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THE NEW SEX DISCRIMINATION: FAMILY RESPONSIBILITIES

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I. INTRODUCTION

The days of sex-segregated help wanted ads and blatantly sexist remarks may be fading, but women still do not reach the highest ranks of management in representative numbers. A key reason is revealed by emerging research about discrimination based on women's caregiving roles. Consider these cases:

Plaintiff's supervisor admitted that although Plaintiff was qualified, he did not consider her for a promotion because she had children.¹ He assumed she would not want to relocate her family.² When Plaintiff asked why she was not promoted, the supervisor allegedly stated, "[Y]ou have kids."³ Plaintiff was awarded over \$1 million in damages, which was later reduced.⁴

A car salesperson with four children alleged that her supervisor was antagonistic toward her, would not give her a set schedule, and made comments about how his own wife did not have childcare problems.⁵ The supervisor also kept notes on her "offenses," which he did not do with other employees.⁶ Furthermore, he told her she should "do the right thing" and stay home with her children.⁷ He added that, as a woman with a family, she would always be at a disadvantage at the

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1. *Lust v. Sealy, Inc.*, 277 F. Supp. 2d 973, 981–82 (W.D. Wis. 2003), *aff'd*, 383 F.3d 580 (7th Cir. 2004).

2. *Id.*

3. *Id.* at 981.

4. *Id.* at 977.

5. *Plaetzer v. Borton Auto., Inc.*, No. Civ. 02-3089, 2004 WL 20667700, at *1 (D. Minn. 2004).

6. *Id.*

7. *Id.*

dealership.⁸ The case survived summary judgment and settled immediately thereafter.⁹

Before her wedding, an employee in an insurance claims department was told by her supervisor that if she returned from her honeymoon pregnant, she would be fired because there was no room for pregnancy leave in budget.¹⁰ When the supervisor learned of her pregnancy, he gave her a poor performance review and fired her sixty days later.¹¹ A jury awarded her \$2,710,000, which was later reduced to \$1,860,000 by remittitur.¹²

These are just a few examples of employment discrimination against caregivers, known as family responsibilities discrimination (hereinafter “FRD”). Between 1996 and 2005, the number of FRD cases increased by almost four-hundred percent.¹³ Plaintiffs prevailed in more than 679 such cases, and at least eighty-five of those involved verdicts or settlements in excess of \$100,000.¹⁴ Twenty of the verdicts or settlements were \$1 million or more, with the largest single verdict totaling \$11.65 million.¹⁵

FRD occurs when an employee suffers an adverse action that affects the terms and conditions of her employment based on unexamined biases about how women with family caregiving

8. *Id.*

9. *Id.* at *11.

10. *Ambruster v. Cal. Casualty Mgmt. Co.*, No. 724952 (Santa Clara Sup. Ct. 1993).

11. *Id.*

12. *Id.*

13. MARY C. STILL, CENTER FOR WORKLIFE LAW, LITIGATING THE MATERNAL WALL: U.S. LAWSUITS CHARGING DISCRIMINATION AGAINST WORKERS WITH FAMILY RESPONSIBILITIES 7 (2006), available at http://www.uchastings.edu/site_files/WLL/FRDreport.pdf.

14. Research by author as of February 4, 2008, maintained by the Center for WorkLife Law (on file with author).

15. See, e.g., *Dee McAree, Family Leave Suit Draws \$11.65 Million Award Chicago Verdict May Be Sign of Emerging Trend*, NAT’L L.J., Nov. 11, 2002, at A4; *Wrynski v. Agilent Tech., Inc.*, 2006 WL 2742475, at *1 (Cal. Ct. App. 2006) (\$5,224,272.82); *Boswell v. FedEx Corp.*, JVR No. 808123, 2007 WL 2076813 (N.D. Cal. 2007) (\$3,000,000); *Lehman v. Kohl’s Dep’t Store*, JVR No. 808174, 2007 WL 2350545 (Cuyahoga Cty. Common Pleas Ct., Ohio 2007) (\$2,100,000); *Glenn-Davis v. City of Oakland*, JVR No. 807067, 2006 WL 1431338 (N.D. Cal. 2006) (\$2,000,000); *Rau v. Apple Rio Mgmt. Co.*, 85 F. Supp. 2d 1344, 1345–46 (N.D. Ga. 1999) (\$1,826,000, later reduced to \$334,000); *Xanders v. Cent. Ill. Broad. Co.*, JVR No. 801409, 1999 WL 33219258 (Peoria County, Ill. 1999) (\$1,600,000).

