

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. fax	cover sheet to Neera Tanden (partial) (1 page)	01/15/1999	P6/b(6)

COLLECTION:

Clinton Presidential Records
First Lady's Office
Domestic Policy Council (Nicole Rabner)
OA/Box Number: 15418

FOLDER TITLE:

Parental Status Discrimination [4]

2012-1035-S

kc1075

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
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b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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. 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.

Get ENDA

A BILL

To prohibit employment discrimination on the basis of parental status.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Parental Status Non-Discrimination Act of 1999."

SECTION 2. PURPOSES.

The purposes of this Act are –

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

SECTION 3. DEFINITIONS.

In this Act –

- (1) **CHILD** - The term 'child' means an individual who is under the age of 18, or who is 18 or older but is incapable of self-care because of a physical or mental disability.
- (2) **COMMISSION** - The term 'Commission' means the Equal Employment Opportunity Commission.
- (3) **COMPLAINING PARTY** - The term 'complaining party' means the Commission, the Attorney General, or any other person who may bring an action or proceeding under this Act.
- (4) **COVERED ENTITY** - The term 'covered entity' means an employer, employment agency, labor organization, joint labor-management committee, an entity to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-

Look up whether
ADA applies to states?

Federal §.

- ① ~~Get~~ Meeting a Jues
- ② w/CF/EC/JL/ELV
make changes
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Civil Rights for Parents / Hiring Parents in
the
Workplace

16(a)) applies, an employing authority to which section 302(a)(1) of the Government Employee Rights Act of 1991 (2 U.S.C. § 1202(a)(1)) applies, or an employing office, as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. § 1301). The term 'covered entity' includes an employing office, as defined in section 401 of title 3, United States Code.

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

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

(7) EMPLOYER - The term 'employer' means a person engaged in an industry affecting commerce (as defined in section 701(h) of the Civil Rights Act of 1964 (42 U.S.C. § 2000e(h)) who has 15 or more employees (as defined in section 701(f) of such Act (42 U.S.C. § 2000e(f)) for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

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

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

(10) INCAPABLE OF SELF-CARE - The term 'incapable of self-care' has the meaning given the term in regulations implementing the Family and Medical Leave Act (29 C.F.R. § 825.113 (1998)).

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

(12) PARENTAL STATUS - The term 'parental status' means having the status of one or more of the following --

(A) a biological parent;

(B) an adoptive parent;

(C) a foster parent; or

(D) an individual who has day-to-day responsibilities to care for and financially support a child.

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

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

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

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

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

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

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

* SECTION 4. DISCRIMINATION PROHIBITED.

A covered entity shall not, with respect to the employment or an employment opportunity of an individual, subject the individual to a different standard or different treatment, or otherwise discriminate against the individual on the basis of parental status.

SECTION 5. RETALIATION AND COERCION PROHIBITED.

(A) RETALIATION - A covered entity shall not discriminate against an individual because the individual opposed any act or practice prohibited by this Act or because the

PDA → doesn't protect
toxic chemicals → woman's choice.

individual made a charge, assisted, testified, or participated in any manner in an investigation, proceeding, or hearing under this Act.

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

SECTION 6. OTHER PROHIBITIONS.

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

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

(C) PREFERENTIAL TREATMENT - A covered entity shall not give preferential treatment to an individual on the basis of parental status. *→ false*

SECTION 7. PROOF OF VIOLATION.

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

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

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

liability cannot be based on (B) DISPARATE IMPACT - The fact that an employment practice has a disparate impact, as the term 'disparate impact' is used in section 703(k) of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-2(k)), on the basis of parental status does not establish a *prima facie* violation of this Act.

SECTION 8. DEFENSES.

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

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

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

SECTION 9. ENFORCEMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DRAFT BILL RE PARENTAL STATUS DISCRIMINATION

Section 1 Definitions

For the purposes of this act,

(a) the terms ~~employer~~, ~~employee~~, ~~employment agency~~, ~~labor organization~~, ~~complaining party~~, ~~person~~, ~~State~~, ~~commerce~~, ~~industry affecting commerce~~, ~~demonstrates~~, and ~~respondent~~ will have the meaning as defined in Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e.

(b) the term ~~parental status~~ means the status of biological, adopted, or foster parent, stepparent, or standing in loco parentis, to a son or daughter who is under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability.

Section 2 Unlawful Employment Practices

(a) It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with regard to his compensation, terms, conditions, or privileges of employment because of such person's parental status.

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against any individuals because of his or her parental status or to classify or refer for employment any individual because of his or her parental status.

(c) It shall be an unlawful employment practice for a labor organization to fail or refuse to refer for employment any individual because of such individual's parental status.

(d) It shall be an unlawful employment practice for an employer, employment agency, or labor organization to discriminate against any individual because he or she has opposed any employment practice made unlawful under this act, or because he or she has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this act.

(e) Nothing in this act shall be interpreted to require any employer, employment agency, or labor organization to collect or report information about the parental status of its employees, nor to require that any employer, employment agency, or labor organization grant preferential treatment to any individual because of his or her parental status.

→ write it
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Section 3 ✖ Enforcement and Remedies

(a) The powers, remedies, and procedures set forth in sections 705, 706, 707, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. §2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9) shall be the powers, remedies, and procedures this title provides to the Equal Employment Opportunity Commission, to the Attorney General, or to any person alleging a violation of any provision of this Act.

(b) Every employer, employment agency, and labor organization shall post and keep posted in conspicuous places upon its premises where notices to employees, applicant for employment, and members are customarily posted a notice setting forth excerpts from or summaries of the pertinent provisions of this act and information pertinent to the filing of a complaint. A willful violation of this section shall be punishable by a fine of not more than \$100 for each separate offense.

(c) The Equal Employment Opportunity Commission shall be empowered to promulgate regulations implementing the provisions of this act.)) ↙

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

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

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

SECTION 10. STATE AND FEDERAL IMMUNITY.

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

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

SECTION 11. ATTORNEYS' FEES.

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

SECTION 12. POSTING NOTICES.

A covered entity shall post notices for employees, applicants for employment, and members, to whom the provisions specified in section 9(b) apply, that describe the applicable provisions of this Act in the manner prescribed by, and subject to the penalty provided under, section 711 of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-10).

Parental Status Mtg
ENDA

Dodd

① Diff't
comparates:

② ^{not} prohibit accommodation

① Donna/Marsha/NOW LDF
↳ Marsha

② call Marsha again

① not a problem
② basis for litigation
③

Nat'l Partnerships:

Benefits:
{ equal cost rule }
↳ stat:

Issue: What non-discrimination
in benefits means:

ADA (*italics supplied*)

SEC. 102. DISCRIMINATION. 42 USC 12112.

(a) General Rule. No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) Construction. As used in subsection (a), the term "discriminate" includes

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this title (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;



(4) *excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;*

(5) (A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective

manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

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Domestic Policy Council (Nicole Rabner)
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2012-1035-S
kc1075

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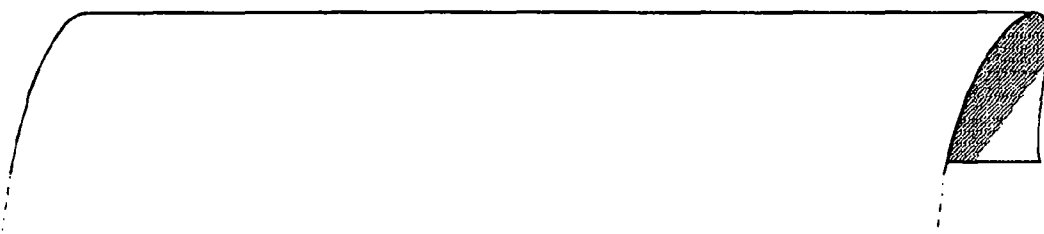
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RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

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FACSIMILE COVER PAGE

Date: 1/15/99
Time: 11:40:56
Pages: 3

To: Neera Tanden
Company: White House - DPC/First Lady
Fax #: 456-2878

Message:

Neera, here's the ADA language (in italics). Sandhya did some looking but found very little in the way of case law: one case she cites, Piantanida (8th Cir. 1997), denied a PDA cause of action for discrimination on the basis of parental status. I should be in the office at about 1:30, and Sandhya will be there sooner.

P6/(b)(6)

P6/(b)(6)

SEC. 102. DISCRIMINATION. 42 USC 12112.

(a) General Rule. No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) Construction. As used in subsection (a), *the term "discriminate" includes*

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this title (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) *excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;*

(5) (A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports

to measure).

DRAFT

States Prohibiting Discrimination on the Basis of Parental Status

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

Alaska

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

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

Kentucky

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

Michigan

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

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

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or identical to discrimination because of the age of persons residing with the individual bringing or continuing the action.” (MCL @ 37.2102 (1998))

Nebraska

Nebraska law simply empowers its municipalities to prohibit discrimination on the basis of familial status, if they so choose. The law states that: “Notwithstanding any other law or laws heretofore enacted, all cities and villages in this state shall have the power by ordinance to define, regulate, suppress, and prevent discrimination on the basis of race, color, creed, religion, ancestry, sex, marital status, national origin, familial status as defined in section 20-311, handicap as defined in section 20-313, age, or disability in employment, public accommodation, and housing and may provide for the enforcement of such ordinances by providing appropriate penalties for the violation thereof. It shall not be an unlawful employment practice to refuse employment based on a policy of not employing both husband and wife if such policy is equally applied to both sexes.” (R.R.S. Neb. @ 18-1724 (1998))

Nebraska law further defines familial status as “one or more minors being domiciled with: (1) A parent or another person having legal custody of such individual; or (2) The designee of a parent or other person having legal custody, with the written permission of the parent or other person.” It also states that “the protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any minor.” (R.R.S. Neb. @ 20-311 (1998))

New Hampshire:

According to New Hampshire state law, it is the policy of the state to prohibit discrimination based on familial status. “It shall be deemed an exercise of the police power of the state for the protection of the public welfare, health and peace of the people of this state, and in fulfillment of the provisions of the constitution of this state concerning civil rights. The general court hereby finds and declares that practices of discrimination against any of its inhabitants because of age, sex, race, creed, color, marital status, familial status, physical or mental disability or national origin are a matter of state concern, that such discrimination not only threatens the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state and threatens the peace, order, health, safety and general welfare of the state and its inhabitants.” (R.S.A. 354-A:1 (1998)) New Hampshire’s Commission for Human Rights is empowered to “eliminate and prevent discrimination in employment, in places of public accommodation and in housing accommodations because of age, sex, race, creed, color, marital status, familial status, physical or mental disability or national origin as herein provided.” (R.S.A. 354-A:1 (1998))

New Jersey:

There is created in the Department of Law and Public Safety a division known as "The Division on Civil Rights" with power to prevent and eliminate discrimination in the manner prohibited by

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this act against persons because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, or sex or because of their liability for service in the Armed Forces of the United States, by employers, labor organizations, employment agencies or other persons and to take other actions against discrimination because of race, creed, color, national origin, ancestry, marital status, sex, familial status or age or because of their liability for service in the Armed Forces of the United States, as herein provided; and the division created hereunder is given general jurisdiction and authority for such purposes.

