



April 10, 2000

**MEMORANDUM FOR BRUCE REED**

**FROM: ANN O'LEARY**

**CC: ERIC LIU**  
**TOM FREEDMAN**  
**HEATHER HOWARD**

**SUBJECT: EXECUTIVE ORDERS**

This memo is intended to provide you with a list of outstanding and suggested executive orders from the children and families team. Please provide us guidance on which orders you would like to move forward, release, or, alternatively, no longer consider.

**Executive Orders Already Announced by the President:**

Ending Parental Discrimination in the Federal Workplace

First Announced: State of the Union in 1999

Substance: This EO would prohibit discrimination against parents in the Federal workplace, specifically with regards to hiring and promotion.

Legislative action: Senators Dodd and Kennedy introduced the "Ending Discrimination Against Parents Act of 1999" in November 1999 and the President released a statement of support at the time of introduction.

Possible rollout: This EO could be rolled-out at the White House Conference on Teenagers as part of the message that we need workplaces that support parents in their roles as parents. This EO would send a basic message that individuals should not be discriminated against based on their status and role as parents. The release of the EO would also allow us to highlight the Dodd-Kennedy bill once again.

Status of EO: Draft completed (see attached). Needs to be cleared through OMB.

## Nondiscrimination in Federally Conducted Education and Training Programs

- First Announced: June 17, 1997 at a speech commemorating the 25<sup>th</sup> Anniversary of Title IX of the Education Amendments of 1972
- Substance: This EO would prohibit discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, and status as a parent in educational or training programs offered by the Federal government.
- Current Law: While Title IX prohibits discrimination based on sex – and Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin – in education programs that receive Federal financial assistance, these laws do not apply to comparable educational programs conducted by the Federal government.
- Possible rollout: This EO could be released with a press statement from the President or as part of a departure statement.
- Status of EO: Draft completed (see attached) and cleared through OMB.
- NOTE: The women's groups have been most vocally and actively calling for the completion of this EO given its original tie to the anniversary of Title IX.

### **Possible Executive Orders (Not yet signed-off on or announced):**

#### Expand FMLA to include broader definition of families for Federal employees

- First Considered: As part of SOTU 2000 development under discussion of domestic partner benefits.
- Substance: This EO would broaden the definition of "family" for Federal employees who use FMLA. There are two options for broadening the definition: (1) use the definition created by OPM for sick leave policies, which leaves out the words "domestic partner," but provides for individual or agency discretion (2) spell out the exact "family" members included.
- Under sick leave policies, OPM has issued a proposed regulation stating that "family member" is defined as an employee's children, parents, spouse and spouse's parents, brothers and sisters and spouses thereof, and "any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship."

Under Congresswoman Maloney's bill, family member is expanded to include domestic partner, grandparent, parent-in-law, adult child, or sibling.

- Legislative Action: In June 1999, Maloney introduced her bill to amend FMLA in order to expand the definition of family member.
- History of Issue: During promulgation of regulations, OPM was asked to adopt a broad definition of "family" and "spouse," but declined citing Congressional intent and DOMA.
- Pros: The expansion of family member recognizes the changing nature of the American family. With a broad definition that does not only focus on the domestic partner issue, it is one that the Administration could claim credit for with grandparent groups, long-term caregivers, as well as gay rights groups.
- Cons: By highlighting this issue through EO, Congress could strike out against other OPM policies that have allowed for the broader definition of family. In addition, opening up FMLA through EO could provide Congress with an impetus to provide legislative "fixes" to other perceived FMLA problems, such as restricting the definition of "serious illness."
- Recommendation: I would recommend this EO with the OPM definition of family member which leaves out the domestic partner language, but clearly intends to signal the inclusion of domestic partners. This EO signals that the WH understands the changing nature of the family and is providing a model workplace for employees.
- Status of EO: Not yet drafted

#### Non-discrimination on basis of sexual orientation in Federal Contracts

- First Considered: As part of a WH working group on issues of sexual orientation and domestic partner benefits. The group includes WH Counsel (Eddie Corriea, Paul Oetken), OPL (Jullian Potter), and DPC (Mary Smith and myself).
- Substance: This EO would prohibit discrimination based on sexual orientation by any Federal contractor.
- History: In June 1941, President Roosevelt issued EO 8802 forbidding race-based discrimination by Federal contractors and shortly thereafter, he issued EO 9001 forbidding defense contractors to discriminate on the basis of race.

- Pros: This EO would signal the Administration's continuing commitment to non-discrimination based on sexual orientation. In May 1998, the President issued EO 13087 prohibiting discrimination based on sexual orientation in Federal civilian employment. In addition, non-discrimination based on sexual orientation has been part of the Administration's Hate Crimes legislation message. This EO would provide further proof that the Administration will not tolerate such discrimination.
- Cons: There is some concern among the working group that this EO could infringe about religious rights of Federal contractors.
- Recommendation: At this point, I would recommend that this EO be more thoroughly vetted through the government to determine what type of impact it would have on Federal procurement.
- Status of EO: Rough draft has been completed, but it has gone through no informal or formal clearance process (see attached).

#### Executive Memorandum Opening Federal Buildings and Spaces for use in Non-School Hours

- First Considered: This suggestion came up as part of our brainstorming around the White House Conference on Teenagers.
- Substance: This executive memorandum would encourage Federal agencies to invite local government-community partnerships to use available Federal space during non-school hours for after-school activities.
- History: The Clinton Administration has encouraged such partnerships between Federal agencies and local community organizations or schools. In addition, the Administration has encouraged agencies to allow Federal employees to volunteer for up to two hours during a regular workweek.
- Pros: Space issues are often a problem for community based after-school programs. This executive memorandum would allow Federal agencies to do their part in providing safe spaces for children after school.
- Cons: The use of Federal space could potentially be of high-cost to the government by keeping buildings open and needing to provide additional security. In addition, the Federal government would need to ensure that liability was assumed by the community-based organization.
- Recommendation: If this executive memorandum were of interest, it would need to be studied further to determine costs and potential difficulties in implementation.

Draft – October 15, 1999

## 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]

## Executive Order

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### NONDISCRIMINATION ON THE BASIS OF RACE, SEX, COLOR, NATIONAL ORIGIN, DISABILITY, RELIGION, AGE, SEXUAL ORIENTATION, AND STATUS AS A PARENT IN FEDERALLY CONDUCTED EDUCATION AND TRAINING PROGRAMS

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 921-932 of title 20, United States Code; section 2164 of title 10, United States Code; section 2001 et seq., of title 25, United States Code; section 7301 of title 5, United States Code; and section 301 of title 3, United States Code, and to achieve equal opportunity in Federally conducted education and training programs and activities, it is hereby ordered as follows:

#### Section 1. Statement of policy on education programs and activities conducted by executive departments and agencies.

1 -101 . The Federal Government must hold itself to at least the same principles of nondiscrimination in educational opportunities that it applies to the education programs and activities of State and local governments, and to private institutions receiving Federal financial assistance. Existing laws and regulations prohibit certain forms of discrimination in Federally conducted education and training programs and activities -- including discrimination against people with disabilities, prohibited by the Rehabilitation Act of 1973, 29 U.S.C. 701 et seq., as amended, employment discrimination on the basis of race, color, national origin, sex, or religion, prohibited by Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-17, as amended, discrimination on the basis of race, color, national origin or religion in educational programs receiving Federal assistance, under Title VI of the Civil Rights Acts of 1964, 42 U.S.C. 2000d, and sex-based discrimination in education programs receiving Federal assistance under Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq. Through this Executive order, discrimination on the basis of race, sex, color, national origin, religion, sexual orientation, age,

disability, and status as a parent will be prohibited in Federally conducted education and training programs and activities.

1-102. No individual, on the basis of race, sex, color, national origin, religion, sexual orientation, age, disability, or status as a parent, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in, a Federally conducted education or training program or activity.

## Sec. 2. Definitions.

2-201. "Federally conducted education and training programs and activities" includes programs and activities conducted, operated, or undertaken by an executive department or agency.

2-202. "Education and training programs and activities" include, but are not limited to, formal schools, extracurricular activities, academic programs, occupational training, scholarships and fellowships, student internships, training for industry members, summer enrichment camps, and programs to train teachers.

2-203. The Attorney General is authorized to make a final determination as to whether a program falls within the scope of education and training programs and activities covered by this order, under subsection 2-202, or is excluded from coverage, under section 3.

2-204. "Military education or training programs" are those education and training programs conducted by the Department of Defense or, where the Coast Guard is concerned, the Department of Transportation, for the primary purpose of educating or training members of the armed forces or meeting a statutory requirement to educate or train Federal, State, or local civilian law enforcement officials pursuant to 10 U.S.C. Chapter 18.

2-205. "Armed forces" means the Armed Forces of the United States.

2-206. "Status as a parent" is defined as follows: an individual has the status of a parent, if, 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, that individual has the status of:

- (a) ab a biological parent;
- (b) ab an adoptive parent;
- (c) ab a foster parent;

- (d) ab a stepparent;
- (e) ab a custodian of a legal ward;
- (f) ab a person who is actively seeking legal custody or adoption; or
- (g) ab a person who stands in loco parentis to such an individual.

Sec. 3. Exemption from coverage.

3-301. This order does not apply to members of the armed forces, military education or training programs, or authorized intelligence activities. Members of the armed forces, including students at military academies, will continue to be covered by regulations that currently bar specified forms of discrimination which are now enforced by the Department of Defense and the individual service branches. The Department of Defense shall develop procedures to protect the rights of and to provide redress to civilians not otherwise protected by existing Federal law from discrimination on the basis of race, sex, color, national origin, religion, sexual orientation, disability, or status as a parent and who participate in military education or training programs or activities conducted by the Department of Defense.