responsibilities will or should act.¹⁶ FRD can be very subtle. For example, mothers may be denied promotions because their supervisors believe that they are not as committed to their jobs or as reliable as they were before having children. As another example, employers may assume that mothers “should” be home with their children and may give them less challenging assignments that do not require long hours or travel, which often leads to the denial of promotions because the mothers are not “ready.”¹⁷

FRD may also be more obvious. Pregnant applicants may be turned down for jobs. Supervisors may harass employees who have taken family-related leave, sometimes in an effort to coerce them to quit because the supervisors believe that employees with family obligations are not desirable employees.¹⁸ Whether understated or obvious, the effects of FRD can have devastating consequences for a woman’s career.

Assumptions and stereotypes are key elements of most FRD cases. FRD typically stems from a supervisor’s belief about how a woman with caregiving responsibilities will or should act, without regard to the woman’s actual performance or preferences.¹⁹ Legal claims may arise when a supervisor takes adverse employment actions against a woman based on these assumptions.

II. LITIGATING FAMILY RESPONSIBILITIES DISCRIMINATION CLAIMS UNDER CURRENT LAW

At present, no federal law expressly prohibits FRD. Employees, including males, have successfully sued their employers for FRD using a combination of federal and state laws and various common law causes of action.²⁰

Title VII²¹ sex discrimination disparate treatment claims are by far the most common type of FRD action.²² A Title VII claim arises

16. Joan C. Williams & Consuela A. Pinto, *Family Responsibilities Discrimination: Don’t Get Caught Off Guard*, 293 LAB. LAW. 293, 293–94 (2007).

17. Many of the assertions made in this article are based on the personal professional experience of the author [hereinafter, Professional Experience].

18. *Id.*

19. Joan C. Williams & Nancy Segal, *Beyond the Maternal Wall: Relief for Family Caregivers Who Are Discriminated Against on the Job*, 26 HARV. WOMEN’S L.J. 77, 94–98 (2003).

20. See generally JOAN C. WILLIAMS & CYNTHIA THOMAS CALVERT, WORK LIFE LAW’S GUIDE TO FAMILY RESPONSIBILITIES DISCRIMINATION (WLL Press 2006).

21. 42 U.S.C. §§ 2000e–2000e-17 (2006).

22. WILLIAMS & CALVERT, *supra* note 20, at 1-1.

when a woman is treated differently because she is or might become pregnant, or because she is or might become a mother.²³ Employees have successfully invoked different types of Title VII causes of action, including disparate treatment, disparate impact, pregnancy, hostile work environment, sex plus, stereotyping, and retaliation.²⁴

*Trezza v. The Hartford, Inc.*²⁵ illustrates why FRD cases can be brought as sex discrimination cases. Trezza, an attorney and mother of two young children, claimed that her employer failed to consider her for promotions because she was a mother.²⁶ Despite her consistently excellent job evaluations, promotions were offered to less qualified men with children and to a woman without children.²⁷ The plaintiff was told that she was not considered for the promotion because the new position required extensive traveling, in which her employer presumed she would not be interested because of her family responsibilities.²⁸ In addition, the company's senior vice president complained to Trezza about the "incompetence and laziness of women who are also working mothers."²⁹ He also noted that "women are not good planners, especially women with kids."³⁰ Finally, the general counsel stated that "working mothers cannot be both good mothers and good workers,"³¹ remarking, "I don't see how you can do either job well."³² The court considered these comments and the fact that only seven of the forty-six managing attorneys were female, none of whom were mothers with school-age children, whereas many of the male managing attorneys were fathers.³³ The court denied Hartford's motion to dismiss, and the case settled for an undisclosed amount.³⁴

Many FRD cases are brought under the Pregnancy Discrimination Act. The Equal Employment Opportunity Commission (EEOC) reports that the number of pregnancy discrimination

23. EEOC, ENFORCEMENT GUIDANCE: UNLAWFUL DISPARATE TREATMENT OF WORKERS WITH CAREGIVING RESPONSIBILITIES (2007), available at <http://www.eeoc.gov/policy/docs/caregiving.html>.

