

*Paraphrased
Discrimination*

418 Pickett Lane
Herndon, Va 20170
April 19, 1999

Mr. Bruce Reed
Domestic Policy Advisor
White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. Reed:

I applaud the President's interest in eliminating job discrimination against parents.

I am a Foreign Service Officer who has suffered from such discrimination at the US Agency for International Development (USAID) throughout my career. I have never been promoted. I have been selected out of the Foreign Service twice, once in 1993 and again in 1998.

The discrimination against me resulted directly from my need to support my son who became severely physically disabled after incurring brain damage at age six months in 1980 by reason of US Government negligence. I have been a single parent since 1993 with sole responsibility for supporting nine family members. This has seriously compounded the burden of the discrimination that I have experienced at USAID.

The enclosed copy of my August 11, 1998 letter to Senator Leahy (VT) describes in detail the discrimination that I have suffered. I have written similar letters to Senators Jeffords (VT) and Robb (VA) and to Representatives Wolf (VA), Davis (VA), Sanders (VT) and Morolla (MD). Of these only Senator Robb and Congressman Davis responded. Both indicated that they could offer me no assistance.

My August 14, 1998 letter to Secretary Albright with copies to President Clinton, Administrator Atwood (USAID) and Senator Leahy similarly has gone unanswered.

On October 16, 1998 a grievance on my behalf was filed with USAID. As a result, my employment with the Agency will continue until the grievance is resolved.

I share my story with the hope that it will strengthen the justification for the protective legislation that is being drafted by the Clinton administration.

Sincerely,

Wendell E. Morse, Jr.
Wendell E. Morse, Jr.

Telephones: work - 202-712-4666
home - 703-709-0317

418 Pickett Lane
Herndon, VA 20170
August 11, 1998

The Honorable Patrick J. Leahy
United States Senate
199 Main Street
Burlington, Vermont 05401

Dear Senator Leahy:

I wrote to you on May 15, 1998 to advise you of my proposal to settle with USAID and retire early next year. USAID informed me verbally on July 13 that the Agency had no authority to settle with me. On July 30, 1998 I was informed by USAID that, as a result of deliberations by the 1998 Foreign Service Selection Board and the Performance Standards Board, I had been designated for mandatory retirement from the Foreign Service because the Boards determined that my performance, in relative terms, had not met the standards of my FS-02 class.

I am writing to you today to inform you of the recent actions taken by USAID and request that you consider sponsoring a special or private act of Congress on my behalf through which the U.S. Government can compensate me for damages to my career which exist because I have not been able to serve overseas with USAID. This inability followed directly from the brain damage which my son Geoffrey incurred in 1980 by reason of U.S. Government negligence and the associated need for me to remain on duty with USAID in the United States to meet Geoffrey's ongoing medical and special education needs.

I outline for you below the justification for my request, starting with my academic and employment preparation for a foreign service career in international development and covering my career with USAID.

I view 1964-79 as formative years for my longer term employment in international development. During these years, I worked for the Peace Corps, both as a Volunteer (1964-66) and as a staff member (1973-78); completed a graduate degree in International Agricultural Development at Cornell University (1968-71); and, worked in international programs at Cornell University (1970-71) and the University of Connecticut (1971-73 and 1979). I have enclosed my resume which more fully describes my education and employment during these years.

I joined USAID in November, 1979 as a career candidate in the Foreign Service at a grade equivalent to FS-02 under the current Foreign Service system which took effect in March, 1980. My employment as an FS-02 was at the grade at which I departed Peace Corps staff service and reflected both my academic training and many years of experience in international development work.

I was assigned as the Agricultural Development Officer (ADO) in Sudan in March, 1980 and on arrival there assumed responsibility for the Agricultural Office which was staffed by another U.S. Foreign Service Officer, 3 Foreign Service National employees and me. We managed a multi-million dollar national agricultural research system development program. Geoffrey's illness and resultant brain damage in August, 1980, abruptly ended my service in Sudan and led to my unexpected transfer back to USAID/Washington (USAID/W) where I was placed in a position of significantly less responsibility than that of ADO in Sudan.

A claim on Geoffrey's behalf was filed with the Department of Defense in the spring of 1981. Government negligence was conceded in September, 1983. This is significant, because I was still serving as a career candidate. It was only in March, 1984, after the Government concession of negligence, that I negotiated with USAID a career appointment to the Foreign Service. My memorandum of career appointment states "Transfer to an overseas post will be subject to A.I.D.'s (1) evaluation of the special education (including but not limited to special education for the handicapped, physical therapy, occupational therapy, speech and language therapy and counseling) support services prescribed by the Child Development Center of Georgetown University or other comparable center for dependent son Geoffrey and (2) certification that adequate facilities exist at post to meet dependent son Geoffrey's special education needs."

Since February, 1981, I have served in the central bureaus of USAID/W. Since then I have been recommended for promotion several times by different supervisors from different offices. I, however, have never been promoted. I have been penalized repeatedly throughout my career by the Selection and Performance Standards Boards for both not serving overseas and for service in the central bureaus. This has occurred even though the Office of Human Resources has issued policy stating that Foreign Service employees should not be penalized for service in central bureaus. I was selected out in 1993 principally because I had not served overseas since returning to USAID/W in 1980. My selection out was rescinded in response to a grievance. My low ranking by the 1994 Selection Board was likewise rescinded because it was based on a lack of overseas service. Continued service in USAID/W was again cited as a reason for my low ranking by the Selection Board in 1995 and by the Selection and Performance Standards Board in 1996, as was my continued service in the central bureaus. I received a 'B' rating in 1997 indicating performance at an acceptable or higher level. In 1998, I have been selected out with mandatory retirement set for November 30, 1998. While the 1998 Boards have not mentioned continued service in Washington as a reason, they have reviewed past Board findings which have consistently over time penalized me for not serving overseas. No mention has been made in Board recommendations of the extenuating circumstances responsible for my extended service in Washington.

My selection out at this time is even more puzzling to me given my recent assignments and performance evaluations. In September, 1996 as an FS-02, I assumed management responsibility for the Israeli program which up to that time had been managed by an office which was headed by an Executive Service employee and staffed by two others at the GS-15 and GS-14 grade levels. My most recent evaluation for the April 1, 1997 to March 31, 1998 period attests to my outstanding management of that program, which is larger than many USAID mission programs overseas and more complex given its political context. In March, 1998 when my FS-02 position was abolished, I was reassigned to an FS-01 position.

When I learned in May, 1998, that the mini-appraisal committee for the Center for Economic Growth and Agricultural Development in which I serve had not recommended me for promotion despite my having received an outstanding performance evaluation for management of the Israeli program, I realized that I would never progress in my career at USAID. In response, on May 12 I proposed a settlement with USAID. In response on July 13, 1998, USAID told me that the Agency has no authority to settle with me. Subsequently, I met with private attorneys who said that mine is a unique case for which there is very limited legal remedy because I am a Federal employee even though the legal issue is readily identified.

Given the lack of legal remedy, I turn to you to ask for a private act of Congress to provide the relief I seek. I do this because I have been unfairly penalized by USAID for not serving overseas, which inability exists by reason of U.S. Government negligence for which no adequate legal remedy exists. I, in fact, was told by USAID on July 13 that a private act may be the only mechanism for obtaining the relief which I seek.

I have served my country for many years starting with my Peace Corps service in 1964. I believe that selection out is not a fitting end to my Foreign Service career without compensation for the injury I have suffered.

I am also concerned about the impact that this abrupt ending to my career will have on my four minor children who range in age from 15 to 6 years of age, let alone the impact on Geoffrey and my two older children.

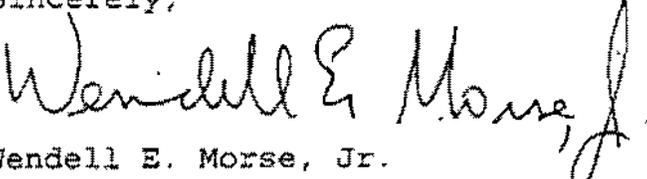
I will gladly work with you to provide the documentation which will show the career damage that I have suffered and, perhaps, serve to justify a special act on my behalf. If a special act is possible, I will forego pursuing a grievance against USAID which will be protracted, costly and most likely not adequately compensate for the damage to my career given the limitations of the legal remedies available to me. I hope sincerely that a decision as to which remedy is possible can be made in sufficient time to act well in advance of my November 30, 1998 retirement.

The Administrator of USAID is most likely not aware of either my employment history or recent selection out, including the special circumstances surrounding my employment, as these matters are routinely handled by those at lower levels in the USAID bureaucracy. You are free to mention my case to him if you deem that it is worthy of his attention.

I thank you for whatever assistance you are able to provide to me.

I look forward to hearing from you.

Sincerely,

A handwritten signature in cursive script that reads "Wendell E. Morse, Jr." with a stylized flourish at the end.

Wendell E. Morse, Jr.

418 Pickett Lane
Herndon, Va 20170
August 14, 1998

The Honorable Madeleine K. Albright
Secretary of State
Department of State
2201 C Street, N.W.
Washington, D.C. 20520

Dear Madam:

I was deeply moved by the emotion, compassion and concern so strongly conveyed in your comments and those of President Clinton and Secretary Cohen at the Andrews Air Force Base ceremony yesterday marking the return of the remains of U.S. citizens killed in the Kenya embassy bombing and through the tears shed by President Clinton and you.

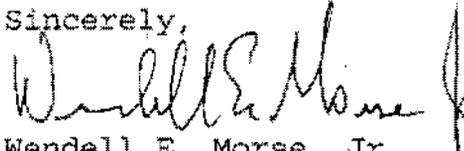
I was deeply moved not only out of profound grief for the families who have suffered the loss of loved ones in the bombing but also as the ceremony vividly recalled for me the day in August, 1980 when my son Geoffrey, who was an infant then, returned to the United States aboard a similar flight from Germany. He had been hospitalized at the 97th General Military Hospital, a Department of Defense facility in Frankfurt, subsequent to becoming ill in Sudan while I was posted there as a Foreign Service Officer with the U.S. Agency for International Development (USAID) and was being transferred back to the U.S. for medical care. We later learned that Geoffrey had incurred brain damage while at the hospital in Frankfurt. The U.S. Government conceded negligence for Geoffrey's brain damage in 1983.

As a direct result of Geoffrey's condition, I have spent my entire Foreign Service career in Washington. On July 30 of this year I received notification from USAID that I have been selected out of the Foreign Service for relative performance. I enclose a copy of my recent letter to Senator Patrick J. Leahy in which I seek relief for an unjust and premature ending to my Foreign Service career. I encourage you to read carefully my letter to Senator Leahy for a more complete accounting of the price my family has paid as a result of government service overseas.

Your characterization of those who died in Nairobi as "...builders, doers, good people who acted out of hope and with the conviction that what will be can be made better than what has been." heartens me as I am one of those. I pray for your intervention on my behalf that the wrong that my family has suffered at the hands of USAID be addressed as I have requested from Senator Leahy.

May God bless you.

Sincerely,



Wendell E. Morse, Jr.
Foreign Service Officer
U.S. Agency for International
Development

cc: President Clinton
Administrator Atwood
Senator Leahy

encl.

PARENTAL
DISCRIMINATION

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).

No parent should face discrimination in workplace

A BILL

To prohibit employment discrimination on the basis of parental status.

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." [Will change.]

SECTION 2. PURPOSES.

The purposes of this Act are -

- (1) to provide a comprehensive Federal prohibition of employment discrimination on the basis of parental status;
- (2) to provide meaningful and effective remedies for employment discrimination on the basis of parental status; and
- (3) to invoke congressional powers, including the powers to enforce the 14th amendment to the Constitution and to regulate interstate commerce, in order to prohibit discrimination on the basis of parental status.

SECTION 3. DEFINITIONS.

In this Act -

- (1) CHILD - The term 'child' means 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.
- (2) COMMISSION - The term 'Commission' means the Equal Employment Opportunity Commission.
- (3) COMPLAINING PARTY - The term 'complaining party' means the Commission, the Attorney General, or any other person who may bring an action or proceeding under this Act.
- (4) COVERED ENTITY - The term 'covered entity' means an employer, employment agency, labor organization, joint labor-management

committee, an entity to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-16(a)) applies, 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, or an employing office, as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. § 1301). The term 'covered entity' includes an employing office, as defined in section 401 of title 3, United States Code.

(5) DEMONSTRATES - The term 'demonstrates' means meets the burdens of production and persuasion.

(6) EMPLOYEE - The term 'employee' has the meaning given the term in section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. § 2000e(f)), except that the term 'employee' also includes any individual covered under the Government Employee Rights Act of 1991 (2 U.S.C. § 1201 *et seq.*), the Congressional Accountability Act of 1995 (2 U.S.C. § 1301), or section 401 of title 3, United States Code. The term 'employee' further includes applicants for employment and former employees.

(7) EMPLOYER - The term 'employer' means 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 15 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 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501^c of the Internal Revenue Code of 1986.

(8) EMPLOYMENT AGENCY - The term 'employment agency' has the meaning given the term in section 701^c of the Civil Rights Act of 1964 (42 U.S.C. § 2000e(c)).

(9) EMPLOYMENT OR AN EMPLOYMENT OPPORTUNITY - The term 'employment or an employment opportunity' includes recruitment or advertisement for a job, referral for a job, job application procedures, hiring, advancement, discharge, compensation, job training, membership in a labor organization, or any other term, condition, or privilege of employment.

(10) INCAPABLE OF SELF-CARE - The term 'incapable of self-care' has the meaning given the term in regulations implementing the Family and

Medical Leave Act (29 C.F.R. § 825.113 (1998)).

(11) LABOR ORGANIZATION - The term 'labor organization' has the meaning given the term in section 701(d) of the Civil Rights Act of 1964 (42 U.S.C. § 2000e(d)).

(12) PARENTAL STATUS - The term 'parental status' means having the status of one or more of the following in relation to a son or daughter who is under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability --

(A) a biological parent;

(B) an adoptive parent or a prospective adoptive parent;

(C) a foster parent;

(D) stepparent; or

(E) or standing in loco parentis.

