



**Will  
Working  
Mothers  
Take Your  
Company  
To Court  
?**

## Increasingly, juries are taking the side of women who face workplace discrimination. *by Joan C. Williams and Amy J.C. Cuddy*

**M****MOST MANAGERS KNOW** to keep gender bias to themselves. Some might think that men are better suited to certain roles and women to others. But virtually all of us understand that expressing those views could get us into trouble on the job. So we keep our mouths shut, just as we curb our opinions about age.

Yet many remain surprisingly open about their bias against one subset of employees: caregivers, particularly working mothers. This type of discrimination has a name: "maternal wall bias." It takes the form of comments like "Don't you feel bad leaving your kids at home? Don't you miss them?" For a long time employees have felt free to make remarks like these without fear of consequences.

Historically, mothers have been reluctant to make waves, and women's lack of progress toward the C-suite has been shrugged off as a by-product of personal decisions—a shift in priorities, the fire in the belly extinguished or tamped down. Women fall behind by choice, so the

thinking goes. Recent research, however, shows that even when women maintain their professional ambitions, motherhood often triggers strong and blatant workplace bias.

Companies have begun paying a steep price for that bias. Working mothers have become more likely to sue their employers for discrimination, and juries increasingly inclined to award them large settlements if gender bias appears to have played a role in derailing their careers. A new field of employment law, family responsibilities discrimination, is taking off.

According to data collected by the Center for WorkLife Law, in the United States roughly two-thirds of plaintiffs who sue in federal court on the basis of family responsibilities discrimination prevail at trial. Their success rate is approximately twice as high as that of plaintiffs in federal employment discrimination cases in general. Meanwhile, the filing of family responsibilities lawsuits in federal courts, state courts, and government agencies in-

creased by almost 400% from 1998 to 2008. As more and more successful suits hit the news, people who believe they have been unfairly treated become more apt to seek legal remedies.

Exact dollar amounts of awards are difficult to tease out, because suits can take a long time to resolve and are often settled privately. But the potential liability is significant. In 2007 a female delivery driver won \$2.3 million after her employer, Bimbo Bakeries, a baked goods manufacturer, decided her pregnancy made her unqualified to do her job and refused to find her another position within the company.

Caregiver discrimination suits have now moved into the class action arena, too. Maternal wall discrimination is one element of the largest class action suit ever filed in the United States, *Dukes v. Wal-Mart*. And in *Velez v. Novartis Pharmaceuticals*, a case that combined maternal wall bias with other kinds of sex discrimination, a jury awarded the plaintiffs more than \$250 million. One plaintiff stated in her affidavit that her manager told her he preferred not to hire young women because “first comes love, then comes marriage, then comes flextime and a baby carriage.” Before *Novartis*, the average verdict for plaintiffs in family responsibilities cases was \$570,000, with more than 21 verdicts in excess of \$1 million.

And it's no longer just women who feel the sting of bias and take action. A male state trooper received damages after being denied family medical leave to care for his wife and newborn son. A male maintenance worker who was penalized for taking family leave to care for his ailing parents won an \$11.6 million jury verdict against his employer.

One quirk: Maternal wall cases often involve discrimination by women against women. In *Walsh v. National Computer Systems*, a jury awarded \$625,000 to a top saleswoman who encountered hostility after she had a baby. At one point, when she needed time off because of her son's ear infections, her female supervisor threw a phone book on the saleswoman's desk and ordered her to find a pediatrician who was open after hours. One can only wonder whether the supervisor, who was also a mother, felt that she herself had coped without accommodations and that the saleswoman should “suck it up” just as she had. The female supervisor may have felt she had something to prove in a way no male supervisor would have.

While our research comes primarily from the U.S., where we have access to case law, there's no reason to think maternal wall bias is less prevalent in other countries. It's a global concern and a growing one.

## The Sledgehammer

Discussions of the barriers women face in business typically focus on the double bind that many women find themselves in: High-level positions require managers to be forceful and direct, yet women who demonstrate those qualities are often seen as aggressive and lacking in social skills. Carly Fiorina pointed out that she was routinely described as “either a bimbo or a bitch.” This is an important problem but a subtle one—generating microinequities that amount to death by a thousand cuts.

Maternal wall bias, however, often feels more like a sledgehammer than a paper cut. One study by Shelley Correll, Stephen Benard, and In Paik found that a woman with children was 79% less likely to be hired than one without children. A mother was half as likely to be promoted as a childless woman, was offered \$11,000 less in salary, on average, and was held to higher performance and punctuality standards—discrimination much larger, according to Correll, than what you'd find in the context of a glass ceiling.

