



Conversations with the Experts

Caregiver Bias: Work/Life Issues as Diversity Concerns



Joan Williams, Ph.D.

Bio: Professor Joan Williams, one of the most prolific law professors in the country, has written nearly fifty articles and four books: *Unbending gender: Why family and work conflict and what to do about it* (Oxford, 2000), *Solving the part-time puzzle: The law firm's guide to balanced hours* (with Cynthia Calvert), *Rethinking commodification: Cases and reading in law and culture* (with Martha Ertman, forthcoming NYU Press 2005), *Property: Landownership and use* (with Curtis Berger). She has contributed essays to a number of collections, including *Debating democracy's discontent* (Anita Allen & Milton Regan eds. 1998); *In The face of the facts: Moral inquiry in American scholarship* (Richard Fox & Robert Westbrook eds. 1998); *Property: The fourth way* (Gregory Alexander & Grazyna Skapska eds. 1993); *Pragmatism in law & society* (Michael Brint and Bill Weaver eds. 1992); *Virtue: NOMOS XXXIV* (John Chapman & William Galston eds. 1992); *A companion to American thought* (Richard Fox & James Kloppenberg eds. 1995).

Professor Williams' work in Latin America includes lectures and workshops in Spanish Ecuador, Guatemala, Peru, and Chile, as well as articles published in Spanish, which include *Igualdad sin discriminación in Genero y derecho* (the first textbook on gender and the law to be published in Latin America), *Trabajo en la familia y en el mercado de trabajo*, in IV curso: *Mujer y derechos humanos*, and *Derechos iguales a la propiedad: Si mujeres no fueran pobres*.

She is a member of the Scholars' Advisory Board of the Harvard Divinity School's Women's Studies in Religion Program, and is past president of the Association of American Law Schools sections on Property and on Law & the Humanities.

Editors Note: Joan Williams is the author or co-author of four books and of many publications about caregiver discrimination at the workplace. In this interview, she discusses the issues of caregiver bias, gender stereotyping, stigma, and the maternal wall. In addition, she shares her perspectives about organizational policies and practices that might alleviate these problems.

An Interview with Joan Williams, American University Washington College of Law

Pitt-Catsoupes: How do you define "caregiver bias"? Is it experienced by both women and men?

Williams: Caregiver bias consists of stereotyping and bias that may be experienced by employees, men as well as women, when the fact that they have family caregiving responsibilities becomes known at work.

Motherhood is a key trigger for stereotyping against women. One study showed that business women are rated as highly competent, alongside business men. In contrast, housewives are rated as having levels of competence similar to (to use the stigmatized terms tested by the researchers) the elderly, blind, "retarded," and disabled. This helps explain the experience of a Boston lawyer returning from maternity leave who found she was being given the work of a paralegal, and protested "I had a baby, not a lobotomy." What happened? She fell from businesswoman to housewife.

Gender stereotypes affect men when they seek an active role in family caregiving, because caregiving is perceived to be typical for women but inappropriate for men. Caregiver bias applies to men when they are denied benefits that are routinely granted to female employees. An example is the case of a Maryland state trooper who was denied parental leave on the grounds that he was not eligible unless his wife was "in a coma or dead". There could not be a clearer statement that caregiving is the "women's work," and is inappropriate for men.

Pitt-Catsoupes: Could you discuss your concept of maternal wall bias?

Williams: Maternal wall bias reflects patterns of gender bias and stereotypes that women may encounter (1) during pregnancy, (2) before, during, or after a maternity leave, or (3) when they want to use a family-friendly policy such as requesting to work part-time or a flexible schedule.

Pitt-Catsoupes: What is the relationship between caregiver bias and the stigma that has been widely documented in relation to flexible work arrangements?

Williams: For nearly a decade, sociologists have documented that the use of family-friendly policies often triggers severe stigma. Recent developments in social psychology suggest that the stigma documented by sociologists track documented patterns of gender stereotyping. This is important because the stigma associated with family friendly policies is a key reason for the low usage rates of those policies.

Given the convergence of the findings in sociology and social psychology, employers need to see their work/life initiatives not simply an optional benefits program to be rolled out when times are flush and cut back when flush times end; effective management of work/life issues is increasingly becoming a risk management issue. It also is a crucial part of any diversity initiative, given that more than 80% of women become mothers, and that many mothers experience caregiver bias.

Pitt-Catsoupes: How is caregiver bias evident in case law?