24. *Id.*

25. *Trezza v. The Hartford, Inc.*, No. 98 Civ. 2205, 1998 WL 912101 (S.D.N.Y. Dec. 30, 1998).

26. *Id.* at *1–2.

27. *Id.* at *2.

28. *Id.* at *1.

29. *Id.* at *2.

30. *Id.*

31. *Id.* at *2.

32. *Id.*

33. *Id.* at *3.

34. *Id.* at *7–8.

complaints has risen rapidly in recent years.³⁵ The discrimination in these situations is often quite blatant, as illustrated in the case of *Gorski v. New Hampshire Department of Corrections*.³⁶ In *Gorski*, a prison guard informed her superiors that she was pregnant, only to be asked: “[W]hy did you have to do that? Why did you get pregnant, with everything going on, why do you want another child?”³⁷ The New Hampshire Department of Corrections denied the guard’s transfer request, saying maybe she would not return from leave and also that no one would want her because she was pregnant.³⁸

Similarly, in *Sheehan v. Donlen Corp.*,³⁹ a supervisor said, “Oh, my God, she’s pregnant again,” upon hearing that an employee was pregnant.⁴⁰ The employee was fired when she was five months pregnant, with her supervisor saying to her, “Hopefully this will give you some time to spend at home with your children.”⁴¹ The court stated that a “reasonable jury might conclude that a supervisor’s statement to a woman known to be pregnant that she was being fired so that she could ‘spend more time at home with her children’ reflected unlawful motivations because it invoked widely understood stereotypes the meaning of which is hard to mistake.”⁴²

Men may also file successful sex discrimination claims, as illustrated by *Knussman v. Maryland*.⁴³ In *Knussman*, a male state trooper, whose wife experienced a very difficult pregnancy and delivery, sought leave as a “primary caregiver” for his newborn.⁴⁴ A Maryland statute provided for paid sick leave for state employees to care for their newborns, but granted additional paid leave only to the “primary caregiver.”⁴⁵ In denying his request for primary caregiver leave, Knussman’s supervisor said, “God made women to have babies and, unless [he] could have a baby there is no way [he] could be primary care[giver].”⁴⁶ The supervisor also stated that his wife had to be “in a coma or dead” for Knussman to qualify as the primary

35. Press Release, EEOC, “Job Bias Charges Edged Up in 2006, EEOC Reports,” Feb. 1, 2007, available at <http://www.eeoc.gov/press/2-1-07.html>.

36. *Gorski v. N.H. Dep’t of Corr.*, 290 F.3d 466 (1st Cir. 2002).

37. *Id.* at 469 n.1.

38. *Id.*

39. *Sheehan v. Donlen Corp.*, 173 F.3d 1039 (7th Cir. 1999).

40. *Id.* at 1042.

41. *Id.* at 1043.

42. *Id.* at 1045.

43. *Knussman v. Maryland*, 272 F.3d 625 (4th Cir. 2001).

44. *Id.* at 628.