3-302. This order does not apply to, affect, interfere with, or modify the operation of any otherwise lawful affirmative action plan or program.

3-303. An individual shall not be deemed subjected to discrimination by reason of his or her exclusion from the benefits of a program limited by Federal law, or a program established consistently with Federal law, to individuals of a particular race, sex, color, national origin, religion, sexual orientation, age, disability, or status as a parent different from his or her own.

3-304. This order does not apply to ceremonial or similar education or training programs or activities of schools conducted by the Department of Interior, Bureau of Indian Affairs, that are culturally relevant to the children represented in the school. "Culturally relevant" refers to any class, program, or activity that is fundamental to a tribe's culture, customs, traditions, heritage, or religion.

3-305. This order does not apply to (a) selections based on national origin of foreign nationals to participate in covered education or training programs, if such programs primarily concern national security or foreign policy matters; or (b) selections or other decisions regarding

participation in covered education or training programs made by entities outside the Executive Branch. It shall be the policy of the Executive Branch that education or training programs or activities shall not be available to entities that select persons for participation in violation of Federal or State law.

3-306. The prohibition on discrimination on the basis of age provided in this order does not apply to age-based admissions of participants to education or training programs, if such programs have traditionally been age-specific or must be age-limited for reasons related to health or national security.

Sec. 4. Administrative enforcement.

4-401. Any person who believes himself or herself to be aggrieved by a violation of this order or its implementing regulations, rules, policies, or guidance may, personally or through a representative, file a written complaint with the agency that such person believes is in violation of this order or its implementing regulations, rules, policies, or guidance. Pursuant to procedures established by the Attorney General, each executive department or agency shall conduct an investigation of any complaint by one of its employees alleging a violation of this Executive order.

4-402. (a) If the office within an executive department or agency that is designated to investigate complaints for violations of this order or its implementing rules, regulations, policies, or guidance concludes that an employee has not complied with this order or any of its implementing rules, regulations, policies, or guidance, such office shall complete a report and refer a copy of the report and any relevant findings or supporting evidence to an appropriate agency official. The appropriate agency official shall review such material and determine what, if any, disciplinary action is appropriate.

(b) In addition, the designated investigating office may provide appropriate agency officials with a recommendation for any corrective and/or remedial action. The appropriate officials shall consider such recommendation and implement corrective and/or remedial action by the agency, when appropriate. Nothing in this order authorizes monetary relief to the

complainant as a form of remedial or corrective action by an executive department or agency.

4-403. Any action to discipline an employee who violates this order or its implementing rules, regulations, policies, or guidance, including removal from employment, where appropriate, shall be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act of 1978, Pub. L. No. 95-454, 92 Stat. 1111.

Sec. 5. Implementation and Agency Responsibilities.

5-501. The Attorney General shall publish in the Federal Register such rules, regulations, policies, or guidance, as the Attorney General deems appropriate, to be followed by all executive departments and agencies. The Attorney General shall address:

- a. ab which programs and activities fall within the scope of education and training programs and activities covered by this order, under subsection 2-202, or excluded from coverage, under section 3 of this order;
- b. examples of discrimination conduct;
- c. applicable legal principles;
- d. enforcement procedures with respect to complaints against employees;
- e. remedies;
- f. ab requirements for agency annual and tri-annual reports as set forth in section 6 of this order; and
- g. ab such other matters as deemed appropriate.

5-502. Within 90 days of the publication of final rules, regulations, policies, or guidance by the Attorney General, each executive department and agency shall establish a procedure to receive and address complaints regarding its Federally conducted education and training programs and activities. Each executive department and agency shall take all necessary steps to effectuate any subsequent rules, regulations, policies, or guidance issued by the Attorney General within 90 days of issuance.

5-503. The head of each executive department and agency shall be responsible for ensuring compliance within this order.

5-504. Each executive department and agency shall cooperate with the Attorney General and provide such information and assistance as the Attorney General may require in the performance of the Attorney General's functions under this order.

5-505. Upon request and to the extent practicable, the Attorney General shall provide technical advice and assistance to executive departments and agencies to assist in full compliance with this order.

Sec. 6. Reporting Requirements.

6-601. Consistent with the regulations, rules, policies, or guidance issued by the Attorney General, each executive department and agency shall submit to the Attorney General a report that summarizes the number of nature of complaints filed with the agency and the disposition of such complaints. For the first three years after the date of this order, such reports shall be submitted annually within 90 days of the end of the preceding year's activities. Subsequent reports shall be submitted every three years and with 90 days of the end of each three-year period.

Sec. 7. General Provisions.

7-701. Nothing in this order shall limit the authority of the Attorney General to provide for the coordinated enforcement of nondiscrimination requirements in Federal assistance programs under Executive Order 12350.

Sec. 8. Judicial Review.

8-801. This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. This order is not intended, however, to preclude judicial review of final decisions in accordance with the Administrative Procedure Act, 5 U.S.C. 701, et seq.

THE WHITE HOUSE,

## **Employment Nondiscrimination in Federal Contracts**

Employment non-discrimination directly promotes efficient economic performance and productivity. When Federal contractors engage in discrimination on the basis of sexual orientation, the unavoidable consequence is a serious adverse impact upon the Federal Government's economy, efficiency, and cost of operations. In order to operate as effectively as possible, the Federal Government must demand that the entities with which it has contractual relations not discriminate on the basis of sexual orientation.

The adverse effects of employment discrimination on federal procurement are demonstrated by the straightforward application of basic principles of market economics. When Federal contractors discriminate, the supply of labor is artificially reduced. Other factors being equal, this decrease in supply will cause an increase in the cost of labor. It is the policy of the Federal government to secure goods and services, to complete Federal contracts, and to see federally assisted construction contracts completed in the most economical and efficient manner possible. Therefore, it is the policy of the Executive branch not to tolerate employment discrimination by Federal contractors.

Every President since Franklin Delano Roosevelt has recognized and acted on the force of this argument. In June 1941, President Franklin Roosevelt issued Executive Order 8802 forbidding race-based discrimination by Federal contractors. Less than three weeks after entering World War II, President Roosevelt issued Executive Order 9001 forbidding defense contractors to discriminate on the basis of race. Thus, when economical and efficient procurement has been most vital to the national interest, Presidents have insisted on the non-discrimination principle as crucial to maximizing our procurement efforts.

NOW, THEREFORE, to ensure the economical and efficient administration and completion of Federal Government contracts, and by the authority vested in me as President by the Constitution and the laws of the United States of America, including 40 U.S.C. 486(a) and 3 U.S.C. 301, it is hereby ordered as follows:

Section 1. It is the policy of the executive branch to oppose all forms of discrimination, including discrimination on the basis of sexual orientation.

Sec. 2. It is the finding of the executive branch that discrimination on the basis of sexual orientation interferes with the economical and efficient administration and completion of Federal contracts and federally assisted construction contracts.

Sec. 3. All Federal contractors are hereby forbidden to engage in discrimination on the basis of sexual orientation.

Sec. 4. The Office of Management and Budget is directed to issue regulations to enforce this Executive Order. These regulations shall establish:

(a) procedures by which individual allegations that a Federal contractor has engaged in

discrimination on the basis of sexual orientation may be received, investigated, and resolved;

(b) protections for individuals who make an allegation under subsection (a) against retaliation by a Federal contractor;

(c) specific measures to respond to a determination that a Federal contractor has engaged in discrimination on the basis of sexual orientation. These measures should include, without limitation, termination of contract(s) for convenience, suspension, and debarment; and

(d) mechanisms to encourage equal employment opportunity practices by Federal contractors. These mechanisms may include posting of notices to employees of the equal employment opportunity policies of this Order and positive incentives to Federal contractors that foster a work environment of non-discrimination on the basis of sexual orientation.

The Director shall issue these regulations within 60 days of the effective date of this order.

Sec. 5. For the purposes of this Order, it shall be considered "discrimination on the basis of sexual orientation" for a Federal contractor, or any organizational unit thereof,

(a) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to the compensation, terms, conditions, or privileges of employment of the individual, because of such individual's sexual orientation;

(b) to limit, segregate, or classify the employees or applicants for employment of the employer 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 of the individual's sexual orientation; or

(c) to discriminate against any individual because of the sexual orientation of the individual in admission to, or employment in, any program established to provide apprenticeship or other training.

Sec. 6. For the purposes of this Order, "sexual orientation" means homosexuality, bisexuality, or heterosexuality, whether the orientation is real or perceived.

Sec. 7. This Order does not, and the implementing regulations shall not, authorize or require:

- (a) adoption or implementation of a quota on the basis of sexual orientation;
- (b) preferential treatment for any individual on the basis of sexual orientation;
- (c) entering into an order or consent decree that includes a quota, or preferential treatment to an individual based on sexual orientation; or
- (d) collection of statistics on sexual orientation.

Sec. 8. The fact that an employment practice has a disparate impact, as that term is used in section 703(k) of the Civil Rights Act of 1964, on the basis of sexual orientation does not establish a prima facie violation of this Order, or the implementing regulations.

Sec. 9. This Order does not:

- (a) repeal or modify any Federal, State, territorial, or local law, creating a special right or preference concerning employment or an employment opportunity for a veteran;
- (b) prohibit the enforcement of rules regarding nonprivate sexual conduct, if the rules of conduct are designed for, and uniformly applied to, all individuals regardless of sexual orientation; or
- (c) require the provision of employee benefits to an individual for the benefit of the domestic partner of such individual.

