any other person alleging a violation of this Act to exercise, obtain, and use, as applicable, the powers, remedies, procedures, and jurisdiction set forth in specified sections of title VII of the Civil Rights Act of 1964; sections 7121, 7701, 7702, and 7703 of title 5, United States Code; the Government Employee Rights Act of 1991; the Congressional Accountability Act of 1995; and section 401 et seq. of title 3, United States Code. This subsection is not intended to authorize the Commission to require or monitor, or covered entities to implement, an affirmative program of equal employment opportunity for parents.

Subsection (b)(1) states that notwithstanding any limitation on the remedies incorporated by reference in subsection (a), and except as provided otherwise in this Act, covered entities that violate this Act will be liable for appropriate compensatory and punitive damages.

Subsection (b)(2) states that, notwithstanding subsection (b)(1), absent its consent to a monetary remedy, a state may be liable for monetary relief only in an action brought by the Attorney General in a federal court, and will not be liable for punitive damages.

Subsection (b)(3) states that, notwithstanding any limitations in this section, individuals may bring an action in federal court for declaratory or injunctive relief against any appropriate State official for a violation of this Act and that the Attorney General may bring an action for such relief against any appropriate State official or State.

Federal Immunity

Section 12 states that, notwithstanding any other provision of this Act, remedies under this Act will be available against the United States to the same extent that remedies are available against a private entity, except that punitive damages are not available.

Posting Notices

Section 13 requires covered entities to post notices for individuals covered by the Act that describe the applicable provisions of the Act. Section 13 incorporates the posting requirements and penalties for failure to meet this obligation set forth in title VII of the Civil Rights Act of 1964.

Regulations

Section 14 identifies the entities that are authorized to issue regulations to carry out this Act. The Commission is authorized to issue regulations except as explicitly provided in this section; the Librarian of Congress is authorized to issue regulations with respect to employees of the Library of Congress; the Board of the Office of Compliance is authorized to issue regulations with respect to employees covered by the Congressional Accountability Act of 1995; and the President is authorized to issue regulations with respect to employees covered under section 411(a)(1) of title 3, United States Code.

Relationship to Other Laws

Section 15 states that this Act shall not invalidate or limit the rights, remedies, or procedures available to an individual claiming discrimination under other Federal, state, or local laws.

Severability

Section 16 states that if any provision of this Act, or any application of a provision of this Act, is held to be invalid, the remainder of this Act, and the application of the provision to other persons and circumstances, will not be affected.

Appropriations

Section 17 states that there are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Effective Date

Section 18 states that this Act shall take effect 60 days after the date of enactment and will not apply to conduct occurring before the effective date.

National Partnership
for Women & Families

Donna R. Lenhoff
General Counsel

April 23, 1999

Neera--

I just wanted to thank you, 'formally',
for coming to the meeting we had on this.
I know getting out of the White House mid-
day is never easy-- we really appreciated
your presence, your thoughtfulness, & your
help. Talk to you soon--

Best,

Donna

MEMO

To: Neera Tanden and Suzanne Day
From: Donna Lenhoff and Sandhya Subramanian, National Partnership for Women & Families
Cc: LCCR Employment Task Force
Re: Parental discrimination legislation
Date: April 26, 1999

On March 18, we convened a meeting of the LCCR Employment Task Force to explore legal issues arising from the Ending Discrimination Against Parents Act of 1999 (EDAPA), the proposed bill that aims to prohibit employment discrimination on the basis of parental status. The goal of our discussion was to review the proposed language carefully and to make sure that it was consistent with other areas of antidiscrimination law. Present were: Roslyn Powell and Jackie Payne, NOWLDEF; Rick Seymour, Lawyers' Committee for Civil Rights; Yvonne Williams, NAACP LDEF; Richard Foltin, American Jewish Committee; Helen Norton, DOJ; Jocelyn Samuels, EEOC; Jill Kotner, Senator Dodd's office; and Neera Tanden, White House. With these considerations in mind, we reached the following conclusions about appropriate changes to EDAPA, based on the version of the bill in the February 10, 1999 discussion draft.

1. **Basic prohibition of discrimination.** Section 4 of EDAPA should be changed to track precisely the language of § 703(a)-(d) of Title VII (which we have attached to this memorandum) so that EDAPA's antidiscrimination protections are consistent with the guarantees of Title VII. As part of this expansion, section 4 would include prohibitions against discrimination by employment agencies, by labor organizations, and in training programs.
2. **Add a section of legislative findings to EDAPA.** EDAPA should contain several findings. First, to ensure that EDAPA successfully abrogates states' Eleventh Amendment immunity, findings should describe the problem of parental discrimination and should link EDAPA's prohibition of such discrimination to Congress' enforcement of the Equal Protection Clause of the Fourteenth Amendment. Second, the findings should reflect Congress' understanding that while existing law -- including Title VII, FMLA, and ADA -- already can be interpreted to protect parents, including single mothers, against discrimination in the workplace, and EDAPA leaves these interpretations undisturbed, it is necessary to reach circumstances that the other civil rights laws do not cover.
3. **Clarify EDAPA's exclusion of disparate impact analysis.** EDAPA does not require

employers affirmatively to accommodate employees who are parents; accordingly, section 7(B) of the bill specifically excludes disparate impact analysis. However, the words “prima facie” in section 7(B) should be deleted so that plaintiffs are not prevented from using disparate impact statistics to establish disparate treatment. With this change, section 7(B) would read:

(B) DISPARATE IMPACT - The fact that an employment practice has a disparate impact, as the term ‘disparate impact’ is used in section 703(k) of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-2(k)), on the basis of parental status does not establish a violation of this act.

4. **No language changes are necessary to restrict EDAPA to discrimination against parents.** If the purpose of EDAPA is to cover discrimination against employees who are parents, and not to give a cause of action for parental-status discrimination to employees who are *not* parents, no language changes are necessary: section 3(12) explicitly defines “parental status” in terms of being a parent or standing in loco parentis. Therefore, non-parents have no standing to challenge employers’ voluntary policies that benefit only parents, and such policies do not violate the bill.
5. **Language need not be added to cover prospective biological parents.** Section 3(12) of EDAPA specifically covers both “an adoptive parent” and “a prospective adoptive parent” (emphasis added) while covering only “a biological parent.” This language militates against reading the phrase “a biological parent” as including prospective biological parents. However, the PDA already prohibits employment discrimination on the basis of pregnancy, childbirth, or related medical conditions.
6. **Equal benefits.** As currently drafted, section 4 -- covering discrimination with regard to “compensation, terms, conditions, or privileges of employment” -- of EDAPA guarantees parents and non-parents equal benefits, based on case law interpreting virtually identical language in Title VII. Thus, EDAPA would prohibit employers from differentiating between parents and non-parents with regard to benefits simply because parents consume more benefits. If a different approach to benefits were contemplated, the current language of section 4 would need to be changed; for instance, adopting the ADEA “equal cost rule” would necessitate adding ADEA language to section 4.

Finally, the issue of whether EDAPA should include a religious organization exemption remains unresolved. Many of those present at the meeting felt that the exemption for religious organizations in section 8(A) of the current draft of EDAPA should be deleted, while others disagreed.

Please don’t hesitate to contact us if you have any questions!

Citation
42 USCA s 2000e-2
42 U.S.C.A. § 2000e-2

Found Document

Rank 1 of 1

Database
USCA

UNITED STATES CODE ANNOTATED
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 21--CIVIL RIGHTS
SUBCHAPTER VI--EQUAL EMPLOYMENT OPPORTUNITIES

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Current through P.L. 105-220, approved 8-7-1998

§ 2000e-2. Unlawful employment practices

(a) Employer practices

It shall be an unlawful employment practice for an employer--

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) Employment agency practices

It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) Labor organization practices

It shall be an unlawful employment practice for a labor organization--

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) Training programs

It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or

employment in, any program established to provide apprenticeship or other training.