45. *Id.*

46. *Id.* at 629–30.

caregiver.⁴⁷ Knussman sued for sex discrimination under the Equal Protection Clause and also under the Family and Medical Leave Act (FMLA), eventually winning a verdict of \$665,000 that was later reduced.⁴⁸

An increasing number of Title VII claims are brought as stereotyping cases.⁴⁹ In these cases, employees allege that they were subject to adverse actions because of sex-based stereotypes of mothers. This line of cases was foreshadowed by Chief Justice Rehnquist's observations that "the fault line between work and family [is] precisely where sex-based overgeneralization has been and remains strongest."⁵⁰ Chief Justice Rehnquist also noted that "[s]tereotypes about women's domestic [responsibilities] are reinforced by parallel stereotypes presuming a lack of domestic responsibilities for men. . . . These mutually reinforcing stereotypes created a self-fulfilling cycle of discrimination. . . ."⁵¹

Relying on *Nevada Department of Human Resources v. Hibbs*⁵² and *Price Waterhouse v. Hopkins*,⁵³ which established the proposition that adverse actions based on sex stereotypes violate Title VII, the Second Circuit ruled in the landmark case *Back v. Hastings on Hudson Union Free School District*⁵⁴ that taking adverse actions against women based on stereotypes of motherhood is also actionable sex discrimination.⁵⁵ In *Back*, a school psychologist with outstanding performance reviews claimed she was denied tenure by supervisors who had commented to her that it was "not possible for [her] to be a good mother and have this job," and they "did not know how she could perform [her] job with little ones."⁵⁶ The Second Circuit, reversing summary judgment for the employer, rejected the employer's defense that Back could not succeed because she could not show that there

47. *Id.* at 630.

48. *Id.* at 627.

49. *E.g.*, *Back v. Hastings on Hudson Union Free Sch. Dist.*, 365 F.3d 107 (2d Cir. 2004); *later opinion*, 2005 U.S. App. LEXIS 28973 (2d Cir. Dec. 28, 2005); *Lust v. Sealy, Inc.*, 277 F. Supp. 2d 973 (W.D. Wis. 2003), *aff'd*, 383 F.3d 580 (7th Cir. 2004); *Troy v. Bay State Computer Group, Inc.*, 141 F.3d 378 (1st Cir. 1998); *Plaetzer v. Borton Automotive, Inc.*, 2004 WL 2066770 (D. Minn. 2004); *Stern v. Cintas Corp.*, 319 F. Supp. 2d 841 (N.D. Ill. 2004).

50. *Nev. Dep't of Human Res. v. Hibbs*, 538 U.S. 721, 738 (2003).

51. *Id.* at 736.

52. 538 U.S. 721 (2003).

53. 490 U.S. 228 (1989).

54. *Back*, 365 F.3d at 107.

55. *Id.* at 113.

56. *Id.* at 115.

were similarly situated male employees who were treated differently.⁵⁷ The court held that no comparators were necessary in the face of evidence of stereotypical assumptions about a mother's commitment to her job.⁵⁸

The Family and Medical Leave Act (hereinafter "FMLA")⁵⁹ is the second most commonly used statute in FRD cases.⁶⁰ The FMLA prohibits interference with leave, including leave to take care of sick family members⁶¹ and leave related to childbirth and adoption.⁶² It also prohibits discrimination and retaliation against employees who take leave.⁶³ Common fact patterns that give rise to FMLA FRD claims include: employees who return from leave to find they have been demoted or stripped of all their responsibilities; returning employees subject to harassment, criticism, and unfairly negative performance evaluations in an effort to make them quit or to build a case for termination; supervisors who give returning employees schedules they know the employees cannot work; and the denial of promotions on the ground that taking leave indicated that the employee was insufficiently committed to the job.⁶⁴

*Mueller v. J.P. Morgan Chase*⁶⁵ illustrates the types of negative actions that can give rise to FMLA interference and retaliation claims. Mueller was a relationship banker whose son had juvenile diabetes.⁶⁶ The branch manager complained to several people, and later to Mueller herself, about Mueller's family emergencies that required her to miss work.⁶⁷ Mueller attempted to apply for intermittent leave under the FMLA.⁶⁸ Mueller was told that only the branch manager could initiate the leave request.⁶⁹ The manager did not do so, and when Mueller needed time off while waiting for the manager to process her request, the manager told her that "it would not be good for [her] to

57. *Id.* at 121.

58. *Id.* at 121-22.

59. 29 U.S.C. §§ 2601-2654 (2006).

60. *See* Professional Experience, *supra* note 17.

