

21 percent

Nicole R. Rabner

07/19/99 06:55:59 PM

Record Type: Record

To: stuart-lisa@dol.gov@INET@LNGTWY

cc:

Subject: Re: FMLA q&a

Does DOL have data on the number and/or percentage of the US workforce who are parents? I've seen the data, "46 percent of workers are parents. Nearly one in five employed parents is single, and among these 27 percent are single fathers." Also, "The number of employed women with children increased from 18.3 million in 1985 to 24.1 million in 1997." And... "in 1977, only 49 percent of married male employees with children under 18 had spouses who were also employed, 67 percent do today."

Who should I check with at DOL/BLS to confirm or update these numbers? Can you forward my e-mail appropriately? Let me know.

DOL

47.2

five

8 684 1998

.2 in 1998

38.90

Data for White House Request (numbers are in thousands)

Labor force, March 1998 136,926

Men and women with children under 18 51,492

As percent of U.S. labor force 37.6

35.70

Men with children under 18 25,845

As percent of labor force 18.9

Women with children under 18 25,647

As percent of labor force 18.7

Employed, March 1998 130,007

Men and women with children under 18 49,216

As percent of employed 37.9

still here

Men with children under 18 25,007

As percent of employed 19.2

Women with children under 18 24,209

As percent of employed 18.6

EMPLOYED WOMEN

Employed women, March 1998 60,889

With children under 18 24,209

As percent of employed women 39.8

Employed women, March 1985 47,120

With children under 18 18,306

As percent of employed women 38.8

21.0

MARRIED FATHERS

Total, March 1998 25,227

With employed wife 17,264

As percent of total 68.4

24.2

Total, March 1978 24,625

With employed wife 11,629

As percent of total 47.2

EMPLOYED PARENTS

Total, March 1998 49,216

Unmarried 8,545

As percent of total 17.4

Men with children under 18 25,007

Unmarried 1,783

As percent of total 7.1

Women with children under 18 24,209

Unmarried 6,762

As percent of total 27.9

6634639

Nicole,

As I mentioned yesterday, the "Findings" section should include language that establishes the constitutional bases -- commerce clause and fourteenth amendment -- for Congress' authority to enact this legislation:. These findings will then have to be developed through hearings and committee reports. The Commerce Clause basis should be fairly noncontroversial: Congress regulates private employers all the time under this power. However, the Fourteenth Amendment foundation will be considerably tougher to establish given recent Supreme Court case law; if we don't do it successfully, State employees will not be able to sue their employer for violations of this Act.

I'm by no means an expert on this (OLC and leg counsel do this full-time and may well have lots of comments), but here's a stab:

Such discrimination on the basis of parental status occurs in both the private and governmental sectors.

The existence of such discrimination--

(A) depresses the wages and employment opportunities of working families who rely on the wages of working parents to make ends meet;

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

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

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

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

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

(G) interferes with the orderly and fair marketing of goods in commerce; and

(H) in many instances, may deprive workers of equal protection in violation of the 5th and 14th amendments.

Elimination of such discrimination would have positive effects, including--

(i) providing a solution to problems in the economy created by unfair discrimination on the basis of parental status;

(ii) promoting stable families by enabling working parents to work free from discrimination on the basis of parental status;

(iii) remedying the effects of past discrimination on the basis of parental status; and

(iv) ensuring equal protection pursuant to Congress' power to enforce the 5th and 14th amendments.



Ellen.Vargyas@EEOC.GOV

07/20/99 11:11:00 AM

Record Type: Record

To: Nicole R. Rabner@eop

cc:

Subject: Fwd: Parental status

Attached is a copy of the revised bill. As I said in my voice-mail message, there are a few points to note:

1. We put back in former employees because that apperas in the congressional accountability act.
2. we think the cites to the other statutes are now correct.
3. we went with the version of the severability clause that is in the ADA
4. we included an authorization for appropriations based on our chairwoman's strongly held (and eminently correct) view
5. we've deleted the attorneys fees provisions because we think the issue is adequately covered in the incorporated sta
6. we added a sentence to the findings which states that nothing in the act will affect the interpretation of other statutes
7. a few other technical changes to incorporate Title VII and ADA language where appropriate.

We should have the section by section to you within the hour.

Call either me or Jocelyn at 663-4637 if we can be of further assistance.

A BILL

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

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

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

SECTION 2. FINDINGS.

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

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

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

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

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

(f) Working parents deserve protection from this discrimination.

SECTION 3. PURPOSES

The purposes of this Act are –

(a) to provide a comprehensive Federal prohibition of employment discrimination on the basis of parental status;

(b) to provide meaningful and effective remedies for employment discrimination on the basis of parental status; and

(c) to invoke congressional powers, including the powers to enforce the 14th amendment

to the Constitution and to regulate interstate commerce, in order to prohibit discrimination on the basis of parental status.

SECTION 4. DEFINITIONS

In this Act:

- (a) “Commission” means the Equal Employment Opportunity Commission.
 - (b) “Complaining Party” means the Commission, the Attorney General, or any other person who may bring an action or proceeding under this Act.
 - (c) “Covered Entity” means an employer, employment agency, labor organization, and joint labor-management committee.
 - (d) “Demonstrates” means meets the burdens of production and persuasion.
 - (e) “Employee” means:
 - (1) an individual to whom section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f)) applies;
 - (2) an individual to whom section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16(a)) applies;
 - (3) a Presidential appointee or State employee to whom section 302(a)(1) of the Government Employee Rights Act of 1991 (2 U.S.C. 1202(a)(1)) applies;
 - (4) a covered employee as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301); or
 - (5) a covered employee as defined in section 401(a)(2) of title 3, United States Code.
- The term “employee” includes applicants for employment and former employees.
- (f) “Employer” means:
 - (1) a person engaged in an industry affecting commerce (as defined in section 701(h) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(h)) who has fifteen or more employees (as defined in section 701(f) of such Act (42 U.S.C. 2000e(f)) for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person;
 - (2) an entity to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16(a)) applies;
 - (3) an employing authority to which section 302(a)(1) of the Government Employee Rights Act of 1991 (2 U.S.C. 1202(a)(1)) applies;
 - (4) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301); or
 - (5) an employing office as defined in section 401(a)(4) of title 3, United States

Code.

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

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

(h) “Incapable of Self-Care” has the meaning given the term in regulations implementing section 101(12)(B) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611(12)(B)).

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

(j) “Parental Status” means having the status, 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, of:

- (1) a biological parent;
- (2) an adoptive parent;
- (3) a foster parent;
- (4) a stepparent;
- (5) a custodian of a legal ward;
- (6) a person who is actively seeking legal custody or adoption; or
- (7) an individual standing in loco parentis.

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

(l) “Religious Organization” means:

- (1) a religious corporation, association, or society; or
- (2) a school, college, university, or other educational institution or institution of learning, if –

(i) the 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

(ii) the curriculum of the school, college, university, or other educational institution is directed toward the propagation of a particular religion.

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

SECTION 5. DISCRIMINATION PROHIBITED.

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

- (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with regard to the compensation, terms, conditions, or privileges of employment of the individual because of such individual's parental status; or
- (2) to limit, segregate, or classify employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the status of the individual as an employee, because of such individual's parental status.

(b) **Employment Agency Practices.** -- It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of the parental status of the individual or to classify or refer for employment any individual on the basis of the parental status of the individual.

(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 of the parental status of the individual;
- (2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect the status of the individual as an employee or as an applicant for employment, because of such individual's parental status; 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 of the parental status of the individual 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 individual because the individual has opposed any act or practice prohibited by this Act or because the individual 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 individual in the exercise or enjoyment of, or on

account of the individual's having exercised or enjoyed, or on account of the individual'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.** -- The Commission shall not collect statistics on parental status from covered entities, or compel the collection of such statistics by covered entities.

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

SECTION 8. MIXED MOTIVE DISCRIMINATION. -- An unlawful employment practice is established under this Act when the complaining party demonstrates that parental status, or retaliation, coercion, intimidation, threats, or interference with an individual as described in section 5 of this Act, was a motivating factor for any employment practice, even though other factors also motivated the practice.

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

SECTION 10. DEFENSES

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

(b) Actions in a Foreign Country.

(i) 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.

(ii) (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)).

SECTION 11. ENFORCEMENT

(a) **Enforcement Powers.** -- With respect to the administration and enforcement of this Act in the case of a claim alleged by an individual for a violation of this Act --

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

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

(ii) sections 303 and 304 of the Government Employee Rights Act of 1991 (2 U.S.C. 1219 and 1220);

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

(2) the Librarian of Congress shall have the same powers as the Librarian of Congress has to administer and enforce title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) in the case of a claim alleged by the individual for a violation of such title;

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

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

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

(ii) sections 303 and 304 of the Government Employee Rights Act of 1991 (2 U.S.C. 1219 and 1220);

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

(5) the President, the Commission, and the Merit Systems Protection Board shall have the same powers as the President, the Commission, and that Board, respectively, have under section 454 of title 3, United States Code, in the case of a claim alleged by the individual for a violation of section 411(a)(1) of such title;

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

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

title;

(ii) sections 303 and 304 of the Government Employee Rights Act of 1991 (2 U.S.C. 1219 and 1220) in the case of a claim alleged by the individual for a violation of section 302(a)(1) of such Act (2 U.S.C. 1202(a)(1));

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

(iv) section 451 of title 3, United States Code, in the case of a claim alleged by the individual for a violation of section 411(a)(1) of such title.

(b) Procedures and Remedies. – The procedures and remedies applicable to a claim alleged by an individual for a violation of this Act are –

(1) for individuals who are covered under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), the procedures and remedies applicable under such title for a violation of such title;

(2) for individuals who are covered under section 302(a)(1) of the Government Employee Rights Act of 1991 (2 U.S.C. 1202(a)(1)), the procedures and remedies applicable for a violation of such section;

(3) for individuals who are covered employees under section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301), the procedures and remedies applicable for a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)); and

(4) for individuals who are covered employees under section 401(a)(2) of title 3, United States Code, the procedures and remedies applicable for a violation of section 411(a)(1) of title 3, United States Code.

(c) Additional Remedies. – Notwithstanding any limitation on the remedies specified in subsection (b), and in addition to the remedies specified in subsection (b), any covered entity that violates this Act shall be liable for such compensatory or punitive damages as may be appropriate, except that neither a State nor the United States shall be liable for punitive damages.

(d) Other Applicable Provisions. – With respect to a claim alleged by a covered employee (as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301)) for a violation of this Act, title IV of the Congressional Accountability Act of 1995 (2 U.S.C. 1401 et seq.) shall apply in the same manner as such title applies with respect to a claim alleged by such a covered employee for a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)).

SECTION 12. STATE AND FEDERAL IMMUNITY

(a) **State Immunity.** – A State shall not be immune under the 11th Amendment to the Constitution from an action in a Federal court of competent jurisdiction for a violation of this Act.

(b) **Remedies Against the United States and the States.** – Notwithstanding any other provision of this Act, in an action or administrative proceeding against the United States or a State for a violation of this Act, remedies (including 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 the provisions specified in section 11(b) of this Act apply, that describe the applicable provisions of this Act in the manner prescribed by, and subject to the penalty provided under, section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10).

SECTION 14. REGULATIONS.

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

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

(c) **Board.** The Board referred to in section 11(a)(3) of this Act shall have authority to issue regulations to carry out this Act, in accordance with section 304 of the Congressional Accountability Act of 1995 (2 U.S.C. 1384), with respect to covered employees as defined in section 101 of such Act (2 U.S.C. 1301).

(d) **President.** The President shall have authority to issue regulations to carry out this Act with respect to covered employees as defined in section 401(a)(2) of title 3, United States Code.

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

SECTION 16. SEVERABILITY. – Should any provision of this Act be found to be invalid by a court of law, such provision shall be severed from the remainder of the Act, and such action shall not affect the enforceability of the remaining provisions of the Act.

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

may be necessary to carry out the provisions of this Act.

SECTION 17. EFFECTIVE DATE. – This Act shall take effect 60 days after the date of enactment of this Act and shall not apply to conduct occurring before the effective date.

Life Off the Job

Eighty-five percent of U.S. wage and salaried workers live with family members and have immediate, day-to-day family responsibilities off the job. Family members include anyone related by blood, marriage, or adoption, as well as partners to whom employees are not legally married.

Forty-six percent of wage and salaried workers are parents—that is, they have children under 18 who live with them at least half-time.

- Nearly one in five employed parents is single, and more workers are raising children alone today than workers did 20 years ago.

Among employed single parents, 27 percent are men.

More than three out of four married employees have spouses or partners who are also employed—an increase from 66 to 78 percent over the past 20 years. Among full-time employees living in dual-earner households, 75 percent have partners who also work full-time.

While only 49 percent of married male employees with children under 18 had employed partners in 1977, 67 percent do today.

Thirteen percent of wage and salaried workers—83 percent of whom have full-time primary jobs—moonlight at secondary jobs, adding an average of 13 hours per week to the hours they work at their primary jobs. The most important reason employees take second jobs is to earn extra money.

Are the Roles of Mothers and Fathers Changing?

Although employed married fathers spend less *time with children* than employed married mothers do on both workdays and days off work, the time fathers spend with their children has increased substantially over the past 20 years, while the time mothers spend has remained the same. For example, fathers spend an average of 2.3 hours per workday caring for and doing things with their children, an increase of 30 minutes per workday since 1977. In contrast, mothers spend nearly one hour more than fathers (3.2 versus 2.3 hours) with their children on workdays, but the total time they spend has not changed significantly from 1977 to 1997.

More than three out of four married employees have spouses or partners who are also employed—an increase from 66 to 78 percent over the past 20 years.

Fathers spend an average of 2.3 hours per workday caring for and doing things with their children, an increase of 30 minutes per workday since 1977.

Primarily as the result of changes in fathers' behavior, children are receiving somewhat more attention from their employed parents today than was the case 20 years ago. However, 70 percent of both fathers and mothers feel they do not have enough time with their children.

Employed married mothers spend more *time on chores* than employed married fathers do on both workdays and days off work, whether or not they have children. However, this gap has narrowed quite substantially over the past 20 years, with fathers spending more time, and mothers less, on household work. The decrease for mothers is more than offset by the increase for fathers. Over the past 20 years, mothers' workday time on chores has decreased by 36 minutes per day, while men's time has increased by one hour.

Married employees with children—both fathers and mothers—spend less time on their own *personal activities* today than employees 20 years ago did. The decline has been somewhat more pronounced for fathers than for mothers, suggesting, again, a gradual convergence in the way employed fathers and mothers in couples allocate their time off the job. Fathers spend an average of 1.2 hours engaged in their own free-time activities on workdays, 54 minutes less per workday than 20 years ago. Mothers spend even less time engaged in personal activities on workdays (0.9 hours), 42 minutes less per workday than 20 years ago.

The decrease in time that married fathers spend on themselves suggests where they may have found more time for their children and household work, while the decrease in mothers' time on chores and personal time may help to explain how they have managed to preserve time for their children despite longer hours on the job. The implications of reduced personal time for workers' mental health is another matter.

Child Care Arrangements

Among all employed parents with pre-kindergarten children, two-thirds rely on family members—partners and relatives—as the primary source of care for their youngest children, while a third use non-family arrangements. Among employed parents with employed spouses, 55 percent rely on care by parents or other relatives.

Those experiencing the fewest child care breakdowns—having to make other arrangements because their usual care is not available—use center-based or parental child care.

Although employed married women spend more *time on chores* than employed married men do on both workdays and days off work, whether or not they have children, this gap has narrowed quite substantially over the past 20 years.

Among employed parents with employed spouses, 55 percent rely on care by parents or other relatives.

When one member of a dual-earner couple has to care for a sick child or attend to other needs of children when both are supposed to be at their jobs, 83 percent of employed mothers say they are more likely than their partners to take time off, compared with only 22 percent of fathers who make this claim.