(e) Businesses or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religion.

Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) Members of Communist Party or Communist-action or Communist-front organizations

As used in this subchapter, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950 [50 U.S.C.A. § 781 et seq.].

(g) National security

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if--

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Seniority or merit system; quantity or quality of production; ability tests; compensation based on sex and authorized by minimum wage provisions

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed

ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of Title 29.

(i) Businesses or enterprises extending preferential treatment to Indians

Nothing contained in this subchapter shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Preferential treatment not to be granted on account of existing number or percentage imbalance

Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

(k) Burden of proof in disparate impact cases

(1)(A) An unlawful employment practice based on disparate impact is established under this subchapter only if--

(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or

(ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.

(B)(i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice.

(ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

(C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of "alternative employment practice".

(2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this subchapter.

(3) Notwithstanding any other provision of this subchapter, a rule barring the employment of an individual who

currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act [21 U.S.C.A. § 801 et seq.] or any other provision of Federal law, shall be considered an unlawful employment practice under this subchapter only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.

(l) Prohibition of discriminatory use of test scores

It shall be an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin.

(m) Impermissible consideration of race, color, religion, sex, or national origin in employment practices

Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

(n) Resolution of challenges to employment practices implementing litigated or consent judgments or orders

(1)(A) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged under the circumstances described in subparagraph (B).

(B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws--

(i) by a person who, prior to the entry of the judgment or order described in subparagraph (A), had--

(I) actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely affect the interests and legal rights of such person and that an opportunity was available to present objections to such judgment or order by a future date certain; and

(II) a reasonable opportunity to present objections to such judgment or order; or

(ii) by a person whose interests were adequately represented by another person who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation, unless there has been an intervening change in law or fact.

(2) Nothing in this subsection shall be construed to--

(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights of parties who have successfully intervened pursuant to such rule in the proceeding in which the parties intervened;

(B) apply to the rights of parties to the action in which a litigated or consent judgment or order was entered, or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal Government;

(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction; or

(D) authorize or permit the denial to any person of the due process of law required by the Constitution.

(3) Any action not precluded under this subsection that challenges an employment consent judgment or order described in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of Title 28.

CREDIT(S)

1994 Main Volume

(Pub.L. 88-352, Title VII, § 703, July 2, 1964, 78 Stat. 255; Pub.L. 92-261, § 8(a), (b), Mar. 24, 1972, 86 Stat. 109; Pub.L. 102-166, Title I, §§ 105(a), 106, 107(a), 108, Nov. 21, 1991, 105 Stat. 1074-1076.)

PARENTAL DISCRIMINATION COVERAGE
JANUARY 15, 1999 TO APRIL 21, 1999

1ST STORY of Level 1 printed in FULL format.

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Chicago Tribune

April 21, 1999 Wednesday, CHICAGOLAND FINAL EDITION

SECTION: COMMENTARY; Pg. 15; ZONE: N

LENGTH: 722 words

HEADLINE: WHAT'S WITH PROTECTING EVERYONE'S 'BAGGAGE'?

BYLINE: Linda Chavez, Creators Syndicate.

BODY:

If the Clinton administration has its way, soon practically everyone in America will be a member of one or another "protected class" covered by specific anti-discrimination laws. Women, blacks, Hispanics, Asians, Native Americans, immigrants, the elderly and the disabled are already protected by laws forbidding discrimination on the basis of race, ethnicity, national origin, age and disability. Now the administration wants to broaden definitions under existing categories and add some surprising new ones, as well.

Last week, White House officials floated ideas for a new federal law forbidding employers to discriminate against parents. The proposed bill, which will be introduced in the Senate in the next few weeks, would allow parents to sue if they thought an employer had failed to hire or promote them if they limited their working hours in order to spend time with their children, for example. The administration has also filed briefs in two cases that will be heard next week by the U.S. Supreme Court, which would drastically broaden the definition of disability to include well over one-third of all Americans who suffer from correctable medical problems such as nearsightedness or high blood pressure. And the administration is also on record as favoring laws to forbid discrimination on the basis of sexual orientation.

What's wrong with including so many more categories under our civil rights laws? To answer that question, it's important to remember how the federal government got involved with forbidding discrimination in the first place. After all, discriminating--the act of distinguishing between certain things, people or behavior--is something all of us do all the time, usually for good and proper reasons. When Congress passed the Civil Rights Act of 1964, however, it outlawed a specific kind of discrimination--based on race (sex was thrown in by a Southern senator who hoped it would kill the bill, and religion was added almost as an afterthought)--that was not only irrational but which government itself had wrongly perpetuated. Congress' authority for outlawing racial discrimination was the commerce clause of the Constitution, under the theory that such discrimination interfered with interstate commerce.

But it's not at all clear that the kinds of discrimination the Clinton administration would now like to prohibit meet these criteria. Discriminating against employees who won't work overtime or who will put in fewer hours per week in a salaried position isn't irrational, it may be good business. Although not every parent will choose to forego overtime or cut short his or her work week, some will. And employers should be able to discriminate against workers--parents or not--who won't put in the hours the employer deems necessary to do the job, while rewarding those who will. There's nothing invidious about

this, as there was with assuming that every black person was incapable of performing a job, no matter what his credentials or qualifications.

Likewise, the administration's efforts to expand the definition of disability will place even more onerous burdens on employers who are already stretched to accommodate impairments that Congress didn't give much thought to when it passed the Americans With Disabilities Act in 1990. For example, most ADA complaints against employers today involve employees who claim mental health problems or back pain. New guidelines from the Equal Employment Opportunity Commission require that employers reassign employees who suffer from stress-related illnesses or depression to new supervisors if they claim their current supervisors increase their stress or depression, for example. Now the administration wants to add to the growing list of the "disabled" anyone who suffers a correctable impairment--a far cry from the standard in the law itself, which refers to a disability that "substantially limits life activities."

When will it all end? The Supreme Court should have the good sense to reject the administration's elasticized definition of disability. And surely the Senate will rebuff the notion of a Parental Discrimination Law. If not, the only group left without its very own anti-discrimination law may be native-born, happy, heterosexual, white males with 20/20 vision and in perfect health who don't have kids.

LANGUAGE: ENGLISH

LOAD-DATE: April 21, 1999

2ND STORY of Level 1 printed in FULL format.

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The New York Post

April 18, 1999, Sunday

SECTION: All Editions; Pg. 020

LENGTH: 345 words

HEADLINE: CLINTON WOULD GIVE PARENTS ANTI-JOB BIAS PROTECTION

BYLINE: BRIAN BLOMQUIST Post Correspondent

BODY:

WASHINGTON - President Clinton wants to make parents a "protected class" of citizens under job-discrimination laws, White House officials said yesterday.

Federal laws currently say minorities and women can't be discriminated against because of their race or gender - and Clinton now believes that parents should be added to the list.

His administration plans to send the Senate a bill in the next two weeks that would make it illegal to take a mother or father off a career track because a boss believes parents can't keep up with non-parents.

Critics say the bill would flood the courts with lawsuits and that there's scant evidence of discrimination against parents.

But White House spokesman Barry Toiv said yesterday, "We think there are significant examples of discrimination against parents, and we are determined to propose policies to protect them without imposing undue burdens on employers."

White House officials acknowledge the Republican-controlled Congress is unlikely to pass the bill, but the debate could be an issue in the presidential and congressional campaigns.

Donna Lenhoff, counsel for the National Partnership for Women and Families, said it's "difficult to know" how many parents have been discriminated against.

"We have a fair amount of anecdotal evidence," Lenhoff said.

"Many employers are already way ahead of where the law is and have policies that help parents," Lenhoff said.

Toiv said the White House is family friendly.

"It's a difficult environment," he said, referring to the demands and hours that many workers put in. "But if people need to deal with problems at home, we deal with them. If you've got to deal with a medical problem or a school problem, you do it."