(13) PERSON - The term 'person' has the meaning given the term in section 701(a) of the Civil Rights Act of 1964 (42 U.S.C. § 2000e(a)).

(14) RELIGIOUS ORGANIZATION - The term 'religious organization' means --

(A) a religious corporation, association, or society; or

(B) a school, college, university, or other educational institution or institution of learning, if --

(i) the institution is in whole or substantial part controlled, managed, owned, or supported by a religion, religious corporation, association, or society; or

(ii) the curriculum of the institution is directed toward the propagation of a particular religion.

(15) STATE - The term 'state' has the meaning given the term in section 701(l) of the Civil Right Act of 1964 (42 U.S.C. § 2000e(l)).

SECTION 4. DISCRIMINATION PROHIBITED.

It shall be an unlawful employment practice for an employer to fail or refuse

to hire or to discharge any individual, or otherwise to discriminate against any individual with regard to his compensation, terms, conditions, or privileges of employment because of such person's parental status.

SECTION 5. RETALIATION AND COERCION PROHIBITED.

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

(B) **COERCION** - A covered entity shall not coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of the individual's having exercised, enjoyed, assisted in, or encouraged the exercise or enjoyment of, any right granted or protected by this Act.

SECTION 6. OTHER PROHIBITIONS.

(A) **COLLECTION OF STATISTICS** - The Commission shall not collect statistics on parental status from covered entities, or compel the collection of such statistics by covered entities.

(B) **QUOTAS** - A covered entity shall not adopt or implement a quota on the basis of parental status.

SECTION 7. PROOF OF VIOLATION.

(A) **PROOF OF VIOLATION** - For purposes of this Act, a violation is established -

(1) subject to the provisions of Section 8 below, when a complaining party demonstrates that a covered entity has taken action against an individual based on that individual's parental status, or to retaliate against or coerce an individual in violation of Section 5 of this Act; or

(2) when a complaining party demonstrates that parental status or retaliation or coercion of an individual was a motivating factor for any employment practice, even though other factors also motivated the practice.

(B) **DISPARATE IMPACT** - The fact that an employment practice has a disparate impact, as the term 'disparate impact' is used in section 703(k) of

the Civil Rights Act of 1964 (42 U.S.C. § 2000e-2(k)), on the basis of parental status does not establish a prima facie violation of this Act.

SECTION 8. DEFENSES.

(A) **RELIGIOUS ORGANIZATIONS** - It shall not be a violation of this Act for a religious organization to fail or refuse to hire or to discharge an individual whose parental status violates the sincerely held religious beliefs of that religious organization.

(B) **ACTIONS IN A FOREIGN COUNTRY** - It shall not be a violation of 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.

(1) Where an action alleged to violate this Act is undertaken in a foreign country by an entity incorporated in a foreign country, that action will be presumed to be covered by this Act if the entity is controlled by an American entity that is covered by this Act. The determination of control shall be based on the factors set forth in section 702(c)(3) of Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-1(c)(3)).

SECTION 9. ENFORCEMENT.

(A) **ENFORCEMENT POWERS** - 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 -

(1) the Commission shall have the same powers as the Commission has to administer and enforce -

(A) title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq.*); or

(B) sections 302 and 304 of the Government Employee Rights Act of 1991 (2 U.S.C. §§ 1202 and 1220);

in the case of a claim alleged by the individual for a violation of such title or of section 302(a)(1) of such Act (2 U.S.C. § 1202(a)(1)), respectively;

(2) the Librarian of Congress shall have the same powers as the Librarian of Congress has to administer and enforce title VII of the Civil Rights Act of

1964 (42 U.S.C. § 2000e *et seq.*) in the case of a claim alleged by the individual for a violation of such title;

(3) the Board (as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. § 1301)) shall have the same powers as the Board has to administer and enforce the Congressional Accountability Act of 1995 (2 U.S.C. § 1301 *et seq.*) in the case of a claim alleged by the individual for a violation of section 201(a)(1) of such Act (2 U.S.C. § 1311(a)(1));

(4) the Attorney General shall have the same powers as the Attorney General has to administer and enforce –

(A) title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq.*); or

(B) sections 302 and 304 of the Government Employee Rights Act of 1991 (2 U.S.C. § 1202 and 1220);

in the case of a claim alleged by the individual for a violation of such title or of section 302(a)(1) of such Act (2 U.S.C. § 1202(a)(1)), respectively;

(5) the President, the Commission, and the Merit Systems Protection Board shall have the same powers as the President, the Commission, and the Board, respectively, have to administer and enforce sections 451 and 452 of title 3, United States Code, in the case of a claim alleged by the individual for a violation of section 411(a)(1) of such title;

(6) a court of the United States shall have the same jurisdiction and powers as the court has to enforce –

(A) title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq.*) in the case of a claim alleged by the individual for a violation of such title;

(B) sections 302 and 304 of the Government Employee Rights Act of 1991 (2 U.S.C. § 1202 and 1220) in the case of a claim alleged by the individual for a violation of section 302(a)(1) of such Act (2 U.S.C. § 1202(a)(1));

(C) the Congressional Accountability Act of 1995 (2 U.S.C. § 1301 *et seq.*) in the case of a claim alleged by the individual for a violation of section 201(a)(1) of such Act (2 U.S.C. § 1311(a)(1)); and

(D) section 451 of title 3, United States Code, in the case of a claim

alleged by the individual for a violation of section 411(a)(1) of such title.

(B) PROCEDURES AND REMEDIES - The procedures and remedies applicable to a claim alleged by an individual for a violation of this Act are -

(1) the procedures and remedies applicable for a violation of title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq.*) in the case of a claim alleged by the individual for a violation of such title;

(2) the procedures and remedies applicable for a violation of section 302(a)(1) of the Government Employee Rights Act of 1991 (2 U.S.C. § 1202(a)(1)) in the case of a claim alleged by the individual for a violation of such section;

(3) the procedures and remedies applicable for a violation of section 201(a)(1) of the Congressional Accountability Act of 1995 (2 U.S.C. § 1311(a)(1)) in the case of a claim alleged by the individual for a violation of such section; and

(4) the procedures and remedies applicable for a violation of section 411(a)(1) of title 3, United States Code, in the case of a claim alleged by the individual for a violation of such section.

⊗ ADDITIONAL REMEDIES - Notwithstanding any limitation on the remedies specified in section 9(B) of this Act, and in addition to the remedies specified in section 9(B) above, any covered entity who violates this Act shall be liable for such compensatory or punitive damages as may be appropriate, except that neither a State nor the United States shall be liable for punitive damages.

(D) OTHER APPLICABLE PROVISIONS - With respect to a claim alleged by a covered employee (as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. § 1301)) for a violation of this Act, title III of the Congressional Accountability Act of 1995 (2 U.S.C. § 1381 *et seq.*) shall apply in the same manner as such title applies with respect to a claim alleged by such a covered employee for a violation of section 201(a)(1) of such Act (2 U.S.C. § 1311(a)(1)).

SECTION 10. STATE AND FEDERAL IMMUNITY.

(A) STATE IMMUNITY - A State shall not be immune under the 11th amendment to the Constitution from an action in a Federal court of competent jurisdiction for a violation of this Act.

(B) REMEDIES AGAINST THE UNITED STATES AND THE STATES -

Notwithstanding any other provision of this Act, in an action or administrative proceeding against the United States or a State for a violation of this Act, remedies (including at law and in equity, and interest) are available for the violation to the same extent as the remedies are available for a violation of title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq.*) by a private entity, except that punitive damages are not available.

SECTION 11. ATTORNEYS' FEES.

Notwithstanding any other provision of this Act, in an action or administrative proceeding for a violation of this Act, an entity described in section 9(a) (other than paragraph (4) of such section), in the discretion of the entity, may allow the prevailing party, other than the United States, a reasonable attorney's fee (including expert fees) as part of the costs. The United States shall be liable for the costs to the same extent as a private person.

SECTION 12. POSTING NOTICES.

A covered entity shall post notices for employees, applicants for employment, and members, to whom the provisions specified in section 9(b) apply, 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 13. REGULATIONS.

(A) IN GENERAL - Except as provided in subsections (B), (C), and (D), 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 referred to in section 19(a)(3) shall have authority to issue regulations to carry out this Act, in accordance with section 304 of the Congressional Accountability Act of 1995 (2 U.S.C. § 1384), with respect to covered employees, as defined in section 101 of such Act (2 U.S.C. § 1301).

(D) PRESIDENT - The President shall have authority to issue regulations to carry out this Act with respect to covered employees, as defined in section 401 of title 3, United States Code.

SECTION 14. RELATIONSHIP TO OTHER LAWS.

This Act shall not invalidate or limit the rights, remedies, or procedures available to

an individual claiming discrimination prohibited under any other Federal law or any law of a State or political subdivision of a State.

SECTION 15. SEVERABILITY.

If any provision of this Act, or the application of the provision to any person or circumstance, is held to be invalid, the remainder of this Act and the application of the provision to any other person or circumstance shall not be affected by the invalidity.

SECTION 16. EFFECTIVE DATE.

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

States Prohibiting Discrimination on the Basis of Parental Status

A number of states and the District of Columbia prohibit discrimination on the basis of parental or family status. Those states that prohibit discrimination on the basis of family status define it to include parents.

Alaska

According to Alaskan state law, it is the policy of the state to "eliminate and prevent discrimination in employment... because of parenthood." (Alaska Stat. @ 18.80.200 (1998))

"It is unlawful for an employer to refuse employment to a person, or to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment because of the person's race, religion, color, or national origin, or because of the person's age, physical or mental disability, sex, marital status, changes in marital status, pregnancy, or parenthood when the reasonable demands of the position do not require distinction on the basis of age, physical or mental disability, sex, marital status, changes in marital status, pregnancy, or parenthood." (Alaska Stat. @ 18.80.200 (1998))

In addition, Alaskan state law prohibits an employer from printing or circulating a "statement, advertisement, or publication, or to use a form of application for employment or to make an inquiry in connection with prospective employment, that expresses, directly or indirectly, a limitation, specification, or discrimination as to ... parenthood, unless based upon a bona fide occupational qualification." (Sec. 18.80.220.)

Kentucky

Kentucky law specifies that it is the purpose of state law to "safeguard all individuals within the state from discrimination because of familial status, race, color, religion, national origin, sex, age forty (40) and over, ... thereby to protect their interest in personal dignity and freedom from humiliation, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest which would menace its democratic institutions, to preserve the public safety, health, and general welfare, and to further the interest, rights, and privileges of individuals within the state." (KRS @ 344.020 (Michie 1996))

Michigan

Michigan state law provides: "The opportunity to obtain employment, housing and other real estate, and the full and equal utilization of public accommodations, public service, and educational facilities without discrimination because of religion, race, color, national origin, age, sex, height, weight, familial status, or marital status as

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 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 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))

D.C.

The District of Columbia prohibits employment discrimination on the basis of family responsibilities. It states that it is unlawful discriminatory practice to "fail or refuse to hire, or to discharge, any individual; or otherwise to discriminate against any individual, with respect to his compensation, terms, conditions, or privileges of employment, including promotion; or to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect his status as an employee" based on family responsibilities.(See D.C.Code @ 1-2501 et seq.)

Parental
Discrimination

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).

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, both in the character of their job and in terms of hiring and advancement, 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 taking 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. It would also prohibit employers from hiring a woman without children over a more qualified man with children because the hired employee did not have children. In general, the President's proposal would protect workers from unfair assumptions about their commitment to their job that can affect 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 a number of cases in which employees describe instances of discrimination due to their status as parents. Therefore, though the problem may not be rampant, it is a problem that deserves a remedy. This form of discrimination should simply not take place 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. In fact, 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 against themselves, an often difficult burden in employment discrimination cases. Therefore, there is no reason to think it will cause unnecessary litigation. Indeed, only if this is a rampant, pervasive problem would it cause an 'avalanche' of litigation.

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

As President Clinton said in his State of the Union Address, it ought to 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 repeatedly was passed over for promotions by employers who allegedly told her that working mothers don't do either job well [check]. A federal judge ruled that current law offers parents no protection against such discrimination.

Joann Trezza is not alone. In response to cases like hers around the country, a handful of states -- New York, ____, ____ -- have adopted laws to prohibit employment discrimination against parents.

The President's legislation, which will be introduced by Sen. Chris Dodd (D-CT), is a narrow, carefully tailored proposal to protect mothers and fathers who can prove direct evidence of discrimination by an employer who believes parents as a class don't make good workers. This bill would not affect hiring and promotions 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 argue that employers never discriminate against parents and that this bill will unleash a flood of litigation. Both can't be true. If an employer doesn't discriminate, this bill won't cost them a penny. Working parents don't have time to file frivolous lawsuits.

Others say we shouldn't prohibit parental discrimination unless it's rampant. But surely, outright discrimination against a parent is wrong and deserves a remedy, no matter how many cases have been brought so far.

__ million Americans are working parents -- more than at any time in our history. They deserve to be treated fairly. If this Congress is truly pro-family, it will pass this legislation in a heartbeat.

ADD:

*something on partnership tracks and maternity leaves

* something on overall family agenda: Businesses and government need to do everything they can to help working parents succeed at work and at home.

Give Working Parents a Fair Shake

by Bruce Reed

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 law offers her no protection as a parent against such discrimination.

Joann 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-CT), 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 as a class 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. This bill would not affect hiring and promotions 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 will unleash a flood of litigation. The truth is, if an employer doesn't discriminate, this bill won't cost them a penny. Working parents don't have time to file frivolous lawsuits.

Others say 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 pass this legislation in a heartbeat.

Bruce Reed is President Clinton's domestic policy adviser.

Talking Points
5.2.00

*Parental
discrimination*

In a moment I want to give you an overview of the President's school reform tour tomorrow and Thursday. But first let me say a word about today's conference on raising responsible teenagers, and then turn it over to Shirley Sagawa. By the way, if you haven't seen it, you should get a copy of the book Shirley and Eli Segal called *Common Interest, Common Good: Creating Value through Business and Social Sector Partnerships*. That's a first: a good book by someone who left the Clinton White House.