*Findings
from
Chapter 4*

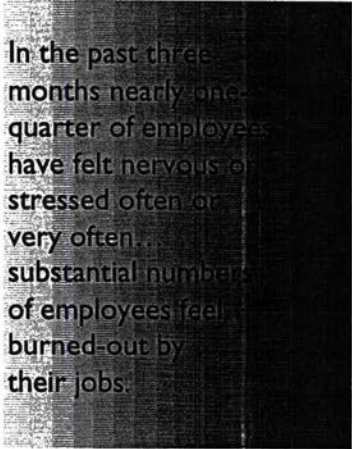
The Personal Well-Being of Workers

Most employees are fairly satisfied with their lives in general, their family lives, and their relationships with their partners, but many have reservations. Only 33 percent rate general life satisfaction at the highest level, while 31 percent and 51 percent, respectively, rate family satisfaction and marital satisfaction at the highest levels.

In the past three months, nearly one-quarter of employees have felt nervous or stressed often or very often, and 13 percent have had difficulty coping with the demands of everyday life often or very often.

Substantial numbers of employees feel burned-out by their jobs. For instance, in the past three months 26 percent have felt emotionally drained by their work often or very often, and 36 percent have felt used up at the end of the workday often or very often.

Similarly, many employees are affected by negative spillover from their jobs into their personal lives. For example, in the past three months 26 percent have not been in as good a mood as they would have liked at home because of their jobs often or very often, and 28 percent have not had the energy to do things with their families or other important people in their lives often or very often.



In the past three months nearly one-quarter of employees have felt nervous or stressed often or very often. Substantial numbers of employees feel burned-out by their jobs.

Job Characteristics

Job Demands

Considering *all paid and unpaid hours worked at any location*, employees spend an average of 44 hours per week on work related to their *primary or only jobs*—six hours more than they are scheduled to work. When the time that the 13 percent of employees who worked at secondary jobs is included, the average total hours worked per week at *all jobs* for all employees increases to 46. On average, men work more hours at all jobs (49 hours per week) than women (42 hours per week).

Eighty-five percent of workers in the wage and salaried labor force are scheduled to work full-time at their main jobs. Women are more likely (21 percent) than men (8 percent) to have part-time jobs, which accounts for part of the difference in hours worked by men and women in the labor force.

It appears¹ that employees are working longer hours today than employees 20 years ago worked. Among employees working 20 or more hours per week,² all paid and unpaid hours worked at all jobs have increased from 43.6 hours in 1977 to 47.1 hours in 1997—an increase of 3.5 hours per week. While men's total hours at all jobs have increased from 47.1 hours to 49.9 hours—an increase of 2.8 hours per week—women's hours have increased from 39 hours to 44 hours—an increase of 5 hours per week.

Employed fathers with children under 18 work longer paid and unpaid hours at all jobs (50.9 hours) than other men (48 hours), while employed mothers with children under 18 work fewer hours (41.4 hours) than other women (43.4 hours). Fathers' total work time has increased by 3.1 hours in the past 20 years, while mothers' time has increased by 5 hours.

Given the hours people work, it should come as no surprise that many employees (63 percent) would like to work less. There is no difference in the proportions of men and women who would like to work fewer hours, and both would reduce their current total work week by about 11 hours on average if they could. The proportion of employees who would like to work fewer hours has increased by 17 percentage points since 1992.

Among employees working 20 or more hours per week, all paid and unpaid hours worked at all jobs have increased from 43.6 hours in 1977 to 47.1 hours in 1997.

1. Small variations in the way work hours were measured in 1977 and 1997 may affect these estimates somewhat. However, the differences found are sufficiently large and reliable to suggest that they are not accounted for by measurement bias.

2. The restriction of the sample to employees working 20 or more hours per week was necessitated by the design of the 1977 survey.

Nearly one in five employees is *required* to work paid or unpaid overtime hours once a week or more with little or no notice, and one in five employees regularly takes overnight business trips.

One in three employees brings work home once a week or more often—an increase of 10 percentage points since 1977.

Moreover, many workers indicate that they have to work very fast (68 percent), have to work very hard (88 percent), and do not have enough time to finish everything that needs to get done on the job (60 percent)—much higher proportions than 20 years ago.

To the extent that comparisons with data from 1977 are possible, it appears that work has become substantially more demanding over the past 20 years.

It appears that work has become substantially more demanding over the past 20 years.

Job Quality

Employees in 1997 have more job autonomy than employees did 20 years ago.

Opportunities and challenges to learn on the job and the meaning that employees find in their work have also increased substantially over this period.

However, only 16 percent of workers rate their chances for advancement in their jobs as excellent, while 23 percent say their chances are good and 61 percent say their chances are fair or poor.

And about three out of 10 employees think it is somewhat or very likely they will lose their jobs in the next couple of years—a higher proportion than 20 years ago.

Only 16 percent of workers rate their chances for advancement in their jobs as excellent, and 61 percent say their chances are fair or poor.

Compensation and Fringe Benefits

The majority of employees—from 74 through 84 percent—have access to traditional fringe benefits: personal health insurance coverage, pension or retirement plan, paid vacation days and holidays, and paid time off for personal illness. However, only a minority have access to dependent-care benefits: child care information and referral services (20 percent), elder care information and referral services (25 percent), on- or near-site child care services

(11 percent), financial assistance for purchasing child care services (13 percent), and dependent-care assistance plans (29 percent).

Historical comparisons could only be made with data from the 1992 survey, and then, only for 5 benefits: personal health insurance coverage, family health insurance coverage, child care information and referral services, employer operated or sponsored on- or near-site child care centers, and elder care information and referral services. Of these fringe benefits, only access to elder care information and referral services has changed, increasing from 11 percent five years ago to 25 percent today.

Access to fringe benefits varies according to a number of factors. Employees who work for companies with larger numbers of employees nationwide have greater access than other workers both to traditional and dependent-care benefits. Part-time workers, low-wage workers, and, to a lesser extent, hourly workers have less access than other workers to traditional fringe benefits.

Of all dependent-care benefits, only access to elder care information and referral services has changed, increasing from 11 percent five years ago to 25 percent today.

*Findings
from
Chapter 6*

Workplace Characteristics

Flexible Work Arrangements

Forty-five percent of employees are able to choose—within some range of hours—when they begin and end their workdays, but only one in four can change daily schedules as needed.

Two-thirds (66 percent) of employees find it relatively easy to take time off during the workday to address family or personal matters. However, only 50 percent of employed parents are able to take a few days off from work to care for sick children without losing pay, forfeiting vacation time, or having to fabricate some excuse for missing work.

Nearly all employees in companies of all sizes say that women are able to take time off—without jeopardizing their jobs—to recuperate from childbirth, and most say that men can similarly take some time off when they become fathers.

Part-time employees are more likely to believe they could switch to full-time in their current jobs, if they wanted to, than full-time workers are to believe they could switch to part-time in their current positions.

Only 50 percent of employed parents are able to take a few days off from work to care for sick children without losing pay, forfeiting vacation time, or having to fabricate some excuse for missing work.

Nineteen percent of employees spend at least part of their *regular workweek* working at home, while another seven percent say they would be allowed to do so if they wanted to.

Work Environment

Most employees feel that their immediate supervisors are quite supportive, with 76 through 92 percent agreeing with nine statements describing various dimensions of supervisor support related to performance of the job and personal or family needs.

Although most employees also feel that the cultures of their workplaces are person- and family-friendly, supervisors are rated more favorably than workplaces. Employees in smaller workplaces rate their workplace cultures as more supportive than employees in larger workplaces do.

And most employees have positive, supportive relationships with coworkers.

Men are slightly more confident than women that employees of their same gender and racial or national backgrounds can advance in the organizations where they work, while non-minority employees are much more confident than minority employees that workers of their own gender and racial or national backgrounds can advance.

Almost one in five employees feels that he or she has been discriminated against at his or her *current* job because of age, gender, or race.

Despite signs of perceived inequality of opportunity and discrimination on the job, 91 percent of workers agree strongly or somewhat that they are treated with respect at work.

Employees in smaller workplaces rate their workplace cultures as more supportive than employees in larger workplaces do.

*Findings
from
Chapter 7*

Employee Outcomes on the Job

Employees are generally satisfied with their jobs—somewhat more so today than employees 20 years ago were, and most are also committed to the success of their companies and loyal to their employers, despite the flagging loyalty of employers to their employees.

More than three out of five employees (62 percent) plan to stay with their current employers for at least the next year, while 22 percent say it is somewhat likely they will make a genuine effort to find another job with

The proportions of employees planning to stay with their employers for at least a year as well as those planning to move on have not changed since 1977.

must provide high-quality jobs—whatever the employee's occupation—and supportive workplaces—whatever the industry. And improving job quality and work environments is generally much more challenging than providing more pay or offering new benefits, because it requires organizational change.

Findings related to job performance provide additional insights into how job and workplace characteristics are related to important business outcomes. Job performance is affected by many things, including spillover from problems that employees have in their personal lives. To improve job performance, employers frequently offer special work-life programs—wellness programs, employee assistance programs, child and elder care information and referral services, direct child care services, and so forth—to help employees solve personal problems so they will not spill over into the workplace and reduce productivity. Such strategies generally treat employees' personal problems as products of their lives off the job that are unrelated to their work experiences.

Our findings, however, indicate that work life is actually an important *source* of employees' personal problems. That is, demanding jobs and unsupportive workplaces lead to spillover from jobs into workers' personal lives that can create or exacerbate problems off the job that, in turn, spill over into work and diminish productivity. Thus, helping employees to solve problems in their personal lives by providing special programs of assistance—without also reducing the extent to which jobs contribute to these problems—may severely limit the impact of work-life programs on job performance.

Of particular concern are the negative spillover effects that demanding and hectic jobs can have on the quality of workers' personal lives and well-being. When job demands exceed some individually defined level, it seems that not even the most supportive workplaces can fully protect workers from negative job spillover into their personal lives. This spillover is reflected in high stress, poor coping, bad moods, and insufficient time and energy for people who are personally important, creating "problems" that, in turn, spill over into work and impair job performance. Therefore, actions by employers to not only increase the supportiveness of workplaces, but urge and help employees "get a life" off the job may be crucial to improving employee productivity over the long run—not to mention the obvious benefits to workers and their families.

Current and Emerging Issues

Generation X

Members of Generation X (workers 18 through 32 years old in 1997) are much better educated, as well as more racially and ethnically diverse, than young workers 20 years ago were.

Married Gen Xers—with and without children—are more likely to have an employed spouse than young workers in 1977 were, and both members of employed couples are more likely to work full-time. This creates stresses and strains that were less prevalent among earlier generations of workers.

Contrary to the portrayal of Generation X in popular media, young workers today are not a group of “slackers.” They work substantially longer hours on average and find their jobs more demanding than young workers 20 years ago did.

Although members of Generation X feel somewhat more satisfied with their jobs than young workers did two decades ago, they feel that they have less job security.

Generation-X employees are less likely than Baby Boomers were to have embarked upon their work lives imagining they would remain with the same company for most of their careers. However, half of all Gen Xers *and* Boomers now view expectations of a lifetime job as passé.

Though most Gen Xers do not expect to stay in the same jobs forever, they are not a generation of job-hoppers. Indeed, only 22 percent of young workers in both 1977 and 1997 said it was very likely they would leave their employers within the next year. Moreover, Gen Xers are just as loyal to their employers, and say that they are just as willing to work harder than required for the success of their companies, as older workers.

As for employers' concerns about retaining Gen-X employees, who are in short supply, the findings indicate that higher job quality and workplace support that is responsive to basic individual needs both on and off the job are the factors most likely to increase retention—assuming that wages and fringe benefits are competitive. This is exactly what we found for workers in general.



Contrary to the portrayal of Generation X in popular media, young workers today are not a group of “slackers.”

Elder Care

Historically, and still today, families provide the major part of non-medical care for elderly relatives. As the population ages and labor-force participation expands, however, the supply of non-employed family members available to provide care is not keeping pace with needs. Looking into the future, one sees that elder care will demand time and attention from growing numbers of employees, affecting the way they work.

While only 13 percent of workers were providing special assistance to someone 65 years or older when interviewed, 25 percent—a quarter of the U.S. wage and salaried labor force—had provided elder care during the preceding year.

One in five working parents has been part of the so-called “sandwich generation” during the past year—both raising children and caring for elderly relatives.

The proportions of employed men and women with elder care responsibilities are virtually the same.

Employees with elder care responsibilities spend an average of nearly 11 hours per week providing assistance, with men and women spending equal amounts of time.

Among workers who had elder care responsibilities in the past year, more than one-third reduced their work hours or took time off to provide that care. Surprisingly, in the past year employed men with elder care responsibilities were just as likely as employed women to have taken time off or reduced their work hours to provide care.

Many employers appear to be at least informally supportive of workers who need to take time off or reduce work hours to provide elder care. However, employees in managerial and professional positions and employees with higher earnings are more able to take as much time as they need without losing pay.

Only one in four employees has access to elder care resource and referral services through his or her employer.

With today's smaller families, single-parent families, and two-career couples, the pool of able-bodied, non-employed adults available to provide elder care is shrinking just as demand for care is rising. It is not clear that anyone—employees, employers, community agencies, or government—is prepared for the substantial impact that growing elder care responsibilities will have on the labor force in coming years.

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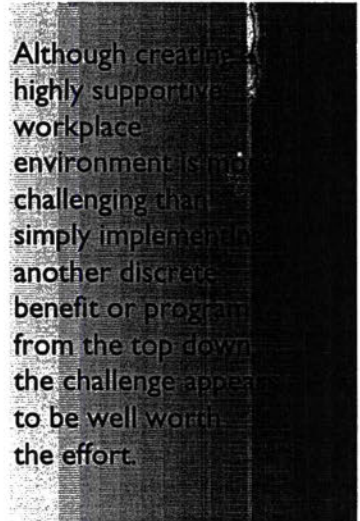
Although no one expects employers to address the full range of issues raised by this demographic tidal wave, employers who do not anticipate the potential disruptions to their workforces will likely be taken aback by the consequences.

Work-Family Backlash?

Despite claims in the press and worries in the boardroom, the findings do not indicate that young, unmarried, or childless employees are more likely than other workers to resent work-family benefits that do not benefit them personally. Nor are they more likely to resent doing extra work occasionally to accommodate coworkers' family or personal needs.

In general, the demographic characteristics of individual workers bear little relationship to either their acceptance of work-family benefits that are not personally beneficial to them or their willingness to do extra work to accommodate the personal and family needs of coworkers. Rather, workplace characteristics—flexibility, supportive supervisors, good coworker relations, and supportive workplace cultures—are most predictive of employees' acceptance of work-family benefits and willingness to accommodate coworkers' needs. Thus, it would appear that employers who have made greater progress in creating person- and family-friendly work environments actually experience less work-family backlash.

To a large extent, supportive workplace factors are within the control of employers to alter, unlike the personal demographic characteristics that workers bring to the job. Although creating a highly supportive workplace environment is more challenging than simply implementing another discrete benefit or program from the top down, the challenge appears to be well worth the effort when measured by employees' attitudes and behavior on the job, ranging from less resentment of work-family benefits and greater support of coworkers to increased job satisfaction, commitment, performance, and retention.



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Synthesis of Findings

The study of work and family life is relatively new. Most studies have investigated either how life on the job affects life at home or, conversely, how life at home affects life on the job.

There have been few attempts to connect it all. *The 1997 National Study of the Changing Workforce* provides a model for understanding how work, family, and personal life fit together, a model that incorporates outcomes important to all—productivity and well-being.

We are able to test this model with a nationally representative sample of the U.S. labor force. Our study design also allows us to detect trends through comparisons with the 1977 Quality of Employment Survey, providing a 20-year perspective, and with our 1992 National Study of the Changing Workforce, providing a five-year point of reference.

What have we found?

- The *quality* of workers' jobs and the *supportiveness* of their workplaces are the most powerful predictors of productivity—job satisfaction, commitment to their employers, and retention. Job and workplace characteristics are far more important predictors than pay and benefits, which are generally competitive with the marketplace. To maximize satisfaction, commitment, and retention, employers need to provide high-quality jobs—whatever the employee's occupation—and supportive workplaces—whatever the industry.

We also found that the characteristics of jobs and workplaces have important effects on the personal lives of workers.