An experiment by Amy Cuddy, Susan Fiske, and Peter Glick revealed similar findings. People were asked to imagine that they were McKinsey & Company clients, evaluating consultants on the basis of several profiles. One of the profiles varied two factors: gender and whether the candidate had a child. When identified as a mother as opposed to a father or a woman or man whose parental status wasn't mentioned, the consultant was judged to be significantly less competent and was least likely to be hired or promoted by the participants. The mere mention of a child led people to see the mother as less competent, and this perception did her in.

This isn't a tale of opting out. Yes, many caregivers are happy to step back and put family responsibilities before professional growth. But most maternal wall cases involve women who wanted to remain in their jobs and on their career paths. They chose to continue working—not to get on the mommy track. Their careers stalled nonetheless.

Of course, most mothers who quit jobs because they feel they've been

## Working Mothers At a Glance

If a woman has a child, her chances of being hired fall by

**79%**

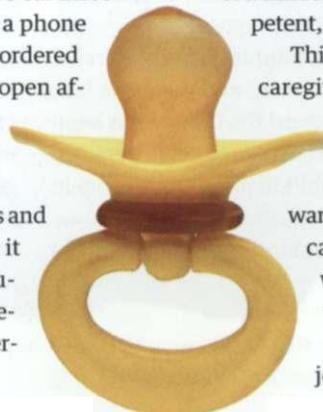
She is

**50%**

as likely to be promoted as a childless woman

Her salary offer, on average, will be reduced by

**\$11K**



## Idea in Brief

Though employment litigation has been decreasing overall, one type of lawsuit has been rapidly proliferating over the past decade: cases that involve bias against working mothers and other caregivers.

Juries are increasingly awarding large settlements to plaintiffs who have experienced derogatory comments and harassment or been denied promotions and raises because of their family responsibilities. These suits are more likely to prevail than other employment-related cases. Class action suits on behalf of caregivers are on the rise as well.

This type of litigation typically doesn't involve people who have opted out of the fast track. These are mothers and fathers who retained their professional ambitions but were still passed over for advancement regardless of their performance.

Leaders need to be aware of the costs—hefty settlements, negative publicity, and the pos-

sibility of losing valued contributors who resign in frustration. Managers often fail to realize the potential negative consequences of subtle remarks and even outright discrimination. To educate them, every company should make lessons on family responsibilities discrimination part of its standard training.

consigned to a mommy track do not sue. Many say they're leaving to devote more time to their families when, in fact, they're leaving because they've found the workplace hostile and unwelcoming to mothers or to women. But often they keep quiet about the real reasons precisely because they're intent on returning to work and don't want to burn any bridges. And then their departures are taken as evidence that their jobs aren't suited to mothers.

All this is sobering news for companies. An employer may be getting feedback in exit interviews that mothers are leaving for family reasons when, in fact, discrimination is playing a role—a potentially expensive role. In other words, to remain employable, women sometimes find that they have to stick to gender stereotypes.

### The Maternal Wall Defined

Maternal wall bias can take different forms. Prescriptive bias involves "should" statements. Take the chairman of a law firm's board of directors, who told a female lawyer and shareholder in the firm that women who had their "priorities straight" were "those who relinquished their status as shareholders and worked part-time...to spend more time with their husbands and children."

A less obvious form is what we call benevolent prescriptive stereotyping. Here's an example: Two lawyers, a married couple, worked for the same

employer. When they became parents, the wife was sent home promptly at 5:30—she had a baby to take care of. The husband, though, was expected to work later than ever—he had a family to support. With the best of intentions, their law firm was policing the wife into a caregiver role and the husband out of one.

More subtle still is descriptive bias, which stems not from assumptions about how people *should* act but rather from assumptions about how they *will* act. One mother told Joan that when she went part-time, people assumed that whenever she was not at her desk, she was at home with the kids rather than in a meeting. Colleagues had previously given her the benefit of the doubt when projects fell behind—they'd assumed she was working as fast as humanly possible. Now delays were attributed to her part-time schedule. When she was working full-time, this woman was seen first and foremost as a professional; once she cut her hours she was seen chiefly as a mother. Coworkers assumed that she put family first and work a distant second.

### How to Steer Clear of Bias

As with many managerial challenges, the first step is to create awareness of the problem. The second, to put it plainly, is to cut it out. It seems obvious, but in our research and conversations with women in the workplace it's become clear that some managers still behave in a remarkably biased fashion.

**One plaintiff's manager told her that he preferred not to hire young women because "first comes love, then comes marriage, then comes flextime and a baby carriage."**



How do fathers fare in the office after the birth of a child? Three key studies that uncovered major workplace biases against mothers also revealed that fathers were actually held to lower performance and punctuality standards and were more likely to be hired and promoted than childless men with identical qualifications. In a study looking at potential clients'

impressions of fictitious male and female McKinsey consultants who were or were not parents, the father was the only one seen as both competent and warm (and the mother the only one perceived as warm but less competent than her unencumbered peers).