In addition, New Jersey law requires their Attorney General “to receive, investigate, and act upon complaints alleging discrimination against persons because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, or sex or because of their liability for service in the Armed Forces of the United States.”(N.J. Stat. @ 10:5-8 (1998))

However, New Jersey law does not specifically prohibit employment discrimination based on family status, though their law does prohibit housing discrimination based on such status. (N.J. Stat. @ 10:5-12 (1998))

Pennsylvania

Pennsylvania specifically grants its citizens a civil right to “obtain employment ... without discrimination because of race, color, familial status, religious creed, ancestry, handicap or disability, age, sex, national origin, the use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals...” (43 P.S. @ 953 (1998))

Pennsylvania law defines “familial status” as “one or more individuals who have not attained the age of eighteen years being domiciled with: (1) a parent or other person having legal custody of such individual or individuals; or (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.” The statute further states that “the protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.”(43 P.S. @ 953 (1998))

South Dakota

South Dakota only grants its municipalities the power to “investigate any discriminatory practices based on sex, race, color, creed, religion, ancestry, disability, familial status or national origin, with respect to employment, labor union membership, housing accommodations, property rights, education, public accommodations or public services.” (S.D. Codified Laws @ 20-12-4 (1998)) South Dakota defines familial status as “the relationship of individuals by birth, adoption or guardianship who are domiciled together.” (S.D. Codified Laws @ 20-13-1 (1998))

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Discussion Draft only

A BILL

To prohibit employment discrimination on the basis of parental status.

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

SECTION 1. SHORT TITLE.

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

SECTION 2. PURPOSES.

The purposes of this Act are –

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

SECTION 3. DEFINITIONS.

In this Act –

- (1) CHILD - The term 'child' means an individual who is under the age of 18, or who is 18 or older but is incapable of self-care because of a physical or mental disability.
- (2) COMMISSION - The term 'Commission' means the Equal Employment Opportunity Commission.
- (3) COMPLAINING PARTY - The term 'complaining party' means the Commission, the Attorney General, or any other person who may bring an action or proceeding under this Act.
- (4) COVERED ENTITY - The term 'covered entity' means an employer, employment agency, labor organization, joint labor-management committee, an entity to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-

Commerce Clause - use as 'a basis'

16(a)) applies, an employing authority to which section 302(a)(1) of the Government Employee Rights Act of 1991 (2 U.S.C. § 1202(a)(1)) applies, or an employing office, as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. § 1301). The term ‘covered entity’ includes an employing office, as defined in section 401 of title 3, United States Code.

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

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

(7) EMPLOYER - The term ‘employer’ means a person engaged in an industry affecting commerce (as defined in section 701(h) of the Civil Rights Act of 1964 (42 U.S.C. § 2000e(h)) who has 15 or more employees (as defined in section 701(f) of such Act (42 U.S.C. § 2000e(f)) for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501© of the Internal Revenue Code of 1986.

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

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

(10) INCAPABLE OF SELF-CARE - The term ‘incapable of self-care’ has the meaning given the term in regulations implementing the Family and Medical Leave Act (29 C.F.R. § 825.113 (1998)).

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

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

- (A) a biological parent;
- (B) an adoptive parent or a prospective adoptive parent;
- (C) a foster parent;
- (D) stepparent; or
- (E) or standing in loco parentis.

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

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

- (A) a religious corporation, association, or society; or
- (B) a school, college, university, or other educational institution or institution of learning, if --
 - (I) the institution is in whole or substantial part controlled, managed, owned, or supported by a religion, religious corporation, association, or society; or
 - (ii) the curriculum of the institution is directed toward the propagation of a particular religion.

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

SECTION 4. DISCRIMINATION PROHIBITED.

It shall be an unlawful employment practice for an employer, to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with regard to his compensation, terms, conditions, or privileges of employment because of such person's parental status.

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SECTION 5. RETALIATION AND COERCION PROHIBITED.

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

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

SECTION 6. OTHER PROHIBITIONS.

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

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

SECTION 7. PROOF OF VIOLATION.

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

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

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

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

SECTION 8. DEFENSES.

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look at religious exemptions

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

case law

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

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

SECTION 9. ENFORCEMENT.

(A) ENFORCEMENT POWERS - With respect to the administration and enforcement of this Act in the case of a claim alleged by an individual for a violation of this Act –

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 10. STATE AND FEDERAL IMMUNITY.

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

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

SECTION 11. ATTORNEYS' FEES.

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

SECTION 12. POSTING NOTICES.

A covered entity shall post notices for employees, applicants for employment, and members, to whom the provisions specified in section 9(b) apply, that describe the applicable provisions of this Act in the manner prescribed by, and subject to the penalty provided under, section 711 of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-10).

SECTION 13. REGULATIONS.

(A) IN GENERAL - Except as provided in subsections (B), (C), and (D), the Commission shall have authority to issue regulations to carry out this Act.

(B) LIBRARIAN OF CONGRESS - The Librarian of Congress shall have authority to issue regulations to carry out this Act with respect to employees of the Library of Congress.

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

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

SECTION 14. RELATIONSHIP TO OTHER LAWS.

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

SECTION 15. SEVERABILITY.

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

SECTION 16. EFFECTIVE DATE.

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



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

P.O. Box 65808

Washington, D.C. 20035-5808

Telephone (202) 514-2151

TELEFACSIMILE COVER SHEET

DATE:

1/15/99

TO:

Nicole Rabner

PHONE:

FAX:

456-2878

FROM:

Helen NortonOFFICE OF THE ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

FAX NUMBER: 202-307-2839

PHONE: 353-0742

COMMENTS:

NUMBER OF PAGES TRANSMITTED (INCLUDING THIS SHEET) 11

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National Partnership for Women & Families

MEMO

To: Neera Tanden and Suzanne Day
From: Donna Lenhoff and Sandhya Subramanian, National Partnership for Women & Families
Cc: LCCR Employment Task Force
Re: Parental discrimination legislation
Date: April 26, 1999

On March 18, we convened a meeting of the LCCR Employment Task Force to explore legal issues arising from the Ending Discrimination Against Parents Act of 1999 (EDAPA), the proposed bill that aims to prohibit employment discrimination on the basis of parental status. The goal of our discussion was to review the proposed language carefully and to make sure that it was consistent with other areas of antidiscrimination law. Present were: Roslyn Powell and Jackie Payne, NOWLDEF; Rick Seymour, Lawyers' Committee for Civil Rights; Yvonne Williams, NAACP LDEF; Richard Foltin, American Jewish Committee; Helen Norton, DOJ; Jocelyn Samuels, EEOC; Jill Kotner, Senator Dodd's office; and Neera Tanden, White House. With these considerations in mind, we reached the following conclusions about appropriate changes to EDAPA, based on the version of the bill in the February 10, 1999 discussion draft.

1. **Basic prohibition of discrimination.** Section 4 of EDAPA should be changed to track precisely the language of § 703(a)-(d) of Title VII (which we have attached to this memorandum) so that EDAPA's antidiscrimination protections are consistent with the guarantees of Title VII. As part of this expansion, section 4 would include prohibitions against discrimination by employment agencies, by labor organizations, and in training programs.
2. **Add a section of legislative findings to EDAPA.** EDAPA should contain several findings. First, to ensure that EDAPA successfully abrogates states' Eleventh Amendment immunity, findings should describe the problem of parental discrimination and should link EDAPA's prohibition of such discrimination to Congress' enforcement of the Equal Protection Clause of the Fourteenth Amendment. Second, the findings should reflect Congress' understanding that while existing law -- including Title VII, FMLA, and ADA -- already can be interpreted to protect parents, including single mothers, against discrimination in the workplace, and EDAPA leaves these interpretations undisturbed, it is necessary to reach circumstances that the other civil rights laws do not cover.
3. **Clarify EDAPA's exclusion of disparate impact analysis.** EDAPA does not require

employers affirmatively to accommodate employees who are parents; accordingly, section 7(B) of the bill specifically excludes disparate impact analysis. However, the words "prima facie" in section 7(B) should be deleted so that plaintiffs are not prevented from using disparate impact statistics to establish disparate treatment. With this change, section 7(B) would read:

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

4. **No language changes are necessary to restrict EDAPA to discrimination against parents.** If the purpose of EDAPA is to cover discrimination against employees who are parents, and not to give a cause of action for parental-status discrimination to employees who are *not* parents, no language changes are necessary: section 3(12) explicitly defines "parental status" in terms of being a parent or standing in loco parentis. Therefore, non-parents have no standing to challenge employers' voluntary policies that benefit only parents, and such policies do not violate the bill.
5. **Language need not be added to cover prospective biological parents.** Section 3(12) of EDAPA specifically covers both "an adoptive parent" and "a prospective adoptive parent" (emphasis added) while covering only "a biological parent." This language militates against reading the phrase "a biological parent" as including prospective biological parents. However, the PDA already prohibits employment discrimination on the basis of pregnancy, childbirth, or related medical conditions.
6. **Equal benefits.** As currently drafted, section 4 -- covering discrimination with regard to "compensation, terms, conditions, or privileges of employment" -- of EDAPA guarantees parents and non-parents equal benefits, based on case law interpreting virtually identical language in Title VII. Thus, EDAPA would prohibit employers from differentiating between parents and non-parents with regard to benefits simply because parents consume more benefits. If a different approach to benefits were contemplated, the current language of section 4 would need to be changed; for instance, adopting the ADEA "equal cost rule" would necessitate adding ADEA language to section 4.

Finally, the issue of whether EDAPA should include a religious organization exemption remains unresolved. Many of those present at the meeting felt that the exemption for religious organizations in section 8(A) of the current draft of EDAPA should be deleted, while others disagreed.

Please don't hesitate to contact us if you have any questions!

A BILL

To prohibit employment discrimination on the basis of parental status.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Parental Status Non-Discrimination Act of 1999."

SECTION 2. PURPOSES.

The purposes of this Act are -

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

SECTION 3. DEFINITIONS.

