THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release **November 11, 1999**

STATEMENT BY THE PRESIDENT

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

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

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

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

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DRAFT

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

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

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

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

Ending Discrimination Against Parents Act of 1999
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DRAFT

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

I am very pleased that today Senator Dodd has introduced the "Ending Discrimination Against Parents Act of 1999." This legislative proposal would prohibit employment discrimination against parents and those with parental responsibilities. It builds on our Nation's longstanding commitment to equal opportunity, following in the footsteps of anti-discrimination laws like title VII of the Civil Rights Act of 1964, which prohibits job bias on the bases of race, color, sex, national origin, and religion, and the Pregnancy Discrimination Act of 1978, which bars employment discrimination against pregnant women.

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

Such protections are increasingly important as more and more mothers join fathers in participating in the workforce and contributing to their families' economic security – and as more and more families rely on the earnings of single parents, both male and female. As a Nation, we cannot afford to lose the talents and labor of these working parents due to unfounded assumptions about their capacity to work. Parents who are dedicated to meeting their responsibilities both at home and at work should be valued and celebrated, not targeted for discrimination.

In recognition of the gravity of this issue, numerous states (including Alaska, Nebraska, New Hampshire, New Jersey, and South Dakota) and the District of Columbia have enacted laws prohibiting, or authorizing the prohibition of, discrimination on the basis of parental or familial status.

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

TO THE CONGRESS OF THE UNITED STATES:

I am pleased to transmit today for immediate consideration and prompt enactment the "Ending Discrimination Against Parents Act of 1999." This legislative proposal would prohibit employment discrimination against parents and those with parental responsibilities. Also transmitted is a section-by-section analysis.

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

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

Such protections are increasingly important as more and more mothers join fathers in participating in the workforce and contributing to their families' economic security – and as more and more families rely on the earnings of single parents, both male and female. Indeed, a 1998 survey revealed that 38 percent of all American workers are parents with children under age 18. Nearly one in five working parents is unmarried; a fifth of these are single dads. As a Nation, we cannot afford to lose the talents and labor of these working parents due to unfounded assumptions about their capacity to work. Parents who are dedicated to meeting their responsibilities both at home and at work should be valued and celebrated, rather than targeted for discrimination.

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

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

WILLIAM J. CLINTON

THE WHITE HOUSE
October 18, 1999

DRAFT
October 21, 1999

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

Q. What employers and employees are covered by this bill?

A. The bill covers private sector and state and local government employers with 15 or more employees; executive branch agencies, including the Executive Office of the President; and the House of Representatives, the Senate, and other offices (such as the Congressional Budget Office, the Capitol Police, and the Office of the Architect of the Capitol) that are part of the legislative branch. The bill covers all employees, former employees, and applicants of these employers.

Q. Are any other entities covered under the bill?

A. The bill also applies to employment agencies, labor organizations, and joint labor-management committees, as those entities are defined in Title VII of the Civil Rights Act of 1964. The bill specifically excludes bona fide private membership clubs that are exempt from taxation under the Internal Revenue Code.

Q. What does it mean to be a "parent" under this bill?

A. The bill contains a multi-faceted definition of "parent." It includes people who are parents of children under 18, whether those people are biological, adoptive, foster, or step-parents. It includes the parents of people who are 18 or over but who cannot take care of themselves because of a mental or physical disability. It includes those who are actively seeking legal custody or adoption of someone who is under 18 or over 18 but unable to care for himself. Finally, it includes those who stand "in loco parentis" to such individuals.

Q. What does it mean to be "actively seeking legal custody?" If I am beginning to explore the possibility of adopting a child from overseas, am I covered by this bill?

A. People who are actively seeking custody or adoption are those whose custody or adoption of a child reasonably seems to be imminent. A person "beginning to explore the possibility" of adoption would be unlikely to be covered by the bill. The language is intended to provide protection that is comparable to that provided under the Pregnancy Discrimination Act for biological mothers awaiting the birth of a child – that is, to bar discrimination during the period immediately before adoption or custody arrangements are finalized.

Q. What does "in loco parentis" mean?

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

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

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

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

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

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

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

Q. Why does the bill provide for uncapped damages? Doesn't this mean that people could get vastly more money under this law than they could if they are the victims of sex discrimination? Why should that be authorized?

A. The Administration believes that the limits on the damages that are available under Title VII are unwarranted, and has consistently supported legislation that would remove those caps and allow victims of sex discrimination to get the full amount of damages to which they are entitled. **[Is legislation pending now?]** It is the Administration's hope, therefore, that damages available for discrimination against parents *will* ultimately be commensurate with those available for discrimination on the basis of sex, and that both will be uncapped.

