

## Is Family Responsibilities Discrimination the New Sex Discrimination? Lessons from School Teachers' Perceptions

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### Abstract

This exploratory mixed-methods study uses grounded theory to examine the organizational and individual dimensions of Family Responsibilities Discrimination (FRD) and perceptions of FRD as a phenomenon and emerging law. By employing a primarily qualitative embedded research design, semi-structured interviews and exit surveys were conducted in three New Jersey public schools to study a sample of teachers and similarly situated professional staff to investigate these topics. This study is the first of its kind to examine FRD, as opposed to gender discrimination, in relation to public sector employees, specifically public school professionals. The results of the analysis of the data, consisting of qualitative themes extracted from the interviews and descriptive statistics from the exit surveys, show that current organizational factors not only fail to mitigate effects of FRD on the work/family balancing act but sometimes contribute to them, and that there is a lack of awareness of the legal concept of FRD, despite knowledge of the existence of discrimination against people with family responsibilities. Based on these preliminary results, recommendations for future research and action in the field are suggested.

**Keywords:** Family responsibilities; Discrimination; Case study; work-family Balance

### Introduction

Family Responsibilities Discrimination (FRD) is an important legal concept that describes discrimination against an employee on the basis of her or his responsibilities as a caregiver [1]. This concept has been purported to be the latest form of sex discrimination, because it disproportionately affects women and lower income workers. Most legal claims are brought by women who happen to be mothers; however FRD is not exclusively a woman's issue. Litigation of family responsibilities discrimination is on the rise in public and private sectors in the U.S. and claims purporting discrimination on the basis of caregiver status are brought by men and women. From Years 1999-2008, FRD claims increased by over 400 percent in comparison to the previous decade, with verdicts and settlements averaging over \$500,000 [2]. Given the growth of this phenomenon as a legal issue, the relationship between FRD and career advancement is one that is becoming quite pertinent to a workforce that is more diverse than ever.

This study explores the organizational and individual dimensions of Family Responsibilities Discrimination (FRD) and perceptions of FRD as a phenomenon and emerging law. It begins to fill gaps in previous literature and form a basis for future research in the field of public administration. In order to inform management theory and training practices of the public sector as well as policy decisions, this study suggests ideas and recommendations for better accommodations of the needs of public sector workers with family responsibilities.

### Background

The issue of balancing work and family responsibilities was historically a woman's issue, beginning with the Pregnancy Discrimination Act of 1978, which amended the Civil Rights Act of 1964. Section 701 of the Civil Rights Act prohibits discrimination 'on the basis of sex' or 'because of sex', including reasons such as childbirth, pregnancy, and related medical conditions. Eventually the need for job protection during leave from work for family responsibilities grew out of the pregnancy discourse [3].

In order to assist with the need to balance work and family, the Federal Family and Medical Leave Act (FMLA) of 1993 was passed to give American workers the option to take unpaid time off from work with job protection to care for a new baby, an ill family member, or their own illness [4]. However, a U.S Department of Labor survey showed that out of workers who were entitled to FMLA benefits 78 percent of those who did not take advantage of such benefits were unable to because they could not afford unpaid leave and that does not include workers who did not qualify for the benefit [5]. Family-friendly policies have been proven to benefit employees and employers. According to the New York State Paid Family Leave Coalition, workers with paid leave show increased job satisfaction, commitment, and morale [6]. However, California, New Jersey and Washington are the only states currently offering paid leave.

The EEOC released guidelines in 2009, "Employer Best Practices for Workers with Caregiving responsibilities, these guidelines are helpful to both employers and employees to better understand the hodgepodge legal terrain of this complicated issue [7].

Much interdisciplinary literature paints a picture of women and people with family responsibilities having an inherent disadvantage in the workplace. For example, women have more family responsibility conflicts with work and women must work harder than men [8,9]. It is

probably not a surprise that family to work conflict is linked to absenteeism and stress or that leaves of absence are associated with lower salary and fewer promotions regardless of reason for leave which disproportionately affects women, who are typically the primary family caregivers [10]. Even after Family and Medical Leave Act provisions, family has been seen as an impediment to career advancement [11]. Furthermore, other research shows more work-life balance equals more career advancement potential which is a particular quandary since work-life balance is a traditionally elusive goal [12].