Sec. 10. This Order shall not apply to a Federal contractor that is a religious organization, except that this Order shall apply to employment or an employment opportunity for an employment position of a Federal contractor that is a religious organization if the duties of the position pertain solely to activities of the organization that generate unrelated business taxable income subject to taxation under section 511(a) of the Internal Revenue Code of 1986.

Sec. 11. Nothing in this Order shall be construed to prohibit a covered entity from enforcing rules regarding nonprivate sexual conduct, if the rules of conduct are designed for, and uniformly applied to, all individuals regardless of sexual orientation.

Sec. 12. Each contracting department and agency shall cooperate with the Office of Management and Budget and provide such information and assistance as it may require in the performance of the its functions under this Order.

Sec. 13. The Director of the Office of Management and Budget may delegate any function or duty under this order to any officer in the Office of Management and Budget or to any other officer in the executive branch of the Government, with the consent of the head of the department or agency in which that officer serves.

Sec. 14. This Order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. This order is not intended, however, to preclude judicial review of final agency decisions in accordance with the Administrative Procedure Act, 5 U.S.C. 701 et seq.

Sec. 15. This Order shall apply only to contracts in excess of the Simplified Acquisition Threshold.

Sec. 16. This Order is effective immediately.

WILLIAM J. CLINTON

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Parental  
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November 17, 1999

**MEMORANDUM FOR JACK LEW**

**FROM: BRUCE REED**

**SUBJECT: EXECUTIVE ORDER TO BAN DISCRIMINATION AGAINST  
PARENTS IN THE EXECUTIVE BRANCH**

I am writing to request that you put into expedited clearance the attached Executive Order, pursuant to Executive Order 11030. The proposed Order would prohibit employment discrimination in the executive branch against employees because they are parents or exercise parental responsibilities.

The proposed Executive Order mirrors the "Ending Discrimination Against Parents Act of 1999," legislation that the President announced in his 1999 State of the Union address and was introduced on November 10, 1999 by Senators Dodd and Kennedy. This bill would, for the first time, protect parents and those with parental responsibilities against job discrimination. It does not bar employers from making hiring and promotion decisions on the basis of qualifications or job performance regardless of the employee's parental status, but it does ensure that workers are not discriminated against simply because they are parents or exercise parental responsibilities.

By issuing this Executive Order, the President will hold the Executive Branch as a model for this important new set of protections. The Executive Order would cover employees in the Executive Branch who are biological, adoptive, or foster parents; stepparents; custodians of individuals who are under the age of 18 or who are 18 or older but incapable of self-care because of a mental or physical disability of [and those actively seeking custody or adoption of, and those who stand "in loco parentis" for, such individuals]. The Order would bar discrimination against covered persons in all aspects of employment, including recruitment, referral, hiring, promotions, discharge, training, and other terms and conditions of employment.

The Order would also prohibit employers in the Executive Branch from acting on mere assumptions that parents, or those with parental responsibilities, cannot satisfy the requirements of a particular position. It would, 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;
- preferring applicants without children over equally or better qualified working parents; or

- refusing to hire single parents under any circumstances.

However, the proposed Order would not prohibit an employer from making decisions on the basis of a person's job performance. The Order would not, for example, prevent an employer from disciplining workers who arrive late, even if an individual is late because of child care responsibilities. The Executive Order 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 Order would not interfere with an employer's ability to select workers who are able to perform the jobs in question; the Order would simply ensure that workers are not discriminated against simply because they are parents.

Thank you for your assistance in clearing this Order expeditiously, for release as early as November 27, 1999. The staff contact in the Domestic Policy Council is Nicole Rabner, who is reachable at extension 67263.

## ADDRESSING DISCRIMINATION BASED ON STATUS AS A PARENT IN FEDERAL CIVILIAN EMPLOYMENT

### Introduction

On November 29, 1999, President Clinton issued Executive Order \_\_\_\_\_, stating explicitly for the first time that discrimination based upon an individual's status as a parent is prohibited within Executive Branch civilian employment. The Executive Order adds status as a parent to the list of categories for which discrimination is prohibited. The other categories are race, color, religion, sex, national origin, handicap, age, and sexual orientation.

It is the policy of the Federal Government to provide an equal opportunity to all of its employees. Federal employees should be able to perform their jobs in workplaces free from discrimination, including discrimination based upon status as a parent. The President's Executive Order states, as a matter of Federal policy, that a person's status as a parent should not be the basis for the denial of a job or a promotion. As the Nation's largest employer, the Federal Government sets an example for other employers that discrimination based on status as a parent is not acceptable.

The Executive Order demonstrates the strength of the President's commitment to protect parents in the workplace and is one of several actions he has taken to protect the merit system, the pillar of an honest and effective government. In issuing this Executive Order, the President has reaffirmed a longstanding commitment that already has found expression in programs instituted by the Office of Personnel Management (OPM) to protect parents in the workplace.

The new Executive Order amends section 1 of Executive Order 11478 (1969), which now reads, in part, as follows:

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, age, or sexual orientation, or status as a parent through a continuing affirmative program in each executive department and agency. This policy of equal employment 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.

## **Purpose**

The Executive Order states that OPM shall be \_\_\_\_\_. The purpose of this booklet is to describe the scope of the Executive Order by means of examples and to make Federal employees who are parents aware of governmental initiatives by which they can obtain assistance. Executive Order \_\_\_\_\_ states the Executive Branch's policy but does not create any additional enforcement rights, such as the ability to proceed before the Equal Employment Opportunity Commission. The Executive Order does not authorize affirmative action programs or require accommodations to parents who are employees. Nor is it intended to impinge in any way on the authority of agencies to accomplish their mission on behalf of the American people. It is designed to reaffirm existing administrative and legal remedies available to Federal employees who believe they have been victims of discrimination based upon status as a parent. This booklet is designed to make employees and applicants aware of existing bases for redress. It is not designed as a comprehensive guide, but as a general overview.

## **Agency Commitment**

Federal agencies, as well as their managers, should commit themselves to promoting a work environment that is free from discrimination based upon a person's status as a parent in accordance with Executive Order \_\_\_\_\_. Agencies should distribute the President's Executive Order to their employees and should notify them about avenues of redress. Employees should be encouraged to report to their supervisor instances of discrimination. When made aware of problems, supervisors should consult with their human resources office or agency legal counsel to ensure that appropriate steps. All reports of incidents of discrimination based on status as a parent should be taken seriously and addressed. In some circumstances, this may involve taking corrective steps or disciplining those who discriminate, as appropriate.

## **Legal Protections**

### **Who is a Parent?**

Section 6 of Executive Order \_\_\_\_\_ defines a parent as an individual who, 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, who:

(a) stands in *loco parentis* to such other individual; or

(b) is a:

- Biological parent
- An adoptive parent
- A foster parent
- A step-parent
- A custodian of a legal ward
- A person who is actively seeking legal custody or adoption

### **Prohibited Personnel Practice**

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 upon an individual's status as a parent.

An example of discrimination based upon status as a parent would be if an appointing official denies a promotion because he or she believes that a mother with young children should not work.

But nothing in the Executive Order is intended to give parents advantageous treatment in comparison to other employees. It does not permit preferential treatment to parents with respect to benefits that are available to all employees.

For example, if an agency prescribes flexible work hours, many employees may request the same working hours, say 7:00 a.m. until 4:30 p.m. Some of them might 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 might provide other reasons.

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.

## Where to Seek Help

When applicants or employees believe that a prohibited personnel practice has been committed against them that constitutes discrimination based upon sexual orientation, they may seek assistance under certain circumstances from:

- I. Merit Systems Protection Board
- II. Office of Special Counsel
- III. Negotiated Grievance Procedure
- IV. Agency grievance procedure

Employees and applicants ordinarily may not seek relief from the Equal Employment Opportunity Commission or file a discrimination complaint under title VII of the Civil Rights Act of 1964, as amended, because that law does not prohibit discrimination based upon status as a parent.

Still, in some cases the Equal Employment Opportunity Commission may hear a sex discrimination complaint that relates to parental issues. An example might be if an agency discriminates against mothers because they have young children but not fathers.

Most of the available procedures require employees or applicants to raise the allegations within a specific time frame from the date that the alleged discrimination occurred. The following sections provide basic and general information about these procedures and the circumstances under which each may be used. Under some circumstances, more than one procedure may be available, and the choice of one procedure may preclude the use of others.

You should review the rules and procedures specific to your agency and those issued by agencies that decide complaints and appeals before you decide whether and how to proceed.

*A cautionary note: The Federal employee appeals process can, at times, seem confusing because of the overlapping authority of several different agencies and different appeal routes and time limitations. This guide is intended to be a general introduction to possible remedies for discrimination based upon sexual orientation. It is not intended to be a substitute for legal advice on the best course of action for a particular employee. Although much of this information is available to you directly from either your agency or those agencies mentioned in this guide, you might also consult with an attorney experienced in Federal employment issues or, where applicable, a knowledgeable union officer.*

## I. Merit Systems Protection Board (MSPB)

If you wish to appeal from an agency action, you should contact the MSPB at the addresses listed on page \_ as soon as possible after the action was taken to determine whether it is an action upon which the MSPB may rule.

The MSPB is an independent body that hears, among other things:

Appeals from certain agency personnel actions, which are set forth in regulations contained in section 1201.3 of title 5, Code of Federal Regulations. These include removals, suspensions for more than 14 days, and reductions in grade and pay of certain tenured Federal employees.

Cases brought by the Special Counsel involving alleged prohibited personnel practices.

These two procedures for bringing cases before the MSPB are more fully outlined below.

