

ISSUE BRIEF

Poor, Pregnant, and Fired: Caregiver Discrimination Against Low-Wage Workers

With limited financial resources, few social supports, and high family caregiving demands, low-wage workers go off to work every day to jobs that offer low pay, few days off, and little flexibility or schedule stability. It should come as no surprise, then, that workers' family lives conflict with their jobs. What is surprising is the response at work when they do.

In recent years, the topic of work-family conflict has attracted growing attention in the public discourse, with increasingly more organizations, policymakers, and even businesses focused on creating family-friendly workplaces and improving workplace flexibility. In 2007, the U.S. Equal Employment Opportunity Commission (EEOC) issued enforcement guidance on the issue of caregiver discrimination—unlawful employment discrimination based on a worker's family caregiving responsibilities or stereotypes about them—and, in 2009, best practices for employers to avoid it. In the four years since, public awareness of caregiver discrimination as a significant problem stemming from work-family conflict has also grown.

Yet despite significant attention on these issues over a number of years, little attention has been paid to the work-family conflicts of low-wage workers. A new report by the Center for WorkLife Law, *Poor, Pregnant, and Fired: Caregiver Discrimination Against Low-Wage Workers*, provides a first-of-its-kind analysis of family responsibilities discrimination (FRD) lawsuits that low-wage workers brought against their employers when they were unfairly penalized at work because of their caregiving responsibilities at home. The report reflects a review of cases brought under existing laws by low-wage hourly workers, drawn from the more than 2,600 cases collected by the Center for WorkLife Law in its FRD case database to date. Fifty such cases are used to illustrate trends in caregiver discrimination lawsuits brought by low-wage workers.

The report aims to document what work-family conflict looks like for low-wage workers and to highlight the fact that a focus on the worker, alone, is not enough to help low-income families achieve economic self-sufficiency. The structure of low-wage jobs in the United States—as inflexible, unpredictable, and at times even hostile to workers—must also be addressed.

This issue brief presents highlights from the report. For a full copy of the free report, visit www.worklifelaw.org.

Providing, and Caring, for a Family as a Low-Wage Worker

Low-wage jobs versus low-income families. Low-income families are caught between extreme demands at both home and work. Low-income families are more likely to be headed by single parents—a reported 66% of low-income parents are single—and to have children with health and developmental difficulties—more than two-thirds of low-income parents in one study cared for children with learning disabilities or chronic health conditions.¹ Low income families are also likely to provide more care for elderly and ill family members than more affluent families: families living under the federal poverty level are over twice as likely to be caring for a parent or in-law for 30 or more hours a week.² Meanwhile, low-wage jobs typically provide little flexibility or time off, even for emergencies, and often require unpredictable schedules. In one survey, 60% of employers reported that, from week to week, hourly workers' schedules changed either “a lot” or “a fair amount.”³ Another study reported that almost 60% of low-wage workers cannot choose their starting and stopping times, and one-third cannot choose their break times.⁴

Extraordinary measures to meet work and family demands. Most low-wage workers go to extraordinary measures to meet both work and family responsibilities. Contrary to popular depictions of “welfare queens” left over from the age of welfare reform, low-wage workers often work unbelievably hard to find and keep their jobs. Many low-wage workers piece together child care as they can and work “asocial hours”—nights and weekends—to both provide, and care, for their families. Because of their low wages, piecing together earnings from multiple jobs to be able to provide for the family is also common: while only 5% of all U.S. workers hold multiple jobs, three times as many low-wage workers (15%) do so.⁵

Overwhelming responsibilities and few supports. Low-wage workers often face overwhelming family responsibilities with few social supports. While all U.S. families must juggle work and caregiving responsibilities, low-income families have fewer resources to pay for safe and consistent child or elder care and reliable transportation, and often have one fewer parent to cover family caregiving needs. Federal programs like Head Start are limited to the poorest Americans, and those in low-wage jobs are least likely to have access to sick or vacation days or to even unpaid family and medical leave. Of those in the bottom wage quartile, only 23% have paid sick days, and only 11% have sick days they can use to care for sick children.⁶ Likewise, 56% of workers with a family income below 200% of the poverty level are not covered by the federal Family and Medical Leave Act (FMLA).⁷