- Employees with more difficult, more demanding jobs and less supportive workplaces experience substantially higher levels of negative spillover from work into their lives off the job—jeopardizing their personal and family well-being.

These effects set in motion a chain reaction.

- When workers feel burned-out by their jobs, when they have insufficient time and energy for themselves and their families, when work puts them in a bad mood—these feelings spill back into the workplace, limiting job performance.
- Although more supportive workplaces offer some protection against the effects of hectic and demanding jobs, not even the most supportive workplace can eliminate this problem entirely. To improve and sustain productivity over the long run, employers must not only create supportive workplace environments, but also work with employees to keep job demands in check so they do not endanger personal and family well-being. Promoting

work-life balance appears to be good both for employees and the bottom line.

So what does the scorecard tell us? Are characteristics of jobs and workplaces improving for the U.S. wage and salaried labor force? There is good news and bad news.

The good news: The quality of jobs has improved somewhat over the past 20 years, and workplaces appear to have become a bit more supportive even over the past five years. There is, however, still plenty of room for improvement.

The bad news: Jobs have become less secure. They have also become more demanding—more time-consuming and more hectic—making it increasingly difficult to achieve a balance between work and personal life.

Meanwhile, what is happening on the home front?

- The proportion of employees living in dual-earner families has increased markedly over the past 20 years, and in three-quarters of these couples, both partners work full-time. Thus, among married employees, the pooled time available for child care (if they have children) and household work is decreasing, creating additional stresses off the job.

In response to this situation, the roles of employed married men and women appear to be converging somewhat.

- Although employed married women still spend more time than men doing household chores, men's time doing household chores has increased over the past 20 years, while women's time has decreased somewhat.
- And although employed married mothers still spend more time than fathers with their children, the time that fathers spend with their children has increased over the past 20 years. The time mothers spend with their children has remained about the same despite an increase in the average hours they spend at their jobs. As a result, children appear to spend somewhat more time with their employed parents today than children 20 years ago did.

Although these role changes with respect to child care and household work appear to be positive, effective responses to the challenges facing today's families, they impose costs as well

- Employed married men and women have less time for themselves today than their counterparts did 20 years ago, and less time for oneself is associated with lower personal well-being and greater susceptibility to negative spillover from job to home.

This brings us back to work. High-quality jobs—jobs that offer autonomy, learning opportunities, meaning, and a chance to get ahead—energize employees and win their commitment. Supportive workplaces help employees be more effective workers, people, and parents. Employers who can provide these better quality jobs and supportive workplaces have a clear competitive edge.

Summary of the Report

The National Study of the Changing Workforce (NSCW) is a research program of the Families and Work Institute that surveys representative samples of the nation's labor force every five years. This report focuses on findings from the 1997 survey but also provides a historical perspective by comparing data from 1997 with data from the 1992 NSCW and from the U.S. Department of Labor's 1977 Quality of Employment Survey. Only data for wage and salaried workers who are 18 years or older are considered here. The sample sizes are 2,877 employees for 1997, 2,958 for 1992, and 1,298 for 1977.

In recent years, there has been much discussion about the relationship between workers' lives on and off the job, about changes in the nature of work and in the lives of workers, and about the fit between what is good for employers and for employees, including their families. Our study addresses many of the issues raised in this ongoing discussion, while informing it with new insights.

To guide our analyses and frame our presentation of findings, we developed a conceptual model that ties together many of the elements embodied in discussions of work and personal life. This model, outlined below, portrays hypothesized causal pathways connecting characteristics of employees' jobs and workplaces, characteristics of their lives off the job, and aspects of their personal well-being to one another, as well as to the outcomes of primary interest to employers—job satisfaction, commitment to employer, job performance, and retention—at the pinnacle of the pyramid.

The findings reported here will be of interest not only to employers, but to labor organizations, researchers in various disciplines, public policymakers, and workers everywhere whose experiences and opinions are the substance of the study.

Key findings are summarized below. First, we present descriptive information about the demographic characteristics of individual employees, the characteristics of their lives off the job, their personal well-being, the quality of their jobs, and the quality of their workplaces, as well as their job satisfaction, commitment to their employers, job performance, and plans to remain with their current employers. Then we present and discuss findings that test the conceptual model by exploring the ways in which these factors affect one another.

The findings reported here will be of interest not only to employers, but to labor organizations, researchers in various disciplines, public policymakers, and workers everywhere whose experiences and opinions are the substance of the study.

*Findings
from
Chapter 2*

The Changing Composition of the Workforce

Over the past 20 years, the U.S. wage and salaried labor force has become more balanced with respect to gender, older on average, much better educated, more racially and ethnically diverse, and more concentrated in managerial and professional occupations.

Trends ■ Forecasts ■ Reports ■ Meetings

Coalition Members Endow Scholarship Fund for Child Care Workers

In memory of a work/life colleague who died a year ago of a brain aneurysm, a group of Hartford, Conn., HR specialists convinced their large employers to endow a \$70,000 college scholarship fund for child care workers. Any employee who works for Aetna, Allstate Insurance Cos., BP Amoco, Deloitte & Touche, Exxon, GE Capital Services, IBM, Johnson & Johnson, Texas Instruments or WFD Consulting may nominate a licensed child care worker to receive up to \$750 for tuition.

Contact: Hartford Association for the Education of Young Children, 1800 Silas Deane Hwy., Suite 157, Rocky Hill, Conn. 06067, (860) 257-0676.

Minnesota NOW Survey to Identify Woman-Friendly Firms

The Minnesota chapter of the National Organization for Women (NOW) is wrapping up a statewide survey of female employees who are answering questions about how well they fare at work. This summer, NOW will ask employers the same questions, including queries on child care, flexibility, hours, elder care, harassment, discrimination and affirmative action. Firms will receive questionnaires in the mail; or, request one by calling NOW at (651) 222-1605.

Labor Department Seeks a Few Good Firms

The U.S. Department of Labor's Women's Bureau is linking businesses experienced in setting up child care programs with those just getting started. As part of the Business to Business Mentoring Initiative on Child Care, Labor Secretary Alexis M. Herman has called for companies to share their experiences so "beginners can avoid the pitfalls and save on costs." Businesses can sign up on the bureau's web site at <http://www.dol.gov/dol/wb>.

More Dads Raising Kids Alone

The number of single mothers has remained constant at 9.8 million since 1995, but the legion of single fathers has grown by 25 percent from 1.7 million to 2.1 million, the Commerce Department reports. Men now comprise one-sixth of the nation's 11.9 million single parents, according to a recent update of the government report, *Household and Family Characteristics*.

KinderCare Revenues Increase

KinderCare Learning Centers has announced net revenues of \$142.2 million for the second quarter of fiscal 1999, up \$6.7 million, or 4.9 percent, over the second quarter of last year. During this past quarter, KinderCare opened 17 centers and closed 15, bringing its tally of preschool and child care centers to 1,149 in the United States and two in the United Kingdom. Average enrollment for the year was 120,000 full- and part-time children.

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WORK/LIFE TODAY

NEWS, DEVELOPMENTS AND BOTTOM-LINE SOLUTIONS FOR THE WORKPLACE

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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 workers simply because they are parents.

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

This bill would, for the first time, include parents as a protected class with respect to job discrimination. It would prohibit, for example, employers from taking a parent off the ❖ fast track❖ due to unsubstantiated concerns that parents cannot meet the requirements of demanding jobs. Similarly, it would bar employers from preferring applicants without children over equally or better qualified working parents or from refusing to hire single parents. It would cover discrimination in hiring, promotions, and firing ❖ as well as in pay and other conditions of employment.

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

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

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

WILLIAM J. CLINTON

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or authorizing the prohibition of

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 workers simply because they are parents.

My proposal builds on the Family and Medical Leave Act and its commitment to working families. That law ensures that workers are not forced to choose between their families and their jobs by providing up to 12 weeks of job-guaranteed leave to care for a new child, a seriously ill family member, or to recover from a worker's own serious health condition.

The "Ending Discrimination Against Parents Act" takes the next step on the road to a truly family-friendly America. It would ensure that working parents are not victimized by job discrimination just because they are parents. Unfortunately, employers often wrongly assume that workers who have parental responsibilities can't or won't perform as well or as diligently as employees without children. Parents who are dedicated to meeting their responsibilities both at home and at work should be valued and celebrated, rather than targeted for discrimination.

This bill would include parents as a protected class with respect to job discrimination. It would prohibit, for example, employers from taking a parent off the "fast track" due to unsubstantiated concerns that parents cannot meet the requirements of demanding jobs. Similarly, it would bar employers from preferring applicants without children over equally or better qualified working parents or from refusing to hire single parents. It would cover discrimination in hiring, promotions, and firing — as well as in pay and other conditions of employment.

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WILLIAM J. CLINTON

An Initiative to Protect Parents from Discrimination in the Workplace

Working Americans today enjoy many protections. However, parents lack a basic protection. If they are discriminated against in the workplace simply because they are parents, most have no legal recourse to address these discriminatory practices. And yet, employers often falsely assume that employees with parental responsibilities are not capable of performing as well as their co-workers without children. Eight states -- Alaska, Kentucky, Michigan, Nebraska, New Hampshire, New Jersey, Pennsylvania, South Dakota -- and the District of Columbia recognize the need to protect parents from discrimination in the workplace and have enacted statutes prohibiting discrimination on the basis of parental or family status. This protection is especially important given the increasing number of parents participating in the work force, including more single fathers and mothers and dual-income couples. Parents, balancing responsibilities at home and at work should be valued, not discriminated against.

The Need

- A 1997 survey revealed that 46 percent of workers are parents. Nearly one in five employed parents is single, and among these 27 percent are single fathers.
- The number of women with children who were employed increased from 18.3 million in 1985 to 24.1 million in 1997.
- In 1977, only 49 percent of married male employees with children under 18 had spouses who were also employed, 67 percent do today.

The Proposal

Specifically, the proposed statute would include parental status as a protected class with respect to employment discrimination. Parental status would cover parents of children under 18 years of age and children who remain under parental supervision because of a mental or physical disability, as well as those seeking legal custody of children. The statute would not amend current law, but would stand alone and refer to the definitions and clauses of existing anti-discrimination laws. This would effectively broaden the protections offered in the states referenced above to every state and provide parents across the nation with this most basic protection.

Examples of Prohibited Conduct

- Taking a mother or father off of a career-advancing path out of a belief that parents cannot meet requirements of these jobs.
- Hiring a man or woman without children over a more qualified man or woman with children because of unfounded concerns about working parents.
- Refusing to hire a former welfare recipient because an employer has a policy against hiring single parents -- though the employer hires many single people without children.

ENDING DISCRIMINATION AGAINST PARENTS ACT OF 1999

SECTION-BY-SECTION ANALYSIS

Short Title

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

Findings

Section 2 sets forth findings regarding the existence of, and need for Federal protection against, employment discrimination on the basis of parental status. The findings state that this Act is not intended to affect interpretation or application of existing federal statutes prohibiting employment discrimination on other bases.

Purposes

Section 3 states that the purposes of the Act are to provide comprehensive Federal prohibitions on employment discrimination on the basis of parental status; to provide meaningful and effective remedies for such employment discrimination; and to invoke Congress’ powers under the 14th amendment and the interstate commerce clause to prohibit such discrimination.

Definitions

Section 4 contains definitions.

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

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

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

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

Subsection (e) defines “Employee” to mean individuals covered under Title VII of the Civil Rights Act of 1964; the Government Employee Rights Act of 1991; the Congressional Accountability Act of 1995; or Section 401 of Title 3, United States Code. “Employee” is explicitly defined to cover applicants for employment and former employees.

Subsection (f) defines “Employer” to mean entities covered by Section 701 or Section 717 of Title VII of the Civil Rights Act of 1964; the Government Employee Rights Act of 1991; the Congressional Accountability Act of 1995; or section 401 of title 3, 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” as it is defined in regulations implementing the Family and Medical Leave Act of 1993.

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

Subsection (j) defines “Parental Status” to mean, with regard to an individual who is under the age of 18 or over 18 but incapable of self-care because of a physical or mental disability, having the status of a biological parent; an adoptive parent; a foster parent; a stepparent; a custodian of a legal ward; a person who is actively seeking legal custody or adoption; or an individual standing in loco parentis. Persons who are “in loco parentis” include those with day-to-day responsibilities to care for and financially support a child.

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

Subsection (l) defines “Religious Organization” to mean a religious corporation, association, or society, or a school, college, university, or other educational institution that is owned, managed or controlled by a religious corporation or whose curriculum is directed toward propagation of a particular religion.

Subsection (m) 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 on the basis of parental status.

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 on the basis of parental status.

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 on the basis of parental status.

Subsection (d) bars discrimination on the basis of parental status 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 individual because that individual has opposed acts made unlawful by this Act or because the individual has participated in any way in filing a charge or assisting in an investigation or proceeding under the Act.

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

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

Other Prohibitions

Subsection 7(a) bars the Commission from collecting, or requiring covered entities to collect, statistics on parental status.

Subsection 7(b) bars covered entities from adopting or implementing quotas on the basis of parental status.

Mixed Motive Discrimination

Section 8 states that an unlawful employment practice may be established where a complaining party demonstrates that parental status, or retaliation, coercion, threats, or intimidation, was a motivating factor for the practice, even if other factors also motivated the practice. It mirrors the prohibitions of Title VII of the Civil Rights Act of 1964.

Disparate Impact

Section 9 states that the fact that an employment practice has a disparate impact, as defined in Title VII of the Civil Rights Act of 1964, on the basis of parental status will not establish a violation of this Act.

Defenses

Section 10 sets forth statutory defenses.

Subsection (a) permits religious organizations to refuse to hire, and to discharge, individuals if the parental status of those individuals violates the sincerely held religious beliefs of the religious organization.

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

Enforcement

Section 11 describes the ways in which the Act will be enforced.

Subsection (a) assigns to the entities that have the power to enforce existing nondiscrimination statutes the same power to enforce this Act. The Commission has the same powers to enforce this Act that it has to enforce Title VII and the Government Employee Rights Act of 1991; the Librarian of Congress has the same powers as the Librarian of Congress has to enforce Title VII; the Board that enforces the Congressional Accountability Act of 1995 has the same powers as it exercises under that law; the Attorney General has the same powers as the Attorney General has under Title VII and the Government Employee Rights Act of 1991; and the President, the Commission, and the Merit Systems Protection Board have the same powers as they have under section 454 of title 3, United States Code. Courts of the United States have the same powers under this Act as they have under any of these statutes.

Subsection (b) sets forth the procedures and remedies that will apply to claims brought under this Act. These procedures and remedies will be: for individuals who are covered under Title VII, the procedures and remedies applicable under Title VII; for individuals covered under the Government Employee Rights Act of 1991, the procedures and remedies applicable under the Government Employee Rights Act; for individuals covered under the Congressional Accountability Act, the procedures and remedies applicable under the Congressional Accountability Act; and for individuals covered under section 401 of title 3, United States Code, the procedures and remedies applicable under that title.

Subsection (c) states that notwithstanding any limitations on the remedies specified in subsection (b), and in addition to those remedies, any covered entity that violates this Act will be liable for appropriate compensatory and punitive damages. Subsection (c) further states that neither a State nor the United States will be liable for punitive damages.

Subsection (d) states that title IV of the Congressional Accountability Act of 1995 will apply to claims made under this Act in same manner that it would apply to claims made by

employees covered under the Congressional Accountability Act of 1995 for a violation of that Act.

State and Federal Immunity

Subsection 12(a) states that a state will not be immune under the 11th Amendment to the U.S. Constitution from an action in federal court alleging a violation of this Act.

Subsection 12(b) states that remedies under this Act will be available against the United States to the same extent that remedies are available against a private entity, except that punitive damages are not available.

Posting Notices

Section 13 requires covered entities to post notices for individuals covered by the Act that describe the applicable provisions of the Act. Section 13 incorporates the 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 that enforces the Congressional Accountability Act of 1995 is authorized to issue regulations with respect to employees covered by that Act; and the President is authorized to issue regulations with respect to employees covered under section 401(a)(2) of title 3, United States Code.