The picture changes if a father takes time off to care for children. Fathers with even a short work absence because of family obligations are recommended for fewer rewards and receive lower performance ratings, according to a study by Adam Butler of the University of Northern Iowa and Amie Skattebo of Penn State. Another study, by Tammy Allen and three

colleagues at the University of South Florida, found that fathers—but not mothers—were penalized for taking family leave.

Men may be openly mocked for taking time off, may get passed over for promotions, or may suffer others' quiet doubts about their competence. The message to working fathers is clear: Being a breadwinner who is married to a homemaker and is a father can help your career. But if you try to play an active role in family care, your career may suffer. Just as women are being policed out of breadwinning roles, men are being driven out of caregiving roles, and men are increasingly suing as well.

American managers know not to blurt out, "This is no job for a woman." When it comes to mothers, though, they may see themselves as delivering tough love rather than discrimination. Many don't understand, for instance, that saying "This is no job for a mother" may create a legal liability.

Plenty of resources for devising and assessing training for managers are available. For starters, readers may visit the Workforce 21c website ([workforce21c.com/training.html](http://workforce21c.com/training.html)) for a set of sample training materials. (Also see the sidebar "How to Set the Right Family Policy.") Below are some managerial pointers for leaders who wish to avoid lawsuits and—lest we forget that the war for talent rages on—the risk of losing experienced employees.

**Know the law.** That sounds simple; it's anything but. Regulations vary widely by state and county. Employees have successfully sued on the basis of at least 17 different legal theories. And 60-plus local governments in 22 states have passed laws that go beyond federal discrimination laws, expressly prohibiting employment practices that target employees with family responsibilities. Some go further than parenting obligations to include responsibilities to other dependents. Better to know what you're up against than to be blindsided by a suit. Local laws are constantly evolving, but you can find a summary [atworklifelaw.org/pubs/LocalFRDLawsReport.pdf](http://atworklifelaw.org/pubs/LocalFRDLawsReport.pdf).

**Leave your opinions at home.** Managers are entitled to their views about how families should raise their children, but these opinions have no place in the office and, in fact, can give rise to significant legal liability if they're expressed there. Remarks can be indirect and well-intentioned but still reflect biased assumptions. Women often hear from supervisors or counterparts words to the effect of "You're back already? My wife could never do that—leave our kids." This is the kind of statement that makes employment lawyers happy (and rich).

**Ask mothers what they want rather than withhold opportunities until it's "a good time."** One professional woman we spoke to found out that her mentor had decided not to give her an exciting new assignment because she had a baby. He assumed that she wouldn't have the time to devote to the challenge. Fortunately, she got wind of this and had a chance to make her case—and win the assignment—but it was pure happenstance that she was able to redirect the course of events.

In other cases, we've found, opportunities for advancement are withheld to make a point—to send

a message that discourages parenthood. At one institution a young professional had maintained a heavy workload throughout her second pregnancy and was prepared to continue when an opportunity for a prestigious fellowship came up. Her boss initially decided that she "couldn't handle" the new appointment, although it would have actually lightened her load. In subsequent conversations it became clear that he didn't want to reward her for her personal decisions (and implicitly support them). He didn't want her as a representative of success. (He was later dissuaded by colleagues, and she was awarded the fellowship.)

There's a very easy way to find out if a new mother (or father) wants a promotion that will require longer hours or an opportunity for professional development that will involve more travel: *Ask*. Even well-intentioned assumptions can get you into trouble.

**Eliminate formal flexibility stigma.** In some law firms, lawyers who go part-time still take a "haircut," say, 60% of the pay for 80% of the hours. In some departments of the federal government, women are readily allowed to work part-time but are then barred from management positions. These are examples of formal flexibility stigma.

An employer intent on paying part-time professionals a disproportionately lower wage needs to do a careful business analysis demonstrating that part-timers cost more—factoring in the well-documented savings a high-quality flextime program offers by reducing attrition and tapping the full talent pool. Similarly, employers who deny promotions solely on

the basis of part-time status need to back their decisions with a detailed analysis showing why jobs cannot be performed in a shorter workweek, given that today many professionals with flexible schedules succeed in a wide range of positions.

**Eliminate informal flexibility stigma.** Equally important, though harder, is to examine your company culture for informal flexibility stigma. Does your organization conflate *schedule* with *commitment* and treat those with flexible work arrangements as lacking in dedication? Two recent studies, now under review, suggest such attitudes are not uncommon.

