

Model State or Local FRD Law

Introduction

Almost 200 state and local jurisdictions have family responsibilities discrimination (FRD) laws that prohibit discrimination against employees because they are parents. These laws make it illegal, for example, for employers to select employees for termination because they take care of their children. Some of the laws are broader and apply also to employees who provide care to other family members. A full discussion of the laws can be found in WorkLife Law’s report, [*Protecting Parents During Covid-19: State and Local FRD Laws Prohibit Discrimination at Work.*](#)

A table of the existing laws can be found at <https://worklifelaw.org/get-help/state-local-frd-laws/>.

FRD laws benefit employees and employers. They provide employees with greater protection from discrimination than they have under federal law, and they provide employers with greater clarity that simplifies compliance. FRD laws also benefit the community at large by preventing unemployment, food insecurity, and homelessness, which in turn maintains economic growth. For these reasons, the Center for WorkLife Law recommends that state and local governments enact FRD laws that cover both large and small employers. WorkLife Law also recommends that jurisdictions recognize that many employees live in families that do not consist of two adults with children by enacting FRD laws that include all family types.

Model Law

A prohibition on discrimination because of family responsibilities can be added to an existing anti-discrimination law or enacted as a standalone law. After discussing the elements that each approach should include, we provide below a model standalone law that is based on FRD laws already in effect around the country.

A. Adding FRD Protection to an Existing Employment Discrimination Law

Where an anti-discrimination law already exists, legislators can add “family responsibilities,” “family status,” or “caregiver status” to the list of characteristics that are protected. These terms are preferable to “familial status” because they will allow legislators to define the scope of coverage without the influence of the traditional and limited definition of “familial status” from the Fair Housing Act.¹

WorkLife Law recommends adding to an existing employment discrimination law “family responsibilities” as a protected category.

To be effective, the employment discrimination law must define “family responsibilities” and the related terms “care” and “family member.” The following model language defines the terms broadly but specifically to allow legislators to achieve the policy goals of fair employment for all caregivers and compliance clarity for employers:

Definitions.

Family Responsibilities means an employee’s actual or perceived provision of care to a family member, whether in the past, present, or future.

Care means medical care, psychological comfort, supervision, activities of daily living, transportation, grocery or pharmacy shopping, meal preparation, financial management, financial support, communication with health care professionals, management of changes in care or living arrangements, and other responsibilities of similar importance to daily living.

Family member means:

- 1) an individual related to the employee by blood, marriage, adoption, foster care or legal custody, including an individual related to the employee’s spouse;
- 2) an individual whose close association with the employee is the equivalent of a family relationship; or
- 3) an individual who relies on the employee for care.

These definitions are drawn from a variety of sources, including existing law, as described in the standalone model law below.

B. Adding a Standalone FRD Law

A good standalone FRD law contains several parts:

- **A statement of policy** that describes the harms the law is intended to address and the jurisdiction’s purpose in enacting the law. The policy statement in the model law below contains a description of how discrimination can impact the community, followed by a clear statement that FRD violates the public policy of the jurisdiction.
- **A section that defines the employees and employers to whom the law applies, the types of family or caregiving status covered by the law, and the family members or care recipients included within the scope of the caregiving.** The model law uses the term “family

responsibilities” and defines the term “care” sufficiently broadly to cover all types of family caregiving in keeping with the policy objectives of the law.

The model law defines “family member” broadly as well, seeking to cover all family relationships. The definition covers not only traditional family relationships, including children, parents, grandparents, and other adult family members, but also functional family relationships, such as adults who are unrelated by blood or marriage who live together in a family-like arrangement.

The model law is applicable to all employers who have one or more employees working in the jurisdiction, including public and private employers, to ensure that all employees are protected from FRD.

- **A section that makes it illegal for any employer to discriminate on the basis of family responsibilities.** This is the heart of the law. It declares that employers are prohibited from discriminating against employees because of their family responsibilities. We recommend a clear statement that discrimination is prohibited, followed by a non-exclusive list of forbidden discriminatory actions to make clear that the law is intended to cover all aspects of the employment relationship.

Many FRD laws also contain prohibitions against discrimination by labor unions and employment agencies, which extends the FRD protections to additional ways that employees can be discriminated against.²

The model law also contains prohibitions on retaliation and aiding and abetting, both of which commonly occur in employment discrimination situations.

