

More Parents Than Ever Are Suing Their Employers for Discrimination—and Winning

Pregnant women and caregivers are increasingly fighting for their rights in court, and judges are on their side.

Sarah Alicea was thrilled when she found out she was due with her first child in 2017. A police officer for the town of Cromwell, Connecticut, she worked her normal patrol duty until she was five months pregnant, when she asked for a temporary desk job. "I went to my chief with the union representative and a doctor's note, and listed all the things I could do in the station instead, from logging evidence to finalizing accident reports." Even though Sarah was the first in her department to ask for a pregnancy accommodation, she was hopeful something could be worked out.

But a meeting with the town manager did not go as planned. "He simply said: 'There's not going to be an accommodation. It's not in the contract. It's not happening.'" The next day, she was sent home and was forced to take unpaid leave for the next four months. "It was a stressful time during what was supposed to be an exciting time," she says.

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It was also illegal. "Federal law requires employers to treat pregnant workers the same way they treat other workers who are 'similar in their ability or inability to work,'" says Gillian Thomas, senior staff attorney of the [American Civil Liberties Union's Women's Rights Project](#) and a lawyer who worked on Sarah's case. Even though the town of Cromwell claimed it didn't give light duty to anyone, Connecticut's Fair Employment Practices Act forbids employers from refusing to accommodate an employee's pregnancy or forcing her to take a leave of absence when an accommodation would be possible, according to the ACLU.

Sarah filed a federal civil rights complaint in 2017 with the U.S. Equal Employment Opportunity Commission and the Connecticut Commission on Human Rights and

Opportunities. The following year, she reached a settlement with the town of Cromwell, which agreed to not only reimburse the wages and paid-time-off benefits she lost during her pregnancy, but also to adopt policies to protect future pregnant workers.

After Sarah returned to work in December 2017, another employee announced she was pregnant. She was accommodated right away.

A Rise in Cases

Sarah is just one of a growing number of parents who are taking their employers to court. Typically, the claims are filed by pregnant or breastfeeding women, parents of young children, or employees caring for aging parents, ill spouses or sick children. They fall under a broad umbrella that legal experts call family responsibilities discrimination, or FRD.

The number of FRD cases rose 269 percent between 2006 and 2015, according to [a report by Cynthia Calvert of the Center for WorkLife Law](#), a research and advocacy organization at the University of California, Hastings College of the Law. Notably, other types of federal employment-discrimination cases—such as age and disability—dropped during this same period.

But even since that 2016 report, FRD decisions have

continued to climb, Calvert says; each of the past three years has averaged more than 400 decisions, an increase over all previous years. And these are a small fraction of all discrimination happening because they include cases only in which a court issued a decision. Not included are charges filed by the Equal Employment Opportunity Commission, or even all court complaints.

Not only are women suing more, but they're also more likely to win. Approximately 88 percent of FRD cases are filed by women, and "about half of these women get a settlement, judgment or favorable court ruling," Calvert says. "If a case goes to trial—and few do—the success rate jumps to 67 percent." Usually, employees lose workplace discrimination cases, with success estimates ranging from 16 to 33 percent.

Pregnancy Discrimination

The broad categories of discrimination often overlap—think Venn diagram—but pregnancy discrimination is the most common type of FRD claim, according to WorkLife Law's data. An investigation in *The New York Times* published earlier this year found that pregnancy discrimination was ["rampant" at many of America's largest companies.](#)

The Pregnancy Discrimination Act, passed by Congress in 1978, prohibits discrimination based on pregnancy, and some states also have statutes that protect pregnant workers.

Examples of discrimination include firing someone for being pregnant and not allowing the same accommodations granted to employees with non-pregnancy-related conditions. It is also illegal to deny pregnant workers the right to sit rather than stand during the workday, carry a water bottle, take more-frequent restroom or snack breaks, get help with lifting, and work fewer hours or take leave, if those options are offered to other employees with non-pregnancy-related conditions.