Q. Why are damages unavailable against state governments?

A. Under current case law, federal laws must meet specific requirements before they can provide for damage awards against state governments. Rather than becoming entangled in legal questions about whether the bill does or does not meet these requirements, the bill provides that absent its consent, a State may be sued for monetary relief only by the Attorney General. Individuals may seek declaratory and injunctive relief against State officials.

Q. Would this bill prevent an employer from allowing parents to leave early to coach their kids' soccer teams?

A. This bill prohibits employers only from treating parents *unfavorably*. Nothing in the bill would prevent employers from making accommodations -- such as flexible work schedules -- for parents if they choose to do so.

Q. Would this bill prevent an employer from firing an employee who is consistently late if the reason for the employee's lateness is his childcare responsibilities?

A. No. The bill does not interfere with an employer's discretion to make decisions based on an employee's job performance or ability to meet job requirements or qualification standards. Thus, an employer may discipline an employee who fails to meet the employer's time or attendance standards regardless of the reason the employee is late or absent. Similarly, an employer may reject, for a job that requires extensive travel, an applicant who says he is unwilling to travel because of his parental responsibilities. What the bill would prohibit is rejection of an applicant who *is* willing to travel based simply on the assumption that he, as a parent, will be unable to fulfill that commitment.

Q. Would this bill authorize lawsuits based simply on an employer's failure to hire a sufficient number of parents?

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

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

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

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

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

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

A BILL

To prohibit employment discrimination against parents and those with parental responsibilities, and for other purposes.

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

SECTION 1. SHORT TITLE. – This Act may be cited as the "Ending Discrimination Against Parents Act of 1999."

SECTION 2. FINDINGS.

(a) In 1998, thirty-eight percent of all United States workers had children under 18.

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

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

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

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

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

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

(h) Such discrimination –

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

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

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

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

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

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

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

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

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

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

SECTION 3. PURPOSES.

The purposes of this Act are –

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

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

SECTION 4. DEFINITIONS.

In this Act:

(a) "Commission" means the Equal Employment Opportunity Commission.

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

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

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

(e) (1) The term "employee" means:

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

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

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

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

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

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

(f) (1) The term "employer" means:

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

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

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

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

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

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

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

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

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

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

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

(1) has the status of –

(i) a biological parent;

(ii) an adoptive parent;

(iii) a foster parent;

(iv) a stepparent; or

(v) a custodian of a legal ward;

(2) is actively seeking legal custody or adoption; or

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

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

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

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

SECTION 5. DISCRIMINATION PROHIBITED.

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

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

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

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

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

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

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

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

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

SECTION 6. RETALIATION AND COERCION PROHIBITED.

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

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

SECTION 7. OTHER PROHIBITIONS.

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

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

SECTION 8. MIXED MOTIVE DISCRIMINATION.

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

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

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

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

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

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

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

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

SECTION 10. DEFENSES WHERE ACTIONS TAKEN IN A FOREIGN COUNTRY.

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

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

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

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

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

SECTION 11. ENFORCEMENT AND REMEDIES.

(a) **Incorporation of Powers, Remedies, and Procedures in Other Civil Rights Statutes.** – With respect to the administration and enforcement of this Act in the case of a claim alleged by an individual for a violation of this Act, the following statutory provisions are hereby incorporated, and shall, along with the provisions in subsection 11(b), establish the powers, remedies, procedures, and jurisdiction that this Act provides to the Equal Employment Opportunity Commission, the Attorney General, the Librarian of Congress, the Office of Compliance and its Board of Directors, the Merit Systems Protection Board, the President, the courts of the United States, and/or any other person alleging a violation of any provision of this Act –

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

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

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

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

(b) **Additional Remedies. –**

(1) Notwithstanding any express or implied limitation on the remedies incorporated by reference in subsection 11(a), and except as provided in subsection (b)(2) of this section, section 8, or section 12 of this Act, any covered entity that violates this Act shall be liable for such compensatory damages as may be appropriate and for punitive damages if the covered entity engaged in a discriminatory practice or practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.

(2) Notwithstanding subsection 11(b)(1),

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

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

(3) Notwithstanding any express or implied limitation on the remedies incorporated by reference in subsection 11(a) or included in subsection 11(b)(2) above,

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

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

SECTION 12. FEDERAL IMMUNITY. – Notwithstanding any other provision of this Act, in an action or administrative proceeding against the United States for a violation of this Act,

remedies (including remedies at law and in equity, and interest) are available for a violation to the same extent as the remedies are available against a private entity, except that punitive damages are not available.

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

SECTION 14. REGULATIONS.

(a) **In General.** – Except as provided in subsections 14(b), (c), (d), and (e) below, the Commission shall have authority to issue regulations to carry out this Act.

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

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

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

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

SECTION 15. RELATIONSHIP TO OTHER LAWS. – Nothing in this Act shall affect the interpretation or application of, and this Act shall not invalidate or limit the rights, remedies, or

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

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

SECTION 17. APPROPRIATIONS. – There are authorized to be appropriated such sums as may be necessary to carry out this Act.