Relationship to Other Laws

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

Severability

Section 16 states that if any provision of this Act is found by a court to be invalid, it will be severed from, and will not affect the enforceability of, any other provision of the Act.

Appropriations

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

Effective Date

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

REQUIREMENTS FOR PRESIDENTIAL DRAFT BILL TRANSMITTAL

Each presidential draft bill package must contain the following, which is drafted by the lead agency on the draft bill:

1. PRESIDENTIAL TRANSMITTAL MESSAGE – See two examples attached.
2. FACT SHEET – See example attached.
3. SECTION-BY-SECTION FOR THE DRAFT BILL – See example attached.
4. DRAFT BILL TEXT – See example attached.

When submitting your finalized draft bill package to OMB, please provide the following:

1. TWO (2) COPIES OF THE COMPLETE DRAFT BILL PACKAGE (see contents listed above) PRINTED ON BLANK (no letterhead) BOND PAPER.
2. TEN (10) COPIES OF THE COMPLETE DRAFT BILL PACKAGE ON "REGULAR" BLANK PAPER.
3. COPIES OF THE COMPLETE (4 items) BILL PACKAGE ON A COMPUTER DISK FORMATTED IN WORD PERFECT.

TO THE CONGRESS OF THE UNITED STATES:

I am pleased to transmit today for your immediate consideration the "Educational Excellence for All Children Act of 1999," the Administration's proposal for reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA) and other elementary and secondary education programs.

My proposal builds on the positive trends achieved under current law. The Improving America's Schools Act of 1994, which reauthorized the ESEA five years ago, and the Goals 2000: Educate America Act gave States and school districts a framework for integrating Federal resources in support of State and local reforms based on high academic standards. In response, 48 States, the District of Columbia, and Puerto Rico have adopted State-level standards. Recent results of the National Assessment of Educational Progress (NAEP) show improved performance for the economically disadvantaged and other at-risk students who are the primary focus of ESEA programs. NAEP reading scores for nine-year olds in high-poverty schools have improved significantly since 1992, while mathematics achievement has also increased nationally. Students in high-poverty schools and the lowest-performing students—the specific target populations for the ESEA Title I program—have registered gains in both reading and math achievement.

I am encouraged by these positive trends, but educational results for many children remain far below what they should be. My proposal to reauthorize the ESEA is based on four crosscutting themes reflecting both lessons from research and the experience of implementing the 1994 Act.

First, we would continue to focus on high academic standards for all children. The underlying purpose of every program within the ESEA is to help all children reach challenging State and local academic standards. States have largely completed the first stage of standards-based reform by developing content standards for all children. My bill would support the next stage of reform by helping States, school districts, schools, and teachers use these standards to guide classroom instruction and assessment.

My proposal for reauthorizing Title I, for example, would require States to hold school districts and schools accountable for student performance against State standards, including helping the lowest-performing students continually improve. The bill also would continue to target Federal elementary and secondary education resources on those students furthest from meeting State and local standards, with a particular emphasis on narrowing the gap in achievement between disadvantaged students and their more fortunate peers. In this regard, my proposal would also phase in equal treatment of Puerto Rico in ESEA funding formulas, so that poor children in Puerto Rico are treated the same as those in the rest of the country for the purpose of formula allocations.

Second, my proposal responds to research showing that while qualified teachers are critical to improving student achievement, far too many teachers are not prepared to teach to high

standards. Teacher quality is a particular problem in high-poverty schools, and the problem is often exacerbated by the use of paraprofessionals in instructional roles.

My bill addresses teacher quality by holding States accountable for stronger enforcement of their own certification and licensure requirements, while at the same time providing substantial support for State and local professional development efforts. The Teaching to High Standards initiative in Title II would help move challenging educational standards into every classroom by providing teachers with sustained and intensive high-quality professional development in core academic subjects, supporting new teachers during their first three years in the classroom, and ensuring that all teachers are proficient in relevant content knowledge and teaching skills.

The Technology for Education initiative under Title III would expand the availability of educational technology as a tool to help teachers implement high standards in the classroom, particularly in high-poverty schools. The bill also would extend, over the next seven years, the Class-Size Reduction initiative, which aims to reduce class sizes in the early grades by helping districts to hire and train 100,000 teachers. And the Title VII Bilingual Education proposal would help ensure that all teachers are well trained to teach limited English proficient students, who are found in more and more classrooms with each passing year.

Third, my bill would increase support for safe, healthy, disciplined, and drug-free learning environments where all children feel connected, motivated, and challenged to learn and where parents are welcomed and involved. The recent tragedy at Columbine High School in Littleton, Colorado, reminds us that we must be ever vigilant against the risks of violence and other dangerous behaviors in our schools. Our reauthorization bill includes several measures to help mitigate these risks.

We would strengthen the Safe and Drug-Free Schools and Communities Act by concentrating funds on districts with the greatest need for drug- and violence-prevention programs, and by emphasizing the use of research-based programs of proven effectiveness. Moreover, this proposal would require schools to refer students who bring weapons to schools to a mental health professional for assessment and require counseling for those who pose an imminent threat to themselves or others, allow funding for programs that educate students about the risks associated with guns, expand character education programs, and promote alternative schools and second chance programs. A new School Emergency Response to Violence program would provide rapid assistance to school districts that have experienced violence or other trauma that disrupts the learning environment.

My High School Reform initiative would support innovative reforms to improve student achievement in high schools, such as expanding the connections between adults and students that are necessary for effective learning and healthy personal development. This new initiative would provide resources to help transform 5,000 high schools into places where students receive individual attention, are motivated to learn, are provided with challenging courses, and are encouraged to develop and pursue long-term educational and career goals.

Fourth, in response to clear evidence that standards-based reforms work best when States have strong accountability systems in place, my proposal would encourage each State to establish a single, rigorous accountability system for all schools. The bill also would require States to end social promotion and traditional retention practices, to phase out the use of teachers with emergency certificates and the practice of assigning teachers "out-of-field," and to implement sound discipline policies in every school. Finally, the bill would give parents an important new accountability tool by requiring State, district, and school-level report cards that will help them evaluate the quality of the schools their children attend.

The Educational Excellence for All Children Act of 1999 provides a solid foundation—based on high standards for all students, high-quality professional development for teachers, safe and disciplined learning environments, and accountability to parents and taxpayers—for raising student achievement and narrowing the achievement gap between disadvantaged students and their more advantaged peers. More importantly, it will help prepare all of our children, and thus the Nation, for the challenges of the 21st century. I urge the Congress to take prompt and favorable action on this proposal.

THE WHITE HOUSE

*Transmittal
Message
Example 2*

TO THE CONGRESS OF THE UNITED STATES:

I am pleased to transmit today for immediate consideration and prompt enactment the "Cloning Prohibition Act of 1997." This legislative proposal would prohibit any attempt to create a human being using somatic cell nuclear transfer technology, the method that was used to create Dolly the sheep. This proposal will also provide for further review of the ethical and scientific issues associated with the use of somatic cell nuclear transfer in human beings.

Following the February report that a sheep had been successfully cloned using a new technique, I requested my National Bioethics Advisory Commission to examine the ethical and legal implications of applying the same cloning technology to human beings. The Commission concluded that at this time "it is morally unacceptable for anyone in the public or private sector, whether in a research or clinical setting, to attempt to create a child using somatic cell nuclear transfer cloning" and recommended that Federal legislation be enacted to prohibit such activities. I agree with the Commission's conclusion and am transmitting this legislative proposal to implement its recommendation.

Various forms of cloning technology have been used for decades resulting in important biomedical and agricultural advances. Genes, cells, tissues, and even whole plants and animals have been cloned to develop new therapies for treating such disorders as cancer, diabetes, and cystic fibrosis. Cloning technology also holds promise for producing replacement skin, cartilage, or bone tissue for burn or accident victims, and nerve tissue to treat spinal cord injury. Therefore, nothing in the "Cloning Prohibition Act of 1997" restricts activities in other areas of biomedical and agricultural research that involve: (1) the use of somatic cell nuclear transfer or other cloning technologies to clone molecules, DNA, cells, and tissues; or (2) the use of somatic cell nuclear transfer techniques to create animals.

The Commission recommended that such legislation provide for further review of the state of somatic cell nuclear transfer technology and the ethical and social issues attendant to its potential use to create human beings. My legislative proposal would implement this recommendation and assign responsibility for the review, to be completed in the fifth year after passage of the legislation, to the National Bioethics Advisory Commission.

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

WILLIAM J. CLINTON

THE WHITE HOUSE
June 9, 1997

"CLONING PROHIBITION ACT OF 1997"

FACT SHEET

The President today transmitted to the Congress the "Cloning Prohibition Act of 1997." This legislative proposal would implement the key recommendation of the National Bioethics Advisory Commission for legislation to prohibit any attempt to create a human being using somatic cell nuclear transfer technology.

The National Bioethics Advisory Commission (NBAC) Report

President Clinton today accepted the NBAC's report on the possible cloning of human beings. In February, following reports of the successful cloning of a sheep, the President asked the NBAC to review the profound ethical issues raised by the possible cloning of human beings. Today, Dr. Harold Shapiro, Chair of the Commission and President of Princeton University, formally presented the report to the President.

The Commission found unanimously that it is morally unacceptable for anyone to attempt to create a child with the technology used to create Dolly the sheep. The NBAC reported that attempting to create a child using so-called somatic cell nuclear transfer cloning would pose great risks to the child and raise other ethical issues needing further discussion. The NBAC called for a moratorium on the use of the technique in humans.

The Commission also found that the new technology may have many agricultural and medical benefits, including the development of medicines, therapies for diseases such as cancer, cystic fibrosis, and diabetes, and prospects for repair and regeneration of human tissues. The NBAC concluded that the cloning of DNA, cells, tissues, and non-human animals --using somatic cell nuclear transfer and other cloning techniques --is not ethically problematic when conducted in compliance with existing regulations and guidelines.

Cloning Prohibition Act of 1997

Acting on the Commission's key recommendation, President Clinton announced legislation banning the use of the new technology to clone human beings. Consistent with the NBAC's recommendation, the President's legislative proposal prohibits for five years the use of somatic cell nuclear transfer to create a human being and directs the NBAC to report to the President in four and a half years on whether to continue the ban. The proposal is carefully worded to ensure that it will not interfere with beneficial biomedical and agricultural activities.

Further Actions By The President

As recommended by the NBAC, President Clinton today also:

- **Reaffirmed that no Federal funds will be used to clone human beings. The President stated that the prohibition he put in place in March will remain in effect while his proposed legislation is pending.**
- **Urged privately funded scientists and clinicians to adhere to the voluntary moratorium he called for in March. The President asked these professionals to work through their societies and associations to ensure that all adhere to the current voluntary ban while his proposed legislation is pending.**
- **Pledged to work with other countries to enforce the prohibition. Several other countries, including Great Britain, Denmark, Germany, Australia, and Spain, have banned human cloning.**

COMPREHENSIVE CHILD IMMUNIZATION ACT OF 1993

SECTION-BY-SECTION

Short Title and References in the Act

Section 1 assigns the draft bill the short title "Comprehensive Child Immunization Act of 1993". It also states that all amendments in this Act apply to the Public Health Service Act unless otherwise specifically provided.

Purpose of the Act

Section 2 states that the purpose of the draft bill is to ensure that all children in the United States are protected against vaccine preventable infectious diseases at the earliest appropriate age; to establish a program to purchase vaccines and to distribute them to all willing health care providers; to establish a tracking program to monitor which children need to be immunized and the results of immunizing children; and to extend the National Childhood Vaccine Injury Compensation Program.

Findings of Congress

Section 3 sets forth the findings of Congress regarding the current status of childhood immunization efforts and actions needed to ensure the full immunization of all children in the United States at the earliest possible age.

Federal Purchase and Tracking of Childhood Vaccines

Subsection (a) of section 4 establishes a new Subtitle 3 in Title XXI of the Public Health Service Act.

New section 2141 addresses Federal purchase of recommended childhood vaccines.

Subsection (a) of section 2141 directs the Secretary to promulgate a list of vaccines that provide immunization against naturally occurring infectious diseases and are recommended for universal use in children, along with recommendations regarding appropriate dosage and age for administration. The Secretary is required to promulgate the first list by October 1, 1994, and to promulgate an updated list as warranted by medical developments.

Subsection (b) of section 2141 requires the Secretary to consult with Federal agencies involved in research regarding, or the regulation, procurement, or distribution of recommended childhood vaccines regarding, the quantities of vaccine to purchase. She may establish a Vaccine Requirements Panel to advise her or use whatever other method of conducting consultations she finds appropriate.

Paragraph (1) of subsection (c) of section 2141 directs the Secretary to purchase recommended childhood vaccines in

quantities sufficient to meet anticipated needs for routine and catch-up immunizations of children and foreseeable outbreak control activities, and to maintain a reserve supply sufficient for a six-month period. The Secretary is directed to negotiate a reasonable price that takes fairly into account the various costs described in paragraph (3).

Paragraph (2) of subsection (c) authorizes the Secretary to consult with representatives of State governments, experts in vaccine delivery, health care providers, and other experts prior to commencing negotiations for the purchase of vaccine.

Paragraph (3) of subsection (c) requires vaccine manufacturers participating in a procurement for recommended childhood vaccine instituted by the Secretary to furnish detailed cost or pricing data to the Secretary. The required data includes data related to research and development costs, production costs, costs associated with the distribution of vaccine to States and health care providers, marketing costs, profit levels sufficient to encourage future investment in research and development, the cost of maintaining adequate capacity for outbreak control, and any other data the Secretary determines is relevant.

Paragraph (4) of subsection (c) addresses the confidentiality accorded financial information submitted by manufacturers under paragraph (3). Subparagraph (A) directs that the information be treated as trade secret or confidential information for purposes of the Freedom of Information Act and provides for criminal sanction provisions. Subparagraph (B) states that subparagraph (A) does not authorize the withholding of the financial information from a duly authorized subcommittee or committee of the Congress. (A request from the Congress for this information would be handled in accordance with current practices governing trade secret information.) Written notice is required to be furnished to the manufacturer whenever the Secretary provides information to the Congress. Subparagraph (C) directs the Secretary to establish written procedures to ensure the confidentiality of the information.

Paragraph (5) of subsection (c) prohibits any manufacturer with which the Secretary contracts for the purchase of recommended childhood vaccine from imposing any shipping or handling charges on States or health care providers receiving the federally purchased vaccine. (Costs related to the distribution of vaccine are covered by the price negotiated by the Secretary.)

Paragraph (6) authorizes the Secretary to enter into contracts with multiple manufacturers of the same recommended childhood vaccine to ensure a reliable and adequate supply of vaccines and to stimulate competition.

Paragraph (7) requires a manufacturer that sells recommended childhood vaccine to the Secretary to provide data on the

shipment of doses by lot number, and any other information the Secretary may require.

New section 2142 addresses the distribution of recommended childhood vaccine.

Subsection (a) of section 2142 directs the Secretary to provide (either directly or through States) for the free distribution of vaccine to health care providers who serve children and are located in a State that participates in the State registry grant program under section 2143(b). In States not participating in the State registry grant program, free vaccine will be distributed to Federal health care providers, community health centers, migrant health centers, health centers serving residents of public housing or the homeless, other federally qualified health centers, and health care providers serving Indians under section 503 of the Indian Health Care Improvement Act or pursuant to a contract under section 102 of the Indian Self-Determination Act.

Subsection (b) imposes duties on health care providers receiving free vaccine. Providers may not charge patients for the cost of the vaccine, but may impose a fee for its administration unless such a fee would result in the denial of vaccine to someone unable to pay. Providers are required to report to the State tracking registry (or to the Secretary if there is no State registry) information regarding each vaccine administered. Providers are also required to provide periodic estimates of their future needs for vaccine.

New section 2143 provides for a collaborative Federal and State effort to track the immunization status of the Nation's children.

Subsection (a) requires the Secretary to establish a National Tracking System designed to monitor the various aspects of immunization efforts under subtitle 3. In addition, the Secretary is authorized, in the case of inadequately immunized children in a State not participating in the State registry grant program, to notify their parents or guardians of the need to protect their children with specific vaccine.