### **Appeals**

When employees or applicants challenge one of the actions described above by filing an appeal within the jurisdiction of MSPB, they may also allege that the personnel action being appealed from was based upon a prohibited personnel practice. If the employee establishes that it is more likely than not that this was the basis for the agency's personnel action, the personnel action will not be sustained.

### **Cases Brought by the Special Counsel**

If the personnel action is not one appealable to MSPB, employees and applicants must seek the assistance of the Office of Special Counsel, which has authority to investigate and to petition MSPB on behalf of the employee or applicant. The procedures for seeking the assistance of the Office of Special Counsel are described beginning on page \_.

### **Appeal Procedures**

Very generally, an MSPB appeal proceeds as follows:

A person files an appeal with one of the MSPB's regional offices. The addresses of the regional offices are contained in MSPB's regulations.

The administrative judge assigned to the case determines whether an appeal is filed within the time limits and whether the agency personnel action complained of properly may be the subject of an appeal.

If an appeal meets these requirements, the employee or applicant has the right to choose between a hearing or a decision on the written record.

When an administrative judge issues a decision either the employee or applicant or the agency may ask the full MSPB to review any part of the decision that is thought to be erroneous.

Employees or applicants may seek judicial review of an MSPB decision. An agency may not. However, the United States Office of Personnel Management (OPM) may seek judicial review when the Director of OPM believes that the MSPB's decision is erroneous and will have a substantial impact on civil service law.

The procedures that MSPB follows are contained in Title 5, Code of Federal Regulations, Part 1201.

#### **For Additional Information about the Merit Systems Protection Board**

MSPB has a web site at <http://www.mspb.gov>. You may contact the MSPB's headquarters at (202) 653-7200 or (800) 209-8960, or by mail at: Merit Systems Protection Board, 1120 Vermont Avenue, NW, Washington, DC, 20419. Copies of the MSPB's regulations are available at any MSPB office, agency personnel offices, most public libraries, and on the MSPB web site. The web site also makes available MSPB decisions, forms for filing appeals or petitions for review, and general information about the Board.

The address of MSPB Regional Offices can be found at Appendix II, 5

## **II. Office of Special Counsel (OSC)**

If you think you have been discriminated against based upon sexual orientation, you may wish to contact OSC at the address listed below.

The Office of Special Counsel is an independent investigative and prosecutorial agency within the Executive Branch that receives and investigates complaints alleging prohibited personnel practices, including those involving discrimination based upon sexual orientation.

The Office of Special Counsel:

- Receives and investigates allegations from applicants, employees and former employees of prohibited personnel practices and investigates allegations to

determine whether there are reasonable grounds to believe that the agency has committed a prohibited personnel practice or will do so.

- May request MSPB to stop personnel actions from taking place while it is investigating whether they were taken as a result of a prohibited personnel practice. These prohibited personnel practices include 5 U.S.C. § 2302(b)(1), which prohibits discrimination based on conduct which does not adversely affect either the employee's own job performance or the performance of others.
- May petition MSPB for corrective action to provide a remedy for the employee.
- May seek disciplinary action by MSPB against the individuals who committed a prohibited personnel practice.
- May achieve favorable results for employees without litigation before MSPB by achieving settlements of complaints prior to the initiation of any formal appeal to MSPB. May act as an intermediary between the employee and the agency to resolve issues. May seek an informal stay of a personnel action to prevent imminent harm when it has reasonable grounds to believe the employee has been subjected to a prohibited personnel practice.

The procedures for corrective action by the Special Counsel are set forth in detail in 5 U.S.C. § 1214. The procedures for disciplinary action are contained in 5 U.S.C. § 1215.

### **For Additional Information about the Office of Special Counsel**

Information about how the Office of Special Counsel operates may be obtained from:

Office of Special Counsel  
Suite 300  
1730 M Street, NW  
Washington, D.C. 20036-4505

The Office of Special Counsel's phone numbers are:

Complaints Examining Unit (202) 653-7188 (TDD-ready)

Toll Free (800) 872-9855 (TDD-ready)

Public Information (202) 653-7984

OSC has a web site at <http://www.osc.gov>.

Complaints to the Office of Special Counsel must be in writing. Complaint forms may be downloaded from OSC's web site, or will be provided on request. Complaints should be sent to the Complaints Examining Unit at the above address.

### **III. Negotiated Grievance Procedure**

**If you think you have been the victim of discrimination based upon status as a parent, you may also wish to contact the union that represents you.**

Employees who are in a certified bargaining unit, that is, who are represented by a duly recognized labor organization and covered by a collective bargaining agreement, may file grievance in accordance with 5 U.S.C. § 7121.

- The definition of a grievance is contained in 5 U.S.C. § 7103(a)(9), but generally permits an employee to complain about most matters relating to employment.
- Certain subject matters are excluded from the negotiated grievance procedure. These include complaints related to retirement, life insurance, and health insurance.
- Unless specifically excluded from the grievance procedures by collective bargaining agreement, a grievance may allege the commission of a prohibited personnel practice, including one related to sexual orientation discrimination.
- Employees must elect to use one of the following avenues: the negotiated grievance procedure, the appellate procedures of MSPB (if the action is appealable to MSPB), or the procedures for asking the Special Counsel to seek corrective action from the MSPB. The rules governing the election are set forth in 5 U.S.C. § 7121(g).
- As part of the negotiated grievance procedure, the union that represents the employee may elect to place the dispute before an arbitrator who is usually jointly selected by the union and agency as provided in the collective bargaining agreement. Grievants may not take the case to arbitration on their own.
- Under current law, an arbitrator hearing a case concerning an alleged prohibited personnel practice may:
  - a. Stop any personnel action from taking place while he or she is hearing the case if the arbitrator determines that there are reasonable grounds to believe that a prohibited personnel practice has been committed or will be committed.

- b. Order the taking by an agency of certain disciplinary action against the person committing the prohibited personnel practice.
- The rules for appealing adverse arbitration decisions differ depending upon the subject of the grievance. Generally, matters that may be heard by MSPB may be appealed to the United States Court of Appeals for the Federal Circuit. Otherwise, they may be appealed to the Federal Labor Relations Authority (FLRA). Ordinarily, one may not appeal a decision of the Federal Labor Relations Authority arising from arbitration in the courts.

**However, it is important to become informed about the proper appeals route in any particular circumstance.**

### **For Additional Information about the Federal Labor Relations Authority**

The Federal Labor Relations Authority is an independent body that provides leadership in establishing policies and guidance relating to the Federal labor law. Among its functions is to receive and rule on "exceptions," that is, appeals from arbitral awards resulting from grievances. The Federal Labor Relations Authority's telephone number is (202) 482-6560.

The Federal Labor Relations Authority's web site is  
<http://www.aces.gov/flra>

## **IV. Administrative Grievance Procedure**

Another possible area of redress for those who feel victimized by discrimination based upon sexual orientation is the agency's administrative grievance procedure.

Many agencies have their own grievance systems to resolve disputes between an employee and the agency that may not be heard elsewhere. In general, these systems try to achieve an informal resolution so that they do not have to be decided by higher levels of management. Specific procedures and time limitations vary from agency to agency.

An employee considering such a grievance must become familiar with the rules governing the particular agency's system. Employees who believe that they have been discriminated against due to sexual orientation should ask their human resource office for a copy of their agency grievance procedures to determine subjects they cover and the procedures to follow.

## Existing Parent-related Programs

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. The Executive Order is a continuation of the Administration's commitment to protecting and enhancing the rights and benefits of Federal employees. 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. 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.
- **Extended Family and Medical Leave.** On April 11, 1997, President Clinton issued a memorandum to the heads of department 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.
- **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 Sallam, 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 <http://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 to take time off to deal with family responsibilities are likely to be more productive. These policies improve communication and instill a more cooperative attitude between supervisors and employees. Demonstrating support of employees through these means fosters good will and creates a more compassionate workplace, benefiting parents as well as all other employees.

## **Mission Accomplishment**

Nothing in the Executive Order is designed to prevent agency management from accomplishing its mission. Rather, the agency retains its full management authority to ensure prompt and efficient service. An agency's primary duty is to carry out its mission within the law.

## **Conclusion**

We hope that this booklet will provide some important information to those who believe they have been the victims of discrimination.

This guidance should be widely distributed to employees should be made available for review in central locations. Dissemination of information on procedural remedies is of great importance to employees who may feel victimized by discrimination as well as managers who seek to accomplish their agencies mission in accordance with law. But of primary importance is creating an atmosphere of fairness to employees. Employees should be secure in the knowledge that the Federal agency for which they work will not treat them differently or less favorably on account of status as a parent or any other consideration unrelated to merit.

Through the equitable treatment of employees the Federal Government can set an example for the nation that we serve.

→ Comments by Finty

**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.
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- **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.
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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

## 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]

**STATEMENT BY THE PRESIDENT  
ON “ENDING DISCRIMINATION AGAINST PARENTS ACT OF 1999**

I am pleased that last night Senators Dodd and Kennedy introduced the “Ending Discrimination Against Parents Act of 1999.” This landmark bill protects America’s working parents from unfair treatment on the job. It builds on our nation’s longstanding commitment to equal opportunity. And it sends a clear message that parents striving to meet their responsibilities both at home and at the office should never be considered second-class workers.

This bill would, for the first time, protect parents and those with parental responsibilities against job discrimination. It does not bar employers from making hiring and promotion decisions on the basis of qualifications or job performance regardless of the employee’s parental status, but it does ensure that workers are not discriminated against simply because they are parents or exercise parental responsibilities. It would, for example, prohibit employers from taking a parent off the “fast track” because of unsubstantiated concerns that parents cannot perform in demanding jobs. Similarly, it would not allow employers to prefer applicants without children over equally or better qualified working parents, or to refuse to hire single parents.

