



## DO SINGLE WORKING MOMS DESERVE A BREAK?

Courts not aggressive in protecting employees with family responsibilities

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Last month, the Center for Worklife Law in California released a report analyzing 63 state and local laws in 22 states that offer protections to employees with various family responsibilities. The report stated that this is an area of growing concern in America.

But is that really true?

Almost all the laws are city or county ordinances, with no federal law. There are only three states with such laws, including Connecticut. Moreover, almost 30 years after Connecticut enacted this amendment this legislation has yet to be enforced in the courts. Thus, contrary to national efforts to make family responsibilities an area of growing concern, Connecticut doesn't seem too concerned. One day this may change, but for now the Connecticut focus remains on sex, pregnancy and marital status discrimination. But this could change so what follows is a summary of how we got here.

The Connecticut amendment, subsection (a)(9) of Connecticut General Statutes section 46a-60, makes it a discriminatory practice for employers, employment agencies, and labor organizations to "request or require information from an employee, person seeking employment or member relating to the individual's child-bearing age or plans, pregnancy, function of the individual's reproductive system, use of birth control methods, or the individual's familial responsibilities." While this may seem rather broad and inclusive, that is not how the Connecticut courts interpret the

amendment. Consider the three reported cases:

### Daycare Pick-Up

In the 1997 case of *Truglia v. Connecticut Commission on Human Rights & Opportunities*, the plaintiff alleged she was fired from her attorney position after working only five days because prior to accepting the position, she failed to disclose her familial responsibilities, namely, having to leave work at 5:30 p.m. to pick up her child from day care.

The Commission on Human Rights and Opportunities (CHRO) dismissed her suit by concluding it did not have jurisdiction over claims of discrimination based on "familial status." On appeal, the Superior Court ruled that although CHRO does have jurisdiction over complaints of discrimination under C.G.S.46a-60(a)(9), that statute was "not implicated in this case" because it was "undisputed that the employer never asked about the Plaintiff's familial responsibilities during the two pre-employment interviews and that it was the Plaintiff who first brought up the subject of her familial responsibilities."

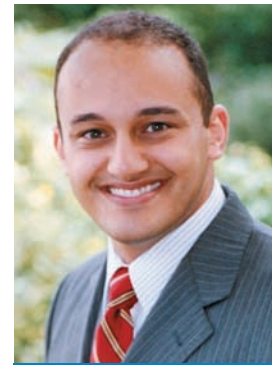
Thus, according to *Truglia*, whether the employer actually fired the plaintiff based on her familial responsibilities was irrelevant. As long as the employer did not inquire about those responsibilities, there is no violation of the statute.

### Single Mother

Three years after *Truglia*, the Superior Court faced another case involving 46a-60-



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(a)(9), this time in a "reverse" family responsibilities discrimination claim.

In *Feathers v. Vivisection Investigation League*, the plaintiff, a single, childless female alleged her employer (the owner of an animal sanctuary) showed preferential treatment to a co-worker who was a single mother. Unlike the other employees, who were all young, childless, and single, the favored co-worker was not required to work overtime, make up lost time when she left early, or attend various employment functions. When the plaintiff complained about this preferential treatment, she was fired. In essence, she claimed she was discriminated against because of her lack of familial responsibilities.

In construing the relevant statute, the court declared, "The legislative purpose in enacting C.G.S. 46a-60 was to eliminate discrimination against women on the basis of such considerations as sex, marital status, and reproductive potential when those same considerations posed no similar threat of discrimination against men."

However, the court went on to state that subsection (a)(9) was only "complementary" to subsection (a)(1), which prohibits discrimination in employment based on,

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among other things, a person's sex or marital status. Because the plaintiff and her coworker had the same sex and marital status, there could be no discrimination claim under Section 46a-60.

In granting the defendant's motion to strike, the Court concluded "to allege only that she lacked responsibilities to family (here, children) when [her coworker] had them . . . ignores that the lynchpin of C.G.S. 46a-60 is membership in a protected class as enumerated in 46a-60(a)(1)." Thus, even though it does not cite *Truglia*, *Feathers* seems in accord with that decision in that both courts found no independent action for a discharge based on family responsibilities discrimination under 46a-60(a)(9).

### Child Adoption

A few years later, the plaintiff in *Grimley v. Icon International* took a more creative approach. Ellen Grimley alleged she was terminated "because of the familial responsibilities associated with her decision to adopt

a child." However, in addition to asserting a claim under the statute itself (as did the plaintiffs in the two prior cases), she also asserted a claim for common law wrongful termination in violation of public policy.

The established public policies cited included: "strengthening the family unit and making the home safe for children by enhancing the parental capacity for good child care." It was this wrongful discharge claim that the court addressed.

In rejecting Grimley's wrongful termination claim, the court relied in part on the 1999 Connecticut Supreme Court opinion in *Daley v. Aetna Life & Casualty Co.*, where the court rejected an employee's wrongful termination claim premised on "Connecticut's policy of discouraging employers from discriminating against employees who choose to have and raise children." Citing *Daley*, the *Grimley* court stated that merely alleging "violations of generalized principles governing child and family welfare"

is not enough to state a claim for wrongful termination. Rather, there must be a violation of an "explicit statutory or constitutional provision . . . or judicially conceived notion of public policy." Here the court found none. Apparently, discharge based on family responsibilities is not a violation of C.G.S. 46a-60(a)(9) and thus no clear public policy exists.

### Conclusion

Based on these three cases, it appears Connecticut courts do not offer significant special protection to employees with family responsibilities. However, employers should beware of basing decisions on family responsibilities because, as the *Feathers* court observed, such a decision may be a form of sex, marital status, or pregnancy discrimination. Moreover, there is a growing trend to protect against family responsibilities discrimination. As time and the courts change, Connecticut could easily reverse itself and begin expressly attacking such discrimination. Be prudent and avoid tempting the courts to make your company or client the test case. ■