In this Act -

- (1) **CHILD** - The term 'child' means an individual who is under the age of 18, or who is 18 or older but is incapable of self-care because of a physical or mental disability.
- (2) **COMMISSION** - The term 'Commission' means the Equal Employment Opportunity Commission.
- (3) **COMPLAINING PARTY** - The term 'complaining party' means the Commission, the Attorney General, or any other person who may bring an action or proceeding under this Act.
- (4) **COVERED ENTITY** - The term 'covered entity' means an employer, employment agency, labor organization, joint labor-management committee, an entity to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-16(a)) applies, an employing authority to which section 302(a)(1) of the Government Employee Rights Act of 1991 (2

U.S.C. § 1202(a)(1)) applies, or an employing office, as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. § 1301). The term 'covered entity' includes an employing office, as defined in section 401 of title 3, United States Code.

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

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

(7) EMPLOYER - The term 'employer' means a person engaged in an industry affecting commerce (as defined in section 701(h) of the Civil Rights Act of 1964 (42 U.S.C. § 2000e(h))) who has 15 or more employees (as defined in section 701(f) of such Act (42 U.S.C. § 2000e(f))) for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

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

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

(10) INCAPABLE OF SELF-CARE - The term 'incapable of self-care' has the meaning given the term in regulations implementing the Family and Medical Leave Act (29 C.F.R. § 825.113 (1998)).

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

(12) PARENTAL STATUS - The term 'parental status' means having the status of one or more of the following --

(A) a biological parent;

(B) an adoptive parent;

(C) a foster parent; or

(D) an individual who has day-to-day responsibilities to care for and financially support a child.

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

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

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

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

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

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

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

SECTION 4. DISCRIMINATION PROHIBITED.

A covered entity shall not, with respect to the employment or an employment opportunity of an individual, subject the individual to a different standard or different treatment, or otherwise discriminate against, the individual on the basis of parental status.

SECTION 5. RETALIATION AND COERCION PROHIBITED.

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

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

granted or protected by this Act.

SECTION 6. OTHER PROHIBITIONS.

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

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

(C) **PREFERENTIAL TREATMENT** - A covered entity shall not give preferential treatment to an individual on the basis of parental status.

SECTION 7. PROOF OF VIOLATION.

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

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

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

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

SECTION 8. DEFENSES.

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

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

(1) Where an action alleged to violate this Act is undertaken in a foreign country by an entity incorporated in a foreign country, that action will be presumed to be covered by this Act if the entity is controlled by an American entity that is

covered by this Act. The determination of control shall be based on the factors set forth in section 702(c)(3) of Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-1(c)(3)).

SECTION 9. ENFORCEMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) OTHER APPLICABLE PROVISIONS - With respect to a claim alleged by a covered employee (as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. §

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

SECTION 10. STATE AND FEDERAL IMMUNITY.

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

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

SECTION 11. ATTORNEYS' FEES.

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

SECTION 12. POSTING NOTICES.

A covered entity shall post notices for employees, applicants for employment, and members, to whom the provisions specified in section 9(b) apply, that describe the applicable provisions of this Act in the manner prescribed by, and subject to the penalty provided under, section 711 of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-10).

SECTION 13. REGULATIONS.

(A) **IN GENERAL** - Except as provided in subsections (B), (C), and (D), the Commission shall have authority to issue regulations to carry out this Act.

(B) **LIBRARIAN OF CONGRESS** - The Librarian of Congress shall have authority to issue regulations to carry out this Act with respect to employees of the Library of Congress.

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

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

SECTION 14. RELATIONSHIP TO OTHER LAWS.

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

SECTION 15. SEVERABILITY.

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

SECTION 16. EFFECTIVE DATE.

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

A BILL

To prohibit employment discrimination on the basis of parental status.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Parental Status Non-Discrimination Act of 1999."

SECTION 2. PURPOSES.

The purposes of this Act are --

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

SECTION 3. DEFINITIONS.

In this Act --

- (1) CHILD - The term 'child' means an individual who is under the age of 18, or who is 18 or older but is incapable of self-care because of a physical or mental disability.
- (2) COMMISSION - The term 'Commission' means the Equal Employment Opportunity Commission.
- (3) COMPLAINING PARTY - The term 'complaining party' means the Commission, the Attorney General, or any other person who may bring an action or proceeding under this Act.
- (4) COVERED ENTITY - The term 'covered entity' means an employer, employment agency, labor organization, joint labor-management committee, an entity to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-

16(a)) applies, an employing authority to which section 302(a)(1) of the Government Employee Rights Act of 1991 (2 U.S.C. § 1202(a)(1)) applies, or an employing office, as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. § 1301). The term 'covered entity' includes an employing office, as defined in section 401 of title 3, United States Code.

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

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

(7) EMPLOYER - The term 'employer' means a person engaged in an industry affecting commerce (as defined in section 701(h) of the Civil Rights Act of 1964 (42 U.S.C. § 2000e(h)) who has 15 or more employees (as defined in section 701(f) of such Act (42 U.S.C. § 2000e(f)) for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

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

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

(10) INCAPABLE OF SELF-CARE - The term 'incapable of self-care' has the meaning given the term in regulations implementing the Family and Medical Leave Act (29 C.F.R. § 825.113 (1998)).

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

(12) **PARENTAL STATUS** - The term 'parental status' means having the status of one or more of the following --

- (A) a biological parent;
- (B) an adoptive parent;
- (C) a foster parent; or
- (D) an individual who has day-to-day responsibilities to care for and financially support a child.

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

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

- (A) a religious corporation, association, or society; or
- (B) a school, college, university, or other educational institution or institution of learning, if --
 - (i) the institution is in whole or substantial part controlled, managed, owned, or supported by a religion, religious corporation, association, or society; or
 - (ii) the curriculum of the institution is directed toward the propagation of a particular religion.

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

SECTION 4. DISCRIMINATION PROHIBITED.

A covered entity shall not, with respect to the employment or an employment opportunity of an individual, subject the individual to a different standard or different treatment, or otherwise discriminate against, the individual on the basis of parental status.

SECTION 5. RETALIATION AND COERCION PROHIBITED.

(A) **RETALIATION** - A covered entity shall not discriminate against an individual because the individual opposed any act or practice prohibited by this Act or because the

individual made a charge, assisted, testified, or participated in any manner in an investigation, proceeding, or hearing under this Act.

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

SECTION 6. OTHER PROHIBITIONS.

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

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

(C) **PREFERENTIAL TREATMENT** - A covered entity shall not give preferential treatment to an individual on the basis of parental status.

SECTION 7. PROOF OF VIOLATION.

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

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

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

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

SECTION 8. DEFENSES.

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

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

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

SECTION 9. ENFORCEMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 10. STATE AND FEDERAL IMMUNITY.

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

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

SECTION 11. ATTORNEYS' FEES.

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

SECTION 12. POSTING NOTICES.

A covered entity shall post notices for employees, applicants for employment, and members, to whom the provisions specified in section 9(b) apply, that describe the applicable provisions of this Act in the manner prescribed by, and subject to the penalty provided under, section 711 of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-10).

SECTION 13. REGULATIONS.

(A) **IN GENERAL** - Except as provided in subsections (B), (C), and (D), the Commission shall have authority to issue regulations to carry out this Act.

(B) **LIBRARIAN OF CONGRESS** - The Librarian of Congress shall have authority to issue regulations to carry out this Act with respect to employees of the Library of Congress.

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

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

SECTION 14. RELATIONSHIP TO OTHER LAWS.

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

SECTION 15. SEVERABILITY.

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

SECTION 16. EFFECTIVE DATE.

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

DRAFT BILL RE PARENTAL STATUS DISCRIMINATION

Section 1 Definitions

For the purposes of this act,

(a) the terms employer, employee, employment agency, labor organization, complaining party, person, State, commerce, industry affecting commerce, demonstrates, and respondent will have the meaning as defined in Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e.

(b) the term parental status means the status of biological, adopted, or foster parent, stepparent, or standing in loco parentis, to a son or daughter who is under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability.

Section 2 Unlawful Employment Practices

(a) It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with regard to his compensation, terms, conditions, or privileges of employment because of such person's parental status.

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against any individuals because of his or her parental status or to classify or refer for employment any individual because of his or her parental status.

(c) It shall be an unlawful employment practice for a labor organization to fail or refuse to refer for employment any individual because of such individual's parental status.

(d) It shall be an unlawful employment practice for an employer, employment agency, or labor organization to discriminate against any individual because he or she has opposed any employment practice made unlawful under this act, or because he or she has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this act.

(e) Nothing in this act shall be interpreted to require any employer, employment agency, or labor organization to collect or report information about the parental status of its employees, nor to require that any employer, employment agency, or labor organization grant preferential treatment to any individual because of his or her parental status.

Section 3 ☒ Enforcement and Remedies

(a) The powers, remedies, and procedures set forth in sections 705, 706, 707, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. §2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9) shall be the powers, remedies, and procedures this title provides to the Equal Employment Opportunity Commission, to the Attorney General, or to any person alleging a violation of any provision of this Act.

(b) Every employer, employment agency, and labor organization shall post and keep posted in conspicuous places upon its premises where notices to employees, applicant for employment, and members are customarily posted a notice setting forth excerpts from or summaries of the pertinent provisions of this act and information pertinent to the filing of a complaint. A willful violation of this section shall be punishable by a fine of not more than \$100 for each separate offense.

(c) The Equal Employment Opportunity Commission shall be empowered to promulgate regulations implementing the provisions of this act.

A BILL

To prohibit employment discrimination on the basis of parental status.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Parental Status Non-Discrimination Act of 1999."

SECTION 2. PURPOSES.

The purposes of this Act are –

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

SECTION 3. DEFINITIONS.

In this Act –

- (1) **CHILD** - The term 'child' means an individual who is under the age of 18, or who is 18 or older but is incapable of self-care because of a physical or mental disability.
- (2) **COMMISSION** - The term 'Commission' means the Equal Employment Opportunity Commission.
- (3) **COMPLAINING PARTY** - The term 'complaining party' means the Commission, the Attorney General, or any other person who may bring an action or proceeding under this Act.
- (4) **COVERED ENTITY** - The term 'covered entity' means an employer, employment agency, labor organization, joint labor-management committee, an entity to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-

16(a)) applies, an employing authority to which section 302(a)(1) of the Government Employee Rights Act of 1991 (2 U.S.C. § 1202(a)(1)) applies, or an employing office, as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. § 1301). The term 'covered entity' includes an employing office, as defined in section 401 of title 3, United States Code.

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

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

(7) EMPLOYER - The term 'employer' means a person engaged in an industry affecting commerce (as defined in section 701(h) of the Civil Rights Act of 1964 (42 U.S.C. § 2000e(h)) who has 15 or more employees (as defined in section 701(f) of such Act (42 U.S.C. § 2000e(f)) for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

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

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

(10) INCAPABLE OF SELF-CARE - The term 'incapable of self-care' has the meaning given the term in regulations implementing the Family and Medical Leave Act (29 C.F.R. § 825.113 (1998)).