A study by Joseph Vandello, Vanessa Hettinger, Jennifer Bosson, and Jasmine Siddiqi found that when both male and female employees sought flexible schedules, people tended to evaluate them more negatively and recommend them for smaller raises than when they worked a regular schedule. Employees who sought flextime were also seen as more feminine—and this perception hurt men more. A second study, by Laurie Rudman and Kris Mescher, corroborated that finding. It showed that men who requested a 12-week family leave to care for a sick child or an ailing mother were seen both as poor organizational citizens and as more feminine than other men. And the femininity stigma hurt the men even more than the bad worker stigma.

Sometimes parents, but not other employees, are penalized when they need flexibility. In one case a medical services company in Chicago interviewed Dena Lockwood, a single mother of two, and hired

## How to Set the Right Family Policy

Companies that are facing or wish to preempt family responsibility discrimination suits are beginning to implement straightforward policies, much as they have for other forms of discrimination. (For sample policy options, see [worklifeflaw.org/EmployerModelPolicy.html](http://worklifeflaw.org/EmployerModelPolicy.html).) At a high level, there are two approaches to crafting an effective policy.

### **Add to an existing anti-discriminatory policy.**

Amend it to include family responsibilities. The appropriate language will vary by locality, but it may be as simple as adding the words "or family responsibilities" to the list of protected classes.

### **Create a stand-alone policy.**

An additional policy can emphasize the commitment to eliminating discrimination and provide the opportunity to explain the family responsibilities to employees and supervisors. You may choose to include language that explicitly addresses the need to recruit and retain talented employees.

Either way, companies that implement a policy change should be sure to notify employees and train supervisors as they would with any change.

## Why Give Special Treatment to Mothers?

Sometimes we hear colleagues complain that mothers get special treatment. Why should other employees have to work on New Year's Eve or pick up the slack when a mother leaves to coach soccer or take Suzy to ballet?

If an employer handles parents' needs by insisting that employees without children always be the ones to cover holidays or undesirable shifts, that's a recipe for resentment. It's also bad management. Not everyone has children, but everyone has a personal life. And caregiving isn't

the only reason people need time for themselves: People also have other goals and dreams outside work.

The solution for employers is to recognize that even responsible and committed employees need some time for life. The management challenge is to design

a scheduling system that allocates holiday work and undesirable shifts fairly and gives people some leeway to attain their desired trade-off between time and money.

## There's a very easy way to find out whether a new mother wants a promotion that will require longer hours: Ask.

her only after she assured the firm that she could work a 70-hour workweek—at a lower salary than her childless counterparts received. She ended up negotiating a fairer paycheck but discovered other compensation discrepancies—differing commission rates, for instance. She also found that the company had a lax approach to attendance for people without children. One employee had a "personal arrangement" allowing her additional vacation time; others were regularly excused to cope with personal issues. Yet when Lockwood rescheduled a meeting because her daughter was ill, she was fired the next day without explanation, though her contract stated that she could be fired only "for cause" and had to be given 30 days' notice. She'd never had any complaints about her performance and delivered higher sales numbers than many of her coworkers. Lockwood filed a complaint with the city, which had an ordinance against discrimination for parental status, and the company ended up paying her \$215,000 in damages and more than \$87,000 in attorneys' fees and costs.

**Incorporate lessons on how to avoid maternal wall bias into existing training programs—or offer a new one.** Maternal wall bias stems from the ways we think: from old-fashioned beliefs about what makes a good mother (someone who is always available to her children) and a good father (a good provider). Extensive research shows that these kinds of assumptions are widely shared and will persist unless they are brought into the light and challenged.

That's why educating employees is important. In California, where sexual harassment training is

compulsory, some companies incorporate lessons on maternal wall bias into those trainings. Other approaches include offering specialized training sessions to all employees and in managers' development programs and making a lack of bias a criterion in performance evaluations.

**Consider fathers as well as mothers.** Men can't be denied benefits that are offered to mothers, apart from the period of maternal disability leave (typically six to eight weeks). But men are commonly (and illegally) discouraged from taking family leave. One male professional was told he would be "cutting his own throat" if he took a leave of absence to care for his sick father. Such comments can be evidence of a violation of federal law. Any organization where men do not take parental leave needs to inquire carefully into the statements made about whether it is appropriate for them to do so.

**THE BOTTOM LINE** of our research is this: Don't lose money over something that you can easily avoid. Maternal wall bias is little understood but at the same time very much out in the open—which means that plaintiffs in these suits tend to win. Legal liability is worth heading off at the pass, by training employees to avoid this new, and increasing, legal risk. O

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