As more mothers enter the workforce, and as more families rely on the earnings of single parents, these protections are increasingly important. We simply cannot afford to let so many working parents be held captive to unfounded assumptions about their capacity to work.

Already, a number of states have enacted common-sense laws that prohibit or pave the way to prohibiting discrimination on the basis of parental or familial status. I urge Congress to safeguard the interests of America’s working families and give this legislation prompt and favorable consideration. Our workplaces should work for all Americans.

395-7294

Draft

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*W. J. Clinton*

*Robert A. G. [unclear]*

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THE WHITE HOUSE

[date]



UNITED STATES  
OFFICE OF PERSONNEL MANAGEMENT  
WASHINGTON, D.C. 20415

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**DRAFT -- OCTOBER 6, 1999**

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

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- **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](http://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.

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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.

**Questions and Answers on the "Ending Discrimination Against Parents Act of 1999"**

- Q.** What employers and employees are covered by this bill?
- A.** The bill covers private sector and state and local government employers with 15 or more employees; executive branch agencies, including the Executive Office of the President; and the House of Representatives, the Senate, and other offices (such as the Congressional Budget Office, the Capitol Police, and the Office of the Architect of the Capitol) that are part of the legislative branch. The bill covers all employees, former employees, and applicants of these employers.
- Q.** Are any other entities covered under the bill?
- A.** The bill also applies to employment agencies, labor organizations, and joint labor-management committees, as those entities are defined in Title VII of the Civil Rights Act of 1964. The bill specifically excludes bona fide private membership clubs that are exempt from taxation under the Internal Revenue Code.
- Q.** What does it mean to be a "parent" under this bill?
- A.** The bill contains a multi-faceted definition of "parent." It includes people who are parents of children under 18, whether those people are biological, adoptive, foster, or step-parents. It includes the parents of people who are 18 or over but who cannot take care of themselves because of a mental or physical disability. It includes those who are actively seeking legal custody or adoption of someone who is under 18 or over 18 but unable to care for himself. Finally, it includes those who stand "in loco parentis" to such individuals.
- Q.** What does it mean to be "actively seeking legal custody?" If I am beginning to explore the possibility of adopting a child from overseas, am I covered by this bill?
- A.** People who are actively seeking custody or adoption are those whose custody or adoption of a child reasonably seems to be imminent. A person "beginning to explore the possibility" of adoption would be unlikely to be covered by the bill. The language is intended to provide protection that is comparable to that provided under the Pregnancy Discrimination Act for biological mothers awaiting the birth of a child – that is, to bar discrimination during the period immediately before adoption or custody arrangements are finalized.

Q. What does “in loco parentis” mean?

A. People who are “in loco parentis” include those with day-to-day responsibilities to care for and financially support a child. Note that both conditions must be met. The bill does not cover a person who simply provides daily childcare to a family. Nor does this language cover people who provide financial assistance for a child but have no caretaking responsibilities. Such people will, of course, be covered if they have parental status under one of the other prongs of the definition.

Q. What does it mean to be “incapable of self-care”?

A. “Incapable of self-care” is defined to mean situations in which a person needs help to provide self-care in three or more “activities of daily living” or “instrumental activities of daily living.” The definition of these activities is taken from the regulations implementing the Family and Medical Leave Act, and includes grooming, bathing, dressing, eating, maintaining a home, using telephones, cooking, and taking public transportation.

Q. What is the relationship between the bill and Title VII of the Civil Rights Act of 1964? How are the two the same and how are they different?

A. The bill is a separate law and does not amend Title VII. Indeed, the bill is not intended to affect interpretation of Title VII or limit rights or remedies that people can claim under that law or other civil rights laws.

The prohibitions of the bill have, however, been modeled on Title VII. Thus, the section that prohibits discrimination by employers, employment agencies, and labor organizations (Section 5) tracks Title VII language, as does the section addressing mixed motive discrimination (Section 8). The defenses available where action has been taken in a foreign country also mirror those available under Title VII. Similarly, the EEOC is given the same authority by the bill that it has to enforce Title VII.

There are some significant differences between the bill and Title VII. First, the bill explicitly states that -- unlike under Title VII -- a disparate impact cause of action will not be available. Second, the bill bars the EEOC from collecting statistics on employment of parents, unless those statistics are necessary for investigation, litigation, or resolution of a specific claim of discrimination. Finally, the remedies applicable under the bill differ in some respects from those available under Title VII. For example, the bill imposes no caps on compensatory or punitive damages for which a covered entity may be liable. On the other hand, the bill does restrict the financial liability of state governments.

- Q. Why does the bill provide for uncapped damages? Doesn't this mean that people could get vastly more money under this law than they could if they are the victims of sex discrimination? Why should that be authorized?
- A. The Administration believes that the limits on the damages that are available under Title VII are unwarranted, and has consistently supported legislation that would remove those caps and allow victims of sex discrimination to get the full amount of damages to which they are entitled. **[Is legislation pending now?]** It is the Administration's hope, therefore, that damages available for discrimination against parents *will* ultimately be commensurate with those available for discrimination on the basis of sex, and that both will be uncapped.
- Q. Why are damages unavailable against state governments?
- A. Under current case law, federal laws must meet specific requirements before they can provide for damage awards against state governments. Rather than becoming entangled in legal questions about whether the bill does or does not meet these requirements, the bill provides that absent its consent, a State may be sued for monetary relief only by the Attorney General. Individuals may seek declaratory and injunctive relief against State officials.
- Q. Would this bill prevent an employer from allowing parents to leave early to coach their kids' soccer teams?
- A. This bill prohibits employers only from treating parents *unfavorably*. Nothing in the bill would prevent employers from making accommodations -- such as flexible work schedules -- for parents if they choose to do so.
- Q. Would this bill prevent an employer from firing an employee who is consistently late if the reason for the employee's lateness is his childcare responsibilities?
- A. No. The bill does not interfere with an employer's discretion to make decisions based on an employee's job performance or ability to meet job requirements or qualification standards. Thus, an employer may discipline an employee who fails to meet the employer's time or attendance standards regardless of the reason the employee is late or absent. Similarly, an employer may reject, for a job that requires extensive travel, an applicant who says he is unwilling to travel because of his parental responsibilities. What the bill would prohibit is rejection of an applicant who *is* willing to travel based simply on the assumption that he, as a parent, will be unable to fulfill that commitment.
- Q. Would this bill authorize lawsuits based simply on an employer's failure to hire a sufficient number of parents?

- A. No. First, proving a violation of this law requires a showing of intent to discriminate. Disparate impact lawsuits are not authorized. Absent evidence that it reflects an intent to discriminate, therefore, the mere fact that an employer has few parents in its work force will not make out a violation of the law.

In addition, employers are not allowed to implement quotas with regard to their employment of parents. Far from being sued for having too few parents in their work forces, employers are affirmatively barred from hiring "by the numbers."

Q. Why is this bill necessary? Is there any evidence that discrimination against parents is a problem in the real world?

- A. There is limited evidence of the extent to which employers discriminate against parents in the workforce – but that likely results, in large part, from the fact that there has been no basis in the law to date on which parents could challenge such discrimination. Congressional hearings will no doubt develop a factual record on this point.

But this is not to say that there is not a real problem. Indeed, the scope of this type of discrimination has been recognized in numerous states (including Alaska, Nebraska, New Hampshire, New Jersey, and South Dakota), plus the District of Columbia, which prohibit, or authorize prohibition of, discrimination based on parental or familial status.

In addition, statistics show the substantial population that will benefit from this protection. In 1998, for example, 38 percent of all U.S. workers had children under the age of 18; additionally, the vast majority of Americans with children under 18 -- some 82 percent -- were employed. Nearly one in five working parents is unmarried, moreover; a fifth of these are single dads. To ensure that these working parents are not subject to this type of unfair conduct, we need to enact legislation now.

**STATEMENT BY THE PRESIDENT  
ON “ENDING DISCRIMINATION AGAINST PARENTS ACT OF 1999**

I am pleased that last night Senators Dodd and Kennedy introduced the “Ending Discrimination Against Parents Act of 1999.” This landmark bill protects America's working parents from unfair treatment on the job. It builds on our nation's longstanding commitment to equal opportunity. And it sends a clear message that parents striving to meet their responsibilities both at home and at the office should never be considered second-class workers.

This bill would, for the first time, protect parents and those with parental responsibilities against job discrimination. It does not bar employers from making hiring and promotion decisions on the basis of qualifications or job performance regardless of the employee's parental status, but it does ensure that workers are not discriminated against simply because they are parents or exercise parental responsibilities. It would, for example, prohibit employers from taking a parent off the “fast track” because of unsubstantiated concerns that parents cannot perform in demanding jobs. Similarly, it would not allow employers to prefer applicants without children over equally or better qualified working parents, or to refuse to hire single parents.

As more mothers enter the workforce, and as more families rely on the earnings of single parents, these protections are increasingly important. We simply cannot afford to let so many working parents be held captive to unfounded assumptions about their capacity to work.

Already, a number of states have enacted common-sense laws that prohibit or pave the way to prohibiting discrimination on the basis of parental or familial status. I urge Congress to safeguard the interests of America's working families and give this legislation prompt and favorable consideration. Our workplaces should work for all Americans.

## **“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 an employer 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 numerous states (including Alaska, Nebraska, New Hampshire, New Jersey, and South Dakota), plus the District of Columbia, which prohibit, or authorize prohibition of, discrimination based on parental or familial status. The Federal government should do no less.