Clinton also proposed yesterday in his weekly radio address that he'll introduce legislation to protect senior citizens from telemarketing swindlers.

The New York Post April 18, 1999, Sunday

"We must fight telemarketing fraud that robs people of their life savings and endangers their well-being," Clinton said, claiming Americans are "bilked" for \$40 billion each year.

LANGUAGE: ENGLISH

LOAD-DATE: April 19, 1999

3RD STORY of Level 1 printed in FULL format.

Copyright 1999 Times Mirror Company
Los Angeles Times

April 17, 1999, Saturday, Home Edition

SECTION: Part A; Page 20; National Desk

LENGTH: 1093 words

HEADLINE: JOB PROTECTIONS FOR PARENTS DEBATED;
LABOR: CLINTON TO PROPOSE LAW BANNING DISCRIMINATION AGAINST THOSE WITH
CHILDREN. BUT SOME SAY THERE IS NO NEED FOR SUCH A MEASURE.

BYLINE: MELISSA HEALY, TIMES STAFF WRITER

DATELINE: WASHINGTON

BODY:

After her first child's birth, Diana Piantanida had planned to join the legions of Americans who juggle paid work and parenthood. But two weeks into her maternity leave, the St. Louis woman learned that she would be returning to her employer to fill what her boss allegedly called "a job a new mom could handle"--at half the pay and much less responsibility.

Piantanida cried foul, charging that her employer was discriminating against her because she was a parent. But in the five years since she took the Wyman Center of St. Louis to court, judge after judge has effectively shrugged and told her that her boss had done nothing wrong. "There was no protection whatsoever for me," Piantanida says now.

In 42 states, including California, there is no explicit protection for workers who believe that their employers have treated them unfairly because they have children. And many employers--even those who compete to be recognized as "family friendly"--do not want any.

"It would provide a weapon for poorly performing employees to use improperly," said Angel Gomez III, an employment-law attorney based in Century City.

In the next few weeks, President Clinton plans to enter the debate by introducing legislation in the Senate that would outlaw workplace discrimination against parents.

In part, Clinton's calculus is political. With Democrats and Republicans competing to be seen as champions of working families, Clinton's proposed legislation could become a rallying cry for Democrats and pose a dilemma for many Republicans. In the 2000 elections when both parties will be wooing an army of "soccer moms," standing for parental rights is a natural for Democrats--and a temptation for Republicans.

Los Angeles Times April 17, 1999, Saturday,

Clinton is also betting on support from social conservatives who often feel that their commitment to families hurts them in the workplace.

The merging of odd political alliances, "is classically Clintonesque," said Democratic pollster Celinda Lake.

Need for Legislation Is Challenged

Some employment experts question the need for legislation. Susan Meissenger of the American Society of Human Resources Managers, called such protections "a solution in search of a problem."

With the labor market tight, and expected to stay that way for years to come, employers are working overtime to make their workplaces more family friendly, she said. In addition to tying personnel managers up in more red tape, she added, "all this does is make politicians feel good."

However, if business-oriented Republicans oppose legislation, Lake warned, they probably will be seen as anti-family. And they could pay dearly for it at the polls, as President Bush did when he twice vetoed a bill requiring employers to offer unpaid leave to parents of newborns or workers caring for sick relatives.

The Family and Medical Leave Act, the first bill Clinton signed into law when he took office in 1993, has proved extremely popular with working families. Derided at the time as a toothless sop to special interests, it has enabled thousands of Americans to stay home when family illness or birth required it--even if they had to do so without a paycheck.

Some family law experts think that the proposed Parental Discrimination Bill could provoke a similar response.

Although few workers currently charge that they have faced discrimination because they are parents, Donna Lenhoff of the National Partnership for Women and Families argued that may be because such protections are not explicitly contained in civil rights law. If such a bar were clarified by legislation, Lenhoff and others believe, more parents would come forward.

But for all the political appeal of a parent-discrimination statute, attorneys who specialize in employment law said that complainants will not be coming out of the woodwork any time soon. Proving parental discrimination would remain difficult even with an explicit prohibition in place.

And beyond that, employment specialists maintain, it just does not happen very often.

"Obviously it makes for a sexy campaign topic, but in California, there doesn't seem to be a need from an employee's side," said Gomez, the Century City attorney.

Years ago, demonstrating such discrimination might have been easier, at least for women. Many companies explicitly excluded mothers of small children from certain positions, such as those requiring travel or lots of extra hours. Today, few companies do so openly, and many employers have sought to accommodate those who juggle work and family responsibilities with flexible new policies on,

Los Angeles Times April 17, 1999, Saturday,

among other things, sick leave, work hours and use of compensatory time.

Lenhoff acknowledged that a law protecting parents may be used infrequently but drew a different conclusion from that of employer representatives like Meissenger.

"If it isn't really a problem, if these kind of underlying stereotypes don't motivate employers' decisions, then why does it hurt to prohibit it, in case there are six people out there who do retain those stereotypes?" she asked. "It seems like an important principle."

Fathers Might Benefit From Proposed Law

With men getting more involved in their children's care, New York employment attorney Steven Eckhaus said, he can easily envision more fathers alleging workplace discrimination in the future.

For now, however, Eckhaus said women would probably benefit most from the proposed law.

He represents Joann Trezza, a New York-based insurance attorney and mother of two children, 6 and 11 years old. Trezza has taken her employer, the Hartford Financial Services Group, to court, charging that she has been passed over repeatedly for promotion in favor of less-qualified employees who are either men or childless women.

In Trezza's complaint, she cites comments by senior attorneys in Hartford's legal department that disparaged the job performance of working mothers generally. In one comment--denied by its alleged source--one of her bosses opined at a business dinner that "women are not good planners, especially women with kids."

But Trezza's case may well be as difficult as Piantanida's was five years ago. "Parenthood is not a protected class under Title VII," wrote U.S. District Judge Michael Mukasey in a December ruling limiting the scope of the trial against Hartford.

Trezza has declined to comment on the case, which is still pending. But Piantanida said that she knows what it feels like when parenthood costs you a job.

"I was all alone. Everywhere I turned I felt like I was hitting brick walls."

LANGUAGE: English

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HEADLINE: Background on State of the Union Address -- Support for American Families (3/8)

CONTACT: White House Press Office, 202-456-2100

DATELINE: WASHINGTON, Jan. 19

BODY:

Following is a background to President Clinton's State of the Union address, released today by the White House (Part 3 of 8):

II. 21ST CENTURY SUPPORT FOR AMERICAN FAMILIES

LABOR

Minimum Wage Increase

The President called on Congress to pass an increase in the minimum wage. Despite the strongest economy in a generation, there are still millions of workers trying to raise a family and struggling to make ends meet. The President believes that parents who works hard and play by the rules should not have to raise their children in poverty. That is why, in 1993, he expanded the Earned Income Tax Credit (EITC) and, in 1996, fought for and won a minimum wage increase. The President's proposal would increase the minimum wage from \$5.15 to \$6.15 over two years -- through a 50-cent increase on September 1, 1999 and a 50-cent increase on September 1, 2000 -- helping to restore the real value of the minimum wage to what it was when President Reagan took office in 1981. This increase will help ensure that -- as costs continue to increase -- parents who work hard and play by the rules can bring up their children out of poverty. For someone who works full-time, this minimum wage increase will mean an additional \$2,000 per year. According to data from the Bureau of Labor Statistics, about 12 million hourly paid workers would benefit directly from this pay raise.

Ensuring Equal Pay

According to the Department of Labor, the average woman who works full-time earns just 74 cents for each dollar that an average man earns. For women of color, the gap is even wider. This gap is, in part, attributable to differing levels of experience, education, and skill. However, even after accounting for these factors, a significant pay gap still remains between men and women in similar jobs. Recognizing this wage disparity, the President is proposing a \$14 million equal pay initiative for the Equal Employment Opportunity Commission (EEOC) and the Department of Labor. Additional details of this initiative will be announced at a later date. The President also will continue to support the Paycheck Fairness Act, which improves the enforcement of wage discrimination laws and provides for research, education, training of EEOC staff, and outreach on this important subject.