The purpose of this conference is to do exactly what Shirley talks about in her book: to help motivate people in all walks of life to take steps that government can't do on its own. As the President and First Lady have often said, governments don't raise children, parents do. This conference is about what all sectors of society to make it easier for parents to do that job where it's the hardest, with teenagers.

I want to highlight one step the President announced today, which is the EO on parental discrimination in the federal workforce. As you may recall, in the 1999 State of the Union, the President called on Congress to take steps to prevent employers from discriminating against parents. Sens. Dodd and Kennedy sponsored legislation to do that, but Congress has not acted on it.

So today the President is taking executive action to do for the federal workforce what we would like Congress to do for the country. The Order would bar discrimination against parents in all aspects of employment, including recruitment, referral, hiring, promotions, discharge, training, and other terms and conditions of employment, and 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. The Order would not interfere with an employer's ability to select workers who are able to perform the jobs in question; it would simply ensure that workers are not discriminated against simply because they are parents.

We will continue to press Congress for that legislation, and for the rest of our family agenda – including expanding FMLA for PT conferences, drs appts, and covering more workers.

Case Examples of Parental Discrimination

~~383-2114~~
Parental
Discrimination

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.)

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))

Termination

Plaintiff, a truck driver and parent, was given much longer hours, with often little notice of a long run, after she miscarried. After complaining about her hours, she and her employer worked out an arrangement in which she would be given due notice of times when she would be required to work late, so that she may make child care arrangements. On one occasion, the plaintiff refused a dispatch because she had not been given advance notice that she would be required to work late, contrary to the prior agreement between the parties. Her refusal to take the dispatch led to her termination. While the court noted evidence that indicated the employer may have harbored "discriminatory animus towards employees with families, or working parents," the court found insufficient evidence of gender discrimination and therefore found no cognizable discrimination under federal law. The court dismissed the claims on a summary judgment motion. (Nelms v. Overnight Transportation Company, 1996 U.S. Dist. LEXIS 3827, (1996), District Court in Michigan)

Termination

Plaintiff worked since her employment with the defendant company as an accountant and after 15 years of promotions, positive performance reviews and bonuses, she attained the position of Director of Advertising Sales Administration. When plaintiff was six months pregnant, a new female Director of Advertising was hired (who was lesbian), as her immediate boss. After her pregnancy, plaintiff took maternity leave. When she returned to work, she found her job responsibilities diminished, she was often assigned tasks normally performed by lower-level employees, her responsibilities were usurped, she was often reprimanded for not working on her days off, and was generally isolated. Within a year of returning to work, plaintiff was told her job was being eliminated and she was then terminated with three weeks notice. Plaintiff claimed that her job functions allegedly did not cease, but were performed instead by the employee who replaced plaintiff during her maternity leave. She argued that her new boss, a lesbian, and the director for her bureau, a single woman without children, were hostile toward her as a married mother. While the court dismissed most of her claims, it did allow her to survive a summary judgment motion on her Title VII claims (though it did not specify its rationale its holding). (Coraggio v. Time Inc. Magazine, 66 Empl. Prac. Dec. (CCH)

P43,578 (1995) Southern District of New York).

Demotion/Termination

Three plaintiffs filed suit against their former employer alleging pregnancy discrimination. All three plaintiffs faced a hostile working environment after they informed their employer that they were pregnant, and each faced reduced hours, reduced pay, demotion or termination after they returned from maternity leave as mothers of young children. Because their alleged discrimination started when they were pregnant, the court found that their claim of pregnancy discrimination could survive a motion to dismiss. (*Donaldson, Morale, and Zavilla v. American Banco Corporation, Inc.*, 945 F. Supp. 1456 (1996) (U.S. D.Ct. Colorado)). However, the President's proposal would extend such protection to employees of both sexes who face similar discrimination only after childbirth.

Termination

Plaintiff requested time off for the birth of his child before the Family and Medical Leave Act was the law of the land. When he discussed his request with his employer, he was told that he "better not take off work." Indeed, his employer admitted ahead of time that if he was terminated it would be solely because he wanted to take time off for the birth of his child. After he took leave and was terminated, he filed suit on the basis of pregnancy discrimination. The court rejected that claim and because FMLA did not apply, the Court held that the plaintiff had no cognizable claim. (*Cooper v. Drexel Chemical Company*, 949 F. Supp. 1275 (1996) U.S. D.Ct. Northern District of Mississippi) The President's proposal would protect such an employee if other non-parents were allowed to take time off.

Give Working Parents a Fair Shake
by Bruce Reed

*If any questions
page here
Parental
Discrimination*

As President Clinton said in his State of the Union Address, it ought to 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 repeatedly was passed over for promotions by employers who allegedly complained that working mothers don't do either job well. A federal judge ruled that current law offers her no protection as a parent against such discrimination.

Joann Trezza is not alone. In response to cases like hers around the country, a handful of states -- ~~New York~~, Michigan, Pennsylvania, Alaska -- have adopted laws to prohibit employment discrimination against parents.

Soon the President will send Congress legislation, sponsored by Sen. Chris Dodd (D-CT), to protect parents from discrimination at work. It would prohibit employers from refusing to hire or promote mothers and fathers out of some belief that parents as a class don't make good workers. [For example, firms shouldn't be able to take all parents off partnership tracks, or hold a mother's status as a parent against her when she returns from maternity leave.] *only here people without children out of some [mistaken] notion that parents can't commit to the job.*

The bill is narrowly tailored to cover only the most egregious cases of overt discrimination against a parent. This bill would not affect hiring and promotions 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 raised predictable arguments that on the one hand, discrimination against parents doesn't exist, and on the other, this bill will unleash a flood of litigation. The truth is, if an employer doesn't discriminate, this bill won't cost them a penny. Working parents don't have time to file frivolous lawsuits.

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

Fact: Almost half of all American workers are parents, 46% (97%)
million Americans are working parents -- more than at any time in our history. They deserve to be treated fairly. If this Congress is truly pro-family, it will pass this legislation in a heartbeat.

Indeed - we must honor parents, not punish them for their choices to start a family.

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Los Angeles Times

Parental
Discrimination

April 17, 1999, Saturday, Home Edition

SECTION: Part A; Page 20; National Desk

LENGTH: 1093 words

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

BYLINE: MELISSA HEALY, TIMES STAFF WRITER

DATELINE: WASHINGTON

BODY:

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

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

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

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

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

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

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

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 - NOT FOR QUOTATION**Prohibiting Discrimination Against Parents**

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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).

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.2nd 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.3rd 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.

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February 16, 1999, Tuesday

SECTION: USA; Pg. 1

LENGTH: 986 words

HEADLINE: Job bias on the basis of ... parenthood

BYLINE: Shelley Donald Coolidge, Staff writer of The Christian Science Monitor

DATELINE: LOS ANGELES

BODY:

It may be one of the most overlooked forms of discrimination in the workplace: the refusal to hire or promote people because they have children.

The issue has long been a staple of Hollywood movies. Now it is gaining visibility in the cubicles and corner offices of corporate America.

In an era of two-parent working families, employees are increasingly pressing companies to accommodate family demands. At the same time, employers are struggling to determine how far they can go in meeting workers' needs - without compromising the bottom line.

Inevitably, conflicts occur. Determining when a company is actually discriminating against someone on the basis of parenthood, though, is difficult. "It's the kind of thing that happens but isn't ever spoken of," says Craig Platt, a consultant on discrimination issues in Alameda, Calif.

Companies cannot refuse to hire or promote people on the basis of race, religion, gender, color, or national origin. But US law says nothing about parenthood.

That may be changing. A handful of states and cities now have laws that prohibit companies from discriminating against workers on the basis of parental or familial status.

President Clinton also gave a nod to the issue during his State of the Union address, calling on Congress to pass a law preventing companies from refusing to hire or promote workers simply because they have children.

Still, the seriousness of the problem is difficult to determine. Recently a handful of such cases have emerged. But the US Constitution does not specifically protect

against antiparent bias.

Most of the concern is anecdotal: A family man suspects he was passed over for a promotion because it's cheaper to relocate a single person; or a mother sees a promotion go to a woman without children.

"It's a problem [that] we haven't seen it's full extent yet," says David Larson, a law professor at Creighton University in Omaha, Neb., who studies employment law.

"When you've got employers trying to keep their work forces as small as possible," he argues, "they may be very selective and discriminatory in who they choose for that core group of workers."

Mr. Platt says he's seen companies overlook employees with children for assignments that involve traveling or relocating. "When you have children, you are considered less flexible..." he contends.

In addition, he says, companies that downsize will opt to get rid of employees with "family problems," such as workers who frequently are absent to stay home with their kids.

"There has been a longstanding problem of greater or lesser magnitude regarding the hiring of parents," adds Judy Clark, president of HR Answers, a national human resources consulting firm based in Portland, Ore.

"I don't know if it will ever be as blatant as, 'You've got kids, I won't hire you,' " she says. "It will be more subtle than that: 'You aren't working as hard; you aren't putting in the extra effort.' "

Passed over for promotion

In a case filed recently, Joann Trezza, a New York lawyer who has worked for the insurance company The Hartford Inc. since 1978, claims she was passed over for promotions several times because she is married with two children. The jobs went to childless women or men with children.

She also claims her supervisors made disparaging remarks about working mothers, such as: "Women are not good planners, especially women with kids."

"If you're a man with children, employers see you as more responsible, more capable of doing your job," says Ms. Trezza's lawyer, Steven Eckhaus of Eckhaus & Olson. "If you're a woman with children, many employers see it as a problem."

The Hartford does not comment on pending cases.

But it's difficult to determine how big a problem this is. "The cases sure aren't arising," says Elaine Shoben, a law professor at the University of Illinois at Urbana-Champaign who studies employment law. "But it would be a simple enough thing to [discriminate]."

Title VII of the Civil Rights Act of 1964 expressly prohibits discrimination based on race, color, religion, sex, and national origin. The law, however, does not include marital or family status. That means companies can discriminate against workers with children, as long as they discriminate against men and women equally.

"Companies certainly have the right to hire the best person for the job," says Donna Lenhoff, general counsel of the National Partnership for Women and Families in Washington.

"What this law would do is require an employer to make an individual determination," she says, and not one based on unfair assumptions about a group - in this case that someone with children will be less productive or less available.

Laws to protect parents

Several states and cities - including New Jersey, Michigan, Alaska, Washington, D.C., New York City, and Miami - have statutes prohibiting discrimination based on familial status. The president is calling on Congress to adopt a similar measure.

"Workers should not be discriminated against simply because they have children," says Jennifer Klein, special assistant to the president for domestic policy. "We must support those people who are managing to meet their responsibilities at work and at home."

Legal consultants, however, agree that such cases would be tough to prove.

And some in corporate America argue that such problems aren't an issue. "This is a solution in search of a problem," says Susan Meisinger, senior vice president of the Society for Human Resource Management in Alexandria, Va.

In fact, she says, the tight labor market is forcing companies to move in the other direction. "The whole trend has been for greater flexibility," she says, "and to allow for greater work-life balance."

October 28, 1999

*Parental
Discrimination*

MEMORANDUM

TO: ✓ BRUCE REED
ERIC LIU

FROM: NICOLE RABNER
ANN O'LEARY

SUBJECT: PROPOSED EXECUTIVE ORDER ON PARENTAL DISCRIMINATION

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

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

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

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

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

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

There are several options to consider:

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

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

Please advise on how you would like us to proceed.

EXECUTIVE ORDER

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

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

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

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

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

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

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

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

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

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

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

WILLIAM J. CLINTON

THE WHITE HOUSE

[date]

File: Parental Discrimination Burke - Miss. all the cases

Case Examples of Parental Discrimination

36 L. 0493

Don't go any to send the full case next

good

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*, 352 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) Appellate 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. (*Trezeu v. The Hartford Ins.*, 1998 W.L. 912101 (Southern District of New York). While under present law she would have to prove that a man received promotions who was in the same situation she was in, a heavy burden to meet (that the court recognized was often impossible to meet), our proposed law would simply prohibit such actions. *- They were already contacted by the Christian Science Monitor, so we're pretty good*

good

Demotion/constructive termination

While plaintiff was on maternity leave, her job was given to a new employee. When plaintiff returned from maternity leave, she was offered a job that was a demotion to an hourly wage job from a salaried position. She refused the position and alleged that she was discriminated against because she had a family. The court held that discrimination based on new parenthood does not

state a claim under the Pregnancy Discrimination Act, nor is it cognizable gender discrimination. (*Santizos v. Aramark Corporation*, 1998 U.S. Dist. LEXIS 15946 (U.S. Northern District of Illinois))

Termination

Plaintiff, a truck driver and parent, was given much longer hours, with often little notice of a long run, after she miscarried. After complaining about her hours, she and her employer worked out an arrangement in which she would be given due notice of times when she would be required to work late, so that she may make child care arrangements. On one occasion, the plaintiff refused a dispatch because she had not been given advance notice that she would be required to work late, contrary to the prior agreement between the parties. Her refusal to take the dispatch led to her termination. While the court noted evidence that indicated the employer may have harbored "discriminatory animus towards employees with families, or working parents," the court found insufficient evidence of gender discrimination and therefore found no cognizable discrimination under federal law. The court dismissed the claims on a summary judgment motion. (*Nelms v. Overnight Transportation Company*, 1996 U.S. Dist. LEXIS 3527, (1996), District Court in Michigan)

Termination

Plaintiff worked started her employment with the defendant company as an accountant and after 15 years of promotions, positive performance reviews and bonuses, she attained the position of Director of Advertising Sales Administration. When plaintiff was six months pregnant, a new female Director of Advertising was hired (who was lesbian), to her immediate boss. After her pregnancy, plaintiff took maternity leave. When she returned to work, she found her job responsibilities diminished, she was often assigned tasks normally performed by lower-level employees, her responsibilities were usurped, she was often reprimanded for not working on her days off, and was generally isolated. Within a year of returning to work, plaintiff was told her job was being eliminated and she was then terminated with three weeks notice. Plaintiff claimed that her job functions allegedly did not cease, but were performed instead by the employees who replaced plaintiff during her maternity leave. She argued that her new boss, a lesbian, and the director for her bureau, a single woman without children, were hostile toward her as a married mother. While the court dismissed most of her claims, it did allow her to survive a summary judgment motion on her Title VII claims (though it did not specify its rationale its holding). (*Coraggio v. Time Inc. Magazine*, 66 Empl. Prac. Dec. (CCH) P43,578 (1995) Southern District of New York).

