

Christian Science Monitor - **Work & Money** from the October 25, 2004 edition  
[Emerging bias: 'Your family or your career'](#)

## **Fighting discrimination against working mothers and fathers gets an important boost from a key court ruling.**

**By Stacy A. Teicher** | *Staff writer of The Christian Science Monitor*

When Elana Back took three months off for the birth of her first child, she was well on her way to tenure. The elementary school psychologist in Hastings-on-Hudson, N.Y., had excellent performance reviews both before and immediately after her leave. But a few months later, as her tenure review approached, she says the principal and another supervisor started questioning her commitment to the job.

Their reason, according to Ms. Back: She was a new mother.

In the lawsuit filed after she lost her job, Back details some of the comments she heard from her two female bosses: That her hard work was "just an act," and once she received tenure she'd start leaving early; that it would be too hard to do the job well with "little ones" at home; that "if my family was my priority ... maybe this was not the job for me."

The case hasn't been presented to a jury yet, but a decision in the Second Circuit Court of Appeals that allowed the suit to go forward has already given it landmark status. By acknowledging that stereotyping about mothers is a form of gender discrimination, it opened a new door for such claims. Previously, courts have required proof that employers treated mothers differently from similarly situated fathers (or vice versa), but in Back's and many other situations, there are no males in similar situations.

After decades of legal challenges to the "glass ceiling" in the workplace, this case highlights a more recent battle against what some have dubbed the "maternal wall." More broadly, it's a reminder to managers to beware of treating employees of either gender differently when they take on caregiving roles.

"For a long time ... the accepted wisdom was that you can't litigate work-family conflict," says Joan Williams, director of the Program on WorkLife Law at American University's Washington College of Law. But as Professor Williams and others have been challenging that notion in the past few years, she says, "there's definitely been a new momentum."

Her group has documented a dozen legal theories used in more than 50 successful caregiver-discrimination cases, with some of the judgments and settlements topping \$500,000.

Employers certainly have the right to expect workers to fulfill their job responsibilities. But they don't always know how to draw the line between an employee's need to care for a relative and accommodations that become too burdensome for the business. That's why the WorkLife Law program is also offering model policies and training tools to help managers avoid landing in court.

### **Attention-getter**

The Back ruling came in April and has been resonating in human-resources newsletters nationwide. "Employers will say 'I better be more careful before I make a decision about a parent with a young child,'" says Eric Matusewitch, deputy director of the New York City Equal Employment Practices Commission. "The Second Circuit is very influential, and I think it's very likely that other circuits around the country will adopt this type of ruling."

Men come up against this type of discrimination, too. In a study of union arbitration cases related to employees' caregiving issues, for instance, the WorkLife Law group found that nearly two-thirds involved men.

A decade ago, Maryland State trooper Kevin Knussman put men's work-family conflicts on the map when he filed the first sex-discrimination claim related to the Family and Medical Leave Act (FMLA). He tried to take several weeks off to care for his wife and newborn daughter after complications in childbirth, but his supervisor denied him leave, saying that only women have the capacity to breast-feed a baby. She also told Mr. Knussman he couldn't be the primary caregiver unless his wife was in a coma or dead.

After seven years of trials and appeals, Knussman was awarded \$40,000 for emotional distress and more than \$600,000 for legal fees.

Caregiver discrimination is specifically prohibited in Alaska, the District of Columbia, the federal government, and a number of localities around the country. Nationally, many employees qualify for leave under the FMLA. But the fight is still under way to enforce such laws.

People regularly seek help from Amy Ficklin DeBrotta, a lawyer in Indianapolis, when supervisors retaliate against them for trying to take time off to care for a sick family member. One such client, Cheryl Pirtle, says that after 10 years working for the state of Indiana, she was harassed by a supervisor for taking intermittent FMLA leave.

### **Career vs. child**

As her grandson's guardian, she needed time to take him to various hospitals when he had a few bouts of severe illness. Her supervisor was so hostile about it, she says, that she often drove to work in tears. "He said I had to choose either my job or my child," she says in a phone interview.

After about three months of the conflict, Ms. Pirtle was laid off this summer and is now considering a lawsuit. Shortly after the layoff, her grandson was finally diagnosed and treated properly, and he no longer requires special care.

When employers have family-friendly policies in place, "that is just the beginning," says Ellen Galinsky, president of the Families and Work Institute in New York. "It depends on whether or not people can use [the leave policy] without jeopardy; it depends on people's perception of the culture and how your supervisor treats you."

### **Flextime jeopardy**

In a recent national study, her group found that 39 percent of employees feared their careers would be jeopardized if they used the leave or flextime options available to them.

"We still define the ideal worker as someone who starts to work in early adulthood and works full time, full force, for 40 years straight," Williams says, "[but that] just doesn't fit with the families we have today."

Williams also takes issue with the way the media portray women as primarily "opting out" of the workforce when they have young children. Often, she says, they're pushed out because they're tired of the discrimination. Sociologists have found that when men are away from work, colleagues assume it's for business reasons, but when a mother is away, they assume she's with her kids. The WorkLife Law group also reports that part-time working mothers are seen as less nurturing than housewives, but less competent than full-time workers.

The stories that get a hearing in court are just the tip of the iceberg, Williams says. "You don't see cases now [where an employer says] 'This is not a job for a woman,' but it's not infrequent to see cases where the message is, 'This is not a job for a mother.' "