61. Williams & Pinto, *supra* note 16, at 310.

62. *Id.*

63. *Id.* at 311.

64. *See* Professional Experience, *supra* note 17.

65. *Mueller v. J.P. Morgan Chase & Co.*, Case No. 1:05 CV 560, 2007 U.S. Dist. LEXIS 20828 (N.D. Ohio, Mar. 23 2007).

66. *Id.* at *1.

67. *Id.*

68. *Id.*

69. *Id.*

take the time off but to do what [she] had to do.”⁷⁰ Mueller’s leave request was finally granted several months later.⁷¹ The manager required a doctor’s note for every absence and kept a list of Mueller’s absences, which he did not do for any other employee.⁷² After the manager requested that Mueller notarize a document outside the presence of a signatory, an illegal act for which other employees had been terminated, Mueller reported the manager for the repeated unnecessary requests for medical certification.⁷³ Two months later, the manager gave Mueller a negative performance evaluation, despite the fact that he had not previously told her of any performance deficiencies.⁷⁴ Soon thereafter, Mueller needed to go on full-time FMLA leave to care for her husband.⁷⁵ When she returned, she was terminated for violating company policy with respect to a fee reversal, which had not been reported to company security until months later, when she was on leave.⁷⁶ The district court denied the employer’s motion for summary judgment on the interference claim (delayed processing of request) and retaliation (negative performance review), but granted summary judgment as to the portion of the retaliation claim based on the termination because others had been terminated for similar violations.⁷⁷

Employees have also used the association clause of the Americans with Disabilities Act⁷⁸ to sue employers for discrimination alleging the employer feared that a disabled family member would correlate to higher health insurance premiums or increased absenteeism for the employees.⁷⁹ Similarly, the Employee Retirement Income Security Act⁸⁰ has also been successfully cited in situations where applicants were not hired or employees were fired based on fears of higher medical insurance premiums due to pregnancy or

70. *Id.*

71. *Id.* at *2.

72. *Id.*

73. *Id.* at *2–3.

74. *Id.* at *3.

75. *Id.* at *6–7.

76. *Id.* at *7–8.

77. *Id.* at *13, 16, 20.

78. 42 U.S.C. §§ 12101–12300 (2000).

79. *E.g.*, *Strate v. Midwest Bankcentre, Inc.*, 398 F.3d 1011, 1019 (8th Cir. 2004); *Smith v. Alexander & Alexander, Inc.*, 25 F. Supp. 2d 404, 405–06 (S.D.N.Y. 1998).

80. 29 U.S.C. §§ 1001–1461 (2000).

family disability,⁸¹ and to prevent an employee from obtaining an employer-provided benefit such as paid maternity leave.⁸²

State counterparts to these federal statutes, some of which provide greater rights for employees,⁸³ and state common law causes of action also make up an important segment of FRD case law. Common law claims include wrongful discharge, intentional infliction of emotional distress, breach of contract, promissory estoppel, breach of implied covenant of good faith and fair dealing, and tortious interference with contractual relations.

III. FAMILY RESPONSIBILITIES DISCRIMINATION CLAIMS IN MARYLAND

Several notable FRD cases have been decided by Maryland courts. In a pregnancy discrimination case, *Glunt v. GES Exposition Services*,⁸⁴ a pregnant customer service representative was asked by her supervisor several times to raise her shirt and show her stomach.⁸⁵ She complied twice but refused to do so a third time.⁸⁶ Her supervisor then began to make disparaging comments regarding her and her pregnancy.⁸⁷ The employee's duties were reduced, her supervisors would not allow her to travel, and they became extremely critical of her work performance.⁸⁸ The employee was formally demoted one month before her maternity leave was to start, which she alleged was so that her employer would not have to pay her the higher maternity leave benefits to which she would have been entitled.⁸⁹ The

81. *E.g.*, *Fleming v. Ayers & Assoc.*, 948 F.2d 993, 996–98 (6th Cir. 1991); *LeCompte v. Freeport-McMoran*, No. 94-2169, 1995 U.S. Dist. LEXIS 3509 at *1, *6–7 (E.D. La. Mar. 20, 1995).