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

(12) **PARENTAL STATUS** - The term 'parental status' means having the status of one or more of the following --

- (A) a biological parent;
- (B) an adoptive parent;
- (C) a foster parent; or
- (D) an individual who has day-to-day responsibilities to care for and financially support a child.

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

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

- (A) a religious corporation, association, or society; or
- (B) a school, college, university, or other educational institution or institution of learning, if --
 - (i) the institution is in whole or substantial part controlled, managed, owned, or supported by a religion, religious corporation, association, or society; or
 - (ii) the curriculum of the institution is directed toward the propagation of a particular religion.

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

SECTION 4. DISCRIMINATION PROHIBITED.

A covered entity shall not, with respect to the employment or an employment opportunity of an individual, subject the individual to a different standard or different treatment, or otherwise discriminate against, the individual on the basis of parental status.

SECTION 5. RETALIATION AND COERCION PROHIBITED.

(A) **RETALIATION** - A covered entity shall not discriminate against an individual because the individual opposed any act or practice prohibited by this Act or because the

individual made a charge, assisted, testified, or participated in any manner in an investigation, proceeding, or hearing under this Act.

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

SECTION 6. OTHER PROHIBITIONS.

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

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

(C) **PREFERENTIAL TREATMENT** - A covered entity shall not give preferential treatment to an individual on the basis of parental status.

SECTION 7. PROOF OF VIOLATION.

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

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

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

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

SECTION 8. DEFENSES.

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

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

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

SECTION 9. ENFORCEMENT.

(A) ENFORCEMENT POWERS - With respect to the administration and enforcement of this Act in the case of a claim alleged by an individual for a violation of this Act -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 10. STATE AND FEDERAL IMMUNITY.

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

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

SECTION 11. ATTORNEYS' FEES.

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

SECTION 12. POSTING NOTICES.

A covered entity shall post notices for employees, applicants for employment, and members, to whom the provisions specified in section 9(b) apply, that describe the applicable provisions of this Act in the manner prescribed by, and subject to the penalty provided under, section 711 of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-10).

SECTION 13. REGULATIONS.

(A) **IN GENERAL** - Except as provided in subsections (B), (C), and (D), the Commission shall have authority to issue regulations to carry out this Act.

(B) **LIBRARIAN OF CONGRESS** - The Librarian of Congress shall have authority to issue regulations to carry out this Act with respect to employees of the Library of Congress.

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

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

SECTION 14. RELATIONSHIP TO OTHER LAWS.

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

SECTION 15. SEVERABILITY.

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

SECTION 16. EFFECTIVE DATE.

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

Parental Discrimination

~~2/26~~ 1/26/99

- Conversation w/ Donna Lennhoff
National Partnership for P + Families
 - 2 pages - parents of children + those seeking legal custody
 - character / terms + conditions
 - Nod: might also be covered by Title VII - P - man
 - ~~ex~~ Title ^{1st ex} VII - parents of real people →
 - benefits → covered.
 - disc. → against non-parent:
1 way swinging door →
~~way~~
Title III: : one way swing door
Buy door
- Civil Rights Community:
 - New anti-disc:
 - Children's Community:
 - Work-Life Community:

Process: Dodd + Kennedy } take lead: mainly

Hatch: 1st talk to Hatch: original cosponsors:

House : polarized hard to know:

Slaughter → Cong. Caucus on P - co-chairs:
Carol Maloney → Roukema: FMIA:

~~To Do~~
~~① Asthma~~

~~Parental~~

Survey who work w/ welfare providers:
→ actual disc. w/ clientele:

employers: job training -

→ single parents - their attendance
is poor.

ADA - protected class is people over 40

DRAFT BILL RE PARENTAL STATUS DISCRIMINATION

Section 1 Definitions

For the purposes of this act,

(a) the terms employer, employee, employment agency, labor organization, complaining party, person, State, commerce, industry affecting commerce, demonstrates, and respondent will have the meaning as defined in Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e.

(b) the term ^{wt}parental status means the status of biological, adopted, or foster parent, stepparent, or standing in loco parentis, to a son or daughter who is under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability.

Section 2 Unlawful Employment Practices

(a) It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with regard to his compensation, terms, conditions, or privileges of employment because of such person's parental status.

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against any individuals because of his or her parental status or to classify or refer for employment any individual because of his or her parental status.

(c) It shall be an unlawful employment practice for a labor organization to fail or refuse to refer for employment any individual because of such individual's parental status.

(d) It shall be an unlawful employment practice for an employer, employment agency, or labor organization to discriminate against any individual because he or she has opposed any employment practice made unlawful under this act, or because he or she has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this act.

(e) Nothing in this act shall be interpreted to require any employer, employment agency, or labor organization to collect or report information about the parental status of its employees, nor to require that any employer, employment agency, or labor organization grant preferential treatment to any individual because of his or her parental status.

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parental
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Section 3 ❖ Enforcement and Remedies

(a) The powers, remedies, and procedures set forth in sections 705, 706, 707, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. §2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9) shall be the powers, remedies, and procedures this title provides to the Equal Employment Opportunity Commission, to the Attorney General, or to any person alleging a violation of any provision of this Act.

(b) Every employer, employment agency, and labor organization shall post and keep posted in conspicuous places upon its premises where notices to employees, applicant for employment, and members are customarily posted a notice setting forth excerpts from or summaries of the pertinent provisions of this act and information pertinent to the filing of a complaint. A willful violation of this section shall be punishable by a fine of not more than \$100 for each separate offense.

(c) The Equal Employment Opportunity Commission shall be empowered to promulgate regulations implementing the provisions of this act.



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

P.O. Box 65808
Washington, D.C. 20035-5808

Telephone (202) 514-2151

TELEFACSIMILE COVER SHEET

DATE:

1/6/99

TO:

Neera Tanden

PHONE:

FAX:

456 2878

FROM:

Helen N...

OFFICE OF THE ASSISTANT ATTORNEY GENERAL

CIVIL RIGHTS DIVISION

FAX NUMBER: 202-307-2839

PHONE:

COMMENTS:

NUMBER OF PAGES TRANSMITTED (INCLUDING THIS SHEET)

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DRAFT BILL RE PARENTAL STATUS DISCRIMINATION

Section 1 — Definitions

For the purposes of this act,

(a) the terms "employer", "employee", "employment agency", "labor organization", "complaining party", "person," "State," "commerce," "industry affecting commerce," "demonstrates," and "respondent" will have the meaning as defined in Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e.

(b) the term "parental status" means the status of biological, adopted, or foster parent, stepparent, or standing in loco parentis, to a son or daughter who is under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability.

Section 2 — Unlawful Employment Practices

(a) It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with regard to his compensation, terms, conditions, or privileges of employment because of such person's parental status.

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(d) It shall be an unlawful employment practice for an employer, employment agency, or labor organization to discriminate against any individual because he or she has opposed any employment practice made unlawful under this act, or because he or she has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this act.

(e) Nothing in this act shall be interpreted to require any employer, employment agency, or labor organization to collect or report information about the parental status of its employees, nor to require that any employer, employment agency, or labor organization grant preferential treatment to any individual because of his or her parental status.

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(a) The powers, remedies, and procedures set forth in sections 705, 706, 707, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. §2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9) shall be the powers, remedies, and procedures this title provides to the Equal Employment Opportunity Commission, to the Attorney General, or to any person alleging a violation of any provision of this Act.

(b) Every employer, employment agency, and labor organization shall post and keep posted in conspicuous places upon its premises where notices to employees, applicant for employment, and members are customarily posted a notice setting forth excerpts from or summaries of the pertinent provisions of this act and information pertinent to the filing of a complaint. A willful violation of this section shall be punishable by a fine of not more than \$100 for each separate offense.

(c) The Equal Employment Opportunity Commission shall be empowered to promulgate regulations implementing the provisions of this act.

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(b) the term parental status means the status of biological, adopted, or foster parent, stepparent, or standing in loco parentis, to a son or daughter who is under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability.

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(c) The Equal Employment Opportunity Commission shall be empowered to promulgate regulations implementing the provisions of this act.

Edward W. Correia

02/09/99 06:10:05 PM

Record Type: Record

To: Neera Tanden/WHO/EOP

cc:

Subject: Re: parental status discrimination 

I like the basic language on discrimination. It appears to take care of the "one way right" problem. Also, "potential parental status" captures the idea that an employer can't refuse to hire someone simply because they will have kids in the future.

Although I think it is unfair for an employer to refuse to hire someone because of future parenthood, I do have some concerns about including this in the bill. First, will people understand what we are proposing? If a female job applicant says right up front that she will become pregnant in the next year and will have to take off a few months, or a male job applicant says that his wife is expecting and that he will have to take off for child care, our bill would not prevent the employer from refusing to hire either one. Our supporters may be uncomfortable with that result, but that is what we are saying, isn't it?

On the other hand, that is the result that follows if the applicant is pregnant at the time under the Pregnancy Discrimination Act. The PDA requires the employer to treat pregnancy like it treats people with disabilities. So, if an employer would not hire anyone who has to be off the job for a few weeks, refusing to hire someone who is pregnant and, therefore, won't be on the job is not prohibited. Will everyone understand that, by including "potential parental status," we are protecting the applicant only from the unfair assumption that, when she gets pregnant, she can't do the job. Will we encourage applicants to promise that they will stay on the job, knowing that they can't? What happens when an applicant says she won't take any time off after the baby is born? Arguably, that is not credible and the employer could decide that the person will take off no matter what she says.

In short, adding "potential parental status" adds some complexities to the bill. On the other hand, these same issues already exist under the PDA. Let's see how the women's groups feel about it.

FACSIMILE

To: Neera Tanden
Fax: 456-2878
Re: U.S. Law Week article
Date: March 16, 1999
Pages: 3, including this cover sheet.

Donna Lenhoff asked me to fax this article to you.

From the desk of...

Anne Arnold
Program Assistant
National Partnership for Women & Families
1875 Connecticut Ave., NW, Suite 710
Washington, DC 20009

202/986-2600
Fax: 202/986-2539

Analysis & Perspective

Employment Discrimination—Parents

Employment Experts Debate Necessity Of President's Parental Discrimination Bill

A new group may soon join the employment discrimination cluster: parents. In his State of the Union address in January, President Clinton proposed new federal legislation to protect parents from discrimination in the workplace. The goal of the measure would be to protect employees from the assumption they would be less committed to their jobs as a result of having children, the White House said.

Employer groups condemned the proposal as another example of over-zealous government intervention in the workplace. However, attorneys and experts on work-family issues assert that parents face several kinds of workplace bias. Still, many contend that a parental discrimination bill would raise some tricky issues, including how it would affect childless workers and how such discrimination cases would be proved.