Literature across disciplines addressing family responsibilities and career advancement takes up the issue of "bias avoidance", or avoiding discussing family issues or representing themselves in certain ways that might cause people to be biased against them [13]. For example, a person might avoid discussing her child rearing responsibilities with her colleagues or boss for fear that they will treat her in a biased way due to her family responsibilities.

While there is literature that addresses work-family conflict and gender discrimination, these studies do not specifically look at FRD or its relationship to career advancement, and none have studied FRD with a sample of school teachers. Overall the literature on FRD is deficient in the following ways: no research on awareness of FRD, lack of qualitative data on FRD and the relationship between FRD and career advancement, and lack of research pertaining to how FRD affects different types of bureaucrats, such as public school teachers. Additionally, there is a lack of research on bureaucratic discretion in relation to FRD and effects of discretion on both work and home outcomes. Typically, bureaucratic discretion has been viewed as beneficial, problematic and inevitable throughout the literature. "Calls teachers street-level bureaucrats who must often rely on discretion" [14]. Most studies on discretion focus on effects of discretion related to work roles and outcomes.

Merit System Protections Board survey findings in the September 2010 Issues of Merit article show that family responsibilities do not negatively impact career advancement, however women were somewhat more likely than men to believe family responsibilities had negatively impacted their career advancement. While this may indicate variation in types of responsibilities, or even differences in how agencies/managers treat women and men with family responsibilities, the fact that female employees perceived negative career advancement due to family responsibilities more often than male employees might be more than a coincidence. The current study explores the possible linkage between FRD and career advancement.

## Data Methods

To explore whether FRD affects career advancement, the following research questions are examined:

RQ1: What are the organizational and individual dimensions of FRD?

RQ2: What are the perceptions of FRD as a phenomenon and emerging law?

The following propositions are based on RQ1 and RQ2:

Proposition 1: Current organizational factors fail to mitigate the effects of individual family responsibilities on the work/family-balancing act.

Proposition 2: Despite the prevalence of FRD, there is a lack of awareness of FRD as emerging law, which has the potential to perpetuate FRD.

In order to examine the research questions, three public schools ranging from Kindergarten through grades 5 or 8 were chosen purposefully based on accessibility (2 were in a large urban district in northern NJ, one was in a small central NJ suburb). Thirty individuals were targeted for semi-structured interviews from these schools. All participants were women (no men volunteered to participate), and one woman declined filling out the survey after her interview. Family responsibilities included childcare, elder care, grandchildren, spousal care, and combinations. Participants were to be selected based on their having or not having family responsibilities so that the sample would have at least some representation of people without family responsibilities. However due to scheduling and time restrictions, volunteers who were available on the days I was able to visit their school, regardless of family responsibilities status, were chosen. Various volunteers handed in a printout of the email advertisement in which they had checked either family responsibilities or none, but at that point they had already volunteered to participate. I was unable to exclude anyone from the study based on family responsibilities status in order to ensure having the anticipated number of participants (10 per school). Thus, of the 30 participants, 26 had family responsibilities and 4 had none. Most participants were scheduled for the interviews in advance of my visits, although a few volunteered the day of the visit. In four instances, participants were interviewed and surveyed over the telephone, due to either being absent (one teacher was out of work that day because her child was home sick from school), or something came up during the course of their day that prohibited meeting in person. In a few of the interviews, it should be noted that teachers opted to conduct the interview in a less than private setting such as a noisy teacher's room or specifically asked to be interviewed with their grade partner or friend at the same time. In the couple of instances where interviews took place with less privacy, participants seemed completely comfortable with the situation. I conducted three joint interviews upon participants' request where two participants at a time requested to meet with me together since they were friends with one another. They affirmed comfort expressing their own opinions with the other participant present, and that time slot best accommodated their work schedules. While it was a consideration that this could in some way affect results, each pair was closely acquainted and did not seem to necessarily agree with one another in their answers, showing no evidence of interference with consistent results. Despite having to slightly alter my initial plan to purposefully select the ratio of participants with and without family responsibilities, my somewhat more random sample worked out well, ending up with a sample consisting mostly of people with family responsibilities with a few exceptions.