Paragraph (1) of subsection (b) authorizes the Secretary to make grants to States to establish and operate State immunization tracking registries and specifies the minimum information to be recorded in the registry for each child within the State.

Paragraph (2) imposes grant conditions, including timely entry of data on covered children; exchanging information with health care providers, the Secretary, and other States; adherence to Federal tracking models and systems specifications regarding registry design; and monitoring provider compliance with reporting and other requirements.

Paragraph (3) sets out requirements applicable to applications for State registry grants.

Paragraph (4) requires a State to furnish satisfactory assurances that its registry will be fully operational by October 1, 1996, and will adhere to the tracking models and systems specifications prescribed by the Secretary. It also requires assurances, as appropriate, that the State is making satisfactory progress toward meeting those requirements.

Paragraph (5) specifies allowable uses of grant funds.

Paragraph (6) requires each State receiving a registry grant to submit periodic reports to the Secretary.

Subsection (c) addresses the use and disclosure of personal information collected under subtitle 3.

Paragraph (1) of subsection (c) states the general rule that no personally identifiable information collected by the National Tracking System or a State tracking registry may be used or disclosed except as permitted by subsection (c).

Paragraph (2) lists the allowable purposes for which the information may be used or disclosed, including tracking children's immunization status, activities related to maintaining safe and effective supplies of vaccine, processing insurance claims, administering the National Vaccine Injury Compensation Program, health research, and program oversight.

Paragraph (3) provides for the use and disclosure of information with the written authorization of the individual to whom it refers (or to the parent or guardian of such individual), and requires that, upon their request, individuals be provided information about themselves.

Paragraph (4) authorizes the Secretary to issue regulations governing the use, maintenance, and disclosure of the covered information.

Paragraph (5) provides a criminal penalty for violation of subsection (c).

Paragraph (1) of subsection (d) authorizes the Secretary and States to utilize social security numbers to identify children in their tracking systems, and to require a parent or guardian to furnish a number (whenever a number has been assigned by the Social Security Administration) as a condition of receiving free vaccine. Paragraph (2) confers basic authority on the Secretary and the States to redisclose social security numbers consistent with the requirements of registry operations.

Subsection (e) of section 2143 requires the Secretary to report to the Congress not later than January 1, 1996, and

biennially thereafter, on the operation of the national tracking system and the State registries.

New section 2144 defines the terms "recommended childhood vaccine" and "health center."

New section 2145 provides appropriations for the vaccine purchase program under the new subtitle, and authorizes appropriations for tracking and start-up activities.

Subsection (a) provides for the financing mechanism to carry out the vaccine purchase program described above. The funds would come from a separate account in the Treasury. The sources of revenue that will be deposited into the account in the Treasury will be identified in legislation for broad-based reform of the national health care system when it is submitted to the Congress by the President in May. This funding will be available beginning with fiscal year 1995 and for each of the following years in which the vaccine purchase program remains in effect. (The sunset provision applicable to the vaccine purchase program is described below.)

For the purpose of making State registry grants, operating the National Tracking System, and carrying out other activities, subsection (b) of section 2145 authorizes the appropriation of \$152 million for fiscal year 1995, \$125 million for fiscal year 1996, and \$35 million for each of the fiscal years 1997, 1998, and 1999.

For the purpose of funding start-up costs associated with activities to implement the Comprehensive Child Immunization Act of 1993, subsection (c) of section 2145 authorizes the appropriation of such sums as may be necessary for fiscal years 1993 and 1994 (which are in addition to other amounts available to carry out current law).

Subsection (b) of section 4 requires State Medicaid programs, as part of their required Early and Periodic Screening, Diagnosis, and Testing (EPSDT) program for children, to cover all recommended childhood vaccines, as defined in section 2144 of the Public Health Service Act. This section also requires that Medicaid payments to providers include amounts, as appropriate, to reimburse for administration of these immunizations. These amendments would be effective for quarters beginning after September 30, 1994.

Subsection (c) of section 4 provides that subsections (b) and (c) of section 2141, providing the broad authority for the Secretary to purchase recommended childhood vaccines, will cease to be in effect when those subsections are superseded or terminated by a national health care reform law.

National Vaccine Injury Compensation Program Amendments

Subsection (a) of section 5 addresses use of the Vaccine Injury Compensation Trust Fund. It amends the Internal Revenue Code to allow payments from the Trust Fund for compensable injuries from vaccines administered on or after October 1, 1992. Under current law, payments are no longer authorized if the vaccine was administered after September 30, 1992. This subsection also amends the Omnibus Budget Reconciliation Act of 1989 to authorize appropriations from the Trust Fund for years after fiscal year 1992 (the latest year specified in the current law authorization) for administrative costs of the Departments of Justice and Health and Human Services, and for the United States Court of Federal Claims, to carry out the National Vaccine Injury Compensation Program. The annual authorization for each of those agencies is increased from \$2.5 to \$3 million to reflect the responsibilities attendant on adding additional vaccines to the program.

Subsection (b) of section 5 contains amendments related to the permanent extension and reinstatement of the vaccine excise tax. Subsection (b) repeals the Internal Revenue Code provision that authorizes the Secretary of the Treasury to terminate the vaccine excise tax. This provision also provides for reinstatement of the excise tax (which was terminated at the end of 1992) beginning on April 1, 1993.

Subsection (c) of section 5 relates to amendment of the Vaccine Injury Table. Subsection (c) adds a new section 2114(f) to the Public Health Service Act. The new subsection states that any vaccine recommended for universal administration to children by the Secretary would be included on the Vaccine Injury Table established by section 2114(a). This occurs by operation of law and no further administrative or legislative action would be needed. Although no conditions would be provided initially on the Table for the new vaccines, petitioners would be able to prevail on a petition for compensation by showing, by a preponderance of the evidence, that the vaccine in fact caused the alleged injury. The Secretary would have authority with respect to any vaccine so added to modify the Table, as may be done under current law with respect to vaccines on the original Table, but only in accordance with the notice, hearing, and comment procedures, and other authorities and limitations contained in section 2114(c).

Subsection (d) of section 5 allows the chief special master to suspend proceedings on petitions for up to 30 months, rather than the 540 days (18 months) in current law. This authority applies to the retrospective claims and is in addition to suspensions permitted under other provisions of the law.

Subsection (e) makes amendments intended to simplify vaccine information materials. Subsection (e) amends section 2126 of the Public Health Service Act, which requires the development and

distribution of vaccine information materials. The amendments are designed to expedite the process of formulating and revising the materials, and to allow the simplification of their content. To achieve these objectives--

- o paragraph (1) amends current law to allow the materials to be developed or revised with notice and a 30-day comment period, rather than through the much more extensive notice, public hearing, and 90-day comment procedure; consultation would only be required with the Advisory Commission on Childhood Vaccines, the Centers for Disease Control and Prevention, and the Food and Drug Administration; and
- o paragraph (2) would replace the extensive, detailed list of items that must be addressed in the information materials with a requirement for a concise and understandable statement of the benefits and risks of the vaccine, and the availability of the National Vaccine Injury Compensation Program.

Additionally, the introductory language of section 2126(c) (describing the content of the vaccine information materials) is amended to require that the materials provided be based on available data and information.

Finally, paragraph (3) amends section 2126(d) at each appropriate place to require the furnishing of materials to any individual (not just the representative of a child) receiving a listed vaccine. Under paragraph (4), the health care provider would supplement the written materials with visual presentations or oral explanations in appropriate cases.

Funding for Child Immunization Program

Section 6(a) directs the establishment and maintenance of a Comprehensive Child Immunization Account in the United States Treasury. The sources of revenue that will be deposited into the Comprehensive Child Immunization Account will be identified in legislation for broad-based reform of the national health care system when it is submitted to the Congress by the President in May. (The amounts in the Account will be available to the Secretary of Health and Human Services to carry out the time-limited program under which recommended childhood vaccines are purchased and distributed.)

Pay-As-You-Go-Scoring

The effect of this proposal is:

Fiscal Years
(in millions of dollars)

	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1994-1998</u>
Outlays	----	1,074	1,164	1,268	1,194	4,700
Revenues	----	1,074	1,164	1,268	1,194	4,700

The program of universal vaccine purchase and distribution contained in the Comprehensive Child Immunization Act of 1993 would increase direct spending and therefore is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990.

The sources of revenue to pay for the direct spending increases contained in the bill will be identified in the President's legislation for broad-based reform of the national health care system when it is submitted to the Congress in May.

Accordingly, the pay-as-you-go cost is zero.

Example Draft Bill

A BILL

To prohibit any attempt to create a human being using somatic cell nuclear transfer, to provide for further review of the ethical and scientific issues associated with the use of somatic cell nuclear transfer in human beings, 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 "Cloning Prohibition Act of 1997".

SECTION 2. FINDINGS.

(a) It has been reported that an adult sheep has been cloned using a technique called somatic cell nuclear transfer, a form of cloning.

(b) The National Bioethics Advisory Commission (NBAC) has reviewed the scientific and ethical implications of this technology's potential use to clone human beings.

(1) NBAC has found that:

(a) Somatic cell nuclear transfer technology may have many applications for biotechnology, livestock production, and new medical approaches including the production of pharmaceutical proteins and prospects for regeneration and repair of human tissues.

(b) However, the possibility of using somatic cell nuclear transfer for the purposes of creating a child entails significant scientific uncertainty and medical risk. Potential risks, known and unknown, could result in harm to a child.

(2) The NBAC concluded unanimously that at this time it is morally unacceptable for anyone in the public or private sector, whether in a research or clinical setting, to attempt to create a child using somatic cell nuclear transfer cloning. The Commission's consensus is based on current scientific information indicating that this technique is not safe to use in humans at this point.

(3) Moreover, in addition to issues of safety, the Commission identified many additional serious ethical concerns which they agreed require a great deal more widespread and careful public deliberation before this technology may be used.

(4) NBAC recommended a continuation of the current moratorium on the use of Federal funds to support any attempt to create a child by somatic cell nuclear transfer, and an immediate request to all firms, clinicians, investigators, and professional societies to comply voluntarily with the intent of the Federal moratorium.

(5) NBAC further recommended that Federal

legislation be enacted to prohibit anyone from attempting, whether in a research or clinical setting, to create a child through somatic cell nuclear transfer cloning.

(6) NBAC also recommended that the United States cooperate with other countries to enforce mutually supported restrictions on this activity.

(7) NBAC specified that the legislation should include a sunset provision and that, prior to the sunset date, an oversight body should review and report on the status of somatic cell nuclear transfer technology and the ethical and social issues associated with its use and recommend whether the prohibition should be continued.

(8) The Commission concluded that any regulatory or legislative actions undertaken to effect the foregoing prohibition should be carefully written so as not to interfere with other important areas of research, such as the cloning of human DNA sequences and cells, which raise neither the scientific nor the ethical issues that arise from the possible creation of children through somatic cell nuclear transfer techniques.

(9) The Commission also found that cloning animals by somatic cell nuclear transfer does not raise the same issues implicated in attempting to use the technique to create a child, and its continuation should only be subject to existing regulations regarding the humane use

of animals.

(c) Biomedical research facilities, including those conducting cloning, and reproductive services facilities affect interstate commerce.

SECTION 3. PURPOSES.—The purposes of this Act are—

(a) To prohibit any attempt to create a human being using somatic cell nuclear transfer cloning; and

(b) To provide for further review of the ethical and scientific issues associated with the use of somatic cell nuclear transfer in humans.

SECTION 4. DEFINITIONS.

(a) "Cloning" means the production of a precise genetic copy of a molecule (including DNA), cell, tissue, plant, animal, or human.

(b) "Somatic cell" means any cell of the body other than germ cells (eggs or sperm).

(c) "Somatic cell nuclear transfer" means the transfer of a cell nucleus from a somatic cell into an egg from which the nucleus has been removed.

SECTION 5. PROHIBITION.—It shall be unlawful for any person or other legal entity, public or private, to perform or use somatic cell nuclear transfer with the intent of introducing the product of that transfer into a woman's womb or in any other way creating a human being.

SECTION 6. PROTECTED BIOMEDICAL RESEARCH.—Nothing in this Act shall restrict other areas of biomedical and agricultural

research, including important and promising work that involves:

(1) the use of somatic cell nuclear transfer or other cloning technologies to clone molecules, DNA, cells, and tissues; or

(2) the use of somatic cell nuclear transfer techniques to create animals.

SECTION 7. PENALTIES.—

(a) Any person who intentionally violates Section 5 shall be fined the greater of \$250,000 or two times the gross gain or loss from the offense.

(b) If a person is violating or about to violate Section 5, the Attorney General may commence a civil action in Federal district court to enjoin such violation.

(c) Any property, real or personal, derived from or used to commit a violation or attempted violation of Section 5, or any property traceable to such property, is subject to forfeiture to the United States in accordance with the procedure set forth in Chapter 46 of Title 18 of the United States Code.

(d) The Attorney General of the United States shall have exclusive enforcement authority under this Act.

SECTION 8. EFFECTIVE DATE.—This Act shall apply to somatic cell nuclear transfers performed within five years after the date of its enactment.

SECTION 9. NATIONAL BIOETHICS ADVISORY COMMISSION REPORT.—No

later than four and one-half years after the enactment of this Act, the National Bioethics Advisory Commission shall report to the President on (1) the state of the science of somatic cell nuclear transfer; (2) the ethical and social issues associated with the potential use of this technology in humans; and (3) the advisability of continuing the prohibition established by this Act. The Commission is authorized to continue for five years from the date of enactment for this purpose and for other purposes as established in Executive Order 12975 and subsequent amendments to this order.

SECTION 10. RIGHT OF ACTION.—Nothing in this Act shall be construed to give any individual or person a private right of action.

Prohibiting Discrimination Against Parents

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

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

Examples of conduct that would be prohibited:

- Employers who take women who are parents off career-advancing paths (e.g., partnership track) out of some belief that parents as a class are not capable of committing to the work requirements of the job, though there is no discernable difference in the work product of those employees who are parents.
- The hiring of a woman without children over a more qualified man with children because the hired employee did not have children.

Background:

Prohibiting employment discrimination based on parental or family status is the law of some states and many municipalities. (Federal law currently prohibits discrimination based on family status in the provision of Housing. See Fair Housing Act.) For example, New Jersey law states that "All persons shall have the opportunity to obtain employment ... property without discrimination because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, or sex, subject only to conditions and limitations applicable alike to all persons. This opportunity is recognized as and declared to be a civil right. (Stat. @ 10:5-4 (1998)) In addition, Michigan law states, "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." (MCL @ 37.2102; MSA @ 3.548(102) (1998)) In addition, a number of municipalities prohibit employment discrimination based on family status, including the District of Columbia, New York, Miami-Dade County, and Pittsburgh.

Other issues:

1. Legislation should clearly state that no disparate impact analysis will apply.
2. Legislation should be drafted so that it will not work to the detriment of workers who are not

covered by the definition (e.g. workers without children).

3. Still must examine issue of benefits to determine whether they should be covered. At this point, benefits should not be exempted from coverage.

106TH CONGRESS
1st Session

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. Dodd introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Ending Discrimination
5 Against Parents Act of 1999".

6 **[Findings to be supplied.]**

7 **SEC. 2. PURPOSES.**

8 The purposes of this Act are—

9 (1) to provide a comprehensive Federal prohibi-
10 tion of employment discrimination on the basis of
11 parental status;

1 (2) to provide meaningful and effective rem-
2 edies for employment discrimination on the basis of
3 parental status; and

4 (3) to invoke congressional powers, including
5 the powers to enforce the 14th amendment to the
6 Constitution and to regulate interstate commerce, in
7 order to prohibit discrimination on the basis of pa-
8 rental status.

9 SEC. 3. DEFINITIONS.

10 In this Act:

11 (1) CHILD.—The term "child" means an indi-
12 vidual who—

13 (A) is under the age of 18; or

14 (B) is 18 or older but is incapable of self-
15 care because of a physical or mental disability.