U.S. Newswire, January 19, 1999

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CHILD CARE

Expanding the Child Care Block Grant

The President is proposing to expand the Child Care and Development Block Grant to help working families struggling to meet the costs of child care. The President's proposal will: (1) increase funding for child care subsidies by \$7.5 billion over five years, enabling the program to serve an additional 1.15 million children by FY 2004; (2) provide \$3 billion over five years to promote early learning; and (3) provide \$173 million to improve child care quality. Additional funds for subsidies are necessary because millions of families who are eligible for assistance with their child care costs currently do not receive any help: in FY 1997, states provided child care assistance to only 1.25 million of the 10 million low-income children eligible. Additional funding to improve early learning through challenge grants to communities for children ages zero to five responds to research showing that children's experiences in the earliest years are critical to their development and ability to reach school ready to learn. Finally, increased investment in improving child care is needed to support quality enhancement efforts such as performing inspections of child care facilities, providing resource and referral services for parents, assisting providers with training and scholarships, and creating networks for family day care providers.

Expanding After-School Opportunities

The President is committed to triple funding for the 21st Century Learning Center Program, which supports the creation and expansion of after-school and summer school programs throughout the country. Experts agree that school-age children who are unsupervised during the hours after school are far more likely to use alcohol, drugs, and tobacco, commit crimes, receive poor grades, and drop out of school than those who are involved in supervised, constructive activities. The program increases the supply of after-school care in a cost-effective manner, primarily by funding programs that use public school facilities and existing resources. In awarding these new funds, the Education Department will give priority to school districts that are ending social promotion by requiring that students meet academic standards in order to move to the next grade. The President's budget will include \$600 million in FY 2000 to help roughly 1.1 million children each year participate in after-school and summer school programs.

Giving Greater Tax Relief for Child Care to Three Million Working Families

The Child and Dependent Care Tax Credit provides tax relief to taxpayers who pay for the care of a child under 13 or a disabled dependent or spouse in order to work. The credit is equal to a percentage of the taxpayer's employment-related expenditures for child or dependent care, with the amount of the credit depending on the taxpayer's income. The President's proposal increases the credit for families earning under \$60,000, providing an additional average tax cut of \$354 for these families and eliminating income tax liability for almost all families with incomes below 200 percent of poverty (\$35,000 for a family of four) that claim the maximum allowable child care expenses. The President's budget will include \$5 billion over five years to expand the Child and Dependent Care Tax Credit for nearly three million working families paying for child businesses that provide child care services for their employees.

Providing Tax Relief to Parents Who Stay at Home

The President believes that we should support parents in whatever choice

U.S. Newswire, January 19, 1999

they make for the care of their children. He therefore is proposing to enable parents who stay at home with children under one year old to take advantage of the Child and Dependent Care Tax Credit by claiming assumed child care expenses of \$500. The President's budget proposal will provide an average tax credit of \$178, at a cost of \$1.3 billion over five years, which will benefit 1.7 million families.

FMLA Expansion

The President is proposing again to extend the benefits of the Family and Medical Leave Act (FMLA) -- the first piece of legislation that the President signed into law -- to ten million more American workers. Today, workers are eligible for up to 12 weeks of attend to their own serious health needs, or to care for a seriously ill parent, child or spouse -- if they work at a business with 50 or more employees. By covering workers in businesses with 25 or more workers, 10 million more American workers will be covered by the FMLA. The President is also calling for expanding the law to allow FMLA-eligible workers to take up to 24 hours of additional leave each year to meet specified family obligations. Leave could be taken to: (1) participate in school activities, such as parent-teacher conferences; (2) accompany one's child to routine dental or medical appointments; and (3) accompany an elderly relative to routine medical appointments or other professional services.

Prohibiting Discrimination Against Parents

The President proposed new federal legislation to protect parents from discrimination in the workplace. Building on laws in Alaska, Michigan, New Jersey and other states, this legislation would protect workers from unfair assumptions about their commitment to their job that can affect hiring, advancement, and other employment decisions. This law would not prohibit employers from making hiring and promotion decisions on the basis of job performance, but would ensure that workers are not unfairly discriminated against simply because they are parents.

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HEALTH CARE

Addressing Growing Long-Term Care Needs

Over five million Americans, most of whom are elderly, have significant limitations due to illness or disability and thus require long-term care. The aging of Americans will only increase the need for quality long-term care options: by 2030, the number of elderly Americans will have doubled, so that one in five Americans will be elderly. President Clinton has proposed an historic new \$6.2 billion initiative to support elderly and disabled Americans with long-term care needs and the millions of family members who care for them. This initiative includes over five years a \$5.5 billion investment in a \$1,000 tax credit to compensate for the cost of long-term care services; a new \$625 million National Family Caregiver Program; a \$10 million national campaign for FY 2000 to educate Medicare beneficiaries about long-term care options; and \$15 million to allow the Federal government to offer long-term care insurance to its employees at group rates.

The Potential of New Biomedical Research

Advances in biomedical research have captured the imagination of all Americans, with scientists now poised to make advances that could revolutionize the way we treat diseases. The President's new \$320 million investment in NIH will allow us to make progress in preventing the complications of diabetes, combating diseases associated with aging, like Alzheimers and Parkinson's, and

U.S. Newswire, January 19, 1999

developing vaccines for tuberculosis, malaria, and AIDS.

Protecting Patients through a Strong, Enforceable Patients Bill of Rights

Once again, the President is calling on Congress to pass a strong federally enforceable patients' bill of rights. This Health Care Bill of Rights should contain a range of protections, including guaranteed access to needed specialists, access to emergency room services when and where the need arises, access to a meaningful independent and external appeals process for consumers to resolve differences with their health plans, and the right to be compensated when a health plan's decision causes a patient to be harmed or die. The President is already doing everything he can to implement these protections, by extending them to the 85 million Americans covered by Federal health plans.

Protecting Privacy of Medical Records

The President is challenging the Congress to pass strong bipartisan legislation to protect the privacy of medical records. The President also pledged that if Congress does not pass this legislation this summer, he will take action to implement protections for electronic medical records under the authority given to him by the Health Insurance Portability and Accountability Act of 1996.

Encouraging Small Businesses to Purchase Health Insurance

Many small businesses cannot offer health insurance because of their higher administrative costs and premiums relative to large businesses. As a result, workers in small firms are less likely to have access to affordable, job-based health insurance. Nearly half of uninsured workers are in firms with fewer than 25 employees (relative to 30 percent of all workers). The President is proposing a new \$44 million initiative to encourage small businesses to offer health insurance to their workers by developing and/or joining coalitions for purchasing health insurance. This three-part initiative would provide a tax credit to small businesses that decide to offer coverage by joining coalitions; encourage private foundations to support coalitions by allowing their contributions towards these organizations to be tax exempt; and offering technical assistance to new small business coalitions.

Providing New Options for Americans Ages 55 to 65 to Obtain Health Insurance

Americans ages 55 to 65 are one of the fastest growing groups of uninsured Americans. They are also extremely difficult to insure: they have less access to and a greater risk of losing employer-based health insurance; and they are twice as likely to have health problems as the population generally. The President's \$1.4 billion proposal gives this vulnerable population three new ways to gain access to health insurance by: (1) allowing Americans ages 62 to 65 to buy into Medicare, through a mechanism that preserves the Medicare trust fund; (2) assisting vulnerable displaced workers 55 and over by offering those who have involuntarily lost their jobs and health care coverage a similar Medicare buy-in option; and (3) giving Americans 55 and over who have lost their retiree benefits access to their former employers' health insurance.

