



EXECUTIVE SUMMARY

# Caregivers in the Workplace

Family Responsibilities Discrimination  
Litigation Update 2016

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# EXECUTIVE SUMMARY

Family responsibilities discrimination continues its growth as the biggest challenge employers never see coming. FRD is employment discrimination because of an employee's caregiving obligations. When employees sue their employers for FRD, the cases include complaints of discrimination based on pregnancy, motherhood, fatherhood, care for family members who are sick or have disabilities, and care for aging or ill parents. This report is based on a dataset of 4,400 FRD cases that the Center for WorkLife Law has collected and analyzed.

The number of employees who have caregiving responsibilities has increased, and the failure of the workplace to adjust to this reality has significantly increased FRD litigation.

- **FRD cases have risen 269% over the last decade – a period when federal employment discrimination cases decreased.** Between 1998 and 2012, FRD case filings increased 590% while the number of employment discrimination cases filed in federal courts decreased 13%. (Three-fourths of FRD cases are filed in federal court.)
- **Employees win 67% of the FRD cases that go to trial** – a far higher rate than other employment cases – and employees prevail in 52% of all FRD cases that are filed.
- **Employees in FRD cases were awarded almost half a billion dollars in verdicts and settlements in the last decade** (\$477,009,417 in 2006–2015), which is more than double the amount of the previous decade. This amount is likely a vast understatement of the real amount because it does not include confidential settlement agreements.
- **FRD cases have been brought by white, black, Latino, and Asian American employees.** How FRD is experienced can vary by the employees' race/ethnicity, and 8% of FRD cases include allegations of race discrimination.
- **FRD is found in every industry and at every level within companies.** Claims for FRD have been filed in every state, and employees are more likely to prevail in the Northeast and West regions.

Four new trends have emerged from our analysis of cases in the past decade.

- **Eldercare is the new frontier.** Cases involving eldercare have increased 650%. Further growth is expected to continue as the population ages.
- **Pregnancy accommodation cases increased rapidly, and pregnancy discrimination remains commonplace.** Pregnancy accommodation cases increased 315%. (These cases involve women who want to continue working but need workplace accommodations.) Cases involving pregnancy are the most common type of FRD claim (67%).
- **Lactation cases increased sharply, despite small numbers.** Cases where an employer denied accommodations to or discriminated against an employee because she was breastfeeding or needed to express milk during the workday increased 800%, though the number of cases remains small.
- **The emergence of men as caregivers has led to more FRD claims by men.** Fully 25% of the calls to WorkLife Law's FRD Hotline are now from men. Male employees have brought 55% of spousal care cases, 39% of eldercare cases, 38% of FMLA cases, and 28% of childcare cases. There has also been a 336% increase in the number of paternity leave cases, although the number remains small.

In addition, two trends noted in our 2010 report remain important:

- **New supervisor syndrome.** Workers' problems with FRD often begin when they get a new supervisor.
- **Second child syndrome.** Employees who do not experience FRD after the birth of their first children may well experience it after the birth of subsequent children.



The number of FRD cases is expected to continue to rise at a rate higher than other types of employment cases. Several trends contribute to this conclusion: the prevalence of American households with all adults in the paid workforce; the projected increase in the number of people over the age of 65 who need care; the growing number of other family members who have disabilities; the number of men who are becoming caregivers; and the expectations of employees that working and providing family care should not be mutually exclusive. Until employers adjust to these new realities, changing their expectations and restructuring how work gets done, FRD will threaten their bottom lines.

FRD can harm businesses beyond the obvious costs of legal damages and litigation expenses. Putting lawsuits aside, FRD causes companies to lose good

employees, damages morale and productivity, weakens relationships with customers, and tarnishes reputations. Employers can take steps to prevent FRD, including training supervisors about why FRD arises and how to reduce it, adopting an anti-FRD policy, giving human resources professionals tools to recognize FRD triggers and effects, instituting an effective complaint procedure, implementing a work coverage plan, and creating nonstigmatized flexible work programs. ♦

### Resources for employees:

WorkLife Law's employee hotline:  
hotline@worklifelaw.org or 415-703-8276

Pregnant@Work, [www.PregnantAtWork.org](http://www.PregnantAtWork.org),  
for pregnancy accommodation information

WorkLife Law, [http://worklifelaw.org/  
frd/more-on-frd/for-employees](http://worklifelaw.org/frd/more-on-frd/for-employees), for FRD  
information

### Resources for employers:

Pregnant@Work, [www.PregnantAtWork.org](http://www.PregnantAtWork.org),  
for pregnancy accommodation information  
and model policy

WorkLife Law, [http://worklifelaw.org/frd/  
more-on-frd/for-employers](http://worklifelaw.org/frd/more-on-frd/for-employers), for FRD  
information and model policies

Workforce 21C, [www.workforce21c.com](http://www.workforce21c.com), for  
FRD information and prevention program



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