Caregiver Discrimination Against Low-Wage Workers

Extreme hostility to pregnancy in low-wage workplaces. The most common type of FRD lawsuit brought by low-wage workers involves discrimination and harassment when a worker becomes pregnant. Cases profiled in the report include: a receptionist fired within hours of telling her employer she was pregnant because her employer thought she would be “less agile” and more absent during their busy months; a restaurant worker (and married mother of two) fired two weeks after announcing her pregnancy because her employer thought she was “too moody” and “for the safety of her unborn child”; and a night shift worker at a fast food restaurant was sent home the first day she reported for work—and never called back—when her supervisor learned that she was four months pregnant.⁸ Other cases show workers, particularly in the restaurant industry, demoted or forced out on leave as soon as they became visibly pregnant, regardless of their ability to continue working through their pregnancies.⁹ Still

other cases show a total lack of access to even small, cost-effective adjustments to allow women to work throughout their pregnancies. For example, in one case, a retail worker was fired for carrying a water bottle on the sales floor, which she needed to treat the recurring urinary and bladder infections she experienced during her pregnancy.¹⁰

A near total lack of flexibility in many low-wage jobs. FRD cases brought by low-wage workers also document that many lack access to even the small kinds of workplace flexibility that are commonplace for middle-wage and professional workers. Cases show employees being refused small allowances for child or family care, even in emergencies, and facing rigid attendance policies with little tolerance for justifiable absences. In one case, a night cashier at a taqueria was fired for breastfeeding her newborn in her car during her own break.¹¹ In another, a laundry worker at a hospital services company with 10 years of seniority and excellent performance reviews was not allowed to use her vacation days or make a temporary change to her schedule when her mother, who cared for the worker's son with cerebral palsy, broke her arm. The laundry worker was forced to take unpaid FMLA leave for one month, then disciplined and fired when she returned, in part due to the absence.¹²

Low-wage workers treated disrespectfully, or even harassed, at work. A number of cases involve situations in which workers were treated in hostile and inappropriate ways. In four separate cases profiled in the report—brought by a hospital cook, a medical biller, a worker at a fabricator company, and a fast food worker respectively—a supervisor encouraged or ordered the pregnant employee to get an abortion in order to retain her job.¹³ Other cases document sexual harassment related to workers' roles as caregivers, including those of an administrative assistant, a janitorial worker, a bartender, a phone clerk, and two restaurant workers, each of whose supervisor commented on her breasts and/or groped her while she was pregnant.¹⁴

Low-wage workers denied their legal rights around caregiving. Another common experience across FRD cases brought by low-wage workers is a lack of access to existing legal protections. Cases show supervisors—sometimes unintentionally—failing to inform employees of their rights, especially to family and medical leave, or forcing employees out, after learning of their caregiving responsibilities, by adding job tasks or setting work goals that the employee cannot possibly meet. In one case, a department store employee whose father had heart and lung surgery and then went into a coma for several weeks was deterred from taking vacation and not told of his right to FMLA leave until a month after his father's death—when his mother began suffering from severe depression. After taking only four of the 12 weeks of leave to which he was entitled, during which the company failed to provide him with the paperwork he needed to complete, he was fired for “abandoning his job.”¹⁵

Hostility to low-income men who play caregiving roles. Low-income families have both the highest rate of single parenthood and, in two-parent households, the highest rate of “tag teaming” (where parents work opposite shifts to cover child care). Yet lawsuits brought by low-income men show severe gender stereotyping of men who are responsible for caring for children or elderly parents at home. In one case, an equipment operator who took leave to care for his stepdaughter with cancer, infant son who needed intestinal surgery, and wife who suffered from multiple ailments, was scrutinized, written up for poor performance, harassed, demoted to groundskeeper, and ultimately fired. Among the harassment he endured, he was asked “why wasn't his step daughter's real father or her mother taking [care of] her...instead of him” and told “that...he was not giving 100%, [and] was taking advantage of the company and not giving back.”¹⁶

Harsher treatment of mothers of color than white mothers. A final pattern among FRD cases brought by low-wage workers involves women of color treated worse at work than white women with similar caregiving responsibilities. For example, a Latina woman who worked as a front-end cashier for a home improvement store was denied a transfer to a less strenuous phone center position and told there was no such work available, while two pregnant white women were transferred to the phone center during the same time period.¹⁷ In another case, a Black Haitian woman who was a laundry worker was stripped of a light duty assignment and fired when given lifting limitations by her doctor, while Latina women were regularly assigned to light duty by the Latino managers.¹⁸

Lessons for Employers, Unions, Poverty Advocates, and Policymakers

As the cases profiled in the report demonstrate, employers, unions, poverty advocates, and policymakers can take steps to reduce caregiver discrimination against low-wage workers and keep low-income families on the path toward economic self-sufficiency.