Improving Economic Opportunities for Americans With Disabilities

Since President Clinton and Vice President Gore took office, the American economy has added 17.7 million new jobs. However, the unemployment rate among working-age adults with disabilities is still nearly 75 percent. People with disabilities can bring tremendous energy and talent to the American workforce,

U.S. Newswire, January 19, 1999

yet institutional barriers often limit their ability to work. The President's budget proposes a historic new \$2 billion initiative that removes significant barriers to work for people with disabilities. It includes the Work Incentives Improvement Act, which invests \$1.2 billion in providing options for workers with disabilities to buy into Medicaid and Medicare; a new \$700 million investment in a \$1,000 tax credit for workers with disabilities; and more than double the government's current investment, an increase of \$35 million, in assistive technologies that make it possible for individuals with disabilities to work.

Improving Health Care Access for Uninsured Workers

This new initiative invests \$1 billion over 5 years in local communities to integrate providers that traditionally provide services to the uninsured, such as public hospitals and clinics, into networks that provide a comprehensive range of services to uninsured people. Providers will receive funds to develop the financial, information, and telecommunication systems necessary to monitor and manage patient needs, as well as funds to expand the range of services they deliver.

Providing Critical Mental Health Prevention and Treatment Services

Approximately 44 million adults and 14 million children suffer from a mental disorder each year. The Clinton/Gore Administration's new FY 2000 budget includes a \$70 million increase -- the largest totaling \$358 million, will enable states to enhance and expand their efforts to assist people with mental illnesses, by targeting particularly-hard-to-reach adults and children with severe mental illnesses, improving school violence abatement programs, helping states provide new effective medications for people with mental illnesses, and providing services to older Americans who are reluctant to reach mental health services in traditional mental health settings. This spring, the Administration will also hold the first ever White House Conference on Mental Health.

Protecting Our Children From Tobacco

Every day, 3000 children become regular smokers and 1000 have their lives shortened because of it. Almost 90 percent of adult smokers began smoking by age 18 and today 4.5 million children -- 37 percent of all high school students -- smoke cigarettes. The state tobacco settlement is an important step in the right direction, but the President believes additional measures must be taken to reduce youth smoking and hold the tobacco industry accountable: 1) raise the price of cigarettes, so fewer young people start to smoke; 2) reaffirm the Food and Drug Administration's full authority to keep cigarettes out of the hands of children; 3) fund critical public health efforts to prevent youth smoking and hold the tobacco industry accountable for reducing youth smoking; and 4) protect farmers and farming communities. The President's budget will use all the funds resulting from this plan to help reimburse the federal government for its annual tobacco-related health costs.

Largest Increase in Family Planning Grants in 15 Years

The President's FY 2000 budget proposal will call for a substantial increase in Title X Family Planning grants, which helps provide women with vital services, including contraception, pregnancy testing, STD screening and treatment. Further details of this increase will be announced later this week.

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drawn

Marjorie Williams

Parenthood Without Punishment

At first blush, it seems the soul of good sense: Of course parents shouldn't be denied jobs or promotions simply because they have kids. When President Clinton on Tuesday announced an executive order barring discrimination against parents in the federal workplace, to match legislation he proposed last year covering private-sector employees, he was asserting an apparently apple-pie principle.

But on closer examination, this is a mischievous bit of grandstanding. For one thing, we should always be wary when our leaders make a great show of redressing an evil that has not been shown to exist. As Republicans in Congress have pointed out, in letting Clinton's private-sector version of this initiative languish, the White House has never shown (nor made much effort to) that parents are routinely discriminated against in any way clear enough to be susceptible to legal redress.

For another thing, to the extent that this problem exists, there are already some good laws on the books to address it. It is already illegal to discriminate against a pregnant woman; and thanks in part to Clinton, workers are already by law entitled to return to the same or an equivalent job after 13 weeks of unpaid leave following childbirth or family crisis.

But the real mischief in Clinton's executive order is that it perpetuates the myth that most confounds all our debates about work-family conflict, which is the fairy-tale belief that if only there were no mean employers harboring brute prejudices against children, there would be no work-family conflict. There should be "no glass ceiling for parents," Clinton declaimed, in signing the order. But of course parenthood itself, properly pursued, is its own glass ceiling.

Being a parent almost inevitably, for a while, cuts into the professional intensity that younger, more single-focused workers bring to the job, including the willingness to work long hours on

short notice. Parents often bring compensatory skills to their work: the efficiencies of experience; the clarity of purpose that parenthood, at its best, can promote; the insight that some of what they have let go is Dilbertian wheel-spinning to begin with.

But the fact is that work and family are often in competition, and good parents sacrifice work to their families more often than they sacrifice their families to their work. We hate to utter this blunt judgment, but the truth is that all the employer flexibility in the world cannot entirely banish the conflict. Our leaders do us no favors when they suggest that the onus is entirely on others—politicians, bosses, co-workers—to make this conflict seem less sharp.

In the long run, it makes us crazy to look at the world around us and be confronted every day with the suggestion that we act and feel exactly as we did before our lives changed. For women, this myth all too often leaves us wondering, "What's wrong with me?" It sets back working parents' efforts to persuade employers to see them as different but valuable: as people for whom allowances must sometimes be made when a child is sick or when a school conference calls but who return enough value—both on the job and as contributors to the social order—to be worth it. You

can't simultaneously urge employers to give parents some breaks and also hector them for not regarding parents in exactly the same light as non-parents.

And Clinton's ploy encourages employers to believe that it's fair to expect everyone, without variation, to want to work all the time. Most professional women and men know that the real sanctions against their family lives in the workplace aren't the gross injuries of being fired or denied promotion; they're the insidious suggestions that if you were really dedicated, you would work work work 14 hours a day. Ask yourself whether Clinton's executive order helps or hurts parents' efforts—in the workplace and in their own convictions—to challenge that definition of dedication.

There are always two overlapping debates going on in our discussion of work-family issues. One is the debate over personal choices that is the luxury of middle- and upper-middle-class families. (Should I work? How much? How do I balance what I gain from working against what my kids want or need?) For this debate, Clinton's pandering in the direction of "parents' rights" only obscures what's at stake.

And of course it makes no contribution at all to the second debate, which is the one our public policy should concern itself with: the question of what we can do for the millions of women who work long hours for low pay and, as things stand, have almost no chance of seeing their children adequately cared for during their work hours.

All the "rights" in the world do nothing to help when you have to get your toddler on a bus at 5:30 a.m. so you can get her to her substandard day care in time to get to your own job cleaning hotels by 7:30.

But of course addressing that problem would cost a lot of money. It's much easier to stand up for our comfortable, middle-class denial of the moral weight our choices carry.



BY JOHN OVERMYER

E. J. Dionne Jr.

Mining The Golden State

LOS ANGELES—A lovely political game is being played during these lovely spring months in the nation's largest state.

Every political strategist agrees Vice President Gore can't be president if he loses California, a state that's been moving sharply toward the Democrats. The game, being played with great skill on both sides, is over whether George W. Bush really means to fight hard enough here to pull Gore into spending money he'd rather shower on the swing states of Pennsylvania, Michigan, Ohio and Illinois.

Republicans insist Bush is serious, and he was stumping the state yesterday to prove the point. Rep. Steve Horn, a moderate Republican from Long Beach, thinks Bush can do well with California's many middle-of-the-roaders.

Leslie Goodman, a Republican consultant, says recent Republican defeats don't mean her state is a sure thing for Democrats. "More and more people are less and less partisan," she argues. With his relentless emphasis on education, Bush can win.

To which Gary South, Democratic Gov. Gray Davis's top political gun, says: balderdash.

"This guy will not be competitive in California," South says of Bush. "A head fake," he calls Bush's claim that he'll run hard here. "The real question is not how much time he'll spend here in May. The real question is how much time he'll spend here in September and October. The answer is: not much."