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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.

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, 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."

## Clinton Seeks to Give Parents Standing To Create Basis for Discrimination Suits

By JEANNE CUMMINGS

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON—Renewing its courtship with "soccer moms" as the presidential campaign approaches, the Clinton administration will seek to create a broad new basis for job-discrimination lawsuits by classifying parents as a "protected class."

Under the proposal, parents would have the same standing to file discrimination cases as those who already fall under the legally protected classes of race, sex, age, religion or disability. Legislation will be sponsored by Democratic Sen. Christopher Dodd of Connecticut and is expected by the end of the month.

Business groups oppose the plan, arguing that it could prompt a flood of lawsuits when there is little evidence that a problem exists. They say disgruntled or poor-performing employees could exploit the new legal standing.

But White House Domestic Policy Adviser Bruce Reed says it is the product of "real cases." Among them is a New Jersey woman who claimed she was passed over for promotions because she is a mother. A New York federal judge rejected her lawsuit, saying the person who was promoted—who had no children—was of the same sex.

The White House acknowledges that its evidence is anecdotal, but Mr. Reed says that because such discrimination isn't illegal, "it is impossible to tell how many cases there will be. Like most cases of discrimination, employers don't advertise

their biases."

Mr. Clinton announced his intention to introduce such legislation in his State of the Union address; he recently expanded his fund-raising stump speech to signal that helping parents will be a major theme for Democrats in next year's elections. "We have not done enough in the U.S. to help people balance work and family," the president said Friday night at a Boston Democratic Party event.

The message dovetails with Vice President Al Gore's urban-sprawl initiative, which is aimed at reducing the time parents spend in traffic jams and creating more green space for families to enjoy.

Although the antidiscrimination proposal probably will face a frosty reception in the GOP-controlled Congress, the election-year dynamics could make opposition risky.

President Clinton's education proposals and criticism of former President Bush for vetoing the Family and Medical Leave Act helped him tap the middle-class soccer-mom vote in 1992. The Family and Medical Leave Act became the first bill signed into law by Mr. Clinton. The administration this year is expected to try to expand the now-popular law, which allows workers to take time off without pay to help sick or disabled relatives.

The White House is making no secret of its intention to make the fate of the parent antidiscrimination proposal an issue next year. "A truly pro-family Congress would pass this in a heartbeat," Mr. Reed says. "We'll see."

# Clinton to Seek Job Bias Protection for Parents

By CHARLES BABINGTON  
Washington Post Staff Writer

A1

The Clinton administration is drafting legislation that would ban workplace discrimination against parents, a proposal that would extend to millions of workers new grounds for suing employers who deny them jobs or promotions because they spend time on family matters.

The initiative, to be introduced in the Senate in a few weeks, would treat parents "as a protected class with respect to employment discrimination," according to draft

language provided by White House aides. It would, for example, prohibit employers from "taking a mother or father off of a career-advancing path out of a belief that parents cannot meet requirements of these jobs."

If enacted by Congress, labor lawyers and other workplace experts say the plan could trigger a raft of new discrimination claims in a federal court system already flooded with lawsuits alleging bias based on gender, race, religion, age or disability. Those categories are protected under existing laws.

White House aides say the proposal is the

latest step in President Clinton's effort to make the American workplace more hospitable to families, and builds on the popular Family and Medical Leave Act, which requires unpaid time off for workers tending to newborn, sick or newly adopted children.

Although Clinton has yet to lay out the details of how the new initiative would work, by categorizing parents as a "protected class," the proposal has the potential to go far beyond the more limited benefits spelled out in the family leave act. As with

## PARENTS, From A1

other civil rights laws, the proposal's applicability to specific workplace circumstances would in part be determined in federal courts as workers attempt to seek its protections.

Privately, White House officials acknowledge that they face a difficult battle in getting the legislation enacted with generally business-friendly Republicans in control of Congress. But strategists on both sides also say that the issue could have enormous political appeal to voters, a factor that could make it difficult to dismiss without a struggle.

Word of the administration's plan has already begun to stir debate. Some family advocates say the proposal would protect employees who legitimately decline to work overtime or make other workplace decisions based on the demands of parenthood. Major employer groups, however, say there is little evidence of discrimination against parents, and they fear the proposed law could ignite a firestorm of unwarranted litigation.

"This is feel-good legislation, but the implications of it are really dramatic," said Larry Lorber, a Washington lawyer who represents employers in discrimination cases. "I'm not sure they've been thought through."

Donna Lenhoff, general counsel for the National Partnership for Women & Families, said, "There's a lot of feeling out there by parents that they do suffer discrimination in the workplace."

Aides to Clinton and Sen. Christopher S. Dodd (D-Conn.), likely sponsor of the bill, have compiled nearly a dozen examples of alleged workplace discrimination they say would have been remedied by their proposal. For example, they cite a Minnesota mother who applied for a teaching job that included coaching duties. The school hired a childless woman with less teaching and coaching experience.

The mother sued under existing discrimination law, claiming the school's hiring policy discriminated against parents.

Clinton's initiative "would clearly prohibit such discrimination," according to a White House summary of the proposed legislation.

But employer groups argue that such anecdotal examples don't justify the proposed legislation.

"Employment litigation has exploded in the courts," said Randy Johnson, vice president for labor and employee benefits at the U.S. Chamber of Commerce. "Employers are concerned about one more statute that would give complainants and lawyers one more thing to sue about."

Johnson contends that Clinton and congressional Democrats found a popular issue in 1993, when they

successfully backed the Family and Medical Leave Act. Now, they simply want to replicate that success, he charges, even though there's little evidence of discrimination against workers based on their roles as parents.

Clinton acknowledges he is hoping to build on the triumph of the Family and Medical Leave Act, but only because parents need more help.

He first signaled his attempt to pass additional legislation for families in his State of the Union address in January, saying he planned to do more "to help the millions of parents who give their all every day at home and at work." He mentioned several ideas, including a higher minimum wage, subsidies for child care and a tax credit for stay-at-home parents.

Pat Cleary, vice president for human resource policies with the National Association of Manufacturers,

said that Clinton's newest proposal to classify parents as a "protected class" is not credible. "No one among our membership that I'm in contact with was aware of any discrimination against parents. ... It seems to be based on absolutely nothing," said Cleary.

Bruce Reed, Clinton's domestic policy adviser, said the proposed legislation is justified even if scores of confirmed cases of discrimination do not exist.

"We hope this kind of discrimination isn't rampant," he said. "But there have been some troubling cases, and no form of discrimination is something that employers are going to readily admit. ... Parents should not be discriminated against in the workplace, and we want to make sure they have legal protection against that."

WASHINGTON POST

4-17-99

Nat Hentoff

# A Different Kind of Discrimination

Rios, 18, ranked in the top 4 percent during his senior year at San Benito High School in Hollister, Calif. Nonetheless, he was rejected for admission to the University of California at Berkeley.

The son of immigrant farm workers, Rios, starting at the age of 8, worked in the fields, dug ditches after high school classes and was active member of a Latino student organization.

Now a student at the University of California at Davis, he is the first member of his family to attend college and hopes to be a civil engineer.

Rios is a named plaintiff in *Rios v. the Regents of the University of California*, an anti-discrimination federal suit that may chart a new way to level the educational playing field even if the Supreme Court eventually declares race- and ethnicity-based admission preferences unconstitutional.

Among the organizations bringing the suit—on behalf of Rios and more than 750 Hispanic and Filipino American students—are the NAACP Legal Defense Fund, the ACLU and the Mexican American Legal Defense Fund.

Attorney Kimberly West-Faulcon of the NAACP Legal Defense Fund says that a victory will show that the admissions policy

her organization desires can be achieved without contradicting California's Proposition 209, which prohibits using race or ethnicity as a factor in admissions to public colleges. The legal basis for this lawsuit is the Civil Rights Act of 1964, which forbids discrimination in any schools receiving federal funds, as nearly all colleges do.

The lawsuit emphasizes that more than 50 percent of ap-

plicants admitted to the Berkeley campus come from only 5 percent of the state's 2,600 high schools. These are schools that have a number of advanced placement courses for which the Berkeley admissions office gives extra grade point credit to an applicant. And these high schools have largely white enrollments.

More than half the state's public high schools—many with largely minority students—offered no advanced placement courses during the 1997-98 school year. But 4 percent of all the high schools offered 21 or more advanced placement courses. Maybe this suit will motivate parents and legislators to ask why this is so in California and other states.

Therefore, students who have access to courses not equally available to all California high school students get extra preference at Berkeley. It is a discriminatory preference that rewards privilege rather than merit.

Moreover, students who take expensive private preparatory courses geared to college entrance exams have an extra admissions edge

based on family income—an index of class discrimination that,

in addition to minorities, affects the children of poor and working-class white families in high schools that also have few, if any, advanced placement courses.

As Michael Fletcher noted in his Feb. 3 Post story, "Civil Rights Groups File Suit Over Calif. Admissions Policy," in view of Berkeley's emphasis on advanced placement courses and SAT scores (which can be enhanced by private preparatory sessions), the suit claims that more than 750 African American, Hispanic and Filipino American applicants with grade point averages of 4.0, like Jesus Rios, were rejected by Berkeley.

So were 7,000 other students with 4.0

averages—including whites, Asian Americans and American Indians. But the lawsuit claims that black, Latino and Filipino students with 4.0 averages were "denied admission at far higher rates than 4.0 white students."

As West-Faulcon says, "All of the students rejected should be seen as more than numbers that don't tell you enough about each individual—like Jesus Rios."