Williams: We track cases involving caregiver bias. We have found nearly 200 cases in which plaintiffs have gained legal relief for caregiver bias. Plaintiffs are succeeding at an increasing rate, with the number of favorable court decisions since 2000 already exceeding the number in all of the 1990s. It is important to note that our research is ongoing, and these results are preliminary.

These favorable decisions include verdicts and settlements high enough to give employers pause. One verdict was over \$11 million and many others are for hundreds of thousands of dollars.

Most jurisdictions have not enacted specific laws against caregiver bias. The District of Columbia is a notable exception: It has a law that prohibits discrimination against adults with caregiver responsibilities. In other jurisdictions, plaintiffs have successfully used more than a dozen legal theories, such as disparate treatment, disparate impact, hostile work environment, The Americans With Disabilities Act, and FMLA.

Here are some examples of legal cases involving caregiver bias.

- In Walsh vs. National Computer Systems Inc., a top computer salesperson with outstanding performance reviews encountered marked hostility from her supervisor when she returned from maternity leave. Her supervisor scrutinized her work hours (but not other employees' work hours); she refused to allow the employee to leave work to pick up her sick child at daycare; and, when the employee's child was sick, her supervisor allegedly threw a phone book at her and demanded that she find a pediatrician who had appointments after business hours.
- In Bailey vs. Scott-Gallagher Inc., an employee called her employer to determine when she should return to work following her maternity leave. She was told that she was fired because she was no longer "dependable," and that her "place was at home with her baby."
- In Lovell vs. Bent Solutions LLC, a federal court ruled that the Equal Pay Act may be violated when a female part-time worker is paid less per hour than (predominantly male) full-time employees. This is a standard practice in some workplaces.

Pitt-Catsoupes: What is the relationship between caregiver bias and restructuring work?

Williams: As long as caregivers who continue to go against conventional "ideal-worker" patterns experience bias, restructuring work will remain an elusive goal. In addition, caregiver bias fuels the stigma associated with flexible work arrangements-and restructuring work will never catch on unless and until the stigma problem is addressed.

Pitt-Catsoupes: What would you suggest that employers do to address discriminatory decisions, policies, and practices?

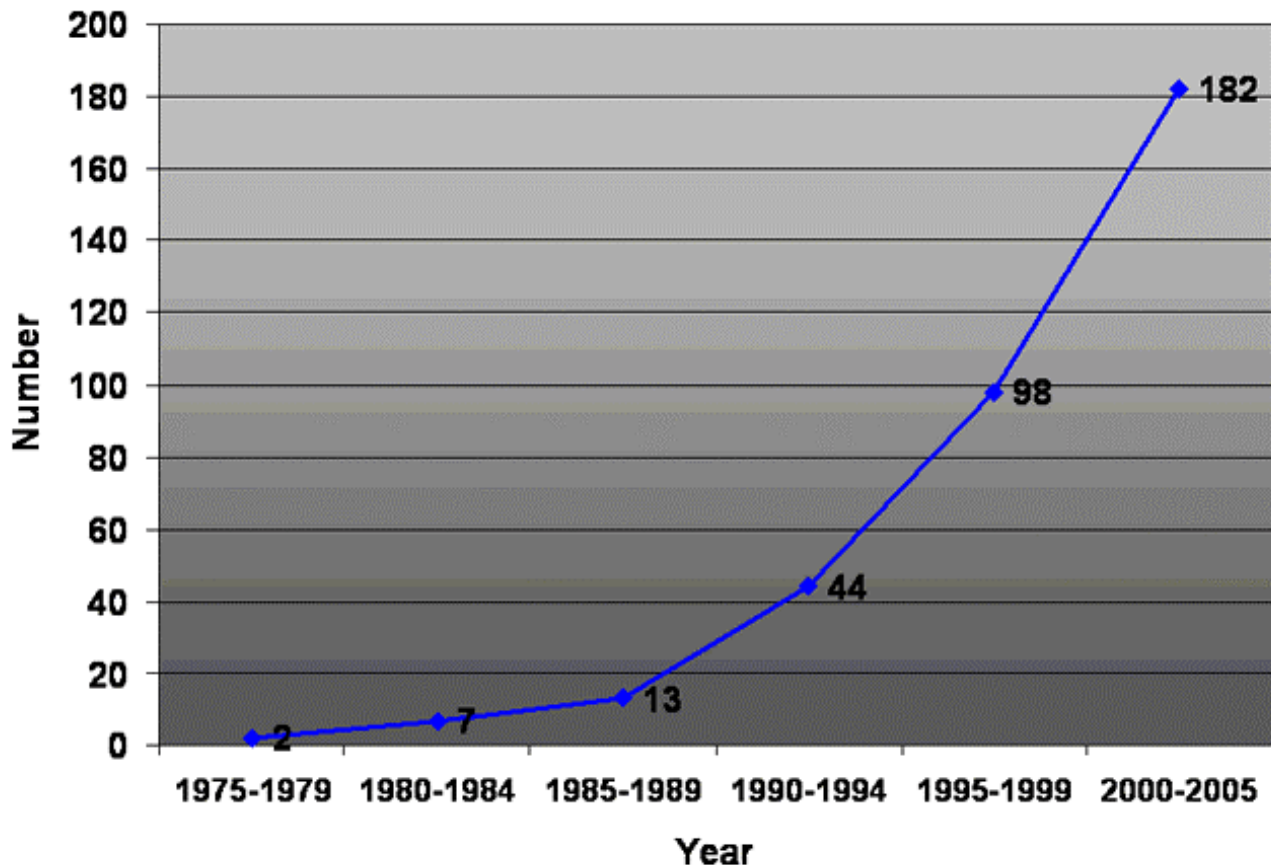
Williams: In response to the emerging case law on caregiver bias, some management-side employment