New Jersey was chosen as the state for this study based on convenience, but it was also a fruitful time to study teachers in New Jersey amidst political tensions running high in regard to teacher welfare. This was due to Governor Christie's education funding targets and plans to lessen teacher benefits, which caused great consternation with the teacher's union. Gender composition of teachers in NJ as of 2009-2010 is 76 percent female, according to State Department of Education statistics.

While three public schools were chosen as cases, it is important to note that according to the World Bank report published in 2010, as of 2009, 86.71 percent of U.S. primary school teachers were women. This

matters in regards to this study since women are typically the primary caretakers of any family, and so it made sense to purposefully sample a demographic that was likely to yield mostly female participants. It has been reported by the Center for Work Life Law that women are the most common complainants of FRD cases (88 percent), and although FRD claims occur in every industry, cases in the health and education industries surpassed the percentage of national employment in that industry [2].

Using a mixed-methods approach to compare three different public grammar schools in New Jersey, both qualitative and quantitative data were combined and integrated for a holistic approach [15]. The nature of this study was exploratory, with a goal toward building initial theory, and it was constructed as an embedded design. That is to say, quantitative data was embedded within a major case study design. The qualitative data explored RQ1 and was collected via interviews guided by an interview protocol (please see Appendix 1: Interview Protocol). Quantitative data explored RQ2 and was collected from an exit survey (please see Appendix 2: Exit Survey). The Exit Survey instrument included four questions dealing with RQ2 (perceptions of FRD as a phenomenon and emerging law) as well as questions that were borrowed from previous surveys to gather demographic information.

Semi-structured interviews at each school were conducted. A storytelling element, or a variation of the Maynard-Mooney and Musheno method, was incorporated into the interview in which participants were prompted in advance to think of a story that will be told during the semi-structured interview [16]. Below is the story prompt that was provided to participants:

In preparation for your interview next week, please write down a small outline of 2 or 3 stories about when you or someone you work with has used discretion at work based on family responsibilities (which can include responsibilities caring for a child or family member) in your agency. The outline will help you to remember details when telling the story during our meeting.

I would like to hear about any stories that involve how you or someone you know at your agency has used discretion in making a decision or did something differently based on their having family responsibilities.

Please try to include as much detail as possible in the stories, including information about the characters in the story, and any relevant setting or circumstantial details that may be of interest.

Participants who volunteered to participate the day of data collection had not pre-considered the story prompt. Various others, who had had the prompt days in advance of their interview, may or may not have prepared stories in great depth. It was not always clear if the stories provided had been prepared in advance or if they had come to mind during the interview. Only one participant actually brought notes with them.

Interview recordings were personally transcribed by the sole researcher to re-experience the data; data was double-coded by hand, and separated into major themes. A grounded theory approach, a method of theory formation where theory is built from the bottom-up, was applied which entailed data collection, creating codes, identifying concepts, sorting into categories, and finally theory formation [17].

Finally, exit surveys were administered at the end of each interview to explore one research question regarding the awareness of FRD as a legal concept (RQ2). Descriptive statistics were run, including mean, standard deviation and maximum/minimum values to summarize the

characteristics of the data sample (Table 1). Due to the small sample size, advanced inferential statistical analysis was not performed.

Variable	Observations	Mean	Std. Dev.	Min	Max
Female	29	1	0	1	1
Age	27	39.9	11.3	22	57
Years in position	28	9.8	7.1	0	22
Education	29	4.9	0.9	4	6
Family Resp.	27	0.9	0.4	0	1
Awareness	29	0.7	0.5	N/A	
FRD Litigation	29	0.3	0.5	N/A	
FRD Frequency	29	0.6	0.5	N/A	
Ability to sue	29	0.6	0.5	N/A	

Table 1: Descriptive Statistics.