Demotion/Termination

Three plaintiffs filed suit against their former employer alleging pregnancy discrimination. All three plaintiffs faced a hostile working environment after they informed their employer that they were pregnant, and each faced reduced hours, reduced pay, demotion or termination after they returned from maternity leave as mothers of young children. Because their alleged discrimination started when they were pregnant, the court found that their claim of pregnancy discrimination could survive a motion to dismiss. (*Donaldson, Morale, and Zavilla v. American Banco Corporation, Inc.*, 945 F. Supp. 1456 (1996) (U.S. D.Ct. Colorado)). However, the President's proposal would extend such protection to employees of both sexes who face similar

discrimination only after childbirth.

Termination

Plaintiff requested time off for the birth of his child before the Family and Medical Leave Act was the law of the land. When he discussed his request with his employer, he was told that he "better not take off work." Indeed, his employer admitted ahead of time that if he was terminated it would be solely because he wanted to take time off for the birth of his child. After he took leave and was terminated, he filed suit on the basis of pregnancy discrimination. The court rejected that claim and because FMLA did not apply, the Court held that the plaintiff had no cognizable claim. (Cooper v. Drexel Chemical Company, 949 F. Supp. 1275 (1996) U.S. D.Ct. Northern District of Mississippi) The President's proposal would protect such an employee if other non-parents were allowed to take time off.

1998 U.S. Dist. LEXIS 20206 printed in FULL format.

JOANN TREZZA, Plaintiff, -against- THE HARTFORD, INC.,
HARTFORD FINANCIAL SERVICES GROUP INC., TUTOKI & LEVY, BRYAN
F. MURPHY and JAMES J. KEATING, Defendants.

*Paraphrase
Discrimination*

98 Civ 2205 (MBM)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
NEW YORK

1998 U.S. Dist. LEXIS 20206; 78 Fair Empl. Prac. Cas. (BNA)
1026

December 28, 1998, Decided
December 30, 1998, Filed

DISPOSITION: [*2] Defendants' motion to dismiss granted in part and denied
in part, and Claims 1-3 and 8 dismissed.

NOTE TERMS: prima facie, sex, hostile work environment, promotion, promoted,
written, disparate impact, sex-plus, discriminatory, married, harassment,
motion to dismiss, protected class, basis of sex, hostile, abusive, hiring,
disparate treatment, discriminate, time-barred, conclusory, separately,
imbalance, pervasive, isolated, skills, work environment, married women,
labor market, per curiam

COUNSEL: STEVEN G. ECKHAUS, ESQ., Eckhaus & Olson, New York, N.Y., for
Plaintiff.

SCOTT J. WENNER, ESQ., TODD A. BROMBERG, ESQ., Little & Mendelson, New York,
N.Y., for Defendants.

JUDGE: Michael S. Mukasey, U.S. District Judge.

OPINION: Michael S. Mukasey

OPINION: OPINION AND ORDER

MICHAEL S. MUKASEY, U.S.D.J.,

Joann Trezza sues The Hartford, Inc., Hartford Financial Services Group Inc
(together "Hartford"), Tutoki & Levy, Bryan F. Murphy and James J. Keating,
alleging discrimination on the basis of sex in violation of 42 U.S.C. § 2000 et
seq. ("Title VII"), N.Y. Exec. Law § 295 et seq. and N.Y.C. Admin. Code § 8-1-1
et seq. Pursuant to Fed. R. Civ. P. 12(b)(6), defendants move to dismiss
seven of plaintiff's eleven claims, specifically those related to hostile work
environment sexual harassment (Claims 1-3), discriminatory failure to promote
(Claims 4-6) and disparate impact discrimination (Claim 8). For the reasons
stated below, defendants' motion is granted in part and denied in part, and
Claims 1-3 and 8 are dismissed.

-Footnotes-

*1 Claims of discrimination brought under the New York Executive Law and the
New York City Administrative Code are governed by the same substantive

principles as govern a Title VII claim. See, e.g., Tomka v. Seiler Corp., 56 F.3d 1295, 1295 n.4 (2d Cir. 1995); Boyer v. Viacom Inc., 22 F. Supp. 2d 701, 701 n.2 (S.D.N.Y. 1998). In the analysis that follows, therefore, I apply Title VII jurisprudence to plaintiff's claims.

- - - - -End Footnotes- - - - -

[*2]

The following relevant facts are taken to be true for purposes of this motion. Plaintiff, a resident of New Jersey, is an attorney employed in New York City by defendant Tutoki & Levy, the legal department for defendant Hartford. (Compl. PP 5, 9, 12) n2 She is married and the mother of two children, ages 11 and 5. (Id. P 19)

- - - - -Footnotes- - - - -

n2 "Compl." refers to the Aetna Complaint, filed on May 14, 1998.

- - - - -End Footnotes- - - - -

Defendant Murphy is a Senior Vice President of Hartford in charge of claims and legal departments nationwide. (Id. P 9) Defendant Keating was, until December 1997, Hartford's Assistant General Counsel, and was recently appointed Hartford's Assistant Vice President. (Id. P 10) In that capacity, he is responsible for all of Hartford's in-house law offices east of the Mississippi River. (Id.)

Plaintiff began working for Hartford in 1978 as a staff attorney in the company's New York City legal office, which was then known as Langan & Levy, Esqs. ("Langan & Levy"), but which came to be known as Tutoki & Levy. [*3] (Id. P 17) After her fifth year of employment, plaintiff was promoted to Senior Staff Attorney. (Id. P 18) At the time of her hiring and her promotion to Senior Staff Attorney, plaintiff did not yet have children. (Id. P 20)

In late 1991 or early 1992, Hartford denoted the Managing Attorney of its Valhalla, New York, legal office. (Id. P 23) Instead of appointing a new Managing Attorney, Hartford decided that an attorney from the New York City office of Langan & Levy should oversee the Valhalla office, a task that would entail traveling to Valhalla approximately three to four times per week. (Id.) The responsibility was given to Rachelle Cohen, who was then, like plaintiff, a Senior Staff Attorney at Langan & Levy. (Id.) Unlike plaintiff, however, Cohen was unmarried and without children at the time. (Id.) In addition, plaintiff was senior to Cohen, having been employed by Hartford "for a slightly longer period." (Id. P 24) When asked why she had not been considered for the Valhalla job, the Managing Attorneys of Langan & Levy told plaintiff that because she had a family they assumed she would not be interested in the position. (Id. P 23)

In 1993, [*4] plaintiff was "in line for" promotion to Assistant Managing Attorney. (Id. P 24) Instead of promoting plaintiff, however, Hartford promoted Cohen and another employee, Lenny Rubosto. (Id.) Cohen was still unmarried and childless; Rubosto was married with children. (Id.) After learning that she was not promoted, plaintiff contacted defendant Murphy and informed him that she felt Hartford was discriminating against her because she was a woman with

children. (Id. P 25) Plaintiff urged Murphy to review her employment record and to provide her with a nondiscriminatory reason for not promoting her. (Id.) Two weeks later, Murphy informed plaintiff that she was being considered for a promotion. (Id. P 25) Two months later, plaintiff was in fact promoted to the position of Assistant Managing Attorney. (Id.)

Hartford requires all applicants for promotion to managerial levels to take "an extensive eight hour test." (Id. P 26) The test examines "various areas," such as reading and comprehension skills, writing skills and mathematical skills. (Id. P 27) The test also includes an extensive psychological component, including psychological testing and evaluation [*5] by a psychiatrist. (Id.) Prior to her promotion to Assistant Managing Attorney, plaintiff took this test. (Id. P 28) There is no allegation in the complaint, however, regarding plaintiff's performance on the test.

Plaintiff alleges that, on three occasions between April 1995 and March 1997, defendants Murphy and Keating subjected her to disparaging remarks "about the incompetence and laziness of women who are also working mothers." (Id. P 30) First, in April 1995, during a business dinner attended by plaintiff, Murphy, Keating and four other male executives, Murphy allegedly stated that "women are not good planners, especially women with kids." (Id. P 29) When plaintiff complained to Murphy about this remark, he allegedly responded that "truth is an absolute defense." (Id. P 30)

Second, in February 1997, during a conversation between Murphy and plaintiff, Murphy allegedly declared that working mothers cannot be both good mothers and good workers, stating, "I don't see how you can do either job well." (Id. P 31) Finally, in March 1997, Keating told plaintiff that if her husband, an attorney in private practice, won "another big verdict," she "would be sitting [*6] here eating donuts." (Id. P 32) As a result of these remarks and a generally hostile work environment, the complaint alleges, plaintiff began to suffer physical ailments, including arrhythmia, loss of appetite and sleeplessness. (Id. P 33) These conditions required medical treatment. (Id. P 34)

In mid-1997, following Murphy's and Keating's disparaging remarks, John Langan, the Managing Attorney of Langan & Levy and a father of four children, retired, making available the position of Managing Attorney. (Id. P 40) Plaintiff, who was the second most senior attorney in the office and had received "consistently excellent employment evaluations," with higher grade point evaluations than the other two Assistant Managing Attorneys in the New York office, asked to be considered for the opening. (Id. PP 41-43) Nevertheless, plaintiff was not considered for the position, which remained open for an unspecified time. (Id. P 44) During the period in which the job remained open, defendants asked two men, both with children, about whether they were interested in the position. (Id.) Both men declined to be considered for the job. (Id.) In August 1997, defendants named [*7] Jane Tutoki the Managing Attorney of the New York office, which thereafter changed its name to Tutoki & Levy. (Id. P 45) Tutoki, a 38-year-old woman without children, had "considerably less legal experience" than plaintiff, had never practiced law in New York and was not admitted to practice in New York courts. (Id.)

In addition to setting forth the foregoing facts, the complaint alleges that only seven of the approximately 46 Managing Attorneys employed by Hartford nationwide are women. (Id. P 47) Of these seven, four are employed on the East Coast of the United States. (Id.) Of these four, none has school-age children.

(Id.) In contrast, "many of the men promoted to Managing Attorney have school age children." (Id. P 49)

On March 4, 1998, plaintiff filed a summons and complaint in Supreme Court, New York County, and served copies of her complaint upon the New York City Cooperation Counsel and the New York City Commission on Human Rights. (Id. PP 2-3) On or about March 26, 1998, defendants removed the case to this court pursuant to 28 U.S.C. §§ 1331, 1367 and 1441 (1994). (Id. P 2) Notice of Removal PP 4-5) Thereafter, on March 27, 1998, plaintiff [*8] filed a charge of discrimination with the Equal Employment Opportunity Commission (the "EEOC"); n3 (Compl. P 4)

-Footnotes-

n3 The EEOC apparently issued plaintiff a right-to-sue letter on June 3, 1998. (See P1. Mem. at 1)

-End Footnotes-

On May 14, 1998, plaintiff filed an amended complaint, alleging hostile work environment sexual harassment (Claims 1-3), discriminatory failure to promote (Claims 4-6), intentional infliction of emotional distress (Claim 7), disparate impact discrimination (Claim 8) and discriminatory retaliation (Claims 9-11). Plaintiff seeks compensatory damages, punitive damages and various forms of injunctive relief. Plaintiff's emotional distress and retaliation claims are not the subject of the present motion.

On a motion to dismiss for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6), the court should dismiss the complaint if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Northrop v. Hoffman of Simsbury, Inc., 134 F.3d 51, 62 (2d Cir. 1997) (quoting Conley v. Gibson, 355 U.S. 41, 45-46, 2 L. Ed. 2d 80, 78 S. Ct. 99 (1957)). It is not the court's function to weigh the evidence that might be presented at trial; instead, the court must merely determine whether the complaint itself is legally sufficient. See Goldman v. Belden, 754 F.2d 1059, 1057 (2d Cir. 1985). In doing so, the court must accept the material facts alleged in the complaint as true, and draw all reasonable inferences in favor of the plaintiff. See Gant v. Wallingford Bd. of Educ., 69 F.3d 669, 673 (2d Cir. 1995). The issue before the court on a Rule 12(b)(6) motion "is not whether a plaintiff is likely to prevail ultimately, but whether the claimant is entitled to offer evidence to support the claims. Indeed it may appear on the face of the pleading that a recovery is very remote and unlikely but that is not the test." Id. (quoting Weisman v. Lelandais, 592 F.2d 309, 311 (2d Cir. 1978) (per curiam)).

Defendants move first to dismiss Claims 1-3 of the complaint, which allege that defendants' "acts in discriminating against (plaintiff) because she is a woman and a parent, and in creating and [*10] allowing a hostile work environment to exist against women with children" were in violation of Title VII and New York law. n4 (Compl. PP 77, 80, 82)

-Footnotes-

84 In their memorandum of law, defendants appear uncertain about whether Claims 1-3 allege more than hostile work environment sexual harassment. (See Def. Mem. at 5-7) Plaintiff herself, however, discusses these claims as alleging only hostile work environment harassment. (See Pl. Mem. at 11-12) Moreover, the only other possible basis for these claims -- the allegedly unlawful failure to promote -- is pleaded separately in Claims 4-6. Accordingly, I will treat Claims 1-3 as alleging hostile work environment harassment exclusively.

-End Footnotes-

To establish a claim of hostile work environment harassment, the workplace must be "permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." *Harris v. Forklift Systems, Inc.*, 510 U.S. [11] 17, 21, 126 L. Ed. 2d 293, 114 S. Ct. 367 (1993) (internal quotation marks and citations omitted); see *Oncale v. Sundowner Offshore Servs. Inc.*, 523 U.S. 75, 118 S. Ct. 998, 1003, 140 L. Ed. 2d 201 (1998) (calling this requirement "crucial"). "Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment -- an environment that a reasonable person would find hostile or abusive -- is beyond Title VII's purview." *Harris*, 510 U.S. at 21 (citing *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 67, 91 L. Ed. 2d 49, 106 S. Ct. 2399 (1986)). Thus, "simple teasing," offhand comments, and isolated incidents (unless extremely serious) are not enough to establish a violation of Title VII. *Faragher v. City of Boca Raton*, 141 L. Ed. 2d 562, 118 S. Ct. 2275, 2283 (1994) (citation omitted); see also *Carrero v. New York City Hous. Auth.*, 390 F.2d 569, 573 (2d Cir. 1959) ("The incidents must be more than episodic; they must be sufficiently continuous and concerted in order to be deemed pervasive"). Whether an environment is "hostile" or "abusive" depends on the totality of the circumstances. See *Harris*, 510 U.S. at 23.

