

Study Shows Spike in Family Responsibilities Discrimination Claims

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The Center for WorkLife Law at the University of California's Hastings College of the Law has just published a fascinating [new study](#) analyzing over 4,000 employment suits filed in claims related to balancing employee's family responsibilities with work, which the study refers to as family responsibilities discrimination (FRD). These include a variety of claims such as discrimination on the basis of pregnancy, motherhood or fatherhood, and care for family members who are aging, ill or affected by disabilities.

This study illustrates an enormous increase in FRD cases filed over the last decade and a significantly higher percentage of FRD cases won at trial than are found among employment cases generally. Notably, the study reports that there was a major increase in cases related to [family responsibilities discrimination](#) even at a time when the total number of employment cases filed in federal courts decreased.

Of the 4,400 cases studied in the report, the majority - 67% - were related to pregnancy and maternity leave. Another 11% included cases relating to eldercare, and 15% related to care for sick children or spouses.

Family Responsibilities Discrimination Areas on the Rise

According to the study, there are four areas increasing at particularly rapid rates:

- eldercare (increasing a whopping 650% in the last decade)

- pregnancy accommodation cases (increasing 315%)

- denials of accommodations for, or discrimination against, employees who were breastfeeding or needed to express milk (increased by 800%)

- cases related to association with an individual who has a disability (400%).

Some of the increase in several of these areas likely relates to new laws passed - expansions of the [Americans with Disabilities Act](#), for example, and new clarity on protections for women who are breastfeeding or expressing milk. The report posits that the increase in pregnancy accommodation cases may be related to more women continuing to work while pregnant and working longer into their pregnancies, as well as the expanded ADA.

FRD Often Prohibited By Federal Law

While federal law does not provide a specific protection for all "family responsibilities" lumped together, many of these types of discrimination are in reality types of discrimination based on sex that is unlawful under federal law - and some states and localities make "family responsibilities" discrimination unlawful in and of itself. We find in our practice that many employers have conscious or unconscious biases about what it means to be a mother or father, what effect a pregnancy is likely to have on an employee's work, or whose job it is in a family to care for aging or sick parents.

Increased FRD Claims from Men

Another trend the report recognized was an increase in the number of cases in the data set filed by men – likely due to men’s increased role in family caregiving. Although the report noted that men have a lower success rate than women in these claims – which, for men, are almost exclusively brought under the [FMLA](#) – men are bringing a substantial number of claims. The report noted, in particular, a 336% increase in claims related to paternity leave, which we know from our practice more men are requesting every year.

FRD Case Success Rates

The report notes that the success rate for FRD cases is higher than that of general [employment cases](#), even though fewer FRD cases settle before trial – and many more FRD cases that go to trial culminate in a verdict for the employee than in other types of employment cases – 75% in federal court compared to approximately a third for other employment cases.

As the report notes, more than 80% of women will become mothers, and nearly every employee, male or female, will become a caretaker at some point during his or her career. The laws protecting employees from discrimination because of family responsibilities affect nearly every worker and nearly every family. We are excited to see that these cases are, rightly, gaining such success in the courts.