

# CAREGIVERS AS A PROTECTED CLASS?:

THE GROWTH OF STATE AND  
LOCAL LAWS PROHIBITING FAMILY  
RESPONSIBILITIES DISCRIMINATION

WORK LIFE LAW

UC Hastings College of the Law



# **CAREGIVERS AS A PROTECTED CLASS?:**

**THE GROWTH OF STATE AND  
LOCAL LAWS PROHIBITING FAMILY  
RESPONSIBILITIES DISCRIMINATION**

**Stephanie Bornstein & Robert J. Rathmell\***

**The Center for WorkLife Law**

**University of California,  
Hastings College of the Law**

**December 2009**

**© 2009 Center for WorkLife Law**

# EXECUTIVE SUMMARY

This report details the results of a Center for WorkLife Law survey, the first comprehensive report to identify and analyze 63 local laws in 22 states that go beyond state and federal law to expressly prohibit discrimination at work against those who are also caregivers at home. The local laws detailed create a new protected class of those with family responsibilities, by specifically including parental or familial status or family responsibilities along with other protected classes (such as sex, race, religion, and disability) in city or county codes that prohibit employment discrimination. In these localities, many of which are major urban areas, caregivers are protected at work beyond current remedies available to them under state and federal law.

The resulting patchwork of state and local laws detailed in this report is of keen importance to employers as they work to craft policies and practices to avoid the rising numbers of family responsibilities discrimination claims. It is important, too, for employment lawyers, both those who advise employers about their potential sources of liability, and those who represent workers who believe they have experienced discrimination at work. It should also be of interest to advocates and state policymakers seeking policy solutions beyond short-term leaves to help working families meet both work and family obligations successfully.

While the scope of local laws may seem limited, their impact can be significant—and costly. A single mother of two who filed a complaint for parental status discrimination under Chicago’s local ordinance was recently awarded over \$300,000 in compensatory and punitive damages and attorneys fees when she was fired from her job as a medical services salesperson after rescheduling a meeting because her daughter was ill. The company had a lax approach to attendance, but only for people without children: other employees were given more vacation time or regularly excused

for non-family personal emergencies, like a plumbing problem at home.<sup>1</sup>

As this case illustrates—and as this report details—many localities provide employees who experience family responsibilities discrimination with additional legal remedies, beyond state and federal law. An awareness of these local laws is essential for employers and employment attorneys, and important to fully understand the developing law of family responsibilities discrimination.

## Overview

Over the past five years, the issue of employment discrimination based on family caregiving responsibilities has grabbed the attention of legal and human resource professionals nationwide. Family responsibilities discrimination, or FRD, is discrimination against employees based on their responsibilities to care for family members—including pregnancy discrimination, discrimination against mothers and against fathers who actively participate in caring for their children, and discrimination against workers who care for aging parents or ill or disabled spouses or family members. FRD can occur when a new mother is denied a promotion based on the assumption that she will no longer be as committed to work, rather than her job performance; or when a father’s employer refuses to allow him to take paternity leave to which he is legally entitled because “his wife should do it”; or when an employee is fired for not meeting work goals while he is on a legally protected family and medical leave to care for an ailing parent.<sup>2</sup>

Also known as caregiver discrimination, FRD has become a hot topic not only among attorneys and human resources professionals, but also with workers, unions, employers, courts, policymakers, and the press.<sup>3</sup> In 2006, the Center for WorkLife

Law (WLL) released the first study of FRD lawsuits, analyzing more than 600 such suits filed between 1971 and 2005. The 2006 study documented a 400% increase in the number of FRD cases filed between 1996 and 2005 as compared to the number filed in the decade prior, between 1986 and 1995.<sup>4</sup> To date, WLL has now collected data on more than 2000 FRD lawsuits; preliminary analysis of this much larger group of cases shows the number of FRD lawsuits filed continuing to increase each year between 2006 and 2008.<sup>5</sup>

