

**Subcommittee on Children and Families
Committee on Labor and Human Resources
Senator Christopher J. Dodd
Ranking Member**

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Bill to protect parents may pit worker against worker

I think of it as being "mummified." After all, the word has such a nice, fuzzy, Egyptian-tomb sound, doesn't it?

This is how it happens. You leave work to have a baby and come back to discover that you've been transformed from a fast-track employee to a mommy. The assumptions have changed, the boss looks at you differently, your career future is suddenly as petrified as the Pharaoh.

Or maybe you're a mother being interviewed for a new job. The questions turn, discreetly of course, to child care or your willingness to travel. Someone without kids is found to be, well, more qualified.

Then again, maybe you're a father who leaves the office before the other guys. You want to coach Little League or oversee homework. You skip the night meeting, say no to the 60-hour week. Zap — "daddified."

Such stories are rampant in the over-

ELLEN GOODMAN

worked workplace of the 1990s. Today, 46 percent of all workers are parents, but employers often regard children as a distraction, a hobby you pick at your own risk, an attention deficit disorder. Many parents feel forced to choose between being "there" for the kids or for the boss.

This is the background behind a new push to ban discrimination against parents. A bill that sounds on the surface as controversial as apple pie and parenthood is going to be introduced in the next couple of weeks by Sen. Christopher Dodd with the backing of the White House.

It would let a parent sue if he or she were taken off "a career advancing path," passed up for someone without children or hurt by a policy against hiring single parents. It would make parenthood a protected status, like race or gender.

That seems like good news for all the parents "mummified" and entombed in lower echelons of the pyramid. And for a society worried about what happens when parents don't have enough time to spend with kids.

But there is a little hitch. The problem of balancing work and family in this country is not just a problem of parenting. It's a problem of caregiving.

Today's working mother or father is tomorrow's working daughter or son. You can be "mummified" one year and "daughterified" the next.

Do we want to protect those workers who take care of young dependents but not those who take care of elder dependents? Is taking a child to a doctor more important than taking a mother? Or for that matter, a spouse?

I am wary of a family-friendly policy that could pit one group of workers against another. Or for that matter, a pol-

icy that would pit one decade of our lives against another.

"It's very clear that the way work is organized is on a collision course with the way families are organized," says Paula Rayman, head of the Radcliffe Public Policy Institute. "But to talk about the rights of parents in the workplace as opposed to the rights of others is a bad strategy. It categorizes one group of people as getting special rights and could create a serious backlash."

The potential for backlash is not just among the young single people who have not yet felt the work-family crunch. It's from other family caregivers.

This is why the Family and Medical Leave Act is not the Maternal Leave Act. It was structured to include all workers with family crises.

Today's Congress is not exactly family-friendly. The House members can't even find a way to balance their own work and

families. It took 12 years to get the Family and Medical Leave Act passed. And that gives unpaid leave only to people — not just parents — who work in companies with more than 50 employees.

There's little legislative will for making the kinds of changes already on the table. If we are looking for a next step, instead of a symbolic parents' rights bill, expand medical leave to workplaces of 25 or more. That would include 13 million more men and women. Or use what political energy there is to support paid leave.

The parents' rights bill is a product of good intentions and good politics. Soccer mom politics. But I have a real sense that it's a doomed distraction. For all the talk there is really little movement on a family agenda. Leadership? That is what seems truly mummified.

Ellen Goodman is a syndicated columnist based in Boston.

Case Examples of Parental Discrimination

Discrimination in Hiring

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

Discrimination in Demotion/Termination

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

Discrimination in Promotion

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

Demotion/ constructive termination

While plaintiff was on maternity leave, her job was given to a new employee. When plaintiff returned from maternity leave, she was offered a job that was a demotion to an hourly wage job from a salaried position. She refused the position and alleged that she was discriminated against because she had a family. The court held that discrimination based on new parenthood does not state a claim under the Pregnancy Discrimination Act, nor is it cognizable gender

discrimination.(Santrizos v. Aramark Corporation, 1998 U.S. Dist. LEXIS 15946 (U.S. Northern District of Illinois)

Prohibiting Discrimination Against Parents

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

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

Examples of conduct that would be prohibited:

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

Background:

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

Other issues:

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

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

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."

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Nat Hentoff

A Different Kind of Discrimination

Jesus Rios, 18, ranked in the top 4 percent during his senior year at San Benito High School in Hollister, Calif. Nonetheless, he was refused 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 an 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 case—on behalf of Rios and more than 750 black, 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

Post 4-17-97
WASHINGTON

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ABC NEWS

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DO PARENTS NEED PROTECTION?