lawyers are now advising employers not only to avoid stereotyping, but also to offer flextime and telecommuting if economically feasible, and to pay part-timers the same wage rate as full-timers if their part-time (but not their full-time) jobs are filled largely or solely by women. The best defense against caregiver bias lawsuits is a family-responsive workplace.

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Number of Caregiver Discrimination Cases, 1970-2005

The information presented in this graphic is from preliminary historical research of legal cases obtained at the Program on *WorkLife Law*. The Sloan Network would like to thank Mary Still at the Program on *WorkLife Law* for providing this graphic.




Additional Resources: Related to Caregiver Discrimination

Institute for Women's Policy Research (IWPR): "The Institute for Women's Policy Research (IWPR) is a public policy research organization dedicated to informing and stimulating the debate on public policy issues of critical importance to women and their families. IWPR focuses on issues of poverty and welfare, employment and earnings, work and family issues, health and safety, and women's civic and political participation."

- Visit the homepage at <http://www.iwpr.org/>

National Partnership for Women & Families: "The National Partnership for Women & Families is a nonprofit, nonpartisan organization that uses public education and advocacy to promote fairness in the workplace, quality health care, and policies that help women and men meet the dual demands of work and family... Working with business, government, unions, nonprofit organizations, and the media, the National Partnership is a voice for fairness, a source for solutions, and a force for change."

- Visit the homepage at <http://www.nationalpartnership.org/>
- [Click here](#) to download a fact sheet about pregnancy discrimination.

 **Global Perspectives -Ontario Human Rights Commission:** "Ontario's Human Rights Code, the first in Canada, was enacted in 1962. The Code protects people in Ontario against discrimination in employment, accommodation, goods, services and facilities, and membership in vocational associations and trade unions."

- Click here to view the homepage <http://www.ohrc.on.ca/english/code/index.shtml>

- To view information about avoiding pregnancy discrimination in the workplace, [click here](#).

Program on WorkLife Law: “The Program on WorkLife Law is a research and advocacy center that seeks to eliminate employment discrimination against caregivers such as parents and adult children of aging parents. WorkLife Law is based at American University, Washington College of Law and is directed by professor and author Joan C. Williams.”

- Click here to view the homepage <http://www.wcl.american.edu/gender/worklifelaw/index.cfm>

United States Equal Employment Opportunity Commission: “EEOC has five commissioners and a General Counsel appointed by the President and confirmed by the Senate. Commissioners are appointed for five-year, staggered terms. The term of the General Counsel is four years. The President designates a Chair and a Vice Chair. The Chair is the chief executive officer of the Commission. The five-member Commission makes equal employment opportunity policy and approves most litigation. The General Counsel is responsible for conducting EEOC enforcement litigation under Title VII of the Civil Rights Act of 1964 (Title VII), the Equal Pay Act (EPA), the Age Discrimination in Employment Act (ADEA), and the Americans with Disabilities Act (ADA).”

- Visit the homepage at <http://www.eeoc.gov/>
- View pregnancy discrimination information at <http://www.eeoc.gov/types/pregnancy.html>

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