16 (2) COMMISSION.—The term "Commission"
17 means the Equal Employment Opportunity Commis-
18 sion.

19 (3) COMPLAINING PARTY.—The term "com-
20 plaining party" means the Commission, the Attorney
21 General, or any other person who may bring an ac-
22 tion or proceeding under this Act.

23 (4) COVERED ENTITY.—The term "covered en-
24 tity" means an employer, employment agency, labor

1 organization, and joint labor-management commit-
2 tee.

3 (5) DEMONSTRATES.—The term “dem-
4 onstrates” means meets the burdens of production
5 and persuasion.

6 (6) EMPLOYEE.—The term “employee” ^{means:} ~~has the~~ (a) an employee
7 ^{to whom} ~~meaning given the term in~~ section 701(f) of the Civil
8 Rights Act of 1964 (42 U.S.C. 2000e(f)), ^{applies; (b)} and means
9 an employee to whom section 717(a) of the Civil
10 Rights Act of 1964 (42 U.S.C. 2000e-16(a)) ap-
11 plies, ^(c) a Presidential appointee or State employee to
12 ^{to whom} ~~which~~ section 902(a)(1) of the Government Em-
13 ployee Rights Act of 1991 (2 U.S.C. 1202(a)(1)) ap-
14 plies; and ^(d) a covered employee, as defined in section
15 101 of the Congressional Accountability Act of 1995
16 (2 U.S.C. 1301) or section 401 of title 8, United
17 States Code. ^q The term “employee” includes appli-
18 cants for employment and former employees.

19 (7) EMPLOYER.—The term “employer” ^{means:}
20 (A) ~~means~~ a person engaged in an industry
21 affecting commerce (as defined in section
22 701(h) of the Civil Rights Act of 1964 (42
23 U.S.C. 2000e(h))) who has 15 or more employ-
24 ees (as defined in section 701(f) of such Act
25 (42 U.S.C. 2000e(f))) for each working day in

parallel
Title VII

1 each of 20 or more calendar weeks in the cur-
2 rent or preceding calendar year, and any agent
3 of such a person;

4 (B) ~~means~~^e an entity to which section
5 717(a) of the Civil Rights Act of 1964 (42
6 U.S.C. 2000e-16(a)) applies; ^(C) an employing au-
7 thority to which section 302(a)(1) of the Gov-
8 ernment Employee Rights Act of 1991 (2
9 U.S.C. 1202(a)(1)) applies; or ^(D) an employing of-
10 fice, as defined in section 101 of the Congres-
11 sional Accountability Act of 1995 (2 U.S.C.
12 1801) or section 401 of title 3, United States
13 Code; and

14 ^E ~~(C)~~ does not include a bona fide private
15 membership club (other than a labor organiza-
16 tion) that is exempt from taxation under section
17 501(c) of the Internal Revenue Code of 1986.

18 (8) EMPLOYMENT.—The term "employment"
19 includes recruitment or advertisement for a job, re-
20 ferral for a job, job application procedures, hiring,
21 advancement, discharge, compensation, job training,
22 ~~[membership in a labor organization]~~ ^g OR [a term,
23 condition, or privilege of membership in a labor or-
24 ganization] or any other term, condition, or privi-
25 lege of employment.

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1 (9) EMPLOYMENT AGENCY.—The term "em-
2 ployment agency" has the meaning given the term in
3 section 701(c) of the Civil Rights Act of 1964 (42
4 U.S.C. 2000e(c)).

5 (10) INCAPABLE OF SELF-CARE.—The term
6 "incapable of self-care" has the meaning given the
7 term in Regulations implementing section
8 101(a)(12)(B) of the Family and Medical Leave Act
9 of 1993 (29 U.S.C. 2611(a)(12)(B)) ~~OR~~ ~~Regula-~~
10 ~~tions specified in section 825.113 of title 29, Code~~
11 ~~of Federal Regulations (as in effect on July 1,~~
12 ~~1993).~~

13 (11) LABOR ORGANIZATION.—The term "labor
14 organization" has the meaning given the term in
15 section 701(d) ^{and (e)} of the Civil Rights Act of 1964 (42
16 U.S.C. 2000e(d)).

17 (12) PARENTAL STATUS.—The term "parental
18 status" means the status of—

19 (A) a biological parent;

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

22 (C) a foster parent;

23 (D) a stepparent; or

24 (E) an individual standing in loco parentis;

25 [Note: Does this include a legal ward?]

parent-
defined

having with regard to a child

of a child who is under 18 -

custodian of a legal ward

1 [in relation to a child.]

2 (13) PERSON.—The term “person” has the
3 meaning given the term in section 701(a) of the
4 Civil Rights Act of 1964 (42 U.S.C. 2000e(a)).

5 (14) RELIGIOUS ORGANIZATION.—The term
6 “religious organization” means—

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

9 (B) a school, college, university, or other
10 educational institution or institution of learn-
11 ing, if—

12 (i) the institution is in whole or substan-
13 tial part controlled, managed, owned, or
14 supported by ^{particular} a religion or religious cor-
15 poration, association, or society; or

16 (ii) the curriculum of the institution is
17 directed toward the propagation of a par-
18 ticular religion.

19 (15) STATE.—The term “State” has the mean-
20 ing given the term in section 701(i) of the Civil
21 Rights Act of 1964 (42 U.S.C. 2000e(i)).

22 **SEC. 4. DISCRIMINATION PROHIBITED.**

23 (a) EMPLOYER PRACTICES.—It shall be an unlawful
24 employment practice for an employer—

1 (1) to fail or refuse to hire or to discharge any
2 individual, or otherwise to discriminate against any
3 individual with regard to the compensation, terms,
4 conditions, or privileges of employment of the indi-
5 vidual, because of such individual's parental status;
6 or

7 (2) to limit, segregate, or classify employees or
8 applicants for employment in any way that would
9 deprive or tend to deprive any individual of employ-
10 ment opportunities or otherwise adversely affect the
11 status of the individual as an employee, because of
12 such individual's parental status.

13 (b) **EMPLOYMENT AGENCY PRACTICES.**—It shall be
14 an unlawful employment practice for an employment agen-
15 cy to fail or refuse to refer for employment, or otherwise
16 to discriminate against, any individual because of the pa-
17 rental status of the individual or to classify or refer for
18 employment any individual on the basis of the parental
19 status of the individual.

20 (c) **LABOR ORGANIZATION PRACTICES.**—It shall be
21 an unlawful employment practice for a labor organiza-
22 tion—

23 (1) to exclude or to expel from its membership,
24 or otherwise to discriminate against, any individual
25 because of the parental status of the individual;

8

1 (2) to limit, segregate, or classify its member-
2 ship or applicants for membership, or to classify or
3 fail or refuse to refer for employment any individual,
4 in any way that would deprive or tend to deprive any
5 individual of employment opportunities, or would
6 limit such employment opportunities or otherwise
7 adversely affect the status of the individual as an
8 employee or as an applicant for employment, be-
9 cause of such individual's parental status; or

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

13 (d) TRAINING PROGRAMS.—It shall be an unlawful
14 employment practice for any employer, labor organization,
15 or joint labor-management committee controlling appren-
16 ticeship or other training or retraining, including on-the-
17 job training programs, to discriminate against any individ-
18 ual because of the parental status of the individual in ad-
19 mission to, or employment in, any program established to
20 provide apprenticeship or other training.

21 SEC. 6. RETALIATION AND COERCION PROHIBITED.

22 (a) RETALIATION.—A covered entity shall not dis-
23 criminate against an individual because the individual op-
24 posed any act or practice prohibited by this Act or because
25 the individual made a charge, assisted, testified, or partici-

1 pated in any manner in an investigation, proceeding, or
2 hearing under this Act.

3 (b) CORRECTION.—A covered entity shall not coerce, in-
4 timidate, threaten, or interfere with any individual in the
5 exercise or enjoyment of, or on account of the individual's
6 having exercised, enjoyed, or assisted in or encouraged the
7 exercise or enjoyment of, any right granted or protected
8 by this Act.

9 SEC. 6. OTHER PROHIBITIONS.

10 (a) COLLECTION OF STATISTICS.—The Commission
11 shall not collect statistics on parental status from covered
12 entities, or compel the collection of such statistics by cov-
13 ered entities.

14 (b) QUOTAS.—A covered entity shall not adopt or im-
15 plement a quota on the basis of parental status.

16 SEC. 7. PROOF OF VIOLATION.

17 (a) PROOF OF VIOLATION.—Subject to section 8, a
18 complaining party may demonstrate a violation of [section
19 4, 5, or 6(b)] by demonstrating that—

20 (1) a covered entity has [discriminated against
21 or taken other prohibited action against an individ-
22 ual because of that individual's parental status, as
23 described in section 4 or 6(b),] or discriminated
24 against, coerced, intimidated, threatened, or inter-
25 fered with an individual as described in section 5; or

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Title VII

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DISCUSSION DRAFT

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1 [(2) a covered entity has engaged in an act of parental sta-
 2 discrimination, coercion, intimidation, threatening, tion, coercion
 3 or interference, or another prohibited act described threats, or
 4 in section 4, 5, or 6(b), that was motivated by pa- interference
 5 rental status ^{the} or an action of an individual described with an indiv-
 6 in section 5, even if another factor also motivated dual as de-
 7 the act.] scribed in
 8 section 5.
 9 was a mot-
 10 vating fact
 11 for any em-
 12 ployment
 13 practice, ex-
 14 cept through offe-
 15 factors als
 16 motivated
 17 the practice

8 (b) DISPARATE IMPACT.—The fact that an employ-
 9 ment practice has a disparate impact, as the term “dispar-
 10 ate impact” is used in section 703(k) of the Civil Rights
 11 Act of 1964 (42 U.S.C. 2000e-2(k)), on the basis of pa-
 12 rental status does not establish a violation of this Act.

13 **SEC. 8. DEFENSES.**

14 (a) **RELIGIOUS ORGANIZATIONS.**—It shall not be a
 15 violation of this Act for a religious organization to fail or
 16 refuse to hire or to discharge an individual ~~or otherwise~~
 17 ~~to discriminate against any individual with regard to the~~
 18 ~~compensation, terms, conditions, or privileges of employ-~~
 19 ~~ment of the individual~~, because the parental status of the
 20 individual violates the sincerely held religious beliefs of
 21 that religious organization.

22 (b) **ACTIONS IN A FOREIGN COUNTRY.**—

23 (1) **IN GENERAL.**—It shall not be a violation of
 24 this Act for a covered entity to take any action oth-
 25 erwise prohibited under this Act with respect to an

another
 fact

1 employee in a workplace in a foreign country if com-
2 pliance with this Act would cause such entity to vio-
3 late the law of the foreign country in which such
4 workplace is located.

5 (2) APPLICATION OF ACT.—[If a covered entity
6 that is incorporated in a foreign country, and is con-
7 trolled by an entity that is incorporated in the Unit-
8 ed States, takes an action that is alleged to violate
9 this Act against an employee in a workplace in the
10 foreign country, this Act shall be presumed to apply
11 to the covered entity and the employee.]

12 (3) CONTROL.—For purposes of paragraph (2),
13 the determination of whether an entity that is incor-
14 porated in the United States controls an entity that
15 is incorporated in a foreign country shall be based
16 on the factors set forth in section 702(e)(3) of title
17 VII of the Civil Rights Act of 1964 (42 U.S.C.
18 2000e-1(c)(3)).

19 SEC. 9. ENFORCEMENT.

20 (a) ENFORCEMENT POWERS.—With respect to the
21 administration and enforcement of this Act in the case of
22 a claim alleged by an individual for a violation of this
23 Act—

24 (1) the Commission shall have the same powers
25 as the Commission has to administer and enforce—

*Back
to the VII*

12

1 (A) title VII of the Civil Rights Act of
2 1964 (42 U.S.C. 2000e et seq.); or

3 (B) sections 802 and 804 of the Govern-
4 ment Employee Rights Act of 1991 (2 U.S.C.
5 1202 and 1220);

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

9 (2) the Librarian of Congress shall have the
10 same powers as the Librarian of Congress has to ad-
11 minister and enforce title VII of the Civil Rights Act
12 of 1964 (42 U.S.C. 2000e et seq.) in the case of a
13 claim alleged by the individual for a violation of such
14 title;

15 (8) the Board (as defined in section 101 of the
16 Congressional Accountability Act of 1995 (2 U.S.C.
17 1801)) shall have the same powers as the Board has
18 to administer and enforce the Congressional Ac-
19 countability Act of 1995 (2 U.S.C. 1301 et seq.) in
20 the case of a claim alleged by the individual for a
21 violation of section 201(a)(1) of such Act (2 U.S.C.
22 1811(a)(1));

23 (4) the Attorney General shall have the same
24 powers as the Attorney General has to administer
25 and enforce—

1 (A) title VII of the Civil Rights Act of
2 1964 (42 U.S.C. 2000e et seq.); or

3 (B) sections 302 and 304 of the Govern-
4 ment Employee Rights Act of 1991 (2 U.S.C.
5 1202 and 1220);

6 in the case of a claim alleged by the individual for
7 a violation of such title or of section 502(a)(1) of
8 such Act (2 U.S.C. 1202(a)(1)), respectively;

9 (5) the President, the Commission, and the
10 Merit Systems Protection Board shall have the same
11 powers as the President, the Commission, and the
12 Board, respectively, have to administer and enforce
13 [sections 451 and 452 of title 8, United States
14 Code,] [Note: This cite looks wrong.] in the case of
15 a claim alleged by the individual for a violation of
16 section 411(a)(1) of such title;

17 (6) a court of the United States shall have the
18 same jurisdiction and powers as the court has to en-
19 force—

20 (A) title VII of the Civil Rights Act of
21 1964 (42 U.S.C. 2000e et seq.) in the case of
22 a claim alleged by the individual for a violation
23 of such title;

24 (B) sections 302 and 304 of the Govern-
25 ment Employee Rights Act of 1991 (2 U.S.C.

14

1 1202 and 1220) in the case of a claim alleged
2 by the individual for a violation of section
3 302(a)(1) of such Act (2 U.S.C. 1202(a)(1));

4 (C) the Congressional Accountability Act
5 of 1995 (2 U.S.C. 1801 et seq.) in the case of
6 a claim alleged by the individual for a violation
7 of section 201(a)(1) of such Act (2 U.S.C.
8 1811(a)(1)); and

9 (D) [section 451] of title 3, United States
10 Code, in the case of a claim alleged by the indi-
11 vidual for a violation of section 411(a)(1) of
12 such title.

13 (b) PROCEDURES AND REMEDIES.—The procedures
14 and remedies applicable to a claim alleged by an individual
15 for a violation of this Act are—

16 (1) ~~the procedures and remedies applicable for~~ *For individuals who are employees under*
17 ~~a violation of title VII of the Civil Rights Act of~~
18 ~~1964 (42 U.S.C. 2000e et seq.) in the case of a~~ *the procedures and*
19 ~~claim alleged by the individual for a violation of such~~ *remedies available*
20 ~~title;~~ *under*

21 (2) ~~the procedures and remedies applicable for~~ *For individuals who are covered by*
22 ~~a violation of section 302(a)(1) of the Government~~
23 ~~Employee Rights Act of 1991 (2 U.S.C. 1202(a)(1)),~~ *the proce*
24 ~~in the case of a claim alleged by the individual for~~ *dones an*
25 ~~a violation of such section;~~ *remedies*
available
under

15

1 (3) ~~the procedures and remedies applicable for~~

2 a violation of section 201(a)(1) of the Congressional
3 Accountability Act of 1995 (2 U.S.C. 1311(a)(1)), ~~in~~
4 ~~the case of a claim alleged by the individual for a~~
5 ~~violation of such section; and~~

the proce:
dures and
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6 (4) ~~the procedures and remedies applicable for~~

7 a violation of section 411(a)(1) of title 8, United
8 States Code, ~~in the case of a claim alleged by the~~
9 ~~individual for a violation of such section.~~

the procedures and remedies
applicabl.