The supporting evidence for South's view can be found in the reaction to three initiatives conservatives put to California's voters: Propositions 13, 187 and 226.

Begin with Proposition 13, the property tax-cutting initiative passed in 1978. It has so sharply restricted spending on schools, says Democratic consultant David Doak, that voters are now more worried about "the demise of the education system" than about cutting taxes. That's true of "corporate interests"

too, says Rep. Sam Farr, a Democrat who represents the central coast. "Business began to realize that if you didn't have a good local tax base, you couldn't count on schools, roads and infrastructure being built."

All this explains why Bush keeps touting his education proposals while Gore insists Bush's big tax cuts won't leave any money for schools.

Then there was Proposition 187, successfully pushed by former Republican governor Pete Wilson in 1994, which sought to limit government spending on illegal immigrants. Latinos came to see the proposition as an attack on their community and reacted ferociously against the GOP.

Latinos now vote Democratic by a margin of 4 to 1. The number of Latino voters grew from 700,000 in 1994 to 1.4 million in 1998, when Davis won a 20-point victory.

"There's a really suspicious eye cast on Republicans," says Rep. Xavier Becerra, a Los Angeles Democrat, which will make it hard for Bush to repeat here the success he's had in appealing to Latinos in Texas.

Then came Proposition 226, the "paycheck protection" proposal that would have curbed union spending on politics. Labor mobilized to beat it and hasn't stopped mobilizing. Democratic Sen. Barbara Boxer notes with glee that newspapers called her race "tight" the day before the 1998 election. She won by 10 points. The key, she says, was unexpectedly high turnout inspired by "Latino groups, women's groups and environmental groups"—and especially the unions.

"Labor would vote all over the lot" in the 1980s, Boxer says, with union members often responding to conservative social issues. "Now, they're voting on the economy, and they're voting Democratic."

The trend is holding, says Paul Maslin, a Democratic pollster.

A California survey he completed this week shows Gore nine points ahead of Bush. Gore, Maslin finds, is being helped by the Democrats' staple issues here—abortion rights, gun control and the environment—and by the success of such Democrats as Davis and President Clinton in neutralizing social issues such as crime that created many Reagan Democrats.

Dan Schnur, a Republican consultant who worked for John McCain this year, agrees: "Reagan convinced an entire generation of blue-collar Democrats to set aside short-term economic interests to vote on an array of social and foreign policy issues."

Republicans need such an issue now, and Schnur still thinks McCain had the right formula. "In a strong economy, without a razor-edge social issue, campaign reform packs more of an emotional wallop than any other policy issue, particularly for a blue-collar voter, a Reagan Democrat," he says. "You're talking about voters who don't think their interests are being watched out for in Washington."

It's an argument Bush may hear when he meets with McCain next week. But Gore has made clear that despite his Buddhist temple problem, he intends to hug McCain's position on campaign finance reform as tightly as possible.

When combined with the Democrats' other advantages, it's the embrace that may prove South right and keep Bush out of California in October.

Latinos now vote

Democratic by a margin

of 4 to 1.

READ THE POLL ANALYSIS

for source (reference) file: parente document
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June 19, 1999 — Study #426

◆◆◆◆ LOS ANGELES TIMES® POLL ALERT ◆◆◆◆

HOW THE POLL WAS CONDUCTED

The Times Poll contacted 2,021 adults statewide by telephone April 25 through May 1. The sample includes 1,601 parents, of whom 334 have children under the age of five and 476 have children between the ages of five and thirteen. Telephone numbers were chosen from a list of all exchanges in the state. Random-digit dialing techniques were used so that listed and unlisted numbers could be contacted. The entire sample was weighted slightly to conform with census figures for sex, race, age, education and region. The margin of sampling error for the entire sample and for all parents is plus or minus three percentage points; it is plus or minus five points for the parents of children under the age of five and for the parents of children between the ages of five and thirteen. For other subgroups the error margin may vary. Poll results can also be affected by other factors such as question wording and the order in which questions are presented. The survey was conducted in English and Spanish.

NOTES

All answer frequencies are given in percentages.
Totals may exceed 100% in questions where more than one response was accepted. Totals may be less than 100% where some answer categories are not shown.
" - " indicates less than 0.5%.
The wording of some questions has been abridged.

SELECTED RESULTS FROM THE TIMES POLL CALIFORNIA SURVEY April 25-May 1, 1999

(A full summary of results will be available at a later date through the Los Angeles Times Poll)

GUIDE TO COLUMN HEADINGS

NON PAR	Non-parents
PARENTS:	
ALL	All parents
MEN	Male parents
WOM	Female parents
M/W	Married, working parents
M/W WOM	Married, working female parents
M/W MEN	Married, working male parents
S/W WOM	Single, working female parents
CHILD <5	Parents of children under age five
CHILD 5-13	Parents of children between five and 13 years old

Overall, how difficult do you think it is for most families in your area today to find affordable, high quality child care?

	NON PAR	PARENTS						
		ALL	MEN	WOM	M/W	M/W WOM	M/W MEN	S/W WOM
Difficult	77	83	78	87	84	89	80	95
Not difficult	14	9	13	6	11	9	12	4
Don't know	9	8	9	7	5	2	8	1

Who do you think should primarily be responsible for making sure that families have access to affordable child care—the government, or employers, or parents themselves?

	NON PAR	PARENTS						
		ALL	MEN	WOM	M/W	M/W WOM	M/W MEN	S/W WOM
Government	32	18	16	31	16	20	13	30
Employers	10	14	12	15	15	15	15	20
Parents	44	49	55	43	50	43	54	27
All (Vol.)	11	16	13	18	16	20	14	22
Don't know	3	3	4	3	3	2	4	1

How important do you think it is for employers to provide their employees assistance in finding affordable, high quality child care?

	NON PAR	PARENTS						
		ALL	MEN	WOM	M/W	M/W WOM	M/W MEN	S/W WOM
Important	79	77	71	81	73	81	69	87
Not important	20	20	25	16	24	19	27	10
Don't know	1	3	4	3	3	-	4	3

Which of the following is closer to your view on how to handle the increasing costs of child care: "The government should provide child care for families that cannot afford it," or "The government should provide tax credits to be used for child care"?

	NON PAR	PARENTS						
		ALL	MEN	WOM	M/W	M/W WOM	M/W MEN	S/W WOM
Provide child care	36	25	20	30	21	24	19	46
Provide tax credits	52	63	67	59	67	63	69	48
Neither (Vol.)	7	7	9	5	7	6	8	2
Don't know	5	5	4	6	5	5	4	4

File:
Parental Discrimination Bruce - these are the cases.

Case Examples of Parental Discrimination

362-0493

I'm going to send the full cases next

→ Minnesota case -- Discrimination in Hiring

good The appellant applied for a full-time teaching position, which also included coaching responsibilities. The district chose another female applicant, without children, for the position with less teaching and coaching experience. Consequently, the appellant sued the district, asserting a discrimination claim under the Minnesota Human Rights Act. Specifically, she claimed that the district had a hiring policy that treated women and men with young children differently. However, she did not prove that men similarly situated were treated differently (though such proof is generally required by gender discrimination law). The Minnesota Court of Appeals found that the appellant had a cause of action under the Minnesota Human Rights Act even though the act does not prohibit familial status discrimination. (Pullar v. Independent School District No. 701, 582 N.W.2d 273, 1998 Minn.)

The President's proposal would clearly prohibit such discrimination, and would allow people in every state to claim such a protection.