BODY:

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UPDATED.

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.

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

BYLINE: MELISSA HEALY, TIMES STAFF WRITER

DATELINE: WASHINGTON

BODY:

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

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

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

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

In the next few weeks, President Clinton plans to enter the debate by

introducing legislation in the Senate that would outlaw workplace discrimination against parents.

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

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."

DRAFT -- OCTOBER 6, 1999

STATEMENT BY THE PRESIDENT

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

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

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

DRAFT -- OCTOBER 6, 1999

EXECUTIVE ORDER

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

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

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

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

WILLIAM J. CLINTON

THE WHITE HOUSE,
[date]

DRAFT -- OCTOBER 6, 1999

Ending Discrimination Against Parents

Q. What is the purpose of this Executive Order?

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

Q. Why is this important?

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

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

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

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

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

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

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

Alternative Work Schedules. Federal agencies may establish flexible or compressed work schedules, collectively referred to as "alternative work schedules." Alternative work schedules allow for a variety of working arrangements tailored to fit the needs of individual employees.

Annual leave. Employees may use annual leave for vacations, school activities, and other family activities.

Sick leave for family care and bereavement purposes. Most employees may use up to 13 days of sick leave each leave year to care for a family member who is incapacitated as a result of physical or mental illness; injury; pregnancy; childbirth; or medical, dental, or optical examination or treatment; or who makes arrangements necessitated by the death of a family member or attends the funeral of a family member.

Sick leave for adoption. Employees may use sick leave for purposes related to the adoption of a child, including court proceedings and required travel.

The Family and Medical Leave Act of 1993 (FMLA). Under the FMLA, an employee is entitled to a total of 12 workweeks of unpaid leave during any 12-month period for the birth, adoption, or foster care of a son or daughter; the care of an employee's spouse, son or daughter, or parent with a serious health condition; and the employee's own serious health condition. An employee may substitute annual leave or sick leave, as appropriate, for unpaid leave under the FMLA. An employee retains his or her health insurance while using leave under the FMLA.

Expanded Family and Medical Leave. On April 11, 1997, President Clinton issued a memorandum to the heads of departments and agencies urging them to take immediate action to allow Federal employees to take 24 hours of unpaid leave each year for the following activities:

- To participate in school activities directly related to the educational advancement of a child, including early childhood education activities;
- To accompany children to routine medical and dental examinations; and

- To tend to the needs of older relatives.

Leave sharing. Employees who experience a personal or family medical emergency and who exhaust their available paid leave may receive donated annual leave from other Federal employees through the voluntary leave transfer or leave bank programs. All agencies must have a leave transfer program. In addition, an agency may also choose to establish a leave bank for its employees.

Emergency Leave Transfer Program. Employees who are adversely affected by a major disaster or emergency, as declared by the President, may receive donated annual leave from employees in their agency or other agencies without having to use their own paid leave. OPM has established emergency leave transfer programs for the emergency situations created by the bombings of the U.S. embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania (August 1998); Hurricane Georges (September 1998); the tornadoes in Oklahoma and Kansas (May 1999); and Hurricane Floyd (September 1999).

Time Off for Volunteer Activities. On April 22, 1998, President Clinton signed a memorandum for heads of departments and agencies requesting them to reexamine the ways in which the Federal Government can support employees' commitment to community service and ensure that all employees are aware of the existing flexibility that permits them to participate in volunteer activities. OPM issued guidance to agencies on existing authority to encourage employee participation in volunteer activities, including alternative work schedules, annual leave, leave without pay, credit hours under flexible work schedules, compensatory time off, and excused absence, where appropriate.

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

Permitting employees maximum flexibility in scheduling work and time off demonstrates that the Federal Government recognizes the importance of each individual's needs. Employees who are able take time off to deal

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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]

THE WHITE HOUSE

WASHINGTON

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; 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 -- 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:
- needs detail*
consider

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

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

DRAFT -- OCTOBER 6, 1999

STATEMENT BY THE PRESIDENT

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

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

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

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.

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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; 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.

October 28, 1999

MEMORANDUM

**TO: BRUCE REED
 ERIC LIU**

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

SUBJECT: PROPOSED EXECUTIVE ORDER ON PARENTAL DISCRIMINATION

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

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

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

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

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

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

There are several options to consider:

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

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

Please advise on how you would like us to proceed.

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]