Rejecting a qualified applicant because of pregnancy is also a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. Brittany Frisby won an \$80,000 settlement in May after medical-documentation service Scribe-X Northwest rescinded its job offer upon learning she was pregnant. She had already completed pre-hiring screens and received an offer before the CEO called to say her services were no longer needed. "Why assume that becoming pregnant suddenly cancels out all the strengths and skills I bring to the table?" Brittany said in an [EEOC press release](#). "If anything, I was even more motivated to prove my value and excel at my job."

Breastfeeding Discrimination

Breastfeeding is one of the fastest-growing FRD areas, and covers discrimination based on breastfeeding status and a [refusal to accommodate breastfeeding or pumping at work](#), Calvert says. According to her 2016 report, there were 46

cases between 2006 and 2015, compared with 37 in just the three years since it came out.

That includes [Tucson paramedic Carrie Clark](#), who was awarded \$3.8 million in April 2018. When she returned from maternity leave in 2012, Carrie's request to transfer to a fire station with a private spot to pump was denied, and she was told she didn't "deserve any special accommodations," according to court documents. Over the next few months, Carrie used up her vacation days and sick leave to take time off from work and pump in private. When Carrie explained to HR that she pumped every two to three hours around the clock, she was told her "pumping seems excessive" and that she wasn't "fit for duty."

Throughout her ordeal, she was harassed and made to endure offensive comments about how women over 40 shouldn't work in fire suppression because they "look like crap, don't age well and can't do the job." The jury decided the city of Tucson not only violated the Fair Labor Standards Act—which requires companies to give women time and a nonbathroom location to pump—but that it [retaliated against her](#) when she complained.

Caregiving Discrimination

There has also been a rise in caregiving claims, says Elizabeth Chen, senior staff attorney at workplace advocacy group A

Better Balance. "Some employers say: 'A parenting worker is not our vision of an ideal worker. This person may have more caregiving responsibilities; they might not have as flexible a schedule as we want them to have.'" It's not necessarily pregnancy that the company finds incompatible; it's that a worker might need to care for someone.

These days, women are not the only ones bringing caregiving claims. In fact, the emergence of male caregivers has led to more FRD claims by men, and one-quarter of all calls to the WorkLife Law's FRD hotline are now from men, Calvert says.

In May, dads at JPMorgan Chase & Co. won a class-action settlement against the financial firm. "We were challenging the company's disparate parental-paid-leave policy, which was essentially 16 weeks for birth mothers and two weeks for dads," says Thomas, whose ACLU colleague helped win the case. The lawsuit claimed the company discriminated against men by designating mothers as the default primary caregivers. Although it's legal to give between six and eight extra weeks to birth moms for physical recovery, extra bonding time should not be solely for women, Thomas explains. Now the bank will pay \$5 million total to male employees who, over the past seven years, were denied primary-caregiver leave. "We look forward to more effectively communicating the policy so all men and women are aware of their benefits," says Reid Broda, JPMorgan Chase & Co., associate general counsel.

Stereotyping Discrimination

Caregiving claims often overlap with stereotyping claims, which usually involve gender bias. Title VII of the Civil Rights Act of 1964 is a federal law that prohibits employers from discriminating against employees on the basis of sex, race, color, national origin and religion. Motherhood is not a protected category under Title VII, but it's sex discrimination if, for example, a company treats women with children differently from men with children.

"They often feature comments by employers such as: 'I don't see how you can be a good mother and a good employee,' or 'We didn't think you would want the promotion because of your family,'" Calvert says. But pregnancy discrimination might also involve a stereotyping claim. "Employers may have stereotypes that pregnant women aren't committed to their jobs, are lazy, or they are going to be absent too much or have pregnancy brain," she says.

These claims can be tricky to prove because the bias usually precedes the assumed behavior. "Often the employee hasn't yet asked for leave or taken days off for a sick child, but they end up being discriminated against because of how it is assumed women or men should behave once they have kids," Calvert explains.

Again, it's not only women fighting back. "Men are negatively

evaluated when they are not being 'macho' enough by working long hours or doing whatever the particular workplace thinks is 'man' enough," says Boston-based Rebecca Pontikes, one of the lawyers leading the charge in these types of claims. "If they act like 'girls,' they are penalized."

