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BUSINESS DAY

Attitudes Shift on Paid Leave: Dads Sue, Too

By **NOAM SCHEIBER** SEPT. 15, 2015

WASHINGTON — For decades, women who believed their employers had punished them with lower wages and missed promotions after they had become mothers have been filing gender discrimination complaints and bringing lawsuits.

Now, as men shoulder more responsibilities at home, they are increasingly taking legal action against employers that they say refuse to accommodate their roles as fathers.

“The huge thing that’s changed only in about the past five years is suddenly men feel entitled to take time off for family,” said Joan C. Williams of the Center for WorkLife Law at the University of California Hastings College of the Law in San Francisco. “They’re willing to put their careers on the line to live up to that idea. It’s revolutionary.”

Just last week, CNN and Turner Broadcasting quietly settled an Equal Employment Opportunity Commission charge with a former CNN correspondent, Josh Levs, who claimed that the company’s paid parental leave policy discriminated against biological fathers.

At the time Mr. Levs’s daughter was born, in October 2013, CNN offered

10 weeks of paid leave to biological mothers and the same amount to parents of either gender who adopted children or relied on surrogates. By contrast, the company offered two weeks of paid leave to biological fathers.

Mr. Levs, whose daughter was born five weeks prematurely, already had two young children. He said he felt he needed to spend more time at home sharing in caregiving responsibilities with his wife. He filed his charge when the company refused to grant him more paid time off.

Mr. Levs is prevented from disclosing what he received under the settlement, but he confirms that CNN and Turner Broadcasting will provide additional paid time off to some other biological fathers who took paternity leave before January 2015. The company's current policy — which went into effect this year — gives six weeks of paid caregiving leave to all new parents. Biological mothers receive another six weeks of leave, and more if they have additional medical needs.

“Turner is a recognized leader because of its family-friendly policies,” the company said in a statement. “CNN is pleased Mr. Levs feels that his concerns have been addressed and has withdrawn his E.E.O.C. charge.”

Mr. Levs's is the latest in a recent string of cases brought by fathers against their employers over conflicts relating to family responsibilities. The law firm Dechert settled a case in 2013 that was brought by Ariel Ayanna, a former lawyer at the firm, who said he faced retaliation from supervisors, who withheld work and ultimately fired him, after he took a leave that was covered by the Family and Medical Leave Act in 2008. He said that one reason for his leave was to help care for his wife, who was suicidal while pregnant.

In his complaint, Mr. Ayanna cited a “macho” culture that “encourages male associates and partners to fulfill the stereotypical male role of ceding family responsibilities to women.”

At the firm, he noted in the complaint, the partner he reported to

repeatedly “made derisive comments about Ayanna’s taking care of his wife and children” after he came back from leave, even though there was no evidence that he had missed deadlines or his work had suffered in any way.

Also in 2013, the Transportation Department settled a complaint from Gary M. Ehrhard, an air traffic controller who claimed that the federal agency had engaged in sex discrimination when it denied him several days of child care leave that it granted to mothers in 2007. Mr. Ehrhard said the agency retaliated when he complained about this treatment by, among other things, requiring him to present a medical note when absent because of illness.

The cases come against the backdrop of a societal shift in which many fathers are working less and spending more time with their children. A recent Pew Research Center analysis reported that from 1965 to 2011, fathers reduced the number of hours they devoted to paid work to about 37 from 42 each week on average and increased the number of hours they devoted to child care each week to about seven from 2.5.

The earlier cases that have been settled appear to have encouraged more fathers to seek legal remedies. Rebecca G. Pontikes, who represented Mr. Ayanna, said she had received inquiries from other lawyers. “They talk to me about bringing suits they have on behalf of male caregivers,” she said. “It has not been without effect.”

Even companies that have adopted legally defensible official policies may still face legal action. In a study reported this year in the journal *Organization Science*, Erin Reid, an assistant professor of organizational behavior at Boston University, who gained access to workers in a large consulting firm, uncovered numerous instances in which fathers were discouraged from adjusting their schedules to accommodate parental responsibilities, coupled with a kind of disbelief that they would even entertain the idea.