10 (c) ADDITIONAL REMEDIES. ~~Notwithstanding any~~
11 ~~limitation on the remedies specified in subsection (b), and~~

12 In addition to the remedies specified in subsection (b), any
13 covered entity who violates this Act shall be liable for such
14 compensatory or punitive damages as may be appropriate,
15 except that neither a State nor the United States shall
16 be liable for punitive damages.

17 (d) OTHER APPLICABLE PROVISIONS.—With respect
18 to a claim alleged by a covered employee (as defined in
19 section 101 of the Congressional Accountability Act of
20 1995 (2 U.S.C. 1301)) for a violation of this Act, title
21 III of the Congressional Accountability Act of 1995 (2
22 U.S.C. 1381 et seq.) shall apply in the same manner as
23 such title applies with respect to a claim alleged by such
24 a covered employee for a violation of section 201(a)(1) of
25 such Act (2 U.S.C. 1311(a)(1)).

1 **SEC. 10. STATE AND FEDERAL IMMUNITY.**

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

6 (b) **REMEDIES AGAINST THE UNITED STATES AND**
7 **THE STATES.**—Notwithstanding any other provision of
8 this Act, in an action or administrative proceeding against
9 the United States or a State for a violation of this Act,
10 remedies (including remedies at law and in equity, and
11 interest) are available for the violation to the same extent
12 as the remedies are available ^{against} ~~for a violation of title VII~~
13 ~~of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.)~~
14 ~~by~~ a private entity, except that punitive damages are not
15 available.

16 **SEC. 11. ATTORNEYS' FEES.**

17 Notwithstanding any other provision of this Act, in
18 an action or administrative proceeding for a violation of
19 this Act, an entity described in section 9(a) (other than
20 paragraph (4) of such section), in the discretion of the
21 entity, may allow the prevailing party, other than the
22 United States, a reasonable attorney's fee (including ex-
23 pert fees) as part of the costs. The United States shall
24 be liable for the costs to the same extent as a private per-
25 son.

Do we
need?

1 SEC. 12. POSTING NOTICES.

2 A covered entity shall post notices for employees, ap-
3 plicants for employment, and members, to whom the provi-
4 sions specified in section 9(b) apply, that describe the ap-
5 plicable provisions of this Act in the manner prescribed
6 by, and subject to the penalty provided under, section 711
7 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10).

8 SEC. 13. REGULATIONS.

9 (a) IN GENERAL.—Except as provided in subsections
10 (b), (c), and (d), ^{below} the Commission shall have authority to
11 issue regulations to carry out this Act.

12 (b) LIBRARIAN OF CONGRESS.—The Librarian of
13 Congress shall have authority to issue regulations to carry
14 out this Act with respect to employees of the Library of
15 Congress.

16 (c) BOARD.—The Board referred to in section 9(a)(3)
17 shall have authority to issue regulations to carry out this
18 Act, in accordance with section 304 of the Congressional
19 Accountability Act of 1995 (2 U.S.C. 1384), with respect
20 to covered employees, as defined in section 101 of such
21 Act (2 U.S.C. 1301).

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

18

1 **SEC. 14. RELATIONSHIP TO OTHER LAWS.**

2 This Act shall not invalidate or limit the rights, rem-
3 edies, or procedures available to an individual claiming
4 discrimination prohibited under any other Federal law or
5 any law of a State or political subdivision of a State.

6 **SEC. 15. SEVERABILITY.**

7 If any provision of this Act, or the application of the
8 provision to any person or circumstance, is held to be in-
9 valid, the remainder of this Act and the application of the
10 provision to any other person or circumstance shall not
11 be affected by the invalidity.

*normal
sex.*

12 **SEC. 16. EFFECTIVE DATE.**

13 This Act shall take effect 60 days after the date of
14 enactment of this Act and shall not apply to conduct oc-
15 ccurring before the effective date.

DISCUSSION POINTS ON DRAFT BILL ON PARENTAL STATUS DISCRIMINATION

Section 3: Definitions

- **Child:** Current definition extends beyond traditional parent/child relationship. Was this the intent?
- **Employee, Employer:** Language changes suggested to enhance clarity.
- **Employment:** New proposed language is preferable.
- **Incapable of self-care:** New proposed language is preferable.
- **Parental status:**
 - As currently drafted, could include those who are caretakers for, e.g., incapacitated elderly relatives. Was this the intent?
 - Whom is “in loco parentis” intended to cover? Should a functional definition – e.g., “those who have day-to-day responsibilities to care for and financially support a child” -- be substituted?
 - Is inclusion of “prospective adoptive parents” too broad?
 - Should people be protected only when they have caretaking responsibilities?
 - Should language be revised to state that parental status means “*having* the status of” a biological parent, etc.?

Section 4: Discrimination Prohibited

- **Benefits:** Not currently mentioned explicitly in the draft, and thus will presumably be handled according to standard Title VII principles. Was this the intent?

Section 7: Proof of Violation

- **First paragraph:** Why are there brackets around the first clause?
- **Second paragraph:** Language changes suggested to track Title VII mixed motives language.

Section 8: Defenses

- **Religious Organizations:** Terms and conditions discrimination not included in section because organizations are not authorized to discriminate in, e.g., benefits or pay, once they have decided to hire an individual.
- **Actions in a Foreign Country:** Should language be modified to track Title VII?

Section 9: Enforcement

- **Procedures and Remedies:** Language changes suggested to enhance clarity.
- **Additional Remedies:** Language changes suggested to enhance clarity.

Section 10: State and Federal Immunity

- **Remedies against the United States:** Language changes suggested to enhance clarity.

Section 11: Attorneys' Fees

- Which entities are intended to be able to award attorneys' fees, and in what circumstances?

Section 15: Severability

- ▶ This language goes further than the standard severability clause. Was this the intent?

→ findings

To: Neera, Donna
From: Suzanne
Date: 5/7/99
RE: Questions from Legislative Counsel on Draft.

I thought it might be easiest just to summarize these questions and fax them along with the draft of the bill from legislative counsel. Most of them seem very technical and probably will need attention from the EEOC or Justice folks that drafted the bill. Beyond resolving the questions, it would be good to understand the answers, so maybe, Neera, a meeting with me and them is needed. Let's see.

Beyond these questions, Neera had talked about getting together next week just to catch up on where we are -- I've been in touch with lots of offices and maybe we can work some of them together. We also need to talk timing on when to roll this out. I can't do Tuesday morning or early afternoon -- but late pm looks good or Wednesday morning.

Here are the questions.

1. On the definition of "employer" -- it was drafted to cover private sector only, although public sector employees were brought in under 'covered entity.' She thought it was clearer to bring them into the definition of "employer." I thought that was fine so, it is drafted that way.
2. On the definition of "employee" -- she thought the wrong cross reference was used and changed that to include federal sector employees. That also made sense, so it is done that way.
3. "Employment" definition -- only includes "membership of labor organization" She thought that this should be broader and include reference to terms, conditions or privileges of membership to be more parallel to the work specific protections already in the definition.
4. "Incapable of Self-care" definition -- this references the regs on FMLA as issued. Do we want to freeze this definition in or allow it to change if the regs change?
5. "Parental Status" definition -- this is drafted differently than the FMLA, specifically "legal ward" is in the FMLA and not in EDAPA. She thought maybe it was covered by "in loco parentis" but wanted to check.
6. "Proof of Violation" definition -- she had some questions see draft.
7. The religious organization exemption in Section 8 -- does not include "terms and conditions of employment, etc." so is not parallel to the rest of EDAPA.
8. Actions in a Foreign Country -- She was confused by this section, as am I. She doesn't understand what a "US entity" is. As I understand it, it is currently drafted so that the act applies to certain actions/acts of discrimination rather than applying to the entities themselves. This section is not drafted like Title VII and she was confused.

9. Section 9 -- she thought the cites to Title III were odd and covered too narrow a group of federal workers/appointees. ENDA was broader and included others.

That's it, which is lucky since I for one am confused enough. You can see why I think we need to go back to the original drafters -- in addition, they should review the draft for changes that may concern them although she wouldn't do anything to mess it up on purpose. But beyond that, I'd rather keep the circulation of this draft quite narrow so we don't have a lot of version floating around out there.

DRAFT FINDINGS

The Congress finds that:

- Title VII of the Civil Rights Act of 1964 prohibits employment discrimination against parents to the extent that such discrimination constitutes discrimination on the basis of sex; the Americans with Disabilities Act prohibits discrimination against parents to the extent that such discrimination constitutes discrimination on the basis of disability; the Family and Medical Leave Act imposes certain requirements with regard to leave; [etc.; add other statutes.];
- Nothing in this law is intended to affect the interpretation of these statutes;
- Despite the provisions of these statutes, individuals are not protected to the extent that employment discrimination against them is based solely on their status as parents;
- Such discrimination occurs where, for example, employers refuse to hire both men and women who have, or plan to have, children, based on stereotypes and assumptions about such individuals' level of commitment to the work force;
- Such discrimination has occurred in the work place and has been largely unremedied;
- The Congress has authority to address such discrimination under its power to enforce the requirement for equal protection of the laws under the Fourteenth Amendment to the United States Constitution; and
- The Congress intends to exercise that authority in enacting this law.

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- The Congress intends to exercise that authority in enacting this law.

on the basis
of parental
status

self-care because of a mental or physical disability. The legislation bars discrimination in all aspects of employment, including recruitment, referral, hiring, promotions, discharge, training, and other terms and conditions of employment.

The legislation will offer a remedy where, for example, an employer takes a parent off the "fast track" due to unsubstantiated concerns that parents cannot meet the requirements of demanding jobs. Similarly, it will bar employers from preferring applicants without children over equally or better qualified working parents or from refusing to hire single parents. The legislation will also require that parents be able to use paid leave for child care purposes to the same extent that other employees are able to use it for other personal reasons.

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

While this law

106TH CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. DODD introduced the following bill; which was read twice and referred to
the Committee on _____

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Ending Discrimination
5 Against Parents Act of 1999".

6 **[Findings to be supplied.]**

7 **SEC. 2. PURPOSES.**

8 The purposes of this Act are—

9 (1) to provide a comprehensive Federal prohibi-
10 tion of employment discrimination on the basis of
11 parental status;

1 (2) to provide meaningful and effective remedies for employment discrimination on the basis of
2 parental status; and
3

4 (3) to invoke congressional powers, including
5 the powers to enforce the 14th amendment to the
6 Constitution and to regulate interstate commerce, in
7 order to prohibit discrimination on the basis of parental status.
8

9 **SEC. 3. DEFINITIONS.**

10 In this Act:

11 (1) **CHILD.**—The term “child” means an individual who—
12

13 (A) is under the age of 18; or

14 (B) is 18 or older but is incapable of self-care because of a physical or mental disability.
15

16 (2) **COMMISSION.**—The term “Commission”
17 means the Equal Employment Opportunity Commission.
18

19 (3) **COMPLAINING PARTY.**—The term “complain-
20 ing party” means the Commission, the Attorney
21 General, or any other person who may bring an action or proceeding under this Act.
22

23 (4) **COVERED ENTITY.**—The term “covered entity” means an employer, employment agency, labor
24

1 organization, and joint labor-management commit-
2 tee.

3 (5) DEMONSTRATES.—The term “dem-
4 onstrates” means meets the burdens of production
5 and persuasion.

6 (6) EMPLOYEE.—The term “employee” has the
7 meaning given the term in section 701(f) of the Civil
8 Rights Act of 1964 (42 U.S.C. 2000e(f)), and means
9 an employee to whom section 717(a) of the Civil
10 Rights Act of 1964 (42 U.S.C. 2000e-16(a)) ap-
11 plies, a Presidential appointee or State employee to
12 which section 302(a)(1) of the Government Em-
13 ployee Rights Act of 1991 (2 U.S.C. 1202(a)(1)) ap-
14 plies, and a covered employee, as defined in section
15 101 of the Congressional Accountability Act of 1995
16 (2 U.S.C. 1301) or section 401 of title 3, United
17 States Code. The term “employee” includes appli-
18 cants for employment and former employees.

19 (7) EMPLOYER.—The term “employer”—

20 (A) means a person engaged in an industry
21 affecting commerce (as defined in section
22 701(h) of the Civil Rights Act of 1964 (42
23 U.S.C. 2000e(h))) who has 15 or more employ-
24 ees (as defined in section 701(f) of such Act
25 (42 U.S.C. 2000e(f))) for each working day in

1 each of 20 or more calendar weeks in the cur-
2 rent or preceding calendar year, and any agent
3 of such a person;

4 (B) means an entity to which section
5 717(a) of the Civil Rights Act of 1964 (42
6 U.S.C. 2000e-16(a)) applies, an employing au-
7 thority to which section 302(a)(1) of the Gov-
8 ernment Employee Rights Act of 1991 (2
9 U.S.C. 1202(a)(1)) applies, or an employing of-
10 fice, as defined in section 101 of the Congres-
11 sional Accountability Act of 1995 (2 U.S.C.
12 1301) or section 401 of title 3, United States
13 Code; and

14 (C) does not include a bona fide private
15 membership club (other than a labor organiza-
16 tion) that is exempt from taxation under section
17 501(c) of the Internal Revenue Code of 1986.

18 (8) EMPLOYMENT.—The term "employment"
19 includes recruitment or advertisement for a job, re-
20 ferral for a job, job application procedures, hiring,
21 advancement, discharge, compensation, job training,
22 [membership in a labor organization,] OR [a term,
23 condition, or privilege of membership in a labor or-
24 ganization] or any other term, condition, or privi-
25 lege of employment.

1 (9) EMPLOYMENT AGENCY.—The term “em-
2 ployment agency” has the meaning given the term in
3 section 701(c) of the Civil Rights Act of 1964 (42
4 U.S.C. 2000e(c)).

5 (10) INCAPABLE OF SELF-CARE.—The term
6 “incapable of self-care” has the meaning given the
7 term in [regulations implementing section
8 101(a)(12)(B) of the Family and Medical Leave Act
9 of 1993 (29 U.S.C. 2611(a)(12)(B))] OR [regula-
10 tions specified in section 825.113 of title 29, Code
11 of Federal Regulations (as in effect on July 1,
12 1998)].

13 (11) LABOR ORGANIZATION.—The term “labor
14 organization” has the meaning given the term in
15 section 701(d) of the Civil Rights Act of 1964 (42
16 U.S.C. 2000e(d)).

17 (12) PARENTAL STATUS.—The term “parental
18 status” means the status of—

19 (A) a biological parent;

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

22 (C) a foster parent;

23 (D) a stepparent; or

24 (E) an individual standing in loco parentis;

25 [Note: Does this include a legal ward?]

1 [in relation to a child.]

2 (13) PERSON.—The term “person” has the
3 meaning given the term in section 701(a) of the
4 Civil Rights Act of 1964 (42 U.S.C. 2000e(a)).

5 (14) RELIGIOUS ORGANIZATION.—The term
6 “religious organization” means—

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

9 (B) a school, college, university, or other
10 educational institution or institution of learn-
11 ing, if—

12 (i) the institution is in whole or substan-
13 tial part controlled, managed, owned, or
14 supported by a religion or religious cor-
15 poration, association, or society; or

16 (ii) the curriculum of the institution is
17 directed toward the propagation of a par-
18 ticular religion.

19 (15) STATE.—The term “State” has the mean-
20 ing given the term in section 701(i) of the Civil
21 Rights Act of 1964 (42 U.S.C. 2000e(i)).

22 **SEC. 4. DISCRIMINATION PROHIBITED.**

23 (a) EMPLOYER PRACTICES.—It shall be an unlawful
24 employment practice for an employer—

1 (1) to fail or refuse to hire or to discharge any
2 individual, or otherwise to discriminate against any
3 individual with regard to the compensation, terms,
4 conditions, or privileges of employment of the indi-
5 vidual, because of such individual's parental status;
6 or

7 (2) to limit, segregate, or classify employees or
8 applicants for employment in any way that would
9 deprive or tend to deprive any individual of employ-
10 ment opportunities or otherwise adversely affect the
11 status of the individual as an employee, because of
12 such individual's parental status.