In the present [12] case, plaintiff premises her hostile work environment claims on (i) defendants' having denied her promotions and (ii) denigrating statements allegedly made by Murphy, Keating and the Managing Attorneys of Langan & Levy. (See Pl. Mem. at 12) The failure to promote plaintiff is not, however, a factor relating to her workplace "environment" and, in any event, is pleaded separately in claims 4-6 of the amended complaint. Therefore, plaintiff's claims rest exclusively on defendants' alleged statements. Defendants argue, inter alia, that these statements should be disregarded on the ground that plaintiff is barred from complaining about them by the applicable statute of limitations. (See Def. Reply Mem. at 2-3)

I need not consider defendants' argument that plaintiff is time-barred from complaining about the alleged statements, because plaintiff's hostile work environment claims are insufficient as a matter of law in any event. Although several of defendants' alleged comments may be objectionable, they were "sufficiently isolated and discrete that a trier of fact could not reasonably conclude that they pervaded [plaintiff's] work environment." *Quinn v. Green Tree Credit Corp.*, [13] 159 F.3d 759, 768 (2d Cir. 1998). Indeed, it is well established that "isolated remarks or occasional episodes of harassment will not merit relief under Title VII." *Tonka*, 66 F.3d at 1305 n.5. Nor were defendants' comments, together or separately, of sufficient severity to establish a claim without regard to frequency or regularity. Cf. *Quinn*, 159 F.3d at 768.

A theory of discrimination was first articulated by the Supreme Court in *Phillips v. Martin Marietta Corp.*, 400 U.S. 542; 27 L. Ed. 2d 603, 91 S. Ct. 496 (1971) (per curiam). In *Phillips*, the defendant company refused to hire women with pre-school-aged children but hired men who had pre-school-aged children. See *id.* at 541. On appeal, the Supreme Court vacated summary judgment in favor of the defendant, holding that although all women were not affected by the policy, Title VII prohibited the use of "one hiring policy for women and another for men -- each having pre-school-age children." *Id.* at 544.

As defendants contend (see Def. Mem. at 9-10), the sex-plus theory of discrimination notwithstanding, a plaintiff must still prove disparate treatment between men and women in order to [*17] prevail on a Title VII discrimination claim. See, e.g., *Coleman v. B-C Maintenance Mgmt., Inc.*, 108 F.3d 1199, 1203 (10th Cir. 1997) ("Although the protected class need not include all women, the plaintiff must still prove that the subclass of women was unfavorably treated as compared to the corresponding subclass of men."); *Fisher I*, 70 F.3d at 1446 ("To establish that [the defendant] discriminated on the basis of sex plus marital status, plaintiff must show that married men were treated differently from married women."); *Jurinko v. Edwin L. Wiegand Co.*, 477 F.2d 1039, 1044 (3d Cir.) ("Discrimination against married women constitutes discrimination on the basis of sex only if a different standard, i.e., the marital status of the person, has been applied to men and women."); vacated on other grounds, 414 U.S. 970 (1973). But this burden must be shouldered by the plaintiff in a sex-plus discrimination case only at the pretext stage of the burden-shifting analysis. When a plaintiff alleges discrimination on the basis of sex in conjunction with some other characteristic, the defendant's selection of someone of the same sex as plaintiff but without the added [*18] characteristic is insufficient to defeat an otherwise legitimate inference of discrimination -- the essence of a plaintiff's prima facie case. Indeed, the point of *Phillips* and its progeny is that a defendant should not be able to escape liability for discrimination on the basis of sex merely by hiring some members of the protected group. Cf. *Graham v. Bendix Corp.*, 595 F. Supp. 1036, 1047 (N.D. Ind. 1984) ("The duty not to discriminate is owed each minority employee, and discrimination against one of them is not excused by a showing the employer did not discriminate against all of them, or there was one he did not abuse." (citing *Furnco Constr. Corp. v. Waters*, 438 U.S. 567, 579, 57 L. Ed. 2d 957, 98 S. Ct. 2943 (1978))).

This court is not the first to conclude that a plaintiff in a sex-plus discrimination case can establish a prima facie case of discrimination where she was rejected in favor of a member of the same sex without the relevant additional characteristic. See, e.g., *McGrenaghan v. St. Denis School*, 979 F. Supp. 323, 326-27 (E.D. Pa. 1997); *Arnett v. Aspin*, 846 F. Supp. 1234, 1237-41 (E.D. Pa. 1994); see also *Fisher II*, 114 F.3d at 1344 ([*19] dicta) (concluding that the plaintiff had established a prima facie case of discrimination by reason of her sex plus marital status by showing, inter alia, "that tenure was granted to a woman who was not married"). In *Arnett*, the plaintiff alleged sex discrimination on the ground that the defendant maintained a hiring policy of rejecting women over the age of 40 in favor of men of any age or women under the age of 40. See *Arnett*, 846 F. Supp. at 1236. In a well-reasoned analysis, the Court rejected the defendant's argument that the plaintiff could not establish a prima facie case of discrimination because two women, albeit both under 40, had received the jobs for which she applied. "The point behind the establishment of the sex-plus discrimination theory," the Court explained, "is to allow Title VII plaintiffs to survive summary judgment when the defendant employer does not discriminate against all members of the sex." *Id.* at 1240.

Finally, it is important to note that plaintiff does in fact allege that defendants treated men with children and women with children differently. According to the complaint, defendants first approached two men, both with [*20] children, about the Managing Attorney position, before giving the job to Suzuki. (See Compl. P 46) In addition, the complaint alleges that "many of the men promoted to Managing Attorney have school age children." (Id. P 46) These allegations distinguish this case from *Bass v. Chemical Banking Corp.*, 1996 U.S. Dist. LEXIS 9228, No. 94 Civ. 8533 (SHS), 1996 WL 374151 (S.D.N.Y. July 2, 1994), where the Court dismissed the plaintiff's sex-plus claim because she failed to produce "any evidence to show that [the defendant] treated her differently than married men or men with children." Indeed, even if I were to hold that the promotion of a childless woman did not in itself establish the fourth element of plaintiff's prima facie case, this additional evidence would be sufficient to establish "circumstances giving rise to an inference of unlawful discrimination." *Quarantino*, 71 F.3d at 64, and thus plaintiff's failure to promote claims could not be dismissed.

It may be that plaintiff will be unable ultimately to prove that defendants discriminated against her on the basis of her sex rather than her parental status. At this stage of the litigation, however, I cannot say beyond doubt that plaintiff [*21] will be unable to prove facts that would entitle her to relief. This is especially true when one considers that a plaintiff's burden at the prima facie stage of the McDonnell Douglas analysis is "de minimis." E.g., *Kerner v. Kingly Mfg.*, 156 F.3d 396, 401 (2d Cir. 1998) (citing cases). Accordingly, defendants' motion to dismiss Claims 4-6 is denied.

V.

Finally, defendants move to dismiss Claim 8, which alleges that defendants violated Title VII and New York law by using an employment practice which disparately impacts women. (Compl. P 110)

Title VII has been interpreted to forbid not only overt discrimination but also "discrimination resulting from practices that are facially neutral but have 'disparate impact,' i.e., significant adverse effects on protected groups." *Bridgport Guardians, Inc. v. City of Bridgeport*, 933 F.2d 1140, 1146 (2d Cir. 1994) (citing *International Bhd. of Teamsters v. United States*, 431 U.S. 324, 375-36 n.15, 52 L. Ed. 2d 396, 97 S. Ct. 1843 (1977)). To establish a prima facie case of discrimination under a disparate impact theory, therefore, a plaintiff need not offer proof of discriminatory motive. See, e.g., *Griggs v. Duke* [*22] *Power Co.*, 401 U.S. 424, 430-32, 28 L. Ed. 2d 158, 91 S. Ct. 649 (1971). Instead, a plaintiff must identify a specific employment practice and provide evidence sufficient to raise an inference that the identified practice caused significant adverse effects on the protected group. See *Watson v. Furl Worth Bank & Trust*, 487 U.S. 977, 994-95, 101 L. Ed. 2d 627, 106 S. Ct. 2777 (1988).

Generally, the proper basis for the initial inquiry in a disparate impact case is a comparison between the composition of qualified persons in the labor market and the persons holding the jobs at issue. See *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642, 650-51, 104 L. Ed. 2d 733, 109 S. Ct. 2115 (1989), superseded by statute on other grounds, Civil Rights Act of 1992, § 105, 42 U.S.C. § 2000e-2(b) (1994). In cases where such labor market statistics are difficult if not impossible to obtain, a plaintiff may use other statistics -- for example, measures showing the mix of "otherwise-qualified applicants" for

the jobs at issue -- to establish a prima facie case. See id. at 651 (citing *New York City Transit Auth. v. Beazer*, 440 U.S. 560, 585, 59 L. Ed. 2d 587, 99 S Ct. 1355 (1979)). [*23] Evidence of a racial or sexual imbalance in the workforce alone -- without proof that such imbalance is the result of discrimination -- is insufficient to establish a prima facie case of discrimination. See 490 U.S. at 651-54. Otherwise, "any employer who had a segment of his work force that was -- for some reason -- racially [or sexually] imbalanced, could be haled into court and forced to engage in the expensive and time-consuming task of defending . . . the methods used to select . . . his work force " Id. at 652

In the present case, plaintiff has presented no evidence from which a rational juror could infer discrimination. Plaintiff alleges merely that (i) defendants employ a test in determining promotions; and (ii) there is an imbalance between the sexes at the Managing Attorney level of defendants' law departments. She then asserts, in conclusory fashion, and "upon information and belief," that the test disparately impacts female applicants. (Comp'l. P 72) Plaintiff alleges no facts about the mix of the relevant labor pool or about the pool of otherwise-qualified applicants. Nor does she make any allegation that women's performance on the test is inferior to that of [*24] men. Indeed, plaintiff does not even report her own score on the test. n5 In short, even accepting arguendo that the disparity between the sexes at the Managing Attorney level otherwise would be sufficient to state a disparate impact claim, plaintiff has alleged no fact that suggests this disparity was caused by discrimination. Her conclusory assertion that the test has a disparate impact is insufficient to survive a motion to dismiss. See, e.g., *In re American Express Co. Shareholder Litig. (Lewis v. Robinson)*, 39 F.3d 395, 400-01 n.3 (2d Cir. 1994) ("Conclusory allegations of the legal status of the defendants' acts need not be accepted as true for the purposes of ruling on a motion to dismiss." (citing cases)); *First Nationwide Bank v. Celt Funding Corp.*, 27 F.3d 763, 771 (2d Cir. 1994) ("The well-pleaded material allegations of the complaint are taken as admitted; but conclusions of law or unwarranted deductions of fact are not admitted." (internal quotation marks and citations omitted)). Accordingly, Claim 8 is dismissed.

-Footnotes-

n5 I note that plaintiff's performance could not have been unsatisfactory because she was subsequently promoted to Assistant Managing Attorney.

-End Footnotes-

(15)

...

For the foregoing reasons, defendants' motion is granted in part and denied in part, and Claims 1-3 and 9 are dismissed.

SO ORDERED

Dated: New York, New York

December 29, 1998

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1979 U.S. Dist. LEXIS 20206, *25; 78 Fair Empl. Prac. Cas.

Michael B. Kukacov

U.S. District Judge

PHOTOCOPY
PRESERVATION

592 N.W.2d 279, 1999 Minn. App. LEXIS 907, *10;
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Although a relevant consideration, is not necessarily a determinative factor in answer to either the initial inquiry of whether [plaintiff] established a prima facie case or the ultimate inquiry of whether she was a victim of discrimination.

10 Instead, the ultimate inquiry in Title VII cases is whether plaintiff has established that a "prohibited factor played a determinative role in the employer's decision." *Id.* The same is true in cases brought under the MHRRA. See *Adams v. West Publ'g* [*11] Co., 912 F. Supp. 929, 932 (D. Minn. 1993) (rejecting employer's claim that female employee failed to raise prima facie case of sex discrimination because she was replaced by another female). The fact that the school district denied Pullar employment in favor of another female, therefore, has no bearing on whether or not the complaint states a prima facie case of discrimination based on sex. The complaint need only establish that a prohibited factor, in this case, stereotypical characterizations of the proper role of women with children, played a determinative role in the employer's decision. Pullar's complaint establishes that.

DECISION

Because the complaint alleges that the school district had one hiring policy for women with young children and a different hiring policy for men, it alleges a claim under the MHRRA even though the MHRRA does not prohibit familial status discrimination in employment and the school district denied an applicant employment in favor of a member of the same gender. We therefore reverse the district court's judgment dismissing the complaint. [*12]

Reversed

1ST CASE of Level 1 printed in FULL format.

Irene C. Pullar, Appellant, vs. Independent School District
No. 701, Hibbing, Respondent.

CA-96-189

COURT OF APPEALS OF MINNESOTA

552 N.W.2d 273; 1998 Minn. App. LEXIS 907; 77 Fair Empl.
Prac. Cas. (2NA) 1013

August 11, 1998, Filed

PRIOR HISTORY: [*1] St. Louis County District Court, File No. C69735667.

DISPOSITION: Reversed.

KEY TERMS: school district, prima facie case, sex, familial status, young children, sex-plus, coaching, hiring, female, hired, protected class, gender, notice, failure to state, failure to state a claim, disparate treatment, employment context, qualifications, replaced, sex discrimination, similarly situated, determinative, teaching, enacting, teaching position, characterizations, stereotypical, incompatible, interpreting, premised

SYNOPSIS: A complaint alleging that an employer had one hiring practice for women with young children and a different hiring practice for men states a claim under the Minnesota Human Rights Act, even though the Human Rights Act does not prohibit familial status discrimination per se in the employment context and the employer denied a female applicant employment in favor of another female.