- **A procedure for enforcing the law.** The law will be ineffective without an enforcement mechanism. The enforcement process for the model law is private right of action, which allows an aggrieved employee to file a complaint in court. The model law also includes the deadline for filing a complaint, the relief that can be awarded if discrimination is found, and a statement that the person who makes a claim under the FRD law retains whatever rights may exist under other laws or legal theories.
- **An instruction that the law should be interpreted liberally to give effect to its policy objectives.** The model law states that it should be construed liberally, which means that whenever its words are unclear or subject to more than one interpretation, decision makers should interpret them in such a way as to carry out the law’s objectives of prohibiting and remedying FRD.

Model Law

Chapter 100: Employment Discrimination Because of Family Responsibilities	
<p>Sec. 100-1: Legislative Findings; Statement of Policy</p> <p>A. Legislative Findings. Discrimination in employment prevents the gainful employment of large segments of the citizens of the City, tends to impair the City's productive capacity, reduces the public revenues, imposes substantial financial burden upon the public for relief and welfare, and tends to create breaches of the peace and depressed living conditions that are detrimental to the public safety, economic growth and general welfare of the City.</p> <p>B. Policy. It is hereby declared to be the policy of the City, in the exercise of its powers for the protection of the public safety and the general welfare, for the maintenance of peace and good government and for the promotion of the City's trade, commerce and manufacture, to promote the right and opportunity of all persons to participate in the social, cultural, recreational, and economic life of the City and to assure equal opportunity for all persons in employment, free from discrimination because of family responsibilities. To accomplish these goals, it shall be the public policy of the City to prohibit discrimination because of family responsibilities in areas relating to employment.</p>	<p>This section is based on the FRD law of Harrisburg, Pennsylvania.³</p> <p>The Harrisburg law has been edited, and “family responsibilities” has been used in place of a longer list of protected characteristics, which included “familial status.”</p>
<p>Sec. 100-2: Definitions</p> <p>Family Responsibilities means an employee’s actual or perceived provision of care to a family member, whether in the past, present, or future.</p> <p>Care means medical care, psychological comfort, supervision, activities of daily living, transportation, grocery or pharmacy shopping, meal preparation, financial management, financial support, communication with health care professionals, management of changes in care or living arrangements, and other responsibilities of similar importance to daily living.</p> <p>Family member means:</p> <ol style="list-style-type: none"> 1. an individual related to the employee by blood, marriage, adoption, foster care or legal custody, including an individual related to the employee’s spouse; 2. an individual whose close association with the employee is the equivalent of a family relationship; or 3. an individual who relies on the employee for care. 	<p>The definitions of “family responsibilities” and “care” are based on concepts from the FRD laws of the Borough of State College, Pennsylvania,⁴ the District of Columbia,⁵ Royal Oak, Michigan,⁶ Family and Medical Leave Act regulations,⁷ and a study of caregiving for older family members.⁸</p> <p>The definition of “family member” is based on the FRD laws of Oshkosh, Michigan⁹ and Philadelphia, Pennsylvania.¹⁰ It has been edited to apply to a broad array of non-traditional families.</p>

<p>Employer means a person that employs for wages a natural person whose employment or any part thereof is within the City.</p> <p>Person means one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, the City or any board, commission, department, or agency thereof, and all other governmental units conducting any activity in the City or any other legal entity.</p>	<p>The definitions of “employer” and “person” are based on the FRD law of Grinnell, Iowa.¹¹</p>
<p>Sec. 100-3: Prohibited Acts</p> <p>(a) It is a violation of this chapter for an employer, because of the actual or perceived family responsibilities of any otherwise qualified individual, to refuse to hire or employ such individual, to bar or discharge such individual from employment, or to otherwise discriminate against such individual in compensation or in terms, conditions, or privileges of employment; to limit, segregate, classify, or make any distinction in regards to employees based on family responsibilities; or to follow any employment procedure or practice which, in fact, results in discrimination, or segregation based on family responsibilities without a valid business necessity.</p> <p>(b) It is a violation of this chapter:</p> <ol style="list-style-type: none"> (1) For any employer to discharge, harass, discriminate against, or otherwise retaliate against any person because the person has opposed in a lawful manner any practices forbidden under this chapter, or because the person has filed a complaint, testified or assisted in any proceeding concerning a violation of this chapter. (2) For any person to cause or attempt to cause an employer to discriminate against an individual in violation of this chapter. (3) For any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this chapter or to attempt to do so. 	<p>This section is based on the FRD laws of Mission, Kansas¹² and Tucson, Arizona.¹³</p> <p>Note: many FRD laws have additional prohibited acts that apply to labor unions and employment agencies.¹⁴</p>
<p>Sec. 100-4: Private Right of Action</p> <p>(a) An aggrieved person may commence a civil action in any court of competent jurisdiction for violation of this chapter no later than one (1) year after the occurrence of the last incident giving rise to the claim of violation. If the alleged violation is continuing in nature, the civil action must be commenced within one year after the most recent act or event giving rise to the claim.</p> <p>(b) Nothing in this chapter shall be construed to waive the right of any person to file a charge with any other agency with the legal authority to investigate or act upon the complaint.</p>	<p>This section is based on the FRD law of Palm Beach County, Florida¹⁵ and the Borough of State College, Pennsylvania.¹⁶</p>