In March, the University of California Board of Regents decided to guarantee a place in the university system to students in the top 4 percent of the state's high schools. Only some 3,500 students will be affected.

But the board refused to eliminate the bonus points for advanced placement honor courses, and it requires no remedial programs or additional financing for low-performing high schools.

John Davis, chairman of the Board of Regents, told the Chronicle of Higher Education: "You're letting these schools off the hook." As well as the state of California. Discrimination by parental income still rules.

Even when there was affirmative action in the state, both minority and white students were discriminated against because of their economic status.

## SWEET LAND OF LIBERTY

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ABC NEWS

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HEADLINE: PARENTS' RIGHTS

BYLINE: TIM O'BRIEN, ELIZABETH VARGAS

HIGHLIGHT:  
DO PARENTS NEED PROTECTION?

BODY:

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ELIZABETH VARGAS: Florida residents are assessing the scorched remains of 35,000 acres of fires that have burned throughout the region in the past days. Light rain was welcome in Tampa today where four dozen of homes have been destroyed by fire.

In Washington, a new initiative by the Clinton administration to add

significantly to the number of people in the work place protected by law. As ABC's Tim O'Brien reports, parents may soon find the law in their corner.

TIM O'BRIEN, ABC News: (voice-over) The idea is to give parents the same kind of protection against job discrimination that the law now routinely accords disabled people, women and minorities.

JUDITH LICHTMAN, Partnership for Women & Family: I think it's a great idea. We, as a nation, pay lip service all the time to being a family-friendly nation, a child-centered nation. A law like this one President Clinton is proposing really puts our values where our mouth is.

TIM O'BRIEN: (voice-over) The administration admits it has no idea how widespread discrimination against parents may be, and that's a concern to business groups.

RANDALL JOHNSON, U.S. Chamber of COMMERCE: Congress shouldn't be, the administration shouldn't be considering passing a law because it may sound good. We need to really look at it. What is the problem they're really looking at? Document it before we go forward.

TIM O'BRIEN: (voice-over) The White House says the law would not allow being a parent to become an excuse for not doing the work.

BRUCE REED, Clinton Domestic Policy Advisor: If the job requires them to be there 100 hours a week and they can't be there 100 hours a week, then they can't file suit for discrimination.

TIM O'BRIEN: (voice-over) Conservative groups warn such a law might drive a wedge between parents and nonparent employees.

BARBARA LEDEEN, Independent Women's Forum: The principle here is wrong. The principle here is that the federal government will decide how people work, where people work, how much they will get paid.

TIM O'BRIEN: (on camera) The administration says it has a long list of examples of job discrimination against parents, but it may need better evidence of a national problem if it is to persuade a Republican-controlled Congress this a law is necessary.

Tim O'Brien ABC News, at the White House.

ELIZABETH VARGAS: When we come back -- The little boy at the center of a bitter adoption case.

Podesta (cc M Penn)

Mary Beth → we need  
to get this out there →

Boz

THE PRESIDENT HAS BEEN  
4-19-99

Copied  
Mary Beth Calm  
Mark Penn  
Podesta

## Clinton Seeks to Give Parents Standing To Create Basis for Discrimination Suits

By JEANNE CUMMINGS

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON—Renewing its courtship with "soccer moms" as the presidential campaign approaches, the Clinton administration will seek to create a broad new basis for job-discrimination lawsuits by classifying parents as a "protected class."

Under the proposal, parents would have the same standing to file discrimination cases as those who already fall under the legally protected classes of race, sex, age, religion or disability. Legislation will be sponsored by Democratic Sen. Christopher Dodd of Connecticut and is expected by the end of the month.

Business groups oppose the plan, arguing that it could prompt a flood of lawsuits when there is little evidence that a problem exists. They say disgruntled or poor-performing employees could exploit the new legal standing.

But White House Domestic Policy Adviser Bruce Reed says it is the product of "real cases." Among them is a New Jersey woman who claimed she was passed over for promotions because she is a mother. A New York federal judge rejected her lawsuit, saying the person who was promoted—who had no children—was of the same sex.

The White House acknowledges that its evidence is anecdotal, but Mr. Reed says that because such discrimination isn't illegal, "it is impossible to tell how many cases there will be. Like most cases of discrimination, employers don't advertise

their biases."

Mr. Clinton announced his intention to introduce such legislation in his State of the Union address; he recently expanded his fund-raising stump speech to signal that helping parents will be a major theme for Democrats in next year's elections. "We have not done enough in the U.S. to help people balance work and family," the president said Friday night at a Boston Democratic Party event.

The message dovetails with Vice President Al Gore's urban-sprawl initiative, which is aimed at reducing the time parents spend in traffic jams and creating more green space for families to enjoy.

Although the antidiscrimination proposal probably will face a frosty reception in the GOP-controlled Congress, the election-year dynamics could make opposition risky.

President Clinton's education proposals and criticism of former President Bush for vetoing the Family and Medical Leave Act helped him tap the middle-class soccer-mom vote in 1992. The Family and Medical Leave Act became the first bill signed into law by Mr. Clinton. The administration this year is expected to try to expand the now-popular law, which allows workers to take time off without pay to help sick or disabled relatives.

The White House is making no secret of its intention to make the fate of the parent antidiscrimination proposal an issue next year. "A truly pro-family Congress would pass this in a heartbeat," Mr. Reed says. "We'll see."

THE WALL STREET JOURNAL  
MONDAY, APRIL 19, 1999

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USA TODAY

April 22, 1999, Thursday, FINAL EDITION

SECTION: NEWS;

Pg. 14A

LENGTH: 373 words

HEADLINE: Working parents unprotected

BYLINE: Bruce Reed

BODY:

As President Clinton said in his State of the Union address, it should be against the law to discriminate against workers just because they're parents.

But right now, in most states, parental discrimination is perfectly legal. Just ask Joann Trezza, a New Jersey mother of two who was passed over for promotion by employers who allegedly complained that working mothers don't do either job well. A federal judge ruled that current laws offer her no protection as a parent against such discrimination.

Trezza is not alone. In response to this concern, a handful of states -- including Michigan, Pennsylvania and Alaska -- have adopted laws to prohibit employment discrimination against parents.

Soon the president will send Congress legislation, sponsored by Sen. Chris Dodd, D-Conn., to protect all parents from discrimination at work. It would prohibit employers from refusing to hire or promote mothers and fathers out of some belief that parents don't make good workers. No one should be denied a job just because he or she is a parent.

The bill is narrowly tailored to cover only cases of overt discrimination against a parent. It would not affect hiring and promotion decisions made on the basis of job performance. If a parent can't put in the hours or doesn't measure up, this legislation won't help them.

Some business lobbyists have tried to claim that, on the one hand, discrimination against parents doesn't exist and, on the other, this bill would unleash a flood of litigation. The truth is, if employers don't discriminate, this bill won't cost them a penny. Working parents don't have time to file frivolous lawsuits.

Others say that even though there have been a number of these

instances, we shouldn't prohibit parental discrimination unless it's rampant. But surely, outright discrimination against any parent is wrong and should be stopped, no matter how many cases have been brought so far.

Nearly 50 million Americans are working parents -- more than at any time in our history. We should do all we can to honor parents, not punish them, for choosing to raise a family. If this Congress is truly pro-family, it will approve this legislation in a heartbeat.

**November 17, 1999**

**MEMORANDUM FOR JACK LEW**

**FROM: BRUCE REED**

**SUBJECT: EXECUTIVE ORDER TO BAN DISCRIMINATION AGAINST PARENTS IN THE EXECUTIVE BRANCH**

I am writing to request that you put into expedited clearance the attached Executive Order, pursuant to Executive Order 11030. The proposed Order would prohibit employment discrimination in the executive branch against employees because they are parents or exercise parental responsibilities.

The proposed Executive Order mirrors the "Ending Discrimination Against Parents Act of 1999," legislation that the President announced in his 1999 State of the Union address and was introduced on November 10, 1999 by Senators Dodd and Kennedy. This bill would, for the first time, protect parents and those with parental responsibilities against job discrimination. It does not bar employers from making hiring and promotion decisions on the basis of qualifications or job performance regardless of the employee's parental status, but it does ensure that workers are not discriminated against simply because they are parents or exercise parental responsibilities.

By issuing this Executive Order, the President will hold the Executive Branch as a model for this important new set of protections. The Executive Order would cover employees in the Executive Branch who are biological, adoptive, or foster parents; stepparents; custodians of individuals who are under the age of 18 or who are 18 or older but incapable of self-care because of a mental or physical disability of [and those actively seeking custody or adoption of, and those who stand "in loco parentis" for, such individuals]. The Order would bar discrimination against covered persons in all aspects of employment, including recruitment, referral, hiring, promotions, discharge, training, and other terms and conditions of employment.

The Order would also prohibit employers in the Executive Branch from acting on mere assumptions that parents, or those with parental responsibilities, cannot satisfy the requirements of a particular position. It would, 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;

- preferring applicants without children over equally or better qualified working parents; or
- refusing to hire single parents under any circumstances.

However, the proposed Order would not prohibit an employer from making decisions on the basis of a person's job performance. The Order would not, for example, prevent an employer from disciplining workers who arrive late, even if an individual is late because of child care responsibilities. The Executive Order 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 Order would not interfere with an employer's ability to select workers who are able to perform the jobs in question; the Order would simply ensure that workers are not discriminated against simply because they are parents.

Thank you for your assistance in clearing this Order expeditiously, for release as early as November 27, 1999. The staff contact in the Domestic Policy Council is Nicole Rabner, who is reachable at extension 67263.