"In some respects I would hate to see [nondiscrimination legislation] pushed just on the basis of parents."

SUZANNE SMITH, NEW WAYS TO WORK

According to Larry Bussey of Ceridian Performance Partners, a Minneapolis-based company that provides work-life programs to companies, employers face a tremendous challenge in keeping their employees both with and without children happy while maintaining a business-first workplace. "It's definitely a tough balance to strike," he said.

Suzanne Smith, co-director of New Ways to Work, a research and resource center in San Francisco that focuses on flexible work options, said that many workers, not only parents, have a hard time getting employers to understand their needs for flexible work options. Therefore, she said, a law only for parents might not be the best remedy. "In some respects I would hate to see it pushed just on the basis of parents," Smith said.

Sights and Biases. Plaintiffs' attorney Nancy Erika Smith said that employer discrimination against parents is a very real part of the workplace. Smith, a partner with Smith Mullin, an employment law firm in Morristown, N.J., explained that discrimination against parents can take several forms. First off, she said, she has had many clients who could not get hired simply because they were pregnant.

Another common form of discrimination against parents occurs if a supervisor who had been accommodat-

ing employees' family obligations is replaced by one who refuses any type of requests for family leave or flexible schedules, Smith said. "There are people with crazy prejudices out there," she said, noting that some managers obsessively prioritize work over family and expect their workers to do the same.

According to Smith, discrimination based on parental status is a much bigger problem for women than for men. Even though fathers today are very involved in raising their children, she said, "the stereotypes remain" that a working mother places much more importance on her kids than on her work.

Bill Being Developed. Although the White House has offered few details on what a parental discrimination measure would do, a Clinton administration official did list what some of the measure's limitations will be:

- parents would not be allowed to claim "disparate impact"—that working conditions affect them differently than nonparents;
- poor job performance would be an "absolute defense" for an employer's personnel decision;
- no new reporting requirements would be imposed on employers; and
- Title VII of the 1964 Civil Rights Act would not be amended.

Taking exception to the White House proposal, an employer group said there is no justification for a law protecting parents from workplace discrimination. "We're unaware of any significant national problem in this area that would justify federal legislation," Randel Johnson, director of labor policy at the U.S. Chamber of Commerce, told BNA. "Maybe there are a few cases out there, but a few cases don't amount to a public policy problem justifying a federal law applicable to millions of workers."

Moreover, Johnson added, family leave issues are already covered under the Family and Medical Leave Act. However, the chamber has vigorously opposed expanding that law to allow for, among other things, leave for working parents to attend children's school-related activities.

Also contending that a parental discrimination bill is ill advised, a management lawyer asserted that employer discrimination against employees with children is quite rare. Vincent Cino, a partner in the Morristown, N.J., office of the employment law firm Jackson Lewis, said that while protecting parents is "a nice concept," discrimination against parents is not "a big problem." In fact, he said, "I think most employers bend over backwards for parents."

The main concern of companies is having a productive workforce, regardless of its race, sex, or family status, Cino said. "Employers really want good, productive, successful employees," he said.

Tension Between Parents, Childless Employees. One of the dangers for employers that tailor programs and policies toward working parents is that they will alienate, or worse discriminate against, childless employees.

Lynn M. Daggett, a law professor at Gonzaga University in Spokane, Wash., said that anecdotal evidence supports both parents and childless workers in their claims that employers are discriminating against them. Both groups "seem to face some bias," she said.

Daggett noted that many parents, particularly women, have been told by employers that they will not make it to the senior levels of the company if they spend too much time tending to their family concerns. On the other hand, she said, childless workers have been told that they are less desirable workers than are their "more stable" colleagues with families. And while many parents lament that their companies do not suitably allow them to meet their family obligations, unattached workers often resent having to cover for parents who are off watching their kids play soccer, Daggett said. "There's a growing tension in some workplaces between employees with families and employees that are unattached," she said.

Work-Life Programs for Everybody. Because benefits that are geared to any specific group can be "a very sensitive issue" in the workplace, an increasing number of employers are designing programs that "have something for all their employees," explained Cerdian's Bussey.

Bussey recommended eliminating the "soms get special treatment mindset" from the organization. Instead of focusing only on a specific subset of workers, employers should direct all their policies and practices toward what is best for the business, he said.

Employers today are moving away from just offering dependent care assistance to providing benefits for "everyday issues," such as finding a plumber or buying a new car, Bussey said. "It's basically a convenience service," he said, aimed at making every employee's life easier.

"There's a growing tension in some workplaces between employees with families and employees that are unattached."

LYNN M. DAGGETT, LAW PROFESSOR, GONZAGA UNIVERSITY

Cino agreed that employers must strike a balance in the treatment of both parents and childless workers. While "everyone loves children," employers do not want to swing so far toward helping out parents that they wind up slighting those workers without families, he said. Still, Cino said, at most companies, there are benefits and advantages for employees with all different personal situations. In the end, he said, "all these things kind of even out."

While both parents and childless employees have become more vocal about asserting their rights, Daggett said, neither group has successfully done so in court. Proving a claim for either type of employee would not

be difficult if there was the "smoking gun" of an employer statement, Daggett said. For example, she said, if a supervisor tells a parent that the company favors employees "who give their all to the job" rather than to their children, then the employee might have a solid case for discrimination. In the absence of that type of statement, it would be difficult to come up with much direct proof that an employer showed bias to a worker because he did or did not have children, Daggett explained.

Court Decisions Under Current Law. Several cases dealing with parental responsibilities and the workplace have arisen under existing laws.

"We're unaware of any significant national problem in this area that would justify federal legislation."

RANDEL JOHNSON, U.S. CHAMBER OF COMMERCE

Joann Trezza, who was married with two young children, was an attorney in The Hartford Inc.'s legal department. She claimed that she was passed over for several promotions in favor of childless female attorneys and a male attorney with children. She sued under Title VII and New York law, alleging that she was not promoted because she was a woman and a parent. A federal district court allowed her to proceed with her sex discrimination claim, but ruled against her on her disparate impact claim. *Trezza v. The Hartford Inc.*, S.D.N.Y., No. 98 Civ. 2205, 12/28/98.

The Massachusetts Supreme Judicial Court ruled that an at-will employee could be fired for refusing to work overtime, even if the refusal was based on family obligations. Joanna Upton, a single mother, told her employer that she could not work late into the night or on weekends because of her responsibility as a mother. After she was fired, she sued, claiming that Massachusetts public policy favors the care and protection of children. While the court was sympathetic to the challenges of balancing parental responsibilities with the demands of employment, it ruled that public policy did not prevent Upton's discharge and that an at-will employee, as a general rule, can be terminated at any time for any or no reason. *Upton v. JWP Businessland*, Mass SupJudCt, SJC-06433, 8/18/97.

A federal jury in Maryland awarded \$375,000 to a male state trooper who was denied permission to take extended family leave after the birth of his daughter. Kevin Knussman, a paramedic on a medical evacuation helicopter, sued the Maryland State Police under the FMLA and the U.S. Constitution's equal protection clause after his request for an extended paid leave was denied because he was a father rather than a mother. He was required to return to work on the 11th work day following his daughter's birth, despite the fact that his wife suffered health problems following the pregnancy and had difficulty caring for the baby. *Knussman v. Maryland*, D. Md., No. B-95-1255, verdict 2/2/99.

SIMON J. NADEL

*Findings
section*

A BILL

To prohibit employment discrimination on the basis of parental status.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Parental Status Non-Discrimination Act of 1999."

SECTION 2. PURPOSES.

The purposes of this Act are --

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

SECTION 3. DEFINITIONS.

In this Act --

- (1) **CHILD** - The term 'child' means an individual who is under the age of 18, or who is 18 or older but is incapable of self-care because of a physical or mental disability.
- (2) **COMMISSION** - The term 'Commission' means the Equal Employment Opportunity Commission.
- (3) **COMPLAINING PARTY** - The term 'complaining party' means the Commission, the Attorney General, or any other person who may bring an action or proceeding under this Act.
- (4) **COVERED ENTITY** - The term 'covered entity' means an employer, employment agency, labor organization, joint labor-management committee, an entity to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-

16(a)) applies, an employing authority to which section 302(a)(1) of the Government Employee Rights Act of 1991 (2 U.S.C. § 1202(a)(1)) applies, or an employing office, as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. § 1301). The term 'covered entity' includes an employing office, as defined in section 401 of title 3, United States Code.

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

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

(7) **EMPLOYER** - The term 'employer' means a person engaged in an industry affecting commerce (as defined in section 701(h) of the Civil Rights Act of 1964 (42 U.S.C. § 2000e(h))) who has 15 or more employees (as defined in section 701(f) of such Act (42 U.S.C. § 2000e(f))) for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

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

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

(10) **INCAPABLE OF SELF-CARE** - The term 'incapable of self-care' has the meaning given the term in regulations implementing the Family and Medical Leave Act (29 C.F.R. § 825.113 (1998)).

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

The protections of this chapter should protect

(12) PARENTAL STATUS - The term 'parental status' means having the status of one or more of the following --

- (A) a biological parent;
 - (B) an adoptive parent;
 - (C) a foster parent; or
 - (D) an individual who has day-to-day responsibilities to care for and financially support a child.
- not custody*

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

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

- (A) a religious corporation, association, or society; or
- (B) a school, college, university, or other educational institution or institution of learning, if --
 - (i) the institution is in whole or substantial part controlled, managed, owned, or supported by a religion, religious corporation, association, or society; or
 - (ii) the curriculum of the institution is directed toward the propagation of a particular religion.

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

SECTION 4. DISCRIMINATION PROHIBITED.

A covered entity shall not, with respect to the employment or an employment opportunity of an individual, subject the individual to a different standard or different treatment, or otherwise discriminate against, the individual on the basis of parental status.

SECTION 5. RETALIATION AND COERCION PROHIBITED.

(A) RETALIATION - A covered entity shall not discriminate against an individual because the individual opposed any act or practice prohibited by this Act or because the

The protections of this chapter

individual made a charge, assisted, testified, or participated in any manner in an investigation, proceeding, or hearing under this Act.

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

SECTION 6. OTHER PROHIBITIONS.

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

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

(C) **PREFERENTIAL TREATMENT** - A covered entity shall not give preferential treatment to an individual on the basis of parental status.

SECTION 7. PROOF OF VIOLATION.

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

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

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

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

SECTION 8. DEFENSES.

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

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

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

SECTION 9. ENFORCEMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 10. STATE AND FEDERAL IMMUNITY.

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

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

SECTION 11. ATTORNEYS' FEES.

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

SECTION 12. POSTING NOTICES.