Discrimination in Demotion/Termination

Appellant, a new mom, was demoted to a job with fewer responsibilities and half the salary, after she returned to work from maternity leave because the employer believed that new mothers could not take their work responsibility seriously. (Piantanida v. Wyman Center, 116 F.3d 340, (1997) Appealed from the Eastern District of Missouri) Though the court ruled she had no protection under the Pregnancy Discrimination Act (which is part of Title VII), she would be protected under our proposed statute. The court in that case stated that there was no relief for the plaintiff, because "[a]n employer's discrimination against an employee who has accepted this parental role -- reprehensible as this discrimination might be -- is therefore not based on the gender-specific biological functions of pregnancy and child-bearing, but rather is based on a gender-neutral status potentially possessible by all employees, including men and women who will never be pregnant."

Discrimination in Promotion

good → Appellant, a married woman with two children aged six and eleven who had spotless record of job performance, was passed up for a significant promotion, which was instead given to single women with no children. Her employers specifically stated on several occasions that women with children could not do either job well and questioned her commitment to the job. (Trezza v. The Hartford Inc., 1998 W.L. 912101 (Southern District of New York). While under present law she would have to prove that a man received promotions who was in the same situation she was in, a heavy burden to meet (that the court recognized was often impossible to meet), our proposed law would simply prohibit such actions. - They were already contacted by the Christian Science Monitor & were pretty good!

Demotion/constructive termination

While plaintiff was on maternity leave, her job was given to a new employee. When plaintiff returned from maternity leave, she was offered a job that was a demotion to an hourly wage job from a salaried position. She refused the position and alleged that she was discriminated against because she had a family. The court held that discrimination based on new parenthood does not

state a claim under the Pregnancy Discrimination Act, nor is it cognizable gender discrimination. (Santrizos v. Aramark Corporation, 1998 U.S. Dist. LEXIS 15946 (U.S. Northern District of Illinois))

Termination

Plaintiff, a truck driver and parent, was given much longer hours, with often little notice of a long run, after she miscarried. After complaining about her hours, she and her employer worked out an arrangement in which she would be given due notice of times when she would be required to work late, so that she may make child care arrangements. On one occasion, the plaintiff refused a dispatch because she had not been given advance notice that she would be required to work late, contrary to the prior agreement between the parties. Her refusal to take the dispatch led to her termination. While the court noted evidence that indicated the employer may have harbored "discriminatory animus towards employees with families, or working parents," the court found insufficient evidence of gender discrimination and therefore found no cognizable discrimination under federal law. The court dismissed the claims on a summary judgment motion. (Nelms v. Overnight Transportation Company, 1996 U.S. Dist. LEXIS 3827, (1996), District Court in Michigan)

Termination

Plaintiff worked starter her employment with the defendant company as an accountant and after 15 years of promotions, positive performance reviews and bonuses, she attained the position of Director of Advertising Sales Administration. When plaintiff was six months pregnant, a new female Director of Advertising was hired (who was lesbian), as her immediate boss. After her pregnancy, plaintiff took maternity leave. When she returned to work, she found her job responsibilities diminished, she was often assigned tasks normally performed by lower-level employees, her responsibilities were usurped, she was often reprimanded for not working on her days off, and was generally isolated. Within a year of returning to work, plaintiff was told her job was being eliminated and she was then terminated with three weeks notice. Plaintiff claimed that her job functions allegedly did not cease, but were performed instead by the employee who replaced plaintiff during her maternity leave. She argued that her new boss, a lesbian, and the director for her bureau, a single woman without children, were hostile toward her as a married mother. While the court dismissed most of her claims, it did allow her to survive a summary judgment motion on her Title VII claims (though it did not specify its rationale its holding). (Coraggio v. Time Inc. Magazine, 66 Empl. Prac. Dec. (CCH) P43,578 (1995) Southern District of New York).

Demotion/Termination

Three plaintiffs filed suit against their former employer alleging pregnancy discrimination. All three plaintiffs faced a hostile working environment after they informed their employer that they were pregnant, and each faced reduced hours, reduced pay, demotion or termination after they returned from maternity leave as mothers of young children. Because their alleged discrimination started when they were pregnant, the court found that their claim of pregnancy discrimination could survive a motion to dismiss. (Donaldson, Morale, and Zavilla v. American Banco Corporation, Inc., 945 F. Supp. 1456 (1996) (U.S. D.Ct. Colorado)). However, the President's proposal would extend such protection to employees of both sexes who face similar

discrimination only after childbirth.

Termination

Plaintiff requested time off for the birth of his child before the Family and Medical Leave Act was the law of the land. When he discussed his request with his employer, he was told that he "better not take off work." Indeed, his employer admitted ahead of time that if he was terminated it would be solely because he wanted to take time off for the birth of his child. After he took leave and was terminated, he filed suit on the basis of pregnancy discrimination. The court rejected that claim and because FMLA did not apply, the Court held that the plaintiff had no cognizable claim. (Cooper v. Drexel Chemical Company, 949 F. Supp. 1275 (1996) U.S. D.Ct. Northern District of Mississippi) The President's proposal would protect such an employee if other non-parents were allowed to take time off.

States Prohibiting Discrimination on the Basis of Parental Status

A number of states and the District of Columbia prohibit discrimination on the basis of parental or family status. Those states that prohibit discrimination on the basis of family status define it to include parents.

Alaska

According to Alaskan state law, it is the policy of the state to "eliminate and prevent discrimination in employment... because of parenthood." (Alaska Stat. @ 18.80.200 (1998))

"It is unlawful for an employer to refuse employment to a person, or to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment because of the person's race, religion, color, or national origin, or because of the person's age, physical or mental disability, sex, marital status, changes in marital status, pregnancy, or parenthood when the reasonable demands of the position do not require distinction on the basis of age, physical or mental disability, sex, marital status, changes in marital status, pregnancy, or parenthood." (Alaska Stat. @ 18.80.200 (1998))

In addition, Alaskan state law prohibits an employer from printing or circulating a "statement, advertisement, or publication, or to use a form of application for employment or to make an inquiry in connection with prospective employment, that expresses, directly or indirectly, a limitation, specification, or discrimination as to ... parenthood, unless based upon a bona fide occupational qualification." (Sec. 18.80.220.)

Kentucky

Kentucky law specifies that it is the purpose of state law to "safeguard all individuals within the state from discrimination because of familial status, race, color, religion, national origin, sex, age forty (40) and over, ... thereby to protect their interest in personal dignity and freedom from humiliation, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest which would menace its democratic institutions, to preserve the public safety, health, and general welfare, and to further the interest, rights, and privileges of individuals within the state." (KRS @ 344.020 (Michie 1996))

Michigan

Michigan state law provides: "The opportunity to obtain employment, housing and other real estate, and the full and equal utilization of public accommodations, public service, and educational facilities without discrimination because of religion, race, color, national origin, age, sex, height, weight, familial status, or marital status as

hibited by this act, is recognized and declared to be a civil right."

The law continues, "This section shall not be construed to prevent an individual from bringing or continuing an action arising out of discrimination based on familial status before the effective date of the amendatory act that added this subsection which action is based on conduct similar to or identical to discrimination because of the age of persons residing with the individual bringing or continuing the action." (MCL @ 37.2102 (1998))

Nebraska

Nebraska law simply empowers its municipalities to prohibit discrimination on the basis of familial status, if they so choose. The law states that: "Notwithstanding any other law or laws heretofore enacted, all cities and villages in this state shall have the power by ordinance to define, regulate, suppress, and prevent discrimination on the basis of race, color, creed, religion, ancestry, sex, marital status, national origin, familial status as defined in section 20-311, handicap as defined in section 20-313, age, or disability in employment, public accommodation, and housing and may provide for the enforcement of such ordinances by providing appropriate penalties for the violation thereof. It shall not be an unlawful employment practice to refuse employment based on a policy of not employing both husband and wife if such policy is equally applied to both sexes." (R.R.S. Neb. @ 18-1724 (1998))

Nebraska law further defines familial status as "one or more minors being domiciled with:

(1) A parent or another person having legal custody of such individual; or (2) The designee of a parent or other person having legal custody, with the written permission of the parent or other person." It also states that "the protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any minor." (R.R.S. Neb. @ 20-311 (1998))