COUNSEL: Don L. Bye, 1000 Torrey Building, 314 West Superior Street, Duluth, MN 55802 (for appellant).

James E. Anderson, Erstad & Riemer, P.A., 1000 Northland Plaza, 3500 West 80th Street, Bloomington, MN 55431 (for respondent).

JUDGES: Considered and decided by Klaphake, Presiding Judge, Lansing, Judge, and Holtan, Judge *

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. Art. VI, § 10.

OPINIONBY: HOLTAN

OPINION: SPINER

HOLTAN, Judge

Appellant Irene Pullar challenges the district court's judgment dismissing her complaint against respondent Independent School District No. 701 (the school district) for failure to state a discrimination [*2] claim under the Minnesota Human Rights Act (MHRA), Minn. Stat. § 363.01 (1996). The district court dismissed the complaint upon a finding that it did not sufficiently

803 N.W.2d 271; 1998 Minn. App. LEXIS 907, *2;
 77 Fair Empl. Prac. Cas. (DWA) 1013

allege that the school district had a hiring policy that treated women and men with young children differently. We disagree and reverse.

FACTS

Puller is a former employee of Independent School District No. 701. The complaint alleges that in August of 1994, she applied for a full-time teaching position with the school district. The position involved the additional responsibility of coaching. The school district refused to hire Puller because she had young children, whose needs, the principal claimed, were incompatible with the responsibilities associated with coaching after school hours. Instead, it hired another woman who had less teaching and coaching experience than Puller, but did not have young children.

Paragraph ten of the complaint alleges that the school district "had frequently hired males for teaching positions that involved coaching responsibilities."

ISSUE

Did the district court err in dismissing Puller's complaint for failure to state a sex discrimination claim under Minn. Stat. [*2] § 363.03, subds. 1(2)(a) and (c)?

ANALYSIS

We review de novo a district court's dismissal of a complaint for failure to state a claim. *Frost-Senco Elec. Ass'n v. Minnesota Pub. Util. Comm'n.*, 358 N.W.2d 619, 642 (Minn. 1984). A dismissal will be affirmed only if it appears to a certainty that plaintiff can introduce no facts consistent with the complaint to support granting the relief requested. *Eizie v. Commissioner of Pub. Safety*, 289 N.W.2d 29, 32 (Minn. 1980). In reviewing cases dismissed for failure to state a claim, we may consider only the facts alleged in the complaint. *David S. Herr & Roger S. Haydock, Minnesota Practice* § 12.9 (1985). We must accept those facts as true and draw all reasonable inferences in favor of plaintiff. *Id.*

The MHRRA prohibits an employer from discriminating against a person with respect to hiring because of sex, except when the employer's action is based on a bona fide occupational qualification. Minn. Stat. § 363.03, subd. 1(2)(a), (c) (1996). Employment discrimination claims under the MHRRA may be premised on disparate treatment by the employer based on gender. *Sigurdson v. Isanti County*, [*4] 386 N.W.2d 715, 719 n.3 (Minn. 1986) (*Sigurdson I*). In cases where direct evidence of a discriminatory motive is not available, plaintiff may establish a prima facie case of disparate treatment discrimination by showing that (1) she is a member of a protected group; (2) she sought and qualified for opportunities that the employer was making available to others; (3) the employer denied her the opportunities despite her qualifications; and (4) the opportunities remained available or were given to other persons with her qualifications. *Id.*, at 720. A prima facie case must support an inference that the employer acted with a discriminatory motive to deprive a person of

Accordingly, plaintiff's hostile work environment claims are dismissed.

IV.

Defendants move next to dismiss Claims 4-6, which allege that defendants' "acts in failing to promote [plaintiff] because she is a woman and a parent" are in violation of Title VII and New York law. (Comp. PP 93, 94, 100)

When a plaintiff alleges disparate treatment in violation of Title VII, the court applies the now familiar three-step burden-shifting analysis first prescribed in *McDonnell-Douglas Corp. v. Green*, 411 U.S. 792, 402-04, 34 L. Ed. 2d 562, 91 S. Ct. 1817, (1973). See *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 506-10, 125 L. Ed. 2d 497, 113 S. Ct. 2742 (1993); *Quaratino v. Tifteny & Co.*, 71 F.3d 59, 64 (2d Cir. 1995). First, the plaintiff bears the burden of establishing a *prima facie* case of discrimination [*14] by demonstrating that: (1) she is a member of a protected class; (2) she was qualified for the position she sought; (3) she was not promoted; and (4) the position remained open and was ultimately filled by someone outside the protected class. See *Quaratino*, 71 F.3d at 64. A plaintiff may satisfy the fourth prong by showing alternatively that the failure to promote "occurred in circumstances giving rise to an inference of unlawful discrimination." *Id.* at 64. Second, assuming the plaintiff proves a *prima facie* case, the burden shifts to the defendant "to articulate a legitimate, clear, specific and non-discriminatory reason" for the employment action at issue. *Id.* Finally, if the defendant carries this relatively light burden of production, the plaintiff must prove that the defendant's articulated reason is merely a pretext for discrimination. See *St. Mary's Honor Ctr.*, 509 U.S. at 511; *Quaratino*, 71 F.3d at 64.

In the present case, the essence of defendants' argument is that plaintiff's claims are deficient because she cannot establish the fourth element of a *prima facie* case. Specifically, defendants contend that because another woman, albeit a woman without [*15] children, received the 1997 promotion about which plaintiff complains, plaintiff cannot prove discrimination on the basis of sex. (See Def. Mem. at 10-11) At most, the defendants reason, plaintiff might be able to establish discrimination on the basis of parenthood, but parenthood is not a protected class under Title VII. (See *id.* at 11) Additionally, defendants contend that the allegedly discriminatory failures to promote plaintiff between 1991 and 1993 should be disregarded because, *inter alia*, these claims are time-barred. (See Def. Mem. at 13 n.3)

Defendants' argument with respect to the failure to promote plaintiff in 1997 is without merit, and the parties did not brief the issue of whether the continuing violations doctrine could be invoked to toll the statute of limitations. See *Cornwell v. Robinson*, 23 F.3d 894, 703-04 (2d Cir. 1994) (discussing the continuing violations doctrine). For these reasons, I need not consider at present whether plaintiff is time-barred from raising the earlier instances of alleged discrimination.

Plaintiff's disparate treatment claims rest on a form of Title VII discrimination known as "sex-plus" discrimination. Sex-plus discrimination [*16] occurs when a person is subjected to disparate treatment based, not solely on her sex, but on her sex "considered in conjunction with a second characteristic." *Fisher v. Vassar College*, 70 F.3d 1420, 1433 (2d Cir. 1996) [*Fisher I*], *on reh'g en banc*, 114 F.3d 1332 (2d Cir. 1997) [*Fisher II*] (concurring in the panel decision), cert. denied, 118 S. Ct. 851 (1998). Such

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77 Fair Emp. Prac. Cas. (BNA) 1013

opportunities it made available to similarly situated members of the opposite sex. See *Id.*

The district court dismissed Pullar's complaint for failure to state an employment discrimination claim under the MHRM upon a finding that it did not sufficiently allege that the district had an employment policy that treated similarly situated men and women differently. We disagree.

To state a claim for sexual discrimination under the MHRM, the complaint need only allege "the bare essentials [of] unequal treatment" based on sex. *Sigurdson v. Selander*, 532 N.W.2d 225, 227 n.2 (Minn. 1995). Pullar's complaint met that minimal threshold. The complaint alleges that the school district denied Pullar employment in favor of another female because she had young children whose needs were incompatible with a teaching position that involved coaching after school hours. The complaint also alleges that the school district had hired men for those positions in the past. Those allegations permit an inference that the school district, relying on stereotypical characterizations of the proper domestic role of women, took adverse employment action against Pullar that it would not have taken had Pullar been a man. That inference is sufficient to establish a prima facie case of discrimination under the MHRM.

Although the complaint does not specifically allege that the school district treated men and women with children differently, notice pleading does not require the pleading of detailed facts in support of every element of a cause of action. *Burton v. Moore*, 538 N.W.2d 140, 143 (Minn. 1997). The primary function of notice pleading is to give the adverse party fair notice [of] the theory on which the claim is based. *Id.* Notice pleading permits the pleading of broad, general statements that may be conclusory. *Id.* A complaint will not be dismissed for failure to state a claim unless it appears to a certainty that plaintiff can prove no set of facts in support of her claim that would entitle her to relief. *Elsie*, 208 N.W.2d at 321.

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Here, the complaint gives the school district fair notice of the theory on which the claim is based. Moreover, it does not appear to take court to a certainty that Pullar can prove no set of facts in support of her claim that would entitle her to relief. To the contrary, if we construe the complaint liberally, as we must do, Pullar could introduce evidence, under paragraph ten of the complaint, that some of the men the school district hired for teaching positions that involved coaching had children and that the school district, therefore, treated similarly situated men and women differently. Pullar's complaint is therefore not subject to dismissal for failure to state a claim.

The school district claims that Pullar's complaint should be dismissed because it alleges a claim of discrimination based [on] familial status and the MHRM does not prohibit familial status discrimination in the employment context. Although it is true that in the employment context the MHRM does not prohibit discrimination based on the status of having children alone, the MHRM does prohibit an employment practice that treats men and women with children differently. Cases interpreting Title VII have referred to that type of discrimination as "sex-plus" discrimination.

In a "sex-plus" discrimination case, plaintiff does not allege that the employer discriminated against a protected class as a whole, but rather that the employer disparately treated a sub-class within the protected class on the

Clinton to Seek Job Bias Protection for Parents

By CHARLES BABINGTON
Washington Post Staff Writer

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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

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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 J. 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."

Fatal Shooting Was Accidental, Montgomery Police Say

By KATHERINE SHAYER
Washington Post Staff Writer

A Montgomery County police officer who killed a Wheaton man Wednesday night outside a McDonald's restaurant told detectives yesterday that he accidentally shot the man in the back while trying to pull him out of his car, police said.

Officer Sean Thielke, 30, said that he had drawn his service weapon as he approached the driver's side of the car driven by Junious Roberts, 44, because he believed Roberts's car might have been stolen and Roberts had led him on a chase, police said.

Acting Police Chief Thomas Evans said Thielke apparently did not believe he had time to holster his weapon, which had no safety, before trying to pull Roberts from the car. Thielke said Roberts, who had a blood alcohol level three times the legal limit for driving, refused his order to get out of the car, according to Evans.

"It's a tragic accident," Evans said at a news conference last night. "It's a traumatic experience for everybody."

A Montgomery grand jury will meet Thursday to determine whether the shooting was justified, Evans said.

The shooting—the second by a Montgomery police officer in as many weeks—has prompted renewed criticism from some in the African American community, who said yesterday that they grew suspicious about the latest shooting because

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police were so tight-lipped about the circumstances. In both shootings, the officer was white, and the victim was black and unarmed.

Roberts's half brother, who attended the news conference, said that he was skeptical of the police account and that the family has hired a lawyer to investigate possible legal action against the county. Thomas Lewis, 29, said he questioned why the officer approached the vehicle with his gun drawn.

"I don't see how a gun can accidentally go off unless you pull the trigger," Lewis said. "I can't come to grips with this being an accidental shooting."

Evans said that Montgomery police officers carry a semiautomatic 9mm Beretta that does not have a safety.

Until yesterday, police said, they were piecing together information from six witnesses who said they saw part of the incident that occurred about 7 p.m. Wednesday in the south parking lot of the McDonald's in the 12300 block of Georgia Avenue.

But the statement from Thielke, who initially had invoked his right to remain silent, and the emergence yesterday of a man who told police he saw the shooting from a table inside the McDonald's presented a more complete account.

Evans said the officer gave the following account to detectives:

"The incident began about 7 p.m. when Thielke, while patrolling the parking lot of Georgian Woods apartments off Randolph Road, saw Roberts standing next to his car talking to another man. When he pulled alongside the car, Thielke said, Roberts's eyes looked 'glazed,' leading the officer to believe he might be intoxicated. And when he peered into the car, Thielke said, the ignition looked like it might have been punched out, as often occurs in stolen cars.

Thielke turned around to drive back to Roberts's car, but he was gone. While driving on Georgia Avenue minutes later, Thielke heard car tires squeal and recognized Roberts's car as the one he had just seen. Thielke, with his red lights flashing, followed Roberts into the parking lot of Glenmont Shopping Center off Georgia Avenue and pulled up to where Roberts had stopped talking to another man.

As Thielke approached Roberts's car on foot, Roberts pulled away, and the officer pursued him. The officer said he saw Roberts "speeding and driving erratically" through the shopping center parking lot before Roberts pulled into the McDonald's and apparently could go no further because of pedestrians on one side and parked cars on another.

Thielke approached Roberts's car with his gun drawn and ordered him out of the car. Roberts held his left hand out of the window, but the officer told detectives he couldn't see his other hand and didn't know if Roberts was armed.

When Roberts refused to get out of the car, Thielke tried to "get his arms around him," police said. "He was trying to pull him out with his left hand, and he had the gun in his

right hand," Evans said. "The officer obviously believed he didn't have time to do anything with his gun."

That's when the gun fired, striking Roberts in the back, Evans said.

The witness who watched from inside McDonald's told police that

Thielke "had an expression of shock as if it were a surprise to the officer that the gun went off," said a source familiar with the investigation.

Evans said the autopsy showed that Roberts had a blood alcohol level of 0.27—more than three times the legal limit for driving in Maryland.

Evans said Thielke, a Montgomery officer for six years, is "very

shook up" and remains on routine paid leave until the grand jury hears the case.

A Montgomery grand jury cleared another officer last week in the fatal shooting of a District man March 31 in a hotel parking lot in Silver Spring. Police said the man was driving a stolen car when he rammed several police cars that had boxed him in. He was shot as he was about to ram another car right where an officer was sitting.

The shootings also come as the department is under review by the U.S. Department of Justice because of allegations by the local NAACP that some officers target and harass minorities, particularly African Americans.

Ronald Clarkson, a police community relations liaison for the county, said his office logged about 25 phone calls yesterday from people saying they believed the police were "hiding something" by not giving out more details earlier.