SECTION 18. EFFECTIVE DATE. – This Act shall take effect 180 days after enactment and shall not apply to conduct occurring before the effective date.

"ENDING DISCRIMINATION AGAINST PARENTS ACT OF 1999"

FACT SHEET

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

The Need for this Legislation

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

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

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

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

"Ending Discrimination Against Parents Act of 1999"

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

who are under the age of 18 or who are 18 or over but incapable of self-care because of a mental or physical disability. The legislation would bar discrimination against parents in all aspects of employment, including recruitment, referral, hiring, promotions, discharge, training, and other terms and conditions of employment.

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

- from taking a parent off the "fast track" due to unsubstantiated concerns that parents cannot meet the requirements of demanding jobs;

- from preferring applicants without children over equally or better qualified working parents; or

- from refusing to hire single parents under any circumstances.

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

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

"ENDING DISCRIMINATION AGAINST PARENTS ACT OF 1999"

SECTION-BY-SECTION

Short Title

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

Findings

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

Purposes

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

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

Definitions

Section 4 contains definitions.

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

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

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

Subsection (d) defines "demonstrates" to mean meeting the burdens of production and persuasion.

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

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

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

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

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

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

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

Subsection (l) defines "person" as it is defined in title VII of the Civil Rights Act of 1964.

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

Subsection (n) defines "state" as it is defined in title VII of the Civil Rights Act of 1964.

Discrimination Prohibited

Section 5 sets forth prohibited discrimination.

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

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

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

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

Retaliation and Coercion Prohibited

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

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

These sections mirror the prohibitions of the Americans with Disabilities Act of 1990.

Other Prohibitions

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

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

Mixed Motive Discrimination

Subsection 8(a) states that an unlawful employment practice is established where a complaining party demonstrates that an individual's status as a parent, or retaliation, coercion, threats, intimidation, or interference, was a motivating factor for an employment practice, even if other factors also motivated the practice.

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

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

Disparate Impact

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

Defenses Where Actions Taken in a Foreign Country

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

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

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

Enforcement and Remedies

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

Subsection (a) authorizes the Equal Employment Opportunity Commission, the Attorney General, the Librarian of Congress, the Office of Compliance and its Board of Directors, the Merit Systems Protection Board, the President, the courts, and/or any other person alleging a violation of this Act to exercise, obtain, and use, as applicable, the powers, remedies, procedures, and jurisdiction set forth in specified sections of title VII of the Civil Rights Act of 1964; sections 7121, 7701, 7702, and 7703 of title 5, United States Code; specified sections of the Government Employee Rights Act of 1991; specified sections of the Congressional Accountability Act of 1995; and sections 411(b)(1), 435, and 451-56 of title 3, United States Code. This subsection is not intended to authorize the Commission to require or monitor, or covered entities to implement, an affirmative program of equal employment opportunity for parents.

Subsection (b)(1) states that notwithstanding any limitation on the remedies incorporated by reference in subsection 11(a), and except as provided otherwise in this Act, covered entities that violate this Act will be liable for appropriate compensatory and punitive damages. Punitive damages may be recovered if the covered entity engaged in a discriminatory practice or practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.

Subsection (b)(2) states that, notwithstanding subsection 11(b)(1), absent its consent to a monetary remedy, a State may be liable for monetary relief only in an action brought by the Attorney General in a federal court, and will not be liable for punitive damages.

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

Federal Immunity

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

Posting Notices

Section 13 requires covered entities to post notices for individuals covered by the Act that describe the applicable provisions of the Act. Section 13 incorporates the posting requirements

and penalties for failure to meet this obligation set forth in title VII of the Civil Rights Act of 1964.

Regulations

Section 14 identifies the entities that are authorized to issue regulations to carry out this Act. The Commission is authorized to issue regulations except as explicitly provided in this section; the Librarian of Congress is authorized to issue regulations with respect to employees of the Library of Congress; the Board of the Office of Compliance is authorized to issue regulations with respect to employees covered by the Congressional Accountability Act of 1995; and the President is authorized to issue regulations with respect to employees covered under section 411(c)(1) of title 3, United States Code. The Commission and the Merit Systems Protection Board (MSPB) are each authorized to issue regulations with respect to individuals covered by sections 7121, 7701, 7702, and 7703 of title 5, United States Code. It is intended that the Commission and the MSPB coordinate their regulations to ensure consistency.

Relationship to Other Laws

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

Severability

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

Appropriations

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

Effective Date

Section 18 states that this Act shall take effect 180 days after enactment and will not apply to conduct occurring before the effective date.