While sex-stereotyping claims are not new, "they are getting new play because many men are now becoming caregivers more transparently," Pontikes says. "I've been bringing these claims for both men and women because we have to work on both to get workplace equality: Men have to be able to be caregivers or the onus falls on women and they are pushed out of the workplace."

Pontikes settled a case for Don Davis in 2019 after he sued a Boston-based subsidiary of defense contractor BAE Systems. Don had accepted a job with BAE before sharing with his supervisor that his wife with cancer had just weeks to live. He said he could work his regular 40-hour week but had to be home at night to care for her. Even though women caregivers at the company had been offered the chance to work from home after office hours, he was told he had to be available 24/7 and that no alternative temporary arrangements were possible. Don alleged in his complaint that his offer was rescinded "because of reliance on a stereotype that only men who eschew caregiving are suitable to work at BAE."

Why Now?

Several reasons, experts say. First, the number of employees with family responsibilities has swelled. "Childcare is getting more expensive, families can afford it less, and wages are stagnating," Pontikes points out. That means "people have to do more caregiving themselves."

There has also been a cultural shift. "The #MeToo movement changed the whole landscape by shining a spotlight on all forms of inequality women were facing in the workforce," Thomas says. "Harassment was a symptom of larger inequalities, so it's not surprising that people would start looking at what's really happening with women at work."

Plus, there are a lot of new laws and growing awareness of them. "Workers are having to sue to enforce their rights because employers don't understand these new laws or are not complying with them," says Chen of A Better Balance.

But it mostly comes down to systemic problems with how some employers view workers.

"The way work is set up is based on the 1950s-era assumption that one adult will be in the workforce and another will be at home to take care of family matters," Calvert says. "That's just not true now."

Ultimately, Thomas says discrimination against pregnant women and moms is one of the biggest drivers of women's

overall inequality. "It can push people into poverty at the low-wage end of the spectrum," she says. "When you are out of the workforce, it depresses your pay and slows your progression. The ripple effects last forever in terms of a woman's long-term economic stability."

So what can be done? On a small [scale](#), companies can accommodate caregivers. Through her independent company Business Workforce 21C, WorkLife's Calvert helps employers understand why it makes sense to keep caregiving employees happy. "It's better for the bottom line if an employer works with an employee to retain them," Calvert says. "They have institutional knowledge and relationships with clients and customers—and you don't have the cost of having to hire someone else."

She also encourages culture change from the top down. "Company leaders need to send a strong message that caregiving employees are valued," she says. One of the easiest ways to do it is by example: "If they are leaving early for a family-related event, they need to say that."

While those tweaks can help individual companies, the American approach to work and caregiving might just need an overhaul. "If you want a system where business has no responsibility, then you need to have [paid family leave](#), [state-subsidized childcare](#), and employment insurance that's a lot more robust," Pontikes says. "If you want to keep women in

the workforce, stop penalizing people for caring for their families.”

Should You Sue?

If you believe your employer is discriminating against you, consider calling [WorkLife Law](tel:415-703-8276) (415-703-8276) or [A Better Balance](tel:833-633-3222) (833-633-3222). The hotline staff can advise you on next steps. “Oftentimes we will explain the law to a caller, and then they will go back to their employer and say: ‘This is what the law says. You’re not doing it. Can you?’ A lot of times that works out, and the person stays on the job,” says Chen of A Better Balance. That’s the ideal outcome: no lawyers, no claim. “Many workers understand that their rights are being violated and just need the tools to convey the law to their employers,” she says.

If that doesn’t work, the organization might help you write a letter to your company explaining the law. If it continues to escalate, they can file lawsuits on your behalf or pair you with an attorney who can help.

In any case, keep in mind that it often takes several years to resolve a case, and it can take much time, mental energy and money. Whatever you decide, says Sarah Alicea, the Cromwell police officer, remember you are not alone in your battle. “Find somebody to be the voice for you,” she says. “I went to the ACLU. They were my voice. You have to fight.”