"They're looking at two white officers and two black males who were killed," Clarkson said. "From the community's perspective, that seems to be, in their mind, obvious that something is going on."

Sins of the Sons: Laws Aim at Parents

By LAURA SESSIONS STEPP
and EDWARD WALSH
Washington Post Staff Writers

As a prosecutor in Durham, N.C.'s juvenile court, Marcia Morey was frustrated by the countless times a teenager would show up for trial and his or her parents would not. So when the state reformed its juvenile justice system last year, she worked hard to inject parental responsibility into a series of new laws.

She succeeded: Beginning July 1, North Carolina parents will be subpoenaed to appear in court along with their children. If the children are convicted and their parents have the means, they'll be required to pay court fees and, possibly, fines. They also must participate in counseling with the juvenile.

Morty, now a district court judge, already has begun requiring parents to take the stand when their children are accused. She asks about their relationships with their children—

time spent together, for example, or activities a child is involved in.

"Everyone blames the schools for youth violence," says Morey. "Or they blame drugs, the streets, the music. But the issue that keeps resurfacing is, where were the parents? Many parents use the excuse they didn't know what their kids were doing, but the signs are always there: the sliding grades, tardiness, the talking that stops. I've seen far too many parents abdicate their parental responsibility in order to live their own lives."

In Colorado, law enforcement officials and politicians are asking about the responsibility of the parents of Eric Harris and Dylan Klebold, who killed a dozen students and a teacher at Columbine High School. States have carried civil liability laws on the books for years, but according to the National Conference of State Legislatures, 13 states passed criminal laws over the last decade allowing courts to jail or fine parents if their sons or daughters commit a crime.

Following a summer of gang violence in the Denver area in 1993, Colorado added a criminal liability statute to deal with the easy access of minors to handguns. The measure provides a prison term of two to six years for parents or guardians who supply an illegal handgun to a juvenile or who know a juvenile who possesses an illegal handgun and fail to make "reasonable efforts" to correct that situation.

Colorado law enforcement officials said they were unaware of any prosecutions under this law. No parents are lined up to go to jail in other states, either. In a few cases, parents have been fined.

Colorado's juvenile code says parents can be forced to pay \$3,500 to \$5,000 in restitution when their child is convicted of breaking the law. The law could have been applied to the Harris and Klebold parents when, in 1998, the two boys pleaded guilty to theft and related charges after they broke into a car. The boys were placed in a counseling and community service program; and their parents signed an agreement setting out the terms of their probation. But neither couple were fined or required to enter counseling or an education program on how to be better parents.

The White House plans today to unveil proposed anti-crime legislation that would make it a federal felony for an adult to

"knowingly or recklessly allow a child unlawful access to a gun that is later used to cause death or injury," said Bruce Reed, the White House domestic policy adviser. "It's narrowly drawn to set the bar very high. It's just a federal backstop in the event of no state laws being in place, but it's a difficult standard to meet."

Reed said Clinton signaled his support of such legislation after the Jonesboro, Ark., shooting.

Cities and towns are also getting tougher on parents. Three years ago, a couple in St. Clair Shores, Mich., was convicted of failing to exercise "reasonable parental control" of their 16-year-old son who had, among other crimes, stolen thousands of dollars from his church. After a jury found

the couple guilty of a criminal misdemeanor, a judge fined each parent \$100 and ordered each to pay \$1,000 in court costs.

In Littleton, investigators searched the home of Eric Harris and found the sawed-off barrel of a shotgun on his dresser. Bombmaking materials were also in plain sight. Harris also allegedly kept a diary in which he and Klebold had planned their attack over the past year. These discoveries and others prompted John Stone, the sheriff of Jefferson County, where Littleton is located, to say publicly, "The parents should have known" what the boys were involved in.

"I think I would be a little concerned about my son's room if I went in there and I found a sawed-off shotgun barrel," Stone said. "I think parents should be accountable for their kids' actions." Colorado Gov. Bill Owens, raised the possibility of taking action against the Klebolds and Harris.

Friends and neighbors of both couples say the parents were involved in their sons' lives, taking them swimming, fishing and to Little League games.

And some people not involved in this case say it's often difficult for parents to do the kind of monitoring many people would expect.

"It's getting harder and harder to monitor older teens," says Ginny Markell, incoming president of the National PTA Association. "Kids are more mobile, have lots more discretionary money, and parents are home fewer hours. My personal belief is that parents should be held responsible to a level of common sense, but there are a lot of external factors that are beyond the control of parents."

Apparently the California General Assembly felt the same way when it passed its 1988 law designed to cut down on gang violence. According to Los Angeles District Attorney Gil Garcetti, the law allows parents to be punished if they knowingly fail to "exercise reasonable care, supervision, protection and control" of children who get in trouble. The California law would not apply in a case like the Colorado massacre because the state has to prove that a child who gets in trouble is controllable and high school-aged children are not considered inherently controllable, Garcetti said.

Markell of the PTA says she favors laws, like North Carolina's, that involve parents in juvenile correction, even educate them; rather than punish them. Such legislation has sound science behind it, according to the findings of John Laub, professor of criminology at the University of Maryland in College Park.

Laub and his colleague Robert Sampson analyzed a well-known years-long study of 500 delinquent boys and 500 non-delinquents and showed that the parent-child relationship predicted whether a kid became delinquent more than any other factor, including family income. Three pieces of that relationship were especially important, Laub says: close attachment in the early years, consistent discipline and careful parental supervision.

Staff writer Charles Babington, special correspondent Cassandra Stern in Los Angeles and news researcher Mary Lou White contributed to this report.

The Washington Post

TUESDAY, APRIL 27, 1999

Clinton to Seek Weapons Controls

One of Few New Proposals Is Background Checks in Explosives Sales

By CHARLES BABINGTON
and HELEN DEWAR
Washington Post Staff Writers

President Clinton will call today for criminal background checks on persons seeking to buy dynamite and blasting caps, part of what appears to be a relatively modest new package of weapons control the administration is proposing in the wake of last week's high school massacre in Colorado.

Although advocates had hoped the shootings might spur an ambitious new effort to restrict gun ownership, the initial reaction from both Democrats and Republicans has been far more tepid.

Clinton's crime package primarily recycles gun control measures proposed before last week's tragedy, while in Congress, the Senate's Democratic leader questioned whether new gun laws are needed at all. GOP congressional leaders, meanwhile, discussed plans for a "national dialogue on youth and culture," which would focus on responses other than new gun restrictions.

Clinton's overall package has "little new," said Bruce Reed, White House director of domestic policy. But Reed said Clinton "already had a very ambitious agenda," in part because of previous school shootings. "This package includes every major measure to crack down on juvenile access to guns," he said.

Aides said Clinton plans to announce several other proposals at a White House ceremony today, including:

Requiring manufacturers to put child safety locks on handguns; holding parents criminally liable—under very specific circumstances—if they let their children get access to guns later used in crimes; requiring background checks for those buying weapons at gun shows; and imposing a lifetime ban

on gun ownership for people who committed violent crimes as juveniles. That last measure would require the opening of juvenile court records that traditionally remain sealed.

The president's chief new proposal applies to explosives, not guns. The culprits in Littleton, Colo., used pipe bombs and other explosives as well as guns in their attack.

Current law prohibits such purchases by felons, fugitives, stalkers or mentally unstable persons, Reed said, but it does not require merchants to check each buyer's background, as Clinton will propose.

Clinton also will call for expanding a federal program that traces firearms used by juveniles in crimes, which has helped identify several illegal gun markets, Reed said. A third new proposal, Reed said, will affect few people. It would make it a felony for an adult to "knowingly or recklessly allow a child unlawful access to a gun that is later used to cause death or injury."

Even a modest legislative agenda could face problems in Congress. Senate Minority Leader Thomas A. Daschle (D-S.D.) yesterday questioned whether more gun control legislation is needed. Daschle said he was prepared to look at "all options" but remained skeptical about the need for new gun laws.

"I think for me the question has always been how enforceable, how practical are additional laws when it comes to guns," he told reporters. "I think it's very important that we recognize that we've got a lot of gun laws on the books right now, in the states and nationally. I'm not sure that gun legislation is what we need."

Instead, he said, Congress should look at broader societal problems, including parental responsibilities and violence on the

Internet and in the media.

Other sources said the Littleton shootings may provide new impetus for a plethora of gun bills that have been introduced this year, at least 50 so far, including Clinton's proposals. But many questioned whether it will be enough to overcome opposition of many Republicans and the National Rifle Association, which has stalled gun legislation for the last five years. The NRA declined to comment yesterday on Clinton's new package.

Sen. John H. Chafee (R-R.I.), a gun control advocate, said, "I'd like to think they will [pass a gun bill], but I don't know. There's a rationale to explain it away... like the roots [of violence] lie in the lack of family control. I don't see much excitement except among those who were committed in the first place."

Detroit, County Sue Gun Manufacturers

Associated Press

DETROIT, April 26—Detroit and its county sued the gun industry for more than \$800 million today for "the havoc wreaked" by illegal firearms.

The lawsuits were brought against 35 manufacturers, distributors and sellers. Wayne County, of which Detroit is a part, separately sued the industry.

The city said the industry should pay for "the havoc wreaked on the city of Detroit by illegal handguns and other firearms that have been carelessly and recklessly sold to individuals who should not be armed in our society."

Other jurisdictions have sued gun manufacturers, including Atlanta, Chicago, Cleveland, New Orleans, Miami-Dade County and Bridgeport, Conn.

The Washington Post

TUESDAY, APRIL 27, 1999

Marjorie Williams

Parenthood Without Punishment

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

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

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

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

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

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

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

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

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

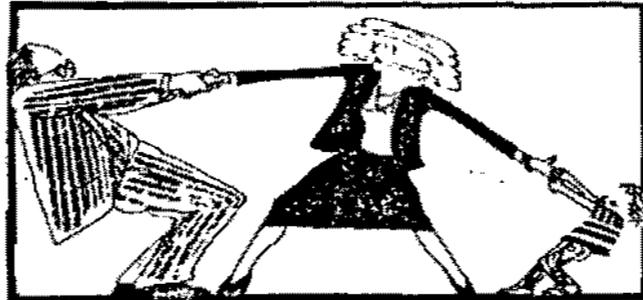
And Clinton's ploy encourages employers to believe that it's fair to expect everyone, without variation, to want to work all the time. Most professional women and men know that the real sanctions against their family lives in the workplace aren't the gross injuries of being fired or denied promotion;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

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

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

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

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



BY KIM DICKINSON

Parental
Discrimination

E. J. Dionne Jr.

Mining The Golden State

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

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

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

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

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

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

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

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

**Latinos now vote
Democratic by a margin
of 4 to 1.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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."

IRS's Handling of Whistle-Blower Shows Agency's Difficulty in Overhauling Itself

By KATHERINE ACKLEY
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON—The Internal Revenue Service's clumsy handling of a prominent whistle-blower last week shows the tax agency's difficulties in reforming itself.

Despite numerous pledges by top executives in Washington to give new protections to in-house critics against harassment, local officials in the IRS's Houston office threatened Thursday—the April 15 taxpaying deadline—to fire Jennifer Long, a revenue agent who gained national prominence when she testified about alleged abuse of taxpayers during 1997 congressional hearings.

But after word spread Friday to Senate Finance Chairman William Roth, who conducted the hearings, and to journalists nationwide, Ms. Long's managers withdrew the threat. The Delaware Republican branded the warning as "a clear act of retaliation."

IRS Commissioner Charles Rossotti sided with the critics, issuing a written statement late Friday that he "won't tolerate retaliation against employees who came forward to testify." He also promised an investigation.

IRS spokesmen, both in Washington and in Houston, refused to comment beyond Mr. Rossotti's statement.

Mr. Rossotti has won high praise from Mr. Roth and other legislators for his attempts to overhaul the tax agency since he took the helm in late 1997. But Mr. Roth has also warned that many employees of the 100,000-member bureaucracy would be resistant to change. As evidence, he has asserted in a new book that many witnesses at his hearing have been subject to a vicious internal backlash.

Ms. Long, a revenue agent since 1984, testified that IRS management encour-

aged many agents "to pursue tax assessments that have no basis in law from individuals who simply can't fight back. I do feel taxpayers' rights are being violated." Since then, Ms. Long said in a telephone interview Friday, she has been harassed and intimidated by her managers.

That culminated on Thursday when she was given a 13-page memo criticizing her job performance and was told she had 60 days to improve, or she would be out of a job. "They want to make a point; that if you criticize them, they'll get you. They'll take away your livelihood," Ms. Long said. "And the symbolism of doing it on April 15—it's outrageous."

Ms. Long said she believes the letter, the first step in the IRS's termination procedure, was sent because she taped television interviews—including one with ABC News—discussing claims of retaliation by her managers.

The 13-page memorandum from Karle L. Gulley, one of Ms. Long's managers, detailed Ms. Long's "ongoing performance deficiencies," including "ineffective planning" and "a failure to perform thorough and accurate work." The memo also offered 29 suggestions to shape up Ms. Long's work.

Ms. Long said she first contacted members of Congress in January 1997 and a month later received a reprimand for causing dissension and discord in the workplace. Until then, she said, she never received anything but positive performance evaluations. Since her testimony in September 1997, she said, most of her performance evaluations have gone from "fully successful" to failing.

Sen. Roth is planning a hearing in September to look into Ms. Long's and other witnesses' claims of retaliation.

Adoption going on line

U.S. government Web site
to list kids nationwide by 2001

By Marilyn Elias
USA TODAY

The federal government Monday announced plans to create a Web site with photos and descriptions of children awaiting adoption through public agencies across the nation.

About 8,000 youngsters need homes now. That number could double or triple by 2001, when the site is expected to be up, says Carol Williams of the Children's Bureau at the Department of Health and Human Services (HHS).

President Clinton in November asked HHS for a plan to expand use of the Internet to find adoptive homes.

The HHS report, submitted Monday, estimates the Web site will cost \$1.5 million to set up, then \$1.25 million per year to run. The funds will come from adoption-related programs already in the budget, with private-sector contributions expected.