Los Angeles Times

April 17, 1999, Saturday, Home Edition

SECTION: Part A; Page 20; National Desk

LENGTH: 1093 words

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

BYLINE: MELISSA HEALY, TIMES STAFF WRITER

DATELINE: WASHINGTON

BODY:

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

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

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

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

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

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

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

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

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

Need for Legislation Is Challenged

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

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

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

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

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

Although few workers currently charge that they have faced discrimination because they are parents, Donna Lenhoff of the National Partnership for Women and Families argued that may be because such protections are not explicitly

contained in civil rights law. If such a bar were clarified by legislation, Lenhoff and others believe, more parents would come forward.

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

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

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

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

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

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

Fathers Might Benefit From Proposed Law

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

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

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

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

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

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

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

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

By JEANNE CUMMINGS
Staff Reporter of THE WALL STREET JOURNAL

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

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

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

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

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

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

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

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

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

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

THE WALL STREET JOURNAL
MONDAY, APRIL 19, 1999

Clinton to Seek Job Bias Protection for Parents

By Charles Babington
Washington Post Staff Writer

A1

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

The initiative, to be introduced in the Senate in a few weeks, would treat parents "as a protected class with respect to employment discrimination," according to draft language provided by White House aides. It would, for example, prohibit employers from "taking a mother or father off of a career-advancing path out of a belief that parents cannot meet requirements of these jobs."

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

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

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

PARENTS, *From A1*

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

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

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

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

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

Aides to Clinton and Sen. Christopher 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."

WASHINGTON POST
4-17-94

Nat Hentoff

A Different Kind of Discrimination

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

The son of immigrant farm workers, Rios, starting at the age of 8, worked in the fields, dug ditches after high school classes and was an active member of a Latino student organization. Now a student at the University of California at Davis, he is the first member of his ly to attend college and hopes to be a civil engineer.

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

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

Attorney Kimberly West-Faulcon of the NAACP Legal Defense Fund says that a victory will show that the admissions policy her organization desires can be achieved without contradicting California's Proposition 209, which prohibits using race or ethnicity as a factor in admissions to public colleges. The legal basis for this lawsuit is the Civil Rights Act of 1964, which forbids discrimination in any schools receiving federal funds, as nearly all colleges do.

The lawsuit emphasizes that more than 50 percent of applicants admitted to the Berkeley campus come from only 5 percent of the state's 2,600 high schools. These are schools that have a number of advanced placement courses for which the Berkeley admissions office gives extra grade point credit to an applicant. And these high schools have largely white enrollments.

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

SWEET LAND OF LIBERTY

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

Moreover, students who take expensive private preparatory courses geared to college entrance exams have an extra admissions edge based on family income—an index of class discrimination that, in addition to minorities, affects the children of poor and working-class white families in high schools that also have few, if any, advanced placement courses.

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

So were 7,000 other students with 4.0 averages—including whites, Asian Americans and American Indians. But the lawsuit claims that black, Latino and Filipino students with 4.0 averages were "denied admission at far higher rates than 4.0 white students."

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

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

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

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

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

ABC NEWS

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APRIL 17, 1999

Transcript # 99041706-j05

TYPE: PACKAGE

SECTION: NEWS

LENGTH: 436 words

HEADLINE: PARENTS' RIGHTS

BYLINE: TIM O'BRIEN, ELIZABETH VARGAS

HIGHLIGHT:
DO PARENTS NEED PROTECTION?

BODY:

THIS IS A RUSH TRANSCRIPT. THIS COPY MAY NOT BE IN ITS FINAL FORM AND MAY BE
UPDATED.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Podesta/cc MPerry

Mary Beth - we need to get this out then -

BR

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

By JEANNE CUMMINGS
Staff Reporter of THE WALL STREET JOURNAL

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

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

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

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

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

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

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

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

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

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

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BYLINE: Bruce Reed

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

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

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

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

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

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

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

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

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

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

(A) the interrelation of operations;

(B) the common management;

(C) the centralized control of labor relations; and

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

Unlawful Employment Practices

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

(a) It shall be an unlawful employment practice for an employer -

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

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

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

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

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

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

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

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

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

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

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

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) *[Repealed]*

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

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

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

(A) interrelation of operations,

(B) common management,

(C) centralized control of labor relations, and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DRAFT

States Prohibiting Discrimination on the Basis of Parental Status

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

Alaska

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

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

Kentucky

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

Michigan

Michigan state law provides: "The opportunity to obtain employment, housing and other real estate, and the full and equal utilization of public accommodations, public service, and educational facilities without discrimination because of religion, race, color, national origin, age, sex, height, weight, familial status, or marital status as prohibited by this act, is recognized and declared to be a civil right."

The law continues, "This section shall not be construed to prevent an individual from bringing or continuing an action arising out of discrimination based on familial status before the effective date of the amendatory act that added this subsection which action is based on conduct similar to

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))