## Results

Several interesting findings emerged from the analysis. The data collected provide some insight into the nature of organizational and individual dimensions of FRD, which includes features such as discretion of administrators, complications such as age and number of children and external support, as well as an awareness of public and private sector differences. Despite acknowledgement of some progress evidenced in the data, the desire for more accommodations like childcare and more flexibility in terms of taking days off to tend to family responsibilities is very much present. In light of these observations, there is preliminary evidence to support Proposition 1 that current organizational factors fail to mitigate the effects of individual family responsibilities on the work/family-balancing act, based on the qualitative analysis.

According to written survey results, there is preliminary evidence to support Proposition 2, that there is a lack of awareness of FRD as emerging law, despite the prevalence of such discrimination. Thirty-four percent had never heard the term "Family Responsibilities Discrimination." Thirty-eight percent of the sample did not know about the ability to sue your supervisor or employer on the basis of FRD, 69 percent did not think FRD litigation is on the rise, however 59 percent thought FRD occurs often in any workplace. These findings support recognition of this type of discrimination taking place, but a lack of awareness of the requisite legal channels to challenge such discrimination.

After careful qualitative analysis of the data (using Strauss and Corbin's grounded theory approach including data collection, creating codes, identifying concepts, sorting into categories, and theory formation as explained previously in the methods section), the following themes were identified [17,18]:

### Administrator discretion

This data shows that discretion of a principal (defined here as principals having the freedom to make subjective judgments to allow or not allow non-contractual privileges, such as giving a teacher the ability to leave school during a prep) can positively or negatively affect an employee's work/family balance. An emergent theme from this

sample showed that certain administrators are more family friendly than others, meaning that they may or may not have been sympathetic to teachers needing to take time from work or tend to family responsibilities. Stories of principals: who seemed to be intolerant or dismissive of the need to tend to family responsibilities provided evidence of what it means to not be family friendly. This discretion inevitably led to issues of fairness in doling out privileges that often resulted in nepotism. "I don't know if they can come out and reprimand you, but they have ways of making you feel uncomfortable," for example if a teacher needed to take vacation time to take care of family responsibilities such as chemo treatment for a spouse, to deal with an parent in hospice, or a child who had a long-term illness. Depending on who you are and how well liked or politically connected a school teacher might be, along with how family friendly a principal is, could affect whether or not one could leave early for their ill spouse's doctor's appointment, for example.

### **Progress and promise**

A positive theme that emerged was that school teachers in some ways felt that family accommodations are improving in small ways with the implementation of the Family and Medical Leave Act, and other more local programs such as sick day banks, or in one case, the provision of a breast-pump room for nursing mothers.

### **Rigidity of vacation/sick time**

Vacation days are during the summer months or designated holidays for schoolteachers. Additionally, sick time is limited to your own illness and days may not be taken to care for sick family members. There are a limited number of personal days (ranging from 2-4) for the entire year, which made it difficult for teachers to take off for their own children's school functions, and any time they had a family-related illness that required taking days off from work. Furthermore, intimidation tactics such as the "letter" seemed to be common. Depending on how many days one takes of their sick time or personal time that they are contractually allotted, some teachers have received letters that remind them of how important it is to be present in the classroom to meet learning goals, despite these days being allotted as days for them to take off from work. As a result many teachers felt guilty to take days they are contractually entitled to: "When you're a teacher, it's hard to compare it to other jobs, because you really don't want to take sick days because you're responsible and these kids become your kids and you don't want to leave them with someone else." Teachers also felt pressure to plan their lives, family activities, and health procedures around summer break: "It's like have a child in the summer and if you don't, oh well." The rigidity of vacation and sick time was particularly more of a problem for people with family responsibilities.