States won't be legally required to list on the federal site, the report says, but a recent national survey suggests that many states regard the Internet as a good recruitment tool.

"The president supports the use of the Net in this way, and we're pleased to be making progress," says Bruce Reed, domestic policy adviser to Clinton. No White House approval is needed to get the plan moving, Reed says.

The number of U.S. children free for adoption is expected to soar in the next few years, primarily because of a 1997 federal law that shortens the length of time kids can remain in foster care before plans are made for a permanent home.

"A national Web site that could include all youngsters available in public adoptions will give these kids a much greater pool of families to draw from," says Joe Kroll of the North American Council on Adoptable Children, an advocacy support group.

Still, "it's not going to make children who are not there suddenly available," Williams says.

The "vast majority" of youngsters photographed and described will be over 3 years old, she says. Many will have handicaps — physical, intellectual or emotional. Some will be part of sibling groups to be adopted together. A significant number will be racial minorities, Williams says.

A pilot Internet adoption site called FACES (go to www.adopt.org and click on photo listings) has been offered by the National Adoption Center in Philadelphia since October 1995. The site opened with listings and photos of 40 children; now there are 1,600, executive director Carolyn Johnson says.

Interest has accelerated, she says. In March, 1,315 of the children listed drew e-mail inquiries from 380 potential families.

About 37 states have Internet adoption sites, but some are very limited.

Prospective parents always visit youngsters in person before adopting, Johnson says. Home studies and approval are required, just as they are in ordinary adoptions.

Many of the 76 adopted so far off the Philadelphia site "weren't likely to have ever found homes," Johnson says. "The Internet is the best tool we have."

U.S. tariff plan wins approval; EU may dig in

By James Cox
USA TODAY

WASHINGTON — Europe appears willing to suffer continued U.S. economic penalties rather than change banana-import policies that sparked a trade war with the United States, U.S. officials say.

The World Trade Organization (WTO) approved U.S. plans Monday to impose 100% duties on \$191 million worth of goods from the European Union (EU).

EU trade chief Sir Leon Brittan says the EU will try to negotiate changes to its policy with the U.S. and banana-growing countries in Latin America, the Caribbean and Africa.

Those talks begin this week. But U.S. officials say they fear the 15-nation EU is unwilling to change its system enough to satisfy U.S. demands and comply with WTO rules. The EU may decide to let certain European goods face punitive U.S. tariffs indefinitely, they say.

The EU's system of tariffs, quotas and licenses is designed to benefit European distributors and Caribbean growers. The EU system hurts U.S. marketers and Latin American growers, the U.S. says.

Unable to get the EU to alter

its banana policy, the U.S. imposed 100% duties on European handbags, wallets, bed linens, batteries, coffee makers and other products, retroactive to March 3.

Britain met Monday in Washington with U.S. Trade Representative Charlene Barshefsky.

The trade bosses made little progress on two other disputes:

► **Beef.** The EU has rejected U.S. demands that it lift its decade-old ban on hormone-treated beef. The EU says it is willing to open its markets to specially labeled U.S. beef — but only until next year when it completes studies of possible health hazards of growth hormones.

The WTO has twice ruled against the EU ban. The U.S. vows to put sanctions on hundreds of millions of dollars' worth of European goods if the beef ban is not lifted by May.

► **Aircraft noise.** New EU noise-restriction rules taking effect April 29 will prohibit many U.S.-made cargo and passenger planes from landing at European airports. The rules also ban aircraft fitted with noise-reduction "hush kits."

Congress has threatened to retaliate by banning the needle-nosed, supersonic Concorde from landing in the USA.

Rivlin: Fed in no hurry to change interest rates

By Rich Miller
USA TODAY

WASHINGTON — Federal Reserve Vice Chair Alice Rivlin signaled Monday that the central bank is in no rush to change interest rates, either up or down.

"The risks (to the economy) look pretty balanced," she said in an interview.

On the one hand, there's the risk that overly rapid economic growth could fuel inflation. "If you had another quarter like the fourth quarter (when the economy grew at a rapid annual

rate strategy on May 18. Rivlin's comments suggest the central bank is unlikely to change short-term rates then and perhaps for months to come.

The Fed policy-maker says the central bank might not need to act as quickly in the past to combat inflation. That's because the economy seems to be working a bit differently than it used to. In the past, companies fre-

quently responded to a tight job market by raising wages. But now, they're putting more effort into cutting costs and making workers more efficient because tough competition is preventing them from raising prices to pay for higher wages. Ebbing inflation fears among consumers and companies also give the Fed more leeway in setting interest rates, Rivlin says. That's because inflation is unlikely to take off in that type of environment.

"It moves the goal post a little bit," she says. "You may be a bit slower to worry (about in-

flation)." But Rivlin says that doesn't mean the economy has entered an era of unbridled growth without inflation.

"There are plenty of reasons to think that an economy that's growing well above 3% and where the unemployment rate is dropping is going to be in inflationary trouble eventually," she says. "The question is when will that be, and how quickly should you move to do something (about that)."

For now, there's no sign of broad-based inflation, despite the rise in oil prices, she says.



Alice Rivlin for USA TODAY

al rate of 6%), you'd be really worried," Rivlin says, adding that she doesn't expect that.

But on the other hand, there's the danger the still-shaky world economy could drag the USA down. "We are still the engine of the growth (for the world economy)," Rivlin says.

"I don't think there's any reason to think we couldn't have another (global) crisis," Rivlin says. Fed policymakers next meet

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Rally for Teacher Who Says Pregnancy Hurt Tenure Bid

By DAVID M. HALBFINGER

ELMONT, N.Y., April 27 — More than 200 teachers and students, carrying signs with "Justice for Kathy" in red letters, rallied outside a school board meeting tonight in support of a teacher who says she is being denied tenure because she got pregnant.

The teacher, Kathleen V. Williamsen, said in an interview earlier today that her fellow high school teachers had warned her: the principal at Elmont Memorial hates the disruption caused when young teachers leave classes in midyear, hates scrambling to find qualified substitutes, hates how teachers-turned-mothers no longer stay after school for hours giving extra help or supervising student activities.

But life happens. Mrs. Williamsen, 30, of Lynbrook, now has a 6-week-old daughter, Colleen. An art teacher at Elmont Memorial, a junior and senior high school just over the Queens line in Nassau County, Mrs. Williamsen said she had enjoyed generally excellent performance reviews until last fall, the start of her third year. In August, she married Gerard Wil-

Love, marriage and a baby carriage, but no happy ending.

liamsen, 29, a tenured science teacher at H. Frank Carey High School, also in the Sewanhaka Central High School District. Thirteen days later, despite using birth control, they learned she was pregnant.

Mrs. Williamsen said she reluctantly told the principal, Diane Scricca, that she was expecting. A week later, she received an "unsatisfactory" rating for the first time — the first of four critical reviews over the next month and a half. Mrs. Williamsen said colleagues told her the school was creating "a paper trail."

And in January, the president of the local union, Matt Jacobs, said he was told by Ms. Scricca that Mrs. Williamsen would not be receiving tenure, though the district denies a final decision has been made.

Mrs. Williamsen, who is on maternity leave, said she was convinced she will be fired after she finishes her last probationary semester in the fall. "One unsatisfactory review is enough," she said. "Nobody gets

hired with three or four."

Ms. Scricca, the principal, declined to comment. The district superintendent, George Goldstein, said of the protesters: "They are misguided. We have never discriminated against anybody." He declined to elaborate, saying state law prohibits school officials from discussing personnel matters. A lawyer for the school district, Douglas Libby, did not return repeated calls.

The dispute is a throwback to more prudish days, said Michael D. Simpson, assistant general counsel for the National Education Association, the union that represents teachers here. "There used to be contracts that teachers would sign where they agreed not to get pregnant," he said. "The thought was, you didn't want students to see that teachers actually get pregnant, because they might ask how they got pregnant."

Such worries seem quaint now. But school administrators still discriminate for other reasons, some teachers and union officials say. On Long Island and other places where teaching jobs are tough to get, they say, many women interviewing for jobs avoid mentioning that they have or might want children anytime soon.

All this flies in the face of the 1978 Pregnancy Discrimination Act, a Federal law that made it illegal to fire or refuse to hire a pregnant woman or compel her to take maternity leave, said Mary Murphree, regional administrator of the women's bureau of the United States Department of Labor. "Young women are going to get pregnant," she said. "It's inconvenient for all employers to deal with this. This is so discriminatory, it's preposterous."

Nationally, just 4,299 women filed complaints of pregnancy discrimination with the United States Equal Employment Opportunity Commission last year. But advocates say the problem is far wider. Martha F. Davis, a lawyer at the NOW Legal Defense and Education Fund, said many new mothers are reluctant to start legal action.

Teachers at Elmont Memorial say that Ms. Scricca's unhappiness with the frequency of staff pregnancies was legendary. A year ago, Mrs. Williamsen said, one skit in the annual faculty-student "follies" featured Ms. Scricca chasing down pregnant teachers.

The case has galvanized many of the district's 500 teachers. Tonight's meeting at Sewanhaka High School was the second time her supporters have turned out in force.

Parental Discrimination

The New York Times

WEDNESDAY, APRIL 28, 1999

THE POLICE RESPONSE

School Attack May Bring Changes in Police Tactics

By TIMOTHY EGAN

SEATTLE, April 27 — After a decade of the largest buildup of special weapons squads by American police departments, the siege at Columbine High School has shown many officers a new kind of domestic terror — and one that tests the limits of training and tactics.

Gunmen spraying people indiscriminately and setting off bombs in a school are not what most SWAT teams are trained for. While the use of the teams — SWAT is an acronym for special weapons and tactics — has grown nearly tenfold, the units have been used primarily for drug raids and hostage situations.

At Columbine, in Littleton, Colo., the SWAT team followed standard procedure by moving very deliberately — and on live television, seemingly extremely slowly. That prompted criticism that more lives could have been saved if the team had moved more quickly.

The Colorado police dispute that contention. But in the wake of at least a half-dozen multiple-victim school shootings in the past 18 months, some SWAT units have changed their planning. For these agencies, the student with an arsenal is now considered a more likely threat than an outside terrorist.

"We've got blueprints now of every single school in this county, which we keep inside the SWAT vehicles," said Maj. Steve James, who heads a SWAT unit for the Springfield, Mo., Police Department. "We're preparing for this very thing to happen. We're training other jurisdictions in this. And when it does happen, we are ready to go."

Most SWAT teams are trained to follow a deliberate process, usually establishing a perimeter of officers around a site, then taking steps to free people held hostage, as was done in Colorado.

The violence at Columbine, which left 13 people dead, presented officers with what they call an "active shooter," someone who is not holed up but is on a killing offensive. Time, usually an ally of SWAT team members, works against them in such a case because the gunman is trying to kill as many people as possible.

"This certainly will go down as the worst-case SWAT scenario of the century," said Larry Glick, executive director of the National Tactical Officers Association, which provides training for hundreds of police agencies.

Mr. James, who teaches SWAT tactics to officers from around the country, said one lesson of the Columbine shooting was that elite police units should be trained in new strategies. "Surrounding a school may not be the best thing to do," Mr. James said. "The goal should be to take out the hostage-taker."

Watching what appeared to be a slow-motion response to a high school laden with explosives and under fire by two heavily armed students, some police officers were openly critical of the SWAT response in Colorado.

Randy Patrick, a veteran officer from Westminster, a suburb of Denver, called the SWAT response "pathetic," and told *The Denver Post*, "I think they should have been more dynamic."

Television showed groups of officers slowly surrounding the school and crouching behind vehicles as students fled classrooms. Jefferson County sheriff's deputies say the television images did not show what was going on inside the school, where a makeshift SWAT team had entered the building within 30 minutes of the first call to the police.

Steve Davis, a spokesman for the Jefferson sheriff's office, said SWAT members from at least four police jurisdictions were able to surround the school and prevent the gunmen from escaping and saved many lives by quickly moving police officers inside.

The Colorado police say that because of the confusion at the scene — fire alarms going off, water pouring down from sprinklers, gunfire, bombs, screaming students and wounded victims — the first officers to arrive did not immediately know how to proceed.

An armed deputy, routinely posted at the school, fired at the two student shooters, Eric Harris and Dylan Klebold, within minutes after the gunfire erupted, the police say. The deputy called for backup, and officers from several agencies in the Denver area responded.

The question is whether a specially trained unit could have entered the school immediately and perhaps saved more lives. The police have not said whether SWAT team members fired shots at the gunmen. They have speculated that the gunmen could have been dead for up to two hours after television seemed to show the school still under siege.

Four elements — an active gunman, numerous deaths and injuries, hundreds of bystanders and a sprawling location — combined to make Columbine a SWAT unit's worst nightmare, Mr. Glick said.

"The question is: Why didn't SWAT move in faster?" Mr. Glick said. "If I was a parent at that school, with my child inside, I'd be

asking the same thing. But I think you have to give the police in Colorado credit. It's a wonder they did as well as they did."

Attorney General Janet Reno, asked about the police response, praised the investigation but did not elaborate on SWAT details.

David Klinger, a former Los Angeles police officer who is a professor at the University of Houston and studies SWAT teams, gave qualified praise to the Colorado police.

"Clearly, what they had was a dynamic event where SWAT had to go in and do what they don't like to do — respond quickly without getting all the information," Mr. Klinger said. "In this situation, officers need to ratchet things up and respond a lot more quickly than they normally would."

The tactical officers association has trained members of the Littleton and the Jefferson County SWAT teams involved in the Colorado case. Mr. Glick, the association's director, defended their actions. "When you see these people at Columbine called cowards — that just turns my stomach," he said. But he added that the Columbine shootings were likely to prompt changes in how the teams are trained.

"When you have an active shooter going after people at random — a shooter with a plan," he said, "that's completely different than your typical barricade hostage situation."

Mr. Glick and other police officers cautioned that an overly aggressive SWAT unit can often get into trouble. SWAT teams, which are typically not full-time units, have been criticized for causing deaths and excessive property damage by acting too hastily. The Branch Davidian standoff near Waco, Tex., in which a police assault led by Federal agents ended in the deaths of 81 people trapped in a religious compound, has become a symbol of what can go wrong.

The New York Times

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