“Men experienced more overt discrimination, hostility,” Professor Reid said.

David Reina, a lawyer who took paternity leave once at a prominent New York firm and a second time at a firm in Washington, said it was implicitly conveyed to senior associates of both genders that if they wanted to make partner they should not take the full leave: In both cases it was four weeks for parents who were not the primary caregiver (typically men) and roughly 18 weeks for women who were primary caregivers.

Though taking the full leave could be equally damaging to men's and women's careers, he said, men's decision-making was carefully scrutinized for signals about commitment.

“The woman was more quickly written off; the expectation was that she'll take a lot of time off,” Mr. Reina said. “For the man, it's more like, ‘Oh, here's a test for him. What's he going to do?’ ”

Experts say the issue goes beyond unequal treatment of men and women to a question of the trade-off between work and family. By discouraging men from taking child-rearing seriously, they say, employers can effectively add to the workplace stigma of women who shoulder these responsibilities.

“People would say to me, ‘When a man disappears from the office at 4:30 or 5, he could be meeting with a client,’ ” Ms. Reid said. “But people tended to assume women were picking up their children.”

The specific issue of paternity leave shows how deeply ingrained these assumptions can be.

Few employers provide paid leave for new fathers or new mothers: Only 17 percent of companies in a survey by the Society for Human Resource Management offered paid paternity leave, while 21 percent offered paid maternity leave.

But companies that do offer paid leave can run into legal trouble if they offer far longer paid time off to women. Equal Employment Opportunity

Commission guidance on the subject explains that under Title VII of the Civil Rights Act of 1964, companies may offer longer leaves to biological mothers than to biological fathers, but the difference must be justified by medical necessity. Any paid leave offered beyond the time a mother spends recovering from her pregnancy must be offered equally to both men and women. Courts have recognized that six weeks is typical for a mother, though it can be longer in individual cases.

Mr. Levs's charge claimed that at CNN, biological mothers were receiving 10 weeks of paid leave regardless of whether the time was medically necessary.

Peter Romer-Friedman of the nonprofit Washington Lawyers' Committee for Civil Rights and Urban affairs, one of the lawyers who represented Mr. Levs, said, "The Supreme Court has said that any disparity in the overall amount of parental leave given to mothers compared to fathers must be tethered to the actual time it takes a mother to recover from having a baby."

He added: "In some cases courts have allowed employers to presume that the recovery time is six weeks. In others courts have rejected such a presumption."

Cynthia Thomas Calvert, who is a senior adviser at the Center for WorkLife Law, said CNN's policy was sufficiently close to the line that it may have withstood a court challenge. But CNN is hardly the only employer whose policies have left it vulnerable to discrimination claims.

Goldman Sachs, for example, offers women 12 weeks of maternity leave tied to their pregnancy-related disability, along with four additional weeks of parenting leave, an amount that is also available to biological fathers. The disparity appears out of step with the case law on the issue, Ms. Calvert said. Goldman Sachs declined to comment.

Toward the most generous end of the spectrum are companies like Facebook, which equalizes paid leave, offering men and women four months.

Polling suggests that millennials — the oldest of whom are in their early 30s — are more likely than their predecessors to rank family obligations ahead of work.

“I loved my job, and wanted to keep doing it, but I was also needed at home,” said Mr. Levs, 43. “In the initial weeks of a newborn child’s life, mothers and fathers should not have to choose between work and caring for their children.”

If Mr. Levs was a pioneer of sorts, who will be next?

Ms. Calvert said the world would soon see a case alleging that retaliation for male caregiving — mockery, gratuitous discipline, ostracization — created a hostile work environment, that mainstay of litigation involving women in the 1980s and ’90s.

Her colleague, Ms. Williams, amplified that point. “Because of the kinds of comments older men are making to younger men,” she said, “employers are unfortunately sitting ducks for suits based on gender discrimination.”

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