Draft

## 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]

**President's Proposal to Prohibit Discrimination Against Parents**  
**April 18, 1999**

**Q: What is the President's proposal on parental discrimination?**

A. The President will send Congress legislation that prohibits discrimination on the basis of parental status in employment. The proposed legislation would protect those who choose to have a family from discrimination in employment, in hiring, advancement, and other employment decisions, because of their status as parents. This legislation would protect parents of children and those seeking legal custody of children.

The President's proposed federal legislation would offer protection to workers who are parents in a number of situations. It would prohibit employers from taking a mother or father off career-advancing paths (e.g., partnership track) out of some generalized belief that parents as a class are not capable of committing to the work requirements of the job. It would also prohibit employers from hiring a person without children over an equally or more qualified person with children. In general, the President's proposal would protect workers from unfair assumptions about their commitment to their jobs in hiring, advancement, and other employment decisions. While this law would clearly not prohibit employers from making hiring and promotion decisions on the basis of job performance, it would ensure that workers are not unfairly discriminated against simply because they are parents.

**Q: What evidence do you have that discrimination against parents in the workplace is a problem?**

A: Despite the fact that there is currently no cause of action for parental discrimination, we have found numerous cases in which employees describe instances of discrimination due to their status as parents. The precise extent of this problem is unknown at this time, but however great or small, it deserves a remedy. This form of discrimination should simply not take place at all and that is why the President has proposed this simple, but clear prohibition.

**Q: How do you respond to the argument by opponents of the measure that this proposal will cause an avalanche of litigation in the courts?**

A: Opponents of this proposal have argued both that employers do not discriminate on the basis of parental status and that this proposal will cause an explosion of litigation. It is difficult to see how the President's proposal will do both. Because the President's proposal only prohibits discrimination on the basis of disparate treatment (not disparate impact), plaintiffs will be required to show direct evidence of discrimination, which is a

difficult burden in employment discrimination cases. Therefore, there is no reason to think that the creation of this cause of action will produce unnecessary and unwarranted litigation.

**Q: Aren't you radically changing the rules of the workplace, if parents can now sue when they're required to work overtime or when they are required to move?**

A. The President's proposal does not do that. This law would clearly not prohibit employers from making hiring and promotion decisions on the basis of job performance, and therefore, does not protect parents who are treated as every other employee. If all employees are required to work overtime, then employees who are parents can be required to work overtime. The President's proposal simply protects workers who are parents from unfair assumptions about their commitment or capacity to work.

Examples of Cases in which claimants would be protected by a prohibition against discrimination on the basis of parental status.

**Minnesota case -- 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.)

Our proposed statute would clearly prohibit such discrimination, and would allow people in every state to claim such a protection.

**Eighth Circuit Case -- 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)) 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.

**Second Circuit Case -- 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 (S.D.N.Y.)). 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.

**Note:** We will also write the legislation so that you will not be able to discriminate on the basis of future parental status.

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### **States Prohibiting Discrimination on the Basis of Parental Status**

A number of states 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 specifically states 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 prohibited 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

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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 and 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

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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 attained 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))

**Ending Discrimination Against Parents Act of 1999**  
**Contact List**

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> get it in the next day or  
two - maybe even week.  
getting bill out

Dr. Vargyas is behind it

*draft w/ Eric's edits*

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*not right,*

*and then*

**STATEMENT BY THE PRESIDENT  
ON "ENDING DISCRIMINATION AGAINST PARENTS ACT OF 1999"**

I am pleased that Senator Dodd today introduced the "Ending Discrimination Against Parents Act of 1999." This landmark bill protects America's working parents from unfair treatment on the job. It builds on our nation's longstanding commitment to equal opportunity. And it sends a clear message that parents striving to meet their responsibilities both at home and at the office should never be considered second-class workers.

This bill would, for the first time, protect parents and those with parental responsibilities against job discrimination. It does not bar employers from making hiring and promotion decisions on the basis of job performance, but it does ensure that workers are not discriminated against simply because they are parents or exercise parental responsibilities. It would, for example, prohibit employers from taking a parent off the "fast track" because of unsubstantiated concerns that parents cannot perform in demanding jobs. Similarly, it would not allow employers to prefer applicants without children over equally or better qualified working parents, or to refuse to hire single parents.

As more mothers enter the workforce, and as more families rely on the earnings of single parents, these protections are increasingly important. We simply cannot afford to let so many working parents be held captive to unfounded assumptions about their capacity to work.

Already, a number of states have enacted common-sense laws that prohibit or pave the way to prohibiting discrimination on the basis of parental or familial status. I urge Congress to safeguard the interests of America's working families and give this legislation prompt and favorable consideration. Our workplaces should work for all Americans.

*John F. Kennedy*

*Ann - Pres who  
5/2/99  
U.S. Ann*

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. Also transmitted is a section-by-section analysis.

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 bases of race, color, sex, national origin, and religion, 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, 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. 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 with children under age 18. Nearly one in five working parents is unmarried; a fifth of these are single dads. As a Nation, we cannot 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, numerous states (including Alaska, Nebraska, New Hampshire, New Jersey, and South Dakota) and the District of Columbia have enacted laws prohibiting, or authorizing the prohibition of, discrimination on the basis of parental or familial status.

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

WILLIAM J. CLINTON

THE WHITE HOUSE  
October 18, 1999

## A BILL

To prohibit employment discrimination against parents and those with parental responsibilities, 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) In 1998, thirty-eight percent of all United States workers had children under 18.

(b) The vast majority of Americans with children under 18 are employed.

(c) 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.

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

(e) 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.

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

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

(h) 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; and
  - (6) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce.
- (i) 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 11(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 11(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 damages as may be appropriate and for punitive damages if the covered entity engaged in a discriminatory practice or practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.

(2) Notwithstanding subsection 11(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 11(a) or included in subsection 11(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 14(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 180 days after enactment and shall not apply to conduct occurring before the effective date.

# **“ENDING DISCRIMINATION AGAINST PARENTS ACT OF 1999”**

## **SECTION-BY-SECTION**

### **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 burdens interstate 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 of 1990.

### **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 the 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 Where Actions Taken in a Foreign Country**

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 and Remedies**

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 11(a), and except as provided otherwise in this Act, covered entities that violate this Act will be liable for appropriate compensatory and punitive damages. Punitive damages may be recovered if the covered entity engaged in a discriminatory practice or practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.

Subsection (b)(2) states that, notwithstanding subsection 11(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 will not be 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 or 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 180 days after enactment and will not apply to conduct occurring before the effective date.

✓ (3) For purposes of this subsection, the determination of whether an employer controls a corporation shall be based on-

- (A) the interrelation of operations;
- (B) the common management;
- (C) the centralized control of labor relations; and
- (D) the common ownership or financial control, of the employer and the corporation.

## Unlawful Employment Practices

### SEC. 2000e-2 [Section 703]

✓ (a) 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) 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) 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) 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) 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) 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. 781 et seq.].

(g) 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

(b) It shall be unlawful for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of such individual's age, or to classify or refer for employment any individual on the basis of such individual's age.

(c) It shall be unlawful for a labor organization-

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his age;

(2) to limit, segregate, or classify its 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 age;

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

(d) It shall be unlawful for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because such individual, member or applicant for membership has opposed any practice made unlawful by this section, or because such individual, member or applicant for membership has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this chapter.

(e) It shall be unlawful for an employer, labor organization, or employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on age.

(f) It shall not be unlawful for an employer, employment agency, or labor organization-

(1) to take any action otherwise prohibited under subsections (a), (b), (c), or (e) of this section where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age, or where such practices involve an employee in a workplace in a foreign country, and compliance with such subsections would cause such employer, or a corporation controlled by such employer, to violate the laws of the country in which such workplace is located;

(2) to take any action otherwise prohibited under subsection (a), (b), (c), or (e) of this section-

(A) to observe the terms of a bona fide seniority system that is not intended to evade the purposes of this chapter, except that no such seniority system shall require or permit the involuntary retirement of any individual specified by section 631(a) of this title because of the age of such individual; or

(B) to observe the terms of a bona fide employee benefit plan-

(i) where, for each benefit or benefit package, the actual amount of payment made or cost incurred on behalf of an older worker is no less than that made or incurred on behalf of a younger worker, as permissible under section 1625.10, title 29, Code of Federal Regulations (as in effect on June 22, 1989); or

(ii) that is a voluntary early retirement incentive plan consistent with the relevant purpose or purposes of this chapter.

Notwithstanding clause (i) or (ii) of subparagraph (B), no such employee benefit plan or voluntary early retirement incentive plan shall excuse the failure to hire any individual, and no such employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 631(a) of this title, because of the age of such individual. An employer, employment agency, or labor organization acting under subparagraph (A), or under clause (i) or (ii) of subparagraph (B), shall have the burden of proving that such actions are lawful in any civil enforcement proceeding brought under this chapter; or

(3) to discharge or otherwise discipline an individual for good cause.

(g) [Repealed]

(h)(1) If an employer controls a corporation whose place of incorporation is in a foreign country, any practice by such corporation prohibited under this section shall be presumed to be such practice by such employer.

(2) The prohibitions of this section shall not apply where the employer is a foreign person not controlled by an American employer.

(3) For the purpose of this subsection the determination of whether an employer controls a corporation shall be based upon the-

(A) interrelation of operations,

(B) common management,

(C) centralized control of labor relations, and

(D) common ownership or financial control, of the employer and the corporation.

**I**t shall not be unlawful for an employer which is a State, a political subdivision of a State, an agency or instrumentality of a State or a political subdivision of a State, or an interstate agency to fail or refuse to hire or to discharge any individual because of such individual's age if such action is taken-