A covered entity shall post notices for employees, applicants for employment, and members, to whom the provisions specified in section 9(b) apply, that describe the applicable provisions of this Act in the manner prescribed by, and subject to the penalty provided under, section 711 of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-10).

SECTION 13. REGULATIONS.

(A) **IN GENERAL** - Except as provided in subsections (B), (C), and (D), the Commission shall have authority to issue regulations to carry out this Act.

(B) **LIBRARIAN OF CONGRESS** - The Librarian of Congress shall have authority to issue regulations to carry out this Act with respect to employees of the Library of Congress.

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

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

SECTION 14. RELATIONSHIP TO OTHER LAWS.

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

SECTION 15. SEVERABILITY.

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

SECTION 16. EFFECTIVE DATE.

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



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Here are some of the legal issues that the proposed parental discrimination legislation has raised for us, for your consideration before our meeting tomorrow. We hope to discuss these issues, as well as any others that you would like to explore, at that meeting.

ENDING DISCRIMINATION AGAINST PARENTS ACT OF 1999 (EDAPA)***Legal Issues***

1. As currently drafted, the EDAPA overlaps with the ADA, the FMLA, and Title VII. For example, employers who discriminate against employees who are parents of children with disabilities arguably trigger the coverage of both the EDAPA and the ADA. Similarly, employers who penalize employees who take leave to care for their children with serious health conditions, while imposing no penalties on employees who take comparable leave for other reasons, presumably run afoul of both the EDAPA and the FMLA. What, if anything, needs to be done through legislative language or history to ensure that the EDAPA does not undercut existing federal antidiscrimination laws? For instance, to the extent that incorrect judicial interpretations of Title VII's proscription against "sex-plus" discrimination have prompted proponents of EDAPA to target discrimination against women with children, does the EDAPA risk contributing to the conclusion that Title VII is inadequate to eliminate such discrimination?
2. As currently drafted, the EDAPA tracks § 703(a)(1) from Title VII. What are the legal implications of this? Should § 4 of EDAPA track Title VII, and if so, to what degree? Should § 4 be expanded to include both § 703(a)(1) and (a)(2) from Title VII?
3. As currently drafted, § 7(b) of the EDAPA purports to exclude disparate impact. Does § 7(b) sufficiently accomplish this purpose, or is additional legislative language or history necessary?
4. As currently drafted, § 4 of the EDAPA covers discrimination with regard to "compensation, terms, conditions, or privileges of employment." Since this provision tracks Title VII, Title VII case law expansively interpreting this language suggests that employers may not differentiate between parents and non-parents with regard to benefits simply because parents consume more benefits, see, e.g., City of Los Angeles v. Manhart, 435 U.S. 702, 717 (1978) (finding that municipal pension scheme requiring women to make higher contributions than men, based on women's greater longevity, violated Title VII; declining to find cost-based defense to liability). What are the legal implications of this interpretation? What benefits are included in § 4 of the EDAPA? Should the current language of § 4 be replaced with ADEA language, so that the ADEA's equal cost rule applies?
5. It has been suggested that the EDAPA cover prospective biological parents. Should prospective biological parents be covered? If prospective biological parents are covered, how will this class be determined? What will be the implications of such coverage for fetal protection policies that categorize prospective parents separately?
6. As currently drafted, the EDAPA covers discrimination against both parents and non-parents. It has been suggested that the EDAPA's protection should be limited to parents only. What legislative language and history would be necessary to achieve this limitation? What would be the legal implications of restricting the EDAPA's coverage to

parents only? For instance, would such a limitation undermine Title VII's coverage of discrimination against men as well as women, given the similarity between the EDAPA and Title VII?

7. As currently drafted, the EDAPA contains no explicit bar to preferential treatment. What would be the legal significance of the absence of such a bar if, on the one hand, EDAPA prohibited discrimination against parents only, or, on the other hand, EDAPA prohibited discrimination against parents and non-parents alike? What would be the effect of an explicit statutory provision forbidding preferential treatment? For example, would such a provision preclude employers from accommodating parental responsibilities if EDAPA were a two-way prohibition? Under what circumstances would the law in its current incarnation prohibit or allow preferential treatment?
8. Would the EDAPA, as currently drafted, preclude employers from asking prospective employees about their parental status?
9. Sections 2(3) and 10(A) of the EDAPA aim to abrogate the states' Eleventh Amendment immunity. Is this statutory language sufficient to accomplish this purpose under City of Boerne? If not, what kind of legislative language and history are necessary? For example, the FMLA has findings of fact documenting the existence and impact of gender-based employment standards. Are such findings of fact necessary for the EDAPA to succeed in abrogating the states' immunity?

F:\USERS\COMMON\FAIRNESS\EDAPALEG.WPD
March 17, 1999 (11:59am)

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

(A) a biological parent;

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

(C) a foster parent;

(D) stepparent; or

(E) or standing in loco parentis.

⑤ **SECTION 4. DISCRIMINATION PROHIBITED.**

It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with regard to his compensation, terms, conditions, or privileges of employment because of such person's parental status.

Prohibiting Discrimination Against Parents

Policy: We propose that the Administration introduce 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, 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 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:

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

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

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

Minnesota case -- Discrimination in Hiring

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

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

Eighth Circuit Case -- Discrimination in Demotion/Termination

Appellant, a new mom, was demoted to a job with fewer responsibilities and half the salary, after she returned to work from maternity leave because the employer believed that new mothers could not take their work responsibility seriously. (*Piantanida v. Wyman Center*, 116 F.3d 340, (1997)) Though the court ruled she had no protection under the Pregnancy Discrimination Act (which is part of Title VII), she would be protected under our proposed statute.

Second Circuit Case -- Discrimination in Promotion

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

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

Equal Employment Opportunity Commission

1801 L Street, N.W.
Washington, D.C., 20507
(202)663-4637
Fax: (202)663-4639

FAX COVER SHEET

FAX NUMBER TRANSMITTED TO: 456-2878

To: Neera Tandon

From: Ellen Vargyas

Date: January 14, 1999

DOCUMENTS	NUMBER OF PAGES*
<u>Trezza v. The Hartford Inc.</u>	6

COMMENTS: I just came across this case and thought it might be of interest to you. It analyzes a claim of discrimination by a woman who claims she was discriminated against because she is a parent and adopts a sex-plus approach. Please feel free to call if I can be of any further assistance.

* NOT COUNTING COVER SHEET. IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE IMMEDIATELY AT (202)663-4637.

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(Cite as: 1998 WL 912101 (S.D.N.Y.))

Page 1

Joann TREZZA, Plaintiff,
v.
THE HARTFORD, INC., Hartford Financial
Services Group Inc., Tutoki & Levy,
Bryan F. Murphy and James J. Keating,
Defendants.

No. 98 CIV. 2205(MBM).

United States District Court, S.D. New York.

Dec. 30, 1998.

Steven G. Eckhaus, Esq., Eckhaus & Olson, New
 York, for Plaintiff.

Scott J. Wenner, Esq., Todd A. Bromberg, Esq.,
 Little & Mendelson, New York, for Defendants.

OPINION AND ORDER

MUKASBY, D.J.

*1 Joann Trezza sues The Hartford, Inc., Hartford Financial Services Group Inc. (together "Hartford"), Tutoki & Levy, Bryan F. Murphy and James J. Keating, alleging discrimination on the basis of sex in violation of 42 U.S.C. § 2000 et seq. ("Title VII"), N.Y. Exec. Law § 296 et seq. and N.Y.C. Admin. Code § 8-1-1 et seq. [FN1] Pursuant to Fed.R.Civ.P. 12(b)(6), defendants move to dismiss seven of plaintiff's eleven claims, specifically those related to hostile work environment sexual harassment (Claims 1-3), discriminatory failure to promote (Claims 4-6) and disparate impact discrimination (Claim 8). For the reasons stated below, defendants' motion is granted in part and denied in part, and Claims 1-3 and 8 are dismissed.

[FN1. Claims of discrimination brought under the New York Executive Law and the New York City Administrative Code are governed by the same substantive principles as govern a Title VII claim. See, e.g., *Tomka v. Seiler Corp.*, 66 F.3d 1295, 1305 n. 4 (2d Cir.1995); *Noyer v. Viacom Inc.*, 22 F.Supp.2d 301, 305 n. 2 (S.D.N.Y.1998). In the analysis that follows, therefore, I apply Title VII jurisprudence to plaintiff's claims.

I.

The following relevant facts are taken to be true for purposes of this motion. Plaintiff, a resident of New Jersey, is an attorney employed in New York City by

defendant Tutoki & Levy, the
 defendant Hartford. (Compl. ¶¶ 5
 married and the mother of two
 6. (Id. ¶ 19)

FN2. "Compl." refers to the
 filed on May 14, 1998.

Defendant Murphy is a Senior
 Hartford in charge of claims and
 nationwide. (Id. ¶ 9) Defendant
 December 1997, Hartford's
 Counsel, and was recently
 Assistant Vice President. (Id. ¶
 he is responsible for all of Hartford's
 offices east of the Mississippi River.

Plaintiff began working for Hartford in 1978 as a
 staff attorney in the company's New York City legal
 office, which was then known as Langan & Levy,
 Esqs. ("Langan & Levy"), but later came to be
 known as Tutoki & Levy. (Id. ¶ 10) After her fifth
 year of employment, plaintiff was promoted to Senior
 Staff Attorney. (Id. ¶ 18) At the time of her hiring and
 her promotion to Senior Staff Attorney, plaintiff did
 not yet have children. (Id. ¶ 20)

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

In 1993, plaintiff was "in line" for promotion to
 Assistant Managing Attorney. (Id. ¶ 24) Instead of
 promoting plaintiff, however, Hartford promoted
 Cohen and another employee, Leo Rubusto. (Id.)
 Cohen was still unmarried and childless. Rubusto was
 married with children. (Id.) After learning that she
 was not promoted, plaintiff contacted defendant
 Murphy and informed him that she believed Hartford was

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

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

Plaintiff alleges that, on three occasions between April 1995 and March 1997, defendants Murphy and Keating subjected her to disparaging remarks "about the incompetence and laziness of women who are also working mothers." (Id. ¶ 38) First, in April 1995, during a business dinner attended by plaintiff, Murphy, Keating and four other male executives, Murphy allegedly stated that "women are not good planners, especially women with kids." (Id. ¶ 29) When plaintiff complained to Murphy about this remark, he allegedly responded that "truth is an absolute defense." (Id. ¶ 30)

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

In mid-1997, following Murphy's and Keating's disparaging remarks, John Langan, the Managing Attorney of Langan & Levy and a father of four children, retired, making available the position of Managing Attorney. (Id. ¶ 40) Plaintiff, who was the

second most senior attorney in the New York office and had received "consistently excellent employment evaluations," with higher grade evaluations than the other two Assistant Managing Attorneys in the New York office, asked to be considered for the opening. (Id. ¶¶ 41-43) Nevertheless, plaintiff was not considered for the position, which remained open for an unspecified time. (Id. ¶ 44) During the period in which the job remained open, defendants asked two men, both with children, about whether they were interested in the position. (Id.) Both men declined to be considered for the job. (Id.) In August 1997, defendants named Jane Tutoki the Managing Attorney of the New York office, which after changed its name to Tutoki & Levy. (Id. ¶ 45) Tutoki, a 38-year-old woman without children, has considerably less legal experience" than plaintiff, who has never practiced law in New York and was not admitted to practice in New York courts. (Id.)