<p>(c) Nothing in this chapter limits the right of an aggrieved person to recover under any other applicable law or legal theory.</p> <p>(d) If the court finds that a violation of this chapter has occurred, it may order injunctive and equitable relief as it may deem appropriate, and award actual and punitive damages, and reasonable attorney's fees and costs. Actual damages include but are not limited to back pay, front pay, economic losses incurred as a result of the violation, and emotional distress damages.</p>	
<p>Sec. 100-5: Liberal Construction</p> <p>This code shall be deemed remedial and shall be liberally construed so as to effectuate its spirit and intent.</p>	<p>This section is based on the FRD law of Harrisburg, Pennsylvania.¹⁷</p>

Additional Considerations

Public education about a newly enacted FRD law will help a jurisdiction achieve the policy goals of an FRD law and should be the responsibility of the administrative agency that enforces the law. Employees can be educated through notices in the workplace. Employers can be educated by a combination of press releases, webinars, and written employer guides.

Jurisdictions that enact an FRD law may wish to consider extending its coverage to businesses that provide goods or services to the jurisdiction. Some jurisdictions do that through their contracting provisions,¹⁸ and others through a provision in their FRD law.¹⁹

Endnotes

¹ “Familial status” is defined in the federal Fair Housing Act. 42 U.S.C. § 3602(k) (“ ‘Familial status’ means one or more individuals (who have not attained the age of 18 years) being domiciled with— (1) a parent or another 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 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.”). Essentially, the definition covers only the parents of children and those who are in the process of becoming parents. When used in an FRD law in the employment context, this definition is so narrow that excludes many caregivers from the law’s protection. For more information, see Cynthia Thomas Calvert, Protecting Parents During Covid-19: State and Local FRD Laws Prohibit Discrimination at Work (WorkLife Law November 2020), <https://worklifelaw.org/get-help/state-local-frd-laws/>.

³ City of Harrisburg, Pa. Code of Ordinances § 4-101.1.

⁴ Code of Ordinances of the Borough of State College, Pa., Code § 5-903.

⁵ D.C. Code Ann. § 2-1401.02.

⁶ City of Royal Oak, Michigan Code of Ordinances § 402-2.

⁷ 29 C.F.R. §825.124.

⁸ The National Alliance for Caregiving and AARP, *Caregiving in the U.S.* (2005), <https://www.caregiving.org/wp-content/uploads/2020/05/04execsumm.pdf>.

⁹ Oshtemo Charter Township, Michigan Code of Ordinances § 174.002.

¹⁰ The Philadelphia Code § § 9-1102(j).

¹¹ Code of Ordinances of the City of Grinnell, Iowa §§ 29.02(16) and 24.

¹² Mission, Kan. Code of Ordinances § 615.030.

¹³ Tucson: Tucson, Ariz. Code of Ordinances § 17-12.

¹⁴ *E.g.*, Athens, Ohio Code of Ordinances § 3.07.62; Reading, Penn. Code of Ordinances § 23-506.

¹⁵ Palm Beach County, Fla. Code of Ordinances § 2-311.

¹⁶ Code of Ordinances of the Borough of State College, Pa., Code § 5-908.

¹⁷ City of Harrisburg, Pa. Code of Ordinances § 4-101.3.

¹⁸ *E.g.*, Atlanta, Georgia Code of Ordinances § 2-1414.

¹⁹ *E.g.*, Elgin, Ill. City Code § 3.12.100.