82. *E.g.*, *Skaggs v. Subway Real Estate Corp.*, No. Civ.3:03 CV 1412(EBB., 2006 WL 1042337 at *3 (D. Conn. Apr. 19, 2006); *Grew v. Kmart*, No. 05 C 2022, 2006 U.S. Dist. LEXIS 6994 at *22–26 (N.D. Ill. Feb. 26, 2006).

83. *WILLIAMS & CALVERT*, *supra* note 20, at 7-4 ("Anti-discrimination statutes in some states are more advantageous to plaintiffs than Title VII. California's Fair Employment and Housing Act, for example, provides for a longer statute of limitations for filing a complaint, and a longer period of time for filing a complaint in court after receipt of a right to sue letter.). *See also id.*, *supra* note 20 at 7-4 n.6 (citing Cal. Gov't Code section 12965); *id.*, *supra* note 20 at 7-4 n.7 (citing that the Pennsylvania Human Rights Act does not cap damages); *id.*, *supra* note 20 at 7-4 n.8 (citing other states and municipalities such as Missouri and the District of Columbia that waive the administrative exhaustion requirement).

84. *Glunt v. GES Exposition Serv.*, 123 F. Supp. 2d 847 (D. Md. 2000).

85. *Id.* at 853.

86. *Id.*

87. *Id.*

88. *Id.* at 853–54.

89. *Id.* at 854, 870.

employer's motion for summary judgment on the pregnancy discrimination claim was denied.⁹⁰

In another pregnancy discrimination case, *Canavan v. Rita Ann Distributors*,⁹¹ a cosmetics salesperson became pregnant.⁹² After she told her employer of her pregnancy, the salesperson's employment was subsequently terminated.⁹³ The company said it had to cut costs, but two other employees who were not pregnant were retained.⁹⁴ One of these employees was junior to the pregnant employee and was the more logical person to be replaced based on the location of her sales territory.⁹⁵ This employer's motion for summary judgment was also denied.⁹⁶ Employees have prevailed in other pregnancy discrimination cases as well.⁹⁷

Like most states, Maryland does not have a statute that expressly prohibits FRD.⁹⁸ To date, most employees who brought FRD claims based on sex or pregnancy discrimination have filed suit under Title VII because, until recently, Maryland's antidiscrimination laws did not provide employees with a private right of action for discrimination claims.⁹⁹ In 2007, the Maryland General Assembly amended its laws to allow for a private right of action for a discrimination claim, with a jury trial on damages claims.¹⁰⁰ Maryland plaintiffs may now shift away from the federal courts, which is

90. *Id.* at 875.

91. *Canavan v. Rita Ann Distributors*, No. CCB-03-3466, 2005 U.S. Dist. LEXIS 4582 (D. Md. Mar. 23, 2005).

92. *Id.* at *4, *6.

93. *Id.* at *10.

94. *Id.* at *8, *11.

95. *Id.* at *10.

96. *Id.* at *20.

97. *E.g.*, *Ferragamo v. Signet Bank*, No. WN-88-3333, 1992 U.S. Dist. LEXIS 21602 (D. Md. March 17, 1992); *EEOC v. Falling Spring Corp.*, No. 1:06-CV-02562, METRO VERDICTS MONTHLY (D. Md. Jan. 3, 2007) (\$45,000 settlement); *EEOC v. Chesapeake Bay Golf Club*, No. 1:06-CV-02542, 2007 Mealey's Jury Verdicts & Settlements 2054 (D. Md. Apr. 27, 2007) (\$23,000 settlement); *Chernova v. Elec. Sys. Serv., Inc.*, 247 F. Supp. 2d 720 (D. Md. 2003).

98. Only Alaska and the District of Columbia expressly prohibit FRD by statute. *See* ALASKA STAT. § 18.80.220 (2006) (stating it is an unlawful employment practice to discriminate against an individual because of their parenthood responsibilities); D.C. CODE § 2-1402.11 (2001) (stating that it is unlawful for an employer to consider family responsibilities when making an employment decision).