*3 In addition to setting forth the foregoing facts, the complaint alleges that only seven of approximately 46 Managing Attorneys employed by Hartford nationwide are women. (Id. ¶ 47) Of these seven, four are employed on the East Coast of the United States. (Id.) Of these four, none has school children. (Id.) In contrast, "[m]any of the attorneys promoted to Managing Attorney have school children." (Id. ¶ 48)

On March 4, 1998, plaintiff filed a summons and complaint in Supreme Court, New York County, and served copies of her complaint upon the New York City Corporation Counsel and the New York City Commission on Human Rights. (Id. ¶¶ 2-3) On or about March 26, 1998, defendants removed the case to this court pursuant to 28 U.S.C. §§ 1331, 1367 and 1441 (1994). (Id. ¶ 2; Notice of Removal ¶¶ 4-5) Thereafter, on March 27, 1998, plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission (the "EEOC"). [FN3] (Compl. ¶ 4)

FN3. The EEOC apparently informed plaintiff a right-to-sue letter on June 3, 1998. (Compl. Mem. at 1)

On May 14, 1998, plaintiff filed an amended complaint, alleging hostile work environment sexual harassment (Claims 1-3), discriminatory failure to promote (Claims 4-6), intentional infliction of emotional distress (Claim 7), disparate impact discrimination (Claim 8) and discriminatory retaliation (Claims 9-11). Plaintiff seeks compensatory damages, punitive damages and various forms of injunctive

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relief. Plaintiff's emotional distress and retaliation claims are not the subject of the present motion.

II.

On a motion to dismiss for failure to state a claim pursuant to Fed.R.Civ.P. 12(b)(6), the court should dismiss the complaint if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Northrop v. Hoffman of Simsbury, Inc.*, 134 F.3d 41, 42 (2d Cir.1997) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). It is not the court's function to weigh the evidence that might be presented at trial; instead, the court must merely determine whether the complaint itself is legally sufficient. See *Goldman v. Belden*, 754 F.2d 1059, 1067 (2d Cir.1985). In doing so, the court must accept the material facts alleged in the complaint as true, and draw all reasonable inferences in favor of the plaintiff. See *Gant v. Wallingford Bd. of Educ.*, 69 F.3d 669, 673 (2d Cir.1995). The issue before the court on a Rule 12(b)(6) motion "is not whether a plaintiff is likely to prevail ultimately, but whether the claimant is entitled to offer evidence to support the claims. Indeed it may appear on the face of the pleading that a recovery is very remote and unlikely but that is not the test." *Id.* (quoting *Weisman v. LeLandais*, 532 F.2d 308, 311 (2d Cir.1976) (per curiam)).

III.

Defendants move first to dismiss Claims 1-3 of the complaint, which allege that defendants' "acts in discriminating against [plaintiff] because she is a woman and a parent, and in creating and allowing a hostile work environment to exist against women with children" were in violation of Title VII and New York law. [FN4] (Comp. ¶¶ 77, 80, 82)

FN4. In their memorandum of law, defendants appear uncertain about whether Claims 1-3 allege more than hostile work environment sexual harassment. (See Def. Mem. at 5-7) Plaintiff herself, however, discusses these claims as alleging only hostile work environment harassment. (See Pl. Mem. at 11-12) Moreover, the only other possible basis for these claims--the allegedly unlawful failure to promote--is pleaded separately in Claims 4-6. Accordingly, I will treat Claims 1-3 as alleging hostile work environment harassment exclusively.

*4 To establish a claim of hostile work environment harassment, the workplace must be "permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions

of the victim's employment and create an abusive working environment." *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 21 (1993) (internal quotation marks and citations omitted); see *Offshore Servs. Inc.*, 118 S.Ct. 8, 1003 (1998) (calling this requirement "crucial"). Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment--an environment that a reasonable person would find hostile or abusive--is beyond Title VII's purview." *Harris*, 510 U.S. at 21 (citing *Faragher v. City of Boca Raton*, 118 S.Ct. 2275, 2283 (1998) (citation omitted); see also *Carrero v. New York City Hous. Auth.*, 890 F.2d 569, 577 (2d Cir.1989) ("The incidents must be more than episodic; they must be sufficiently continuous and concerted in order to be deemed pervasive."). Whether a work environment is "hostile" or "abusive" depends on the totality of the circumstances. See *Harris*, 510 U.S. at 23.

In the present case, plaintiff alleges her hostile work environment claims on (i) defendants' having denied her promotions and (ii) defendants' allegedly made by Murphy, Keating, and the Managing Attorneys of Langan & Levy. (See Pl. Mem. at 12) The failure to promote plaintiff is, however, a factor relating to her workplace "environment" and, in any event, is pleaded separately in Claims 4-6 of the amended complaint. Therefore, plaintiff's claims rest exclusively on defendants' allegedly made statements. Defendants argue, inter alia, that these statements should be disregarded on the ground that plaintiff is barred from complaining about them under the applicable statute of limitations. (See Def. Reply Mem. at 2-3)

I need not consider defendants' argument that plaintiff is time-barred from complaining about the allegedly hostile work environment because plaintiff's hostile work environment claims are insufficient as a matter of law in any event. Although several of defendants' alleged comments may be objectionable, they were "sufficiently isolated and discrete" that a trier of fact could not reasonably conclude that they pervaded [plaintiff's] work environment." *Green Tree Credit Corp.*, 159 F.3d 759, 767 (2d Cir.1998). Indeed, it is well established that "occasional episodes of harassment" do not merit relief under Title VII." *Tomka*, 66 F.3d 305 n. 5. Nor were defendants' comments, taken separately, of sufficient severity to establish a claim without regard

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to frequency or regularity. Cf. Quinn, 159 F.3d at 768. Accordingly, plaintiff's hostile work environment claims are dismissed.

IV.

*5 Defendants move next to dismiss Claims 4-6, which allege that defendants' "acts in failing to promote [plaintiff] because she is a woman and a parent" are in violation of Title VII and New York law. (Compl. ¶¶ 93, 96, 100)

When a plaintiff alleges disparate treatment in violation of Title VII, the court applies the now familiar three-step burden-shifting analysis first prescribed in *McDonnell-Douglas Corp. v. Green*, 411 U.S. 792, 802-04 (1973). See *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 506-08 (1993); *Quarantino v. Tiffany & Co.*, 71 F.3d 58, 64 (2d Cir.1995). First, the plaintiff bears the burden of establishing a prima facie case of discrimination by demonstrating that: (1) she is a member of a protected class; (2) she was qualified for the position she sought; (3) she was not promoted; and (4) the position remained open and was ultimately filled by someone outside the protected class. See *Quarantino*, 71 F.3d at 64. A plaintiff may satisfy the fourth prong by showing alternatively that the failure to promote "occurred in circumstances giving rise to an inference of unlawful discrimination." *Id.* at 64. Second, assuming the plaintiff proves a prima facie case, the burden shifts to the defendant "to articulate a legitimate, clear, specific and non-discriminatory reason" for the employment action at issue. *Id.* Finally, if the defendant carries this relatively light burden of production, the plaintiff must prove that the defendant's articulated reason is merely a pretext for discrimination. See *St. Mary's Honor Ctr.*, 509 U.S. at 511; *Quarantino*, 71 F.3d at 64.

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

should be disregarded because, in any event, these claims are time-barred. (See Def. Mem. at 8 n. 3)

Defendants' argument with respect to the failure to promote plaintiff in 1997 is without merit, and the parties did not brief the issue of whether the continuing violations doctrine could be invoked to toll the statute of limitations. See *Call v. Robinson*, 23 F.3d 694, 703-04 (2d Cir.1994) (discussing the continuing violations doctrine). For these reasons, I need not consider at present whether plaintiff is time-barred from raising the earlier instances of alleged discrimination.

Plaintiff's disparate treatment claim rests on a form of Title VII discrimination known as "sex-plus" discrimination. Sex-plus discrimination occurs when a person is subjected to disparate treatment based, not solely on her sex, but on her sex "considered in conjunction with a second characteristic." *Fisher v. Vassar College*, 70 F.3d 1420, 1426 (2d Cir.1995) ("Fisher I"), on reh'g en banc, 70 F.3d 1332 (2d Cir.1997) ("Fisher II") (concluding in the panel decision), cert. denied, 118 S.Ct. 1000 (1998). Such a theory of discrimination was first articulated by the Supreme Court in *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971) (per curiam). In *Phillips*, the defendant company refused to hire women with pre-school-aged children but hired men who had pre-school-aged children. See *id.* at 544. On appeal, the Supreme Court vacated summary judgment in favor of the defendant, holding that although women were not affected by the policy, Title VII prohibited the use of "one hiring policy for women and another for men--each having pre-school-aged children." *Id.* at 544.

*6 As defendants contend (see Def. Mem. at 9-10), notwithstanding, a plaintiff must still prove disparate treatment between men and women in order to prove a Title VII discrimination claim. See, e.g., *Maintenance Mgmt., Inc.*, 108 F.3d 1203 (10th Cir.1997) ("[A]lthough the protected class need not include all women, the plaintiff must still prove that the subclass of women was unfairly treated as compared to the corresponding subclass of men."); *Fisher I*, 70 F.3d at 1446 ("To establish that [the defendant] discriminated on the basis of sex plus marital status, plaintiff must show that married men were treated differently from married women."); *Jurinko v. Edwin L. Wiegand Co.*, 7 F.2d 1038, 1044 (3d Cir.) ("Discrimination against married women constitutes discrimination on the basis of sex

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only if a different standard, i.e., the marital status of the person, has been applied to men and women."), vacated on other grounds, 414 U.S. 970 (1973). But this burden must be shouldered by the plaintiff in a sex-plus discrimination case only at the pretext stage of the burden-shifting analysis. When a plaintiff alleges discrimination on the basis of sex in conjunction with some other characteristic, the defendant's selection of someone of the same sex as plaintiff but without the added characteristic is insufficient to defeat an otherwise legitimate inference of discrimination--the essence of a plaintiff's prima facie case. Indeed, the point of Phillips and its progeny is that a defendant should not be able to escape liability for discrimination on the basis of sex merely by hiring some members of the protected group. Cf. *Graham v. Bendix Corp.*, 585 F.Supp. 1036, 1047 (N.D.Ind.1984) ("The duty not to discriminate is owed each minority employee, and discrimination against one of them is not excused by a showing the employer did not discriminate against all of them, or there was one he did not abuse." (citing *Furnco Constr. Corp. v. Waters*, 438 U.S. 567, 579 (1978))).