For employers, significant and expensive legal liability can (and does) result from inappropriate treatment of low-wage workers around caregiving responsibilities. FRD lawsuits expose the need for consistent workplace policies and greater training at all levels of the organization. Front-line supervisors of low-wage workers need to be trained and supervised to prevent caregiver discrimination and harassment and to handle family and medical leave requests effectively. In addition, employers should consider policy changes where feasible to alleviate the most common conflicts for low-wage workers, especially where policies lead to high turnover—and lawsuits. Cases document that even small amounts of flexibility, slight changes to no-fault attendance policies, or allowing minimal adjustments for pregnant workers, could make a difference in keeping experienced employees in their jobs.

For unions, the vivid picture of the types of penalties that low-wage workers experience at work due to caregiving responsibilities serves as a reminder that work-family conflict is a core worker issue—which makes it an effective organizing tool. Organizing campaigns need to send the message that unions can help members keep their jobs by ensuring that workers do not get fired due to family responsibilities. Also key is the training of union representatives about FRD issues. Workers in several of the cases detailed in the report were members of unions, yet had to seek relief in the courts; one even filed a duty of fair representation claim against her union for failing to take on her case, which a federal court upheld.¹⁹ And, as the lawsuits show, issues like schedule flexibility and predictability, sick leave that can be used to care for sick family members, and family and medical leave for workers at all levels are important bargaining issues.

For poverty advocates, the case stories show how low-wage job structures and persistent discrimination in low-wage workplaces are crucial factors blocking the path to economic self-sufficiency for low-income families. Examples of workers' lack of access to their legal rights underscores the need for know-your-rights trainings to help low-wage workers understand and avail themselves of their legal rights to be free from caregiver discrimination at work.

For policymakers, the experiences of low-income families appear in stark contrast to the misconception that work-family conflict is a problem of professional women. Work-family conflict is most acute, and caregiver discrimination most blatant, for low-wage workers. Existing legal protections are very limited: the unpaid Family and Medical Leave Act (FMLA)

covers fewer than half of low-wage workers, and three-quarters of the lowest-income workers have no paid sick days. In addition, very blatant pregnancy and caregiver discrimination remain disturbingly commonplace in low-wage workplaces, suggesting that agencies charged with protecting workers' rights and eliminating discrimination need to take additional steps to ensure that existing legal protections are enforced effectively.

Leaving low-wage workers to fend for themselves, and continuing to conduct business as usual is not helping anyone—not workers, nor their families, nor employers. For low-income families to achieve economic self-sufficiency, rather than continuing to cycle through one low-paid job after another, greater focus needs to be placed on the structure of low-wage jobs. Lawsuits brought by low-wage workers provide a troubling window into these problems. They also provide an important lesson on the pressing need to avoid discrimination—often very open and blatant discrimination—against workers with family responsibilities.

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Download a complete copy of the free report at www.worklifelaw.org.

Endnotes

¹ Joan C. Williams & Heather Boushey, Center for WorkLife Law & Center for American Progress, *The Three Faces of Work-Family Conflict: The Poor, the Professionals, and the Missing Middle* 11, 12 (2010) (citations omitted), available at <http://www.worklifelaw.org/pubs/ThreeFacesofWork-FamilyConflict.pdf>.

² *Id.* at 18 (2010) (citation omitted).

³ Joan C. Williams & Penelope Huang, Center for WorkLife Law, *Improving Work-Life Fit in Hourly Jobs: An Underutilized Cost-Cutting Strategy in a Globalized World* (2011) (citation omitted), available at <http://www.worklifelaw.org/pubs/ImprovingWork-LifeFit.pdf>.

⁴ *Id.* at 17 (citation omitted).

⁵ Williams & Boushey, *supra* note 1, at 31, n. 168.

⁶ *Id.* at 69, Table 4 (citation omitted).

⁷ Katherin Ross Phillips, *Working for All Families? Family Leave Policies in the United States*, in *The Economics of Work and Family* 164-170 (Emily P. Hoffman ed. 2002).

⁸ Stephanie Bornstein, Center for WorkLife Law, *Poor, Pregnant, and Fired: Caregiver Discrimination Against Low-Wage Workers* 11-12 (2011) (citations omitted), available at <http://www.worklifelaw.org/pubs/PoorPregnantAndFired.pdf>.

⁹ *Id.* at 13-14 (citations omitted).

¹⁰ *Id.* at 14-15 (citation omitted).

¹¹ *Id.* at 14 (citation omitted).

¹² *Id.* at 19 (citation omitted).

¹³ *Id.* at 21-22 (citations omitted).

¹⁴ *Id.* at 23-24 (citations omitted).

¹⁵ *Id.* at 25 (citation omitted).

¹⁶ *Id.* at 26-27 (citation omitted).

¹⁷ *Id.* at 27-28 (citation omitted).

¹⁸ *Id.* at 28 (citation omitted).

¹⁹ *Id.* at 30 (citation omitted).