99. Maryland's antidiscrimination code was formerly known as "Article 49B" and was found at MD. ANN. CODE art. 49B, § 16 (2003). The Maryland General Assembly has repealed Article 49B and recodified the statute without substantive changes. *See* H.B. 51, 2009 Leg., 426th Sess. (Md. 2009). H.B. 51 will add a new title to the State Government Article of the Annotated Code of Maryland, to be designated and known as "Title 20. Human Relations."

100. H.B. 1034, 2006 Leg., 421st Sess. (Md. 2006).

significant because the Fourth Circuit Court of Appeals is commonly viewed as favoring employers.¹⁰¹ Maryland state courts are no longer obligated to follow federal discrimination law and may prove to be more hospitable to employees' claims.

Seemingly overlooked by many claimants, Maryland employees who work in Montgomery, Howard, and Prince George's counties have had the ability to bring claims expressly for FRD rather than shoehorning their claims into sex discrimination and leave statutes.¹⁰² Montgomery County prohibits "family responsibilities" discrimination in employment.¹⁰³ The Montgomery County Code defines "family responsibilities" as "the state of being financially or legally responsible for the support or care of a person or persons, regardless of the number of dependent persons or the age of any dependent person."¹⁰⁴ Howard County more narrowly proscribes discrimination in employment based on "family status,"¹⁰⁵ applying it to situations where a parent or legal guardian is living with a child under the age of eighteen, or where a woman is pregnant or in the process of securing legal custody.¹⁰⁶ Prince George's County also prohibits employment discrimination based on "family status," which is similarly defined.¹⁰⁷ Actions brought under these county codes have two major advantages over actions brought under the State Government article in the Maryland Code: first, there is no cap on damages;¹⁰⁸ and second, there is a two-year statute of limitations.¹⁰⁹

Looking to the future of Maryland employment law with the benefit of this background, one can predict that it may not be long before Maryland joins the handful of states that are currently considering FRD legislation.¹¹⁰ Discrimination based on "family status" in housing is already prohibited under Maryland state law,¹¹¹

101. Professional Experience, *supra* note 17.

102. MD. CODE ANN., STATE GOV'T, § 20-1202 (WEST 2009).

103. MONTGOMERY COUNTY, MD., CODE § 27-19 (2008).

104. MONTGOMERY COUNTY, MD., CODE § 27-6 (2008).

105. HOWARD COUNTY, MD., CODE § 12.208 (2008).

106. *Id.* § 12.201(VII).

107. PRINCE GEORGE'S COUNTY, MD., CODE, §§ 2-186 (a)(3), (a)(7.1) (2003). PRINCE GEORGE'S COUNTY, MD. CODE §2-222 (2003).

108. MONTGOMERY COUNTY, MD., CODE § 27-8 (2008); HOWARD COUNTY, MD., CODE § 12.212 (IV)(j)(1) (2008); PRINCE GEORGE'S COUNTY, MD., CODE §2-195.01 (2003).

109. MONTGOMERY COUNTY, MD., CODE § 27-7 (2008); HOWARD COUNTY, MD., CODE § 12.212 (I) (2008); PRINCE GEORGE'S COUNTY, MD., CODE §2-201 (2003).

110. These include California, Florida, Maine, New Jersey, New York, and Pennsylvania. California passed a bill in 2007 that would have prohibited employment discrimination based on "familial status," but the governor vetoed the bill.

111. MD. CODE ANN., STATE GOV'T, § 20-702 (WEST 2009).

and the Maryland counties discussed above already prohibit employment discrimination based on “family responsibilities” or “family status.”¹¹² Including “family responsibilities” in the employment provision of the State Government article of the Maryland Code would allow all Marylanders, regardless of the county in which they work, to be expressly protected from FRD. It is not only the right thing to do, but it makes sound business sense. Eliminating FRD in the workplace will lead to increased retention of experienced and valuable employees, which will in turn lead to a stable and productive environment in which client service can thrive. In the end, everyone will win.

112. *See supra* notes 103, 105, and 107, and accompanying text.