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

*7 Finally, it is important to note that plaintiff does in

fact allege that defendants treated men with children and women with children differently. According to the complaint, defendants first approached two men, both with children, about the Managing Attorney position, before giving the job to Tutoki. Compl. ¶ 44) In addition, the complaint alleges "[m]any of the men promoted to Managing Attorney have school age children." (*Id.* ¶ 48) These allegations distinguish this case from *Bass v. Chemical Bank Corp.*, No. 94 Civ. 8833(SHS), 1996 WL 3741 (S.D.N.Y. July 2, 1996), where the Court dismissed the plaintiff's sex-plus claim because she failed to produce "any evidence to show that [the defendant] treated her differently than married men or childless women did not in itself establish the fourth element of plaintiff's prima facie case." This additional evidence would be sufficient to establish "circumstances giving rise to an inference of unlawful discrimination," *Quarantino*, 71 F.3d at 64, and thus plaintiff's failure to promote could not be dismissed.

It may be that plaintiff will be able ultimately to prove that defendants discriminated against her on the basis of her sex rather than her marital status. At this stage of the litigation, however, the court cannot say beyond doubt that plaintiff will be unable to prove facts that would entitle her to relief. The burden at the prima facie stage of the McDonnell Douglas analysis is "de minimis." E.g., *Kerzer v. F.3d 396, 401 (2d Cir.1997)*. Accordingly, defendants' motion to dismiss Claims 4-6 is denied.

V.

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

Title VII has been interpreted to prohibit not only overt discrimination but also "discriminatory practices that are facially neutral but have 'disparate impact,' i.e., significant adverse effects on protected groups." *Bridgeport Guardians v. City of Bridgeport*, 933 F.2d 1140, 1146 (2d Cir.1991) (citing *International Bhd. of Teamsters v. United States*, 431 U.S. 324, 335-36 n. 15 (1977)). To establish a prima facie case of discrimination under the disparate impact theory, therefore, a plaintiff need only offer proof of discriminatory motive. See, e.g., *Griggs v. Duke*

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

Title VII has been interpreted to prohibit not only overt discrimination but also "discriminatory practices that are facially neutral but have 'disparate impact,' i.e., significant adverse effects on protected groups." *Bridgeport Guardians v. City of Bridgeport*, 933 F.2d 1140, 1146 (2d Cir.1991) (citing *International Bhd. of Teamsters v. United States*, 431 U.S. 324, 335-36 n. 15 (1977)). To establish a prima facie case of discrimination under the disparate impact theory, therefore, a plaintiff need only offer proof of discriminatory motive. See, e.g., *Griggs v. Duke*

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Power Co., 401 U.S. 424, 430-32 (1971). Instead, a plaintiff must identify a specific employment practice and provide evidence sufficient to raise an inference that the identified practice caused significant adverse effects on the protected group. See *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 994-95 (1988).

Generally, the proper basis for the initial inquiry in a disparate impact case is a comparison between the composition of qualified persons in the labor market and the persons holding the jobs at issue. See *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642, 650-51 (1989), superseded by statute on other grounds, Civil Rights Act of 1991, § 105, 42 U.S.C. § 2000e-2(k) (1994). In cases where such labor market statistics are difficult if not impossible to obtain, a plaintiff may use other statistics--for example, measures showing the mix of "otherwise-qualified applicants" for the jobs at issue--to establish a prima facie case. See *id.* at 651 (citing *New York City Transit Auth. v. Beazer*, 440 U.S. 568, 585 (1979)). Evidence of a racial or sexual imbalance in the workforce alone--without proof that such imbalance is the result of discrimination--is insufficient to establish a prima facie case of discrimination. See *id.* at 651-54. Otherwise, "any employer who had a segment of his work force that was--for some reason--racially [or sexually] imbalanced, could be haled into court and forced to engage in the expensive and time-consuming task of defending ... the methods used to select ... his work force." *Id.* at 652.

*8 In the present case, plaintiff has presented no evidence from which a rational juror could infer discrimination. Plaintiff alleges merely that (i) defendants employ a test in determining promotions; and (ii) there is an imbalance between the sexes at the Managing Attorney level of defendants' law departments. She then asserts, in conclusory fashion, and "[u]pon information and belief," that the test

disparately impacts female applicants. (Compl. ¶ 72) Plaintiff alleges no facts about the mix of the relevant labor pool or about the pool of otherwise-qualified applicants. Nor does she make any allegation that women's performance on the test is inferior to that of men. Indeed, plaintiff does not report her own score on the test. [FN5] In arguing that the disparity between the sexes at the Managing Attorney level of defendants' law departments would be sufficient to state a disparate impact claim, plaintiff has alleged no fact that suggests the disparity was caused by discrimination. Her conclusory assertion that the test has a disparate impact is insufficient to survive a motion to dismiss. See, e.g., *In re American Express Co. Shareholder Litig.*, 39 F.3d 395, 400-01 n. 1 (2d Cir.1994) ("[C]onclusory allegations of the status of the defendants' acts need not be accepted as true for the purposes of ruling on a motion to dismiss." (citing *Gelt Funding Corp.*, 27 F.3d 763, 771 (2d Cir.1994) ("[T]he well-pleaded material allegations of the complaint are taken as admitted; but conclusions of fact or unwarranted deductions of fact are not accepted." (internal quotation marks and citations omitted)). Accordingly, Claim 8 is dismissed.

FN5. I note that plaintiff's performance could not have been unsatisfactory because she was subsequently promoted to Assistant Managing Attorney.

* * *

For the foregoing reasons, defendants' motion is granted in part and denied in part. Claims 1-3 and 8 are dismissed.

SO ORDERED:

END OF DOCUMENT

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. 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.

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Dodd -
 → Suzanne
 Dodd Stephanie
 Andrew Robert
 Evan Bay
 Mukulshi
 Tiffers:

House side
 Stagnant:

→ Natasha Lowery:

Women's

Civil Rights groups →
 leadership - conference
 Judy Lichtman -

Jenny Luray →
 big in women's groups

→ Family discrimination -
 → EEOC
 ↑ nobody knows:

Research → Minnesota → Bruce

→

Get paper parents discrimination

Tuesday 9/5 groups:

Policy admin:

ADA: - genetic info. idea → post offer:

Lucy → House:
Labonette →

→ Diana De Grette
(→ Slaughter) →

Rep side: - Nancy Johnson →
- Connie Merdella →
- Mike Castle →
→ Lanza
→ King
→ Shays →

House side:

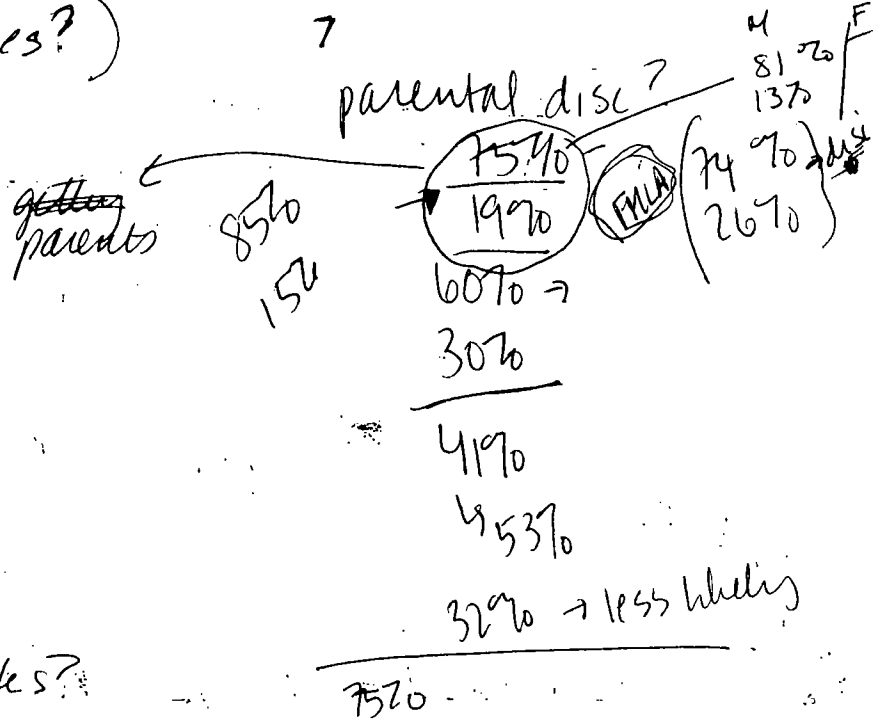
74 → support legislation → disc. →
 1670 →

u - Feb '557.

Groups

- Nike ?
- WNBA ? →
- Kelloggs ? / cereal boxes ?
- Hope for ~~child~~ Kids
- Kelloggs ?
- Kmart ?
- Sears ?
- Neighborhood Networks ?
- Boys + Girls Club - no
- YWCA / YMCA - no
- Education groups
- 21st CCLC
- AmeriCorps → Jan Anne McGuire
- Child Care
NACCRRA
- Children's Defense Fund

Safeway → do visual



Children's Health groups
 CHIR

Romana

Shedding Plough: → talked → to → info → do something w/
school nurses → find pamphlet →
send parents

USA Weekend: CHIP:

- Kmart - ① PSA - in House radio system
② brand of pampers
③ pharmaceutical
④ brand

→ 75%
19%

- parents who must
take time in
workplace ~~must~~

groups

March
↑

McDonald - trays → #1800

Burger King ~~Jaco Bill~~

Jaco Bill - food

Grocery store - S:

→ toothbrush

→ Dan Evans →

Allstate

AMR: 1800 -

School buses

LISC - Internet site → link into schools

General Mills: food product: cereal box

Gerber - #1800 → baby food

NFL Jon Pfizer - brochure - pamphlet - pediatrician

Rally for Teacher Who Says Pregnancy Hurt Tenure Bid

By DAVID M. HALBFINGER

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

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

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

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

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

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

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

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

hired with three or four."

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

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

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

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

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

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

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



Here dropped
this offer
us re:
parental
discrim
re

The New York Times

WEDNESDAY, APRIL 28, 1999