13 (b) **EMPLOYMENT AGENCY PRACTICES.**—It shall be
14 an unlawful employment practice for an employment agen-
15 cy to fail or refuse to refer for employment, or otherwise
16 to discriminate against, any individual because of the pa-
17 rental status of the individual or to classify or refer for
18 employment any individual on the basis of the parental
19 status of the individual.

20 (c) **LABOR ORGANIZATION PRACTICES.**—It shall be
21 an unlawful employment practice for a labor organiza-
22 tion—

23 (1) to exclude or to expel from its membership,
24 or otherwise to discriminate against, any individual
25 because of the parental status of the individual;

1 (2) to limit, segregate, or classify its member-
2 ship or applicants for membership, or to classify or
3 fail or refuse to refer for employment any individual,
4 in any way that would deprive or tend to deprive any
5 individual of employment opportunities, or would
6 limit such employment opportunities or otherwise
7 adversely affect the status of the individual as an
8 employee or as an applicant for employment, be-
9 cause of such individual's parental status; or

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

13 (d) TRAINING PROGRAMS.—It shall be an unlawful
14 employment practice for any employer, labor organization,
15 or joint labor-management committee controlling appren-
16 ticeship or other training or retraining, including on-the-
17 job training programs, to discriminate against any individ-
18 ual because of the parental status of the individual in ad-
19 mission to, or employment in, any program established to
20 provide apprenticeship or other training.

21 **SEC. 5. RETALIATION AND COERCION PROHIBITED.**

22 (a) RETALIATION.—A covered entity shall not dis-
23 criminate against an individual because the individual op-
24 posed any act or practice prohibited by this Act or because
25 the individual made a charge, assisted, testified, or partici-

1 pated in any manner in an investigation, proceeding, or
2 hearing under this Act.

3 (b) CORROSION.—A covered entity shall not coerce, in-
4 timidate, threaten, or interfere with any individual in the
5 exercise or enjoyment of, or on account of the individual's
6 having exercised, enjoyed, or assisted in or encouraged the
7 exercise or enjoyment of, any right granted or protected
8 by this Act.

9 **SEC. 6. OTHER PROHIBITIONS.**

10 (a) COLLECTION OF STATISTICS.—The Commission
11 shall not collect statistics on parental status from covered
12 entities, or compel the collection of such statistics by cov-
13 ered entities.

14 (b) QUOTAS.—A covered entity shall not adopt or im-
15 plement a quota on the basis of parental status.

16 **SEC. 7. PROOF OF VIOLATION.**

17 (a) PROOF OF VIOLATION.—Subject to section 8, a
18 complaining party may demonstrate a violation of [section
19 4, 5, or 6(b)] by demonstrating that—

20 (1) a covered entity has [discriminated against
21 or taken other prohibited action against an individ-
22 ual because of that individual's parental status, as
23 described in section 4 or 6(b),] or discriminated
24 against, coerced, intimidated, threatened, or inter-
25 fered with an individual as described in section 5; or

1 [(2) a covered entity has engaged in an act of
2 discrimination, coercion, intimidation, threatening,
3 or interference, or another prohibited act described
4 in section 4, 5, or 6(b), that was motivated by pa-
5 rental status or an action of an individual described
6 in section 5, even if another factor also motivated
7 the act.]

8 (b) DISPARATE IMPACT.—The fact that an employ-
9 ment practice has a disparate impact, as the term “dispar-
10 ate impact” is used in section 703(k) of the Civil Rights
11 Act of 1964 (42 U.S.C. 2000e-2(k)), on the basis of pa-
12 rental status does not establish a violation of this Act.

13 **SEC. 8. DEFENSES.**

14 (a) RELIGIOUS ORGANIZATIONS.—It shall not be a
15 violation of this Act for a religious organization to fail or
16 refuse to hire or to discharge an individual [, or otherwise
17 to discriminate against any individual with regard to the
18 compensation, terms, conditions, or privileges of employ-
19 ment of the individual], because the parental status of the
20 individual violates the sincerely held religious beliefs of
21 that religious organization.

22 (b) ACTIONS IN A FOREIGN COUNTRY.—

23 (1) IN GENERAL.—It shall not be a violation of
24 this Act for a covered entity to take any action oth-
25 erwise prohibited under this Act with respect to an

11

1 employee in a workplace in a foreign country if com-
2 pliance with this Act would cause such entity to vio-
3 late the law of the foreign country in which such
4 workplace is located.

5 (2) APPLICATION OF ACT.—[If a covered entity
6 that is incorporated in a foreign country, and is con-
7 trolled by an entity that is incorporated in the Unit-
8 ed States, takes an action that is alleged to violate
9 this Act against an employee in a workplace in the
10 foreign country, this Act shall be presumed to apply
11 to the covered entity and the employee.]

12 (3) CONTROL.—For purposes of paragraph (2),
13 the determination of whether an entity that is incor-
14 porated in the United States controls an entity that
15 is incorporated in a foreign country shall be based
16 on the factors set forth in section 702(e)(3) of title
17 VII of the Civil Rights Act of 1964 (42 U.S.C.
18 2000e-1(c)(3)).

19 SEC. 9. ENFORCEMENT.

20 (a) ENFORCEMENT POWERS.—With respect to the
21 administration and enforcement of this Act in the case of
22 a claim alleged by an individual for a violation of this
23 Act—

24 (1) the Commission shall have the same powers
25 as the Commission has to administer and enforce—

12

1 (A) title VII of the Civil Rights Act of
2 1964 (42 U.S.C. 2000e et seq.); or

3 (B) sections 302 and 304 of the Govern-
4 ment Employee Rights Act of 1991 (2 U.S.C.
5 1202 and 1220);

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

9 (2) the Librarian of Congress shall have the
10 same powers as the Librarian of Congress has to ad-
11 minister and enforce title VII of the Civil Rights Act
12 of 1964 (42 U.S.C. 2000e et seq.) in the case of a
13 claim alleged by the individual for a violation of such
14 title;

15 (3) the Board (as defined in section 101 of the
16 Congressional Accountability Act of 1995 (2 U.S.C.
17 1301)) shall have the same powers as the Board has
18 to administer and enforce the Congressional Ac-
19 countability Act of 1995 (2 U.S.C. 1301 et seq.) in
20 the case of a claim alleged by the individual for a
21 violation of section 201(a)(1) of such Act (2 U.S.C.
22 1311(a)(1));

23 (4) the Attorney General shall have the same
24 powers as the Attorney General has to administer
25 and enforce—

1 (A) title VII of the Civil Rights Act of
2 1964 (42 U.S.C. 2000e et seq.); or

3 (B) sections 302 and 304 of the Govern-
4 ment Employee Rights Act of 1991 (2 U.S.C.
5 1202 and 1220);

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

9 (5) the President, the Commission, and the
10 Merit Systems Protection Board shall have the same
11 powers as the President, the Commission, and the
12 Board, respectively, have to administer and enforce
13 [sections 451 and 452 of title 3, United States
14 Code,] [Note: This cite looks wrong.] in the case of
15 a claim alleged by the individual for a violation of
16 section 411(a)(1) of such title;

17 (6) a court of the United States shall have the
18 same jurisdiction and powers as the court has to en-
19 force—

20 (A) title VII of the Civil Rights Act of
21 1964 (42 U.S.C. 2000e et seq.) in the case of
22 a claim alleged by the individual for a violation
23 of such title;

24 (B) sections 302 and 304 of the Govern-
25 ment Employee Rights Act of 1991 (2 U.S.C.

1 1202 and 1220) in the case of a claim alleged
2 by the individual for a violation of section
3 302(a)(1) of such Act (2 U.S.C. 1202(a)(1));

4 (C) the Congressional Accountability Act
5 of 1995 (2 U.S.C. 1301 et seq.) in the case of
6 a claim alleged by the individual for a violation
7 of section 201(a)(1) of such Act (2 U.S.C.
8 1811(a)(1)); and

9 (D) [section 451] of title 3, United States
10 Code, in the case of a claim alleged by the indi-
11 vidual for a violation of section 411(a)(1) of
12 such title.

13 (b) PROCEDURES AND REMEDIES.—The procedures
14 and remedies applicable to a claim alleged by an individual
15 for a violation of this Act are—

16 (1) the procedures and remedies applicable for
17 a violation of title VII of the Civil Rights Act of
18 1964 (42 U.S.C. 2000e et seq.) in the case of a
19 claim alleged by the individual for a violation of such
20 title;

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

15

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

6 (4) the procedures and remedies applicable for
7 a violation of section 411(a)(1) of title 8, United
8 States Code, in the case of a claim alleged by the
9 individual for a violation of such section.

10 (c) **ADDITIONAL REMEDIES.**—Notwithstanding any
11 limitation on the remedies specified in subsection (b), and
12 in addition to the remedies specified in subsection (b), any
13 covered entity who violates this Act shall be liable for such
14 compensatory or punitive damages as may be appropriate,
15 except that neither a State nor the United States shall
16 be liable for punitive damages.

17 (d) **OTHER APPLICABLE PROVISIONS.**—With respect
18 to a claim alleged by a covered employee (as defined in
19 section 101 of the Congressional Accountability Act of
20 1995 (2 U.S.C. 1301)) for a violation of this Act, title
21 III of the Congressional Accountability Act of 1995 (2
22 U.S.C. 1381 et seq.) shall apply in the same manner as
23 such title applies with respect to a claim alleged by such
24 a covered employee for a violation of section 201(a)(1) of
25 such Act (2 U.S.C. 1311(a)(1)).

1 **SEC. 10. STATE AND FEDERAL IMMUNITY.**

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

6 (b) **REMEDIES AGAINST THE UNITED STATES AND**
7 **THE STATES.**—Notwithstanding any other provision of
8 this Act, in an action or administrative proceeding against
9 the United States or a State for a violation of this Act,
10 remedies (including remedies at law and in equity, and
11 interest) are available for the violation to the same extent
12 as the remedies are available for a violation of title VII
13 of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.)
14 by a private entity, except that punitive damages are not
15 available.

16 **SEC. 11. ATTORNEYS' FEES.**

17 Notwithstanding any other provision of this Act, in
18 an action or administrative proceeding for a violation of
19 this Act, an entity described in section 9(a) (other than
20 paragraph (4) of such section), in the discretion of the
21 entity, may allow the prevailing party, other than the
22 United States, a reasonable attorney's fee (including ex-
23 pert fees) as part of the costs. The United States shall
24 be liable for the costs to the same extent as a private per-
25 son.

1 **SEC. 12. POSTING NOTICES.**

2 A covered entity shall post notices for employees, ap-
3 plicants for employment, and members, to whom the provi-
4 sions specified in section 9(b) apply, that describe the ap-
5 plicable provisions of this Act in the manner prescribed
6 by, and subject to the penalty provided under, section 711
7 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10).

8 **SEC. 13. REGULATIONS.**

9 (a) **IN GENERAL.**—Except as provided in subsections
10 (b), (c), and (d), the Commission shall have authority to
11 issue regulations to carry out this Act.

12 (b) **LIBRARIAN OF CONGRESS.**—The Librarian of
13 Congress shall have authority to issue regulations to carry
14 out this Act with respect to employees of the Library of
15 Congress.

16 (c) **BOARD.**—The Board referred to in section 9(a)(3)
17 shall have authority to issue regulations to carry out this
18 Act, in accordance with section 304 of the Congressional
19 Accountability Act of 1995 (2 U.S.C. 1384), with respect
20 to covered employees, as defined in section 101 of such
21 Act (2 U.S.C. 1301).

22 (d) **PRESIDENT.**—The President shall have authority
23 to issue regulations to carry out this Act with respect to
24 covered employees, as defined in section 401 of title 3,
25 United States Code.

1 **SEC. 14. RELATIONSHIP TO OTHER LAWS.**

2 This Act shall not invalidate or limit the rights, rem-
3 edies, or procedures available to an individual claiming
4 discrimination prohibited under any other Federal law or
5 any law of a State or political subdivision of a State.

6 **SEC. 15. SEVERABILITY.**

7 If any provision of this Act, or the application of the
8 provision to any person or circumstance, is held to be in-
9 valid, the remainder of this Act and the application of the
10 provision to any other person or circumstance shall not
11 be affected by the invalidity.

12 **SEC. 16. EFFECTIVE DATE.**

13 This Act shall take effect 60 days after the date of
14 enactment of this Act and shall not apply to conduct oc-
15 ccurring before the effective date.

TO: Donna Lenhoff
FROM: Judy Appelbaum
RE: Parental discrimination bill
DATE: March 17, 1999

I'm not going to be able to make your meeting tomorrow, but I did look over the draft bill, and wanted to share a few thoughts with you. To wit:

Some major issues to think about

1. It seems to me that the most significant form of "parental discrimination" consists of policies that are facially neutral (with respect to parenthood) but have a disparate impact on those with family responsibilities -- e.g., overtime requirements. Yet that form of discrimination is expressly excluded from this bill. Covering disparate impact obviously is not politically feasible, but I think it's important to recognize that this bill doesn't really get at the big problem, and I haven't seen much evidence of disparate treatment parental discrimination. (Neera promised to send me some examples, but never did. And while I haven't read the cases summarized at the end of the BNA piece, from their description in BNA they don't look on point.)
2. This bill is a one-way street -- prohibits discrimination only on the basis of being a parent. It would still be ok to discriminate against your childless employees, e.g., by giving odd-hour shift assignments only to them. Doesn't seem to be entirely fair, and could certainly cause workplace resentment, especially if it leads to outright preferences for parent-employees -- and I note that while the bill does prohibit "quotas" it does not prohibit "preferential treatment" (compare ENDA). Do the state/local laws that address "family status" discrimination go only one-way like this?
3. Why single out parenthood for protection (and even preferential treatment, see above)? Do we place less value on employees who have to care for aging parents? Or who use their non-work hours to engage in civic activities (local politics, tutoring area youth, other forms of volunteer work)? It's one thing to *require* that employers give leave for only some of these purposes (as under FMLA), but is it right to create a federal cause of action for the employee passed over for promotion because she has kids, but no such cause of action for the one passed over because she has an elderly parent at home, or other important and worthy obligations outside of work?

Some smaller drafting issues

1. No findings? Shouldn't there be findings about the need for the legislation, and about the constitutional bases for Congress to enact it? Since some judges won't look at legislative history, it's always a good idea to put some useful stuff in findings, which end up in the Public Law (even J. Scalia said, in the Kolstad argument earlier this month, that he'll look at whatever is in the Public Law).

2. Purpose #1 says it provides "comprehensive" federal protection . . . -- not really, since it's disparate treatment only.
3. Why is the term "child" defined? I don't think it is ever used in the rest of the bill, though I might have missed it.
4. In the definition of parental status, is the status of "prospective adoptive parent" clear? This may not be too important -- if discrimination on this basis occurs, presumably it will be because the employee was taking time to prepare for an adoption.
5. I'm not sure I understand the disparate impact exclusion (sec. 7(B)). If disparate impact doesn't establish a prima facie violation, is it relevant in some other way?
6. Is the "religious organization" defense in Sec. 8 necessary? (Is there really a religion that opposes parenthood? If so, I would think it would die out quickly.) And why does this address only hiring, failure to hire, and discharge?

I hope some of this is helpful. You're welcome to share this memo with others at the meeting if you want to.

Judy

Prohibiting Discrimination Against Parents

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

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

Examples of conduct that would be prohibited:

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

Background:

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

Other issues:

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

"Your child or your job": The ultimatum of the eighties--pregnancy discrimination and Michigan's response, 66 U Det L Rev 49 (1988).

CA States w/ state laws

① AL → parental status disc.

② CA → family status →
employment

(not Delaware / CT)

③ DC - family responsibilities

④ KS ~ Kansas -

⑤ Kentucky → general right against
disc. on the basis of
fam. status

⑥ Michigan → ~~right~~ right against
emp. disc. on the basis of family status

⑦ Minnesota - case law:

⑧ Nebraska gives power to local govts to prohibit
disc in emp't.

⑨ NH - emp't disc w/ familial status

⑩ - New Jersey - familial status disc. prohibited

⑪ PA: families status disc. in employment prohib.

call Shirley Brungay

- (12). South Dakota ~
↳ Commissioner can promulgate rules
prohibiting dec.