### **Women carry FR burden**

Consistent with previous research and only according to a sample that was 100 percent women; in this sample women viewed themselves as carrying the most family responsibilities. While this evidence cannot be used to conclude that women do carry the burden of family responsibilities since the sample does not have any men, it is important to note that the women in this sample view themselves as carrying this burden which is significant [19]. "But it was still all on my shoulders no matter what and that was the beginning of the end because once the family life fell apart it was over. Because I can bring

home the bacon but I'm not frying it up in the pan. I'm not that good.... I wish I was, but I'm not."

### **Employee discretion**

Participants recalled keeping family information from coworkers and supervisors regarding pregnancy, a child's illness, an elder's illness and family conflict. Some alluded to needing to "break the rules" to take care of their families such as lying about reasons for taking days off. One person explained, "Last year my child was hospitalized twice, so my husband and I were taking stretches of days. So I went in and asked the office and they said they don't advise it (telling why I was taking sick days), that they were going to dock all these days. But I probably took less than 30 days. You don't leave a baby in the hospital alone." This takes bias avoidance to a new level, and raises the issue of whether lack of family responsibility provisions encourages unethical behavior or rule breaking at work.

### **Discrimination**

While most participants did not recall instances of outright discrimination, many felt certain rules and system structures could result in discrimination, even if they were not discriminatory upon face value. Others claimed to have witnessed or personally experienced discrimination based on having family responsibilities. While this finding is based purely on participant perceptions, this is not to insist that discrimination in fact took place, but that it was perceived to have taken place, which can be just as damaging to employee wellness and morale, and could result in legal ramifications for the employer.

### **Discussion**

The findings of this study show preliminary evidence that current organizational factors fail to mitigate the effects of individual family responsibilities on the work/family-balancing act. Organizational factors such as discretion of administrators and rigidity of sick time contribute to negative effects of the balancing act. Extended leaves of absence for one's own illness vs. care for family member poses a particular problem for the school teachers sampled in this study, fear of punishment reinforced by formal notices of absence and experiences of colleagues contributes to stress regarding rigidity of leave time.

The exit survey showed evidence of a lack of awareness of FRD as a legal concept, despite awareness of the tensions commonly associated with balancing work with family responsibilities. Ironically, the women sampled perceived themselves as carrying the burden of family responsibilities more so than their male counterparts. There is also preliminary evidence that FRD negatively effects career advancement. These negative effects are facilitated by the presence of the higher education roadblock, pressure to volunteer for non-contractual obligations that may conflict with family responsibilities and anecdotal instances of perceived discrimination.

The results of this study are only generalizable to theory, not larger populations due to the small sample size and case study design. This primarily qualitative study was not designed to be a traditional case study to describe the entire site or organization in depth. Limitations of relying on self-perceptions in both interviews and surveys are also inherent to this study, and the sample was 100 percent female and included only one non-white participants. The potential for selection bias of site selection due to accessibility considerations was present and the findings are specific to public school teachers and similarly

situated professional staff. Further, the study does not address reverse discrimination or bias against people without family responsibilities, which is a completely separate, but somewhat related issue.

Recommendations for organizations based on these findings include increasing flexibility in sick/personal leave, training administrators to better manage their discretion and on family responsibilities discrimination/the importance of being family friendly, offering on-site graduate education programs, raising awareness about FRD, and creating volunteer teams so extra service can be shared and more flexible.

Future research would be helpful to examine a larger sample of other schools, other states, and a more diverse demographic of more minority group members and men. It would also be fruitful to study other types of public employees, like police officers (who in contrast to teachers, operate in predominantly male profession), as well as agency and municipal employees. It might also be useful to study perceptions of public managers and supervisors, to get a better sense of how they decipher and manage their own discretion in relation to family responsibilities of their employees. Experimenting with more ways of measuring perceptions of FRD and how this relates to career advancement would be useful, along with creating and testing new survey and interview questions and other data collection methods such as focus groups and experiments in relation to this topic of inquiry.

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