New Hampshire:

According to New Hampshire state law, it is the policy of the state to prohibit discrimination based on familial status. "It shall be deemed an exercise of the police power of the state for the protection of the public welfare, health and peace of the people of this state, and in fulfillment of the provisions of the constitution of this state concerning civil rights. The general court hereby finds and declares that practices of discrimination against any of its inhabitants because of age, sex, race, creed, color, marital status, familial status, physical or mental disability or national origin are a matter of state concern, that such discrimination not only threatens the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state and threatens the peace, order, health, safety

general welfare of the state and its inhabitants." (R.S.A. 354-A:1 (1998)) New Hampshire's Commission for Human Rights is empowered to "eliminate and prevent discrimination in employment, in places of public accommodation and in housing accommodations because of age, sex, race, creed, color, marital status, familial status, physical or mental disability or national origin as herein provided." (R.S.A. 354-A:1 (1998))

New Jersey:

There is created in the Department of Law and Public Safety a division known as "The Division on Civil Rights" with power to prevent and eliminate discrimination in the manner prohibited by this act against persons because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, or sex or because of their liability for service in the Armed Forces of the United States, by employers, labor organizations, employment agencies or other persons and to take other actions against discrimination because of race, creed, color, national origin, ancestry, marital status, sex, familial status or age or because of their liability for service in the Armed Forces of the United States, as herein provided; and the division created hereunder is given general jurisdiction and authority for such purposes.

In addition, New Jersey law requires their Attorney General "to receive, investigate, and act upon complaints alleging discrimination against persons because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, or sex or because of their liability for service in the Armed Forces of the United States." (N.J. Stat. @ 10:5-8 (1998))

However, New Jersey law does not specifically prohibit employment discrimination based on family status, though their law does prohibit housing discrimination based on such status. (N.J. Stat. @ 10:5-12 (1998))

Pennsylvania

Pennsylvania specifically grants its citizens a civil right to "obtain employment ... without discrimination because of race, color, familial status, religious creed, ancestry, handicap or disability, age, sex, national origin, the use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals..." (43 P.S. @ 953 (1998))

Pennsylvania law defines "familial status" as "one or more individuals who have not

ained the age of eighteen years being domiciled with: (1) a parent or other person having legal custody of such individual or individuals; or (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person." The statute further states that "the protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years." (43 P.S. @ 953 (1998))

South Dakota

South Dakota only grants its municipalities the power to "investigate any discriminatory practices based on sex, race, color, creed, religion, ancestry, disability, familial status or national origin, with respect to employment, labor union membership, housing accommodations, property rights, education, public accommodations or public services." (S.D. Codified Laws @ 20-12-4 (1998)) South Dakota defines familial status as "the relationship of individuals by birth, adoption or guardianship who are domiciled together." (S.D. Codified Laws @ 20-13-1 (1998))

D.C.

The District of Columbia prohibits employment discrimination on the basis of family responsibilities. It states that it is unlawful discriminatory practice to "fail or refuse to hire, or to discharge, any individual; or otherwise to discriminate against any individual, with respect to his compensation, terms, conditions, or privileges of employment, including promotion; or to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect his status as an employee" based on family responsibilities. (See D.C. Code @ 1-2501 et seq.)

FFI - typical dad example (fear of discrimination).

Philadelphia Inquirer
February 6, 1999

Working dads strive for balance

By Maggie Jackson
ASSOCIATED PRESS

NEW YORK — When Maryland state trooper Kevin Knussman won his four-year legal fight this week against the bosses who denied him parental leave, only a couple of colleagues called to congratulate him. In fact, during the long battle, there were snide comments and many jokes.

Knussman's victory highlights the rights of working fathers to take time off to be with their babies. But his isolation shows how balancing a job and a family remains a struggle for many men.

"Much of the progress [for working fathers] is still going on underground," said James Levine, a leading researcher on fatherhood and coauthor of the book *Working Fathers*.

Fearing — often with reason — that they will be labeled slackers, fathers cobble together sick days and vacation time to create leave time after a baby is born. When they want to go to a school play, they dash for the door, under cover of attending a "late meeting."

Ben, a New York city money manager and father of a 3-month-old, carefully left his computer on and his desk lamp lit not too long ago when he took his wife to the hospital for a sonogram. "It made it look like I was still there," said Ben, who asked not to be

identified further. "Plus, it made me feel better."

Progress has been made, albeit slowly, in accepting men's growing desires to be involved parents.

Asked 15 years ago how much unpaid parental leave time was reasonable for men to take, 63 percent of business leaders at large companies said, "none." Even 40 percent of executives at companies with a parental leave policy at the time liked the idea of actually using it, according to Catalyst, a nonprofit New York group that studies women in business.

Today, half a million men take some sort of parental leave each year to care for a new child, under the auspices of the 1993 federal Family and Medical Leave Act. That compares with 1.4 million women.

About 20 million people have taken leave under the federal law, which says all employers with 50 or more workers must allow up to 12 unpaid weeks off to care for a new baby or seriously ill family member.

Knussman, a helicopter paramedic, sued the state police after he was denied 12 weeks' paid leave following the birth of his daughter in 1994. He was given 10 paid days off but sought more time because his wife experienced childbirth complications.

On Tuesday, a jury awarded him \$375,000 in damages for mental anguish in the first

sex-discrimination case under the Family Leave Act. Attorneys for the state police said they may appeal.

"There's still a presumption that women are going to be the primary caretaker," said Sara Mandelbaum, an American Civil Liberties Union lawyer who represented Knussman. "Those attitudes are hard to change, especially in a male-dominated organization like the state police."

Some companies do encourage fathers to take parental leaves — and more men are taking them. AT&T offers all new parents up to a year, unpaid, with a guaranteed job upon return. About one man takes advantage of the program for every 18 women. That's compared with a 1-to-400 ratio a decade ago.

Howard Nathanson, an AT&T computer analyst, said his coworkers and bosses fully supported his decision to take nine months' parental leave in 1996.

But for some other men, obstacles, both perceived and real, prevent their making use of work-family programs.

Money also plays a role. A few companies, including Merrill Lynch and the software maker Lotus Development Corp., offer paid leaves. But most don't, and because men are major breadwinners, it's hard for them to take unpaid time off.

Nathanson and his wife, for example, both felt strongly that one parent should be home with their daughter for a year. Because she earns two-thirds of the household income, he stayed home.

Progress has been made, albeit slowly. Half a million men now take some sort of parental leave each year to care for a new child.

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CASES THAT WOULD BE COVERED UNDER THE DODD/KENNEDY "ENDING DISCRIMINATION AGAINST PARENTS ACT OF 1999"

Discrimination in Hiring

The appellant applied for a full-time teaching position, which also included coaching responsibilities. The district chose another female applicant, without children, for the position with less teaching and coaching experience. Consequently, the appellant sued the district, asserting a discrimination claim under the Minnesota Human Rights Act. Specifically, she claimed that the district had a hiring policy that treated women and men with young children differently. However, she did not prove that men similarly situated were treated differently (such proof is generally required by gender discrimination law). The Minnesota Court of Appeals found that the appellant had a cause of action under the Minnesota Human Rights Act even though the act does not prohibit familial status discrimination. (*Pullar v. Independent School District No. 701*, 582 NW 2nd 273, 1998 Minn.)

Discrimination in Promotion

Appellant, a married woman with two children aged six and eleven who had a spotless record of job performance, was passed up for a significant promotion, which was instead given to a single woman with no children. Her employers specifically stated on several occasions that women with children could not do either job well and questioned her commitment to the job. (*Trezza v. The Hartford, Inc.*, 1998 W.L. 912101 Southern District of New York). While under present law she would have to prove that a man received promotions who was in the same situation she was in.

The proposed legislation would simply prohibit such actions.