Recognizing the growing scope of the problem, in 2007, the U.S. Equal Employment Opportunity Commission (EEOC) issued Enforcement Guidance on the topic of caregiver discrimination, explaining in detail how existing federal laws that prohibit sex and disability discrimination protect family caregivers at work. The Guidance raised the profile of the problem of FRD considerably, in particular catching the attention of employers and the attorneys who represent them. In April 2009, the EEOC followed up with a second publication on the topic, which supplements the 2007 Guidance by providing examples of best practices for employers to decrease the likelihood of EEO complaints and remove barriers to equal employment for workers with caregiving responsibilities.<sup>6</sup>

The number of lawsuits alleging FRD is vast and ever-growing; yet while FRD is actionable under many theories in existing federal and state law,<sup>7</sup> with a very few exceptions, FRD is not expressly prohibited in most state and in federal statutes. This means that, barring the few exceptions, there are no laws that protect caregivers or people with family responsibilities as a specific group or class from discrimination. Instead, plaintiffs who have sued their employers for FRD have successfully fit their FRD-related claims into other legal theories in existing state and federal law—for example as sex discrimination, discrimination based on association with a person with a disability, or a violation of state or federal family and medical leave laws.

This report identifies that, while no federal law and only a few state laws expressly prohibit FRD, at least 63 local laws do—by specifically including parental or familial status or family responsibilities as a protected classification, like sex, race, religion, and so on, in city or county codes that prohibit employment discrimination. The report presents the findings of a survey by the Center for WorkLife Law of nearly 3,700 local government laws (city and county ordinances and codes) that found 63 local governments that explicitly prohibit employment discrimination based on an employee's family status or responsibilities. The report analyzes these findings and the implications they have for workers, employers, attorneys, advocates, and policymakers nationwide.

## Key Findings of the Study

The Center for WorkLife Law's analysis of local FRD laws reveals the following key findings:

- At least 63 local governments in 22 states—including several major urban areas with large labor forces—have passed local FRD laws that go beyond federal and state law and expressly prohibit employment practices that target people with family responsibilities.
- The sizes and types of employers (whether public or private) covered by local FRD laws vary, but most apply to private employers, with some covering businesses as small as those with only one employee.
- While most of the local FRD laws prohibit employment discrimination on the basis of being a parent or guardian of a minor child, several go further to include other family caregiving relationships—for example, contributing to the care of any

dependent. Terms and definitions of the protected class used in the local laws vary, but include “parental status,” “familial status,” and “family responsibilities.”

- Many localities enforce FRD laws by granting employees a private right of action in the courts (some after exhausting administrative procedures), which means that, as with state and federal law, employees can bring a lawsuit in civil court for a violation of a local FRD law. Other localities limit aggrieved employees to seeking relief for FRD in an administrative forum.
- Because enforcement mechanisms vary, the remedies for a successful employee complaint for FRD also vary considerably by locality, ranging from small fines or injunctive relief to major awards of damages and attorneys fees.

## Key Lessons for Various Stakeholders

This report provides lessons for employers, employees, their attorneys, advocates, and public policymakers alike:

- **For employers and their attorneys,** this report helps employers prevent potential claims and assists their attorneys as they provide counsel on complying more effectively with existing law. Because many employers operate in multiple cities, states, or even nationwide, they may not be aware of local

employment discrimination laws that expand worker protections on the local level. Adherence to these laws is essential to employers’ efforts to prevent discrimination in the workplace—efforts that can avoid costly lawsuits and legal penalties.

- **For employees and their attorneys,** this report provides information about additional worker protections under local laws about which they may not be aware. Employees and plaintiffs’ attorneys in the relevant localities should understand the additional employment protections—and administrative and legal remedies—that local law may provide to workers.
- **For advocates and public policymakers,** this report offers a summary of existing state laws, along with new research on local laws that may be in effect in their states. Nearly half (22) of U.S. states have at least one local FRD law, and more than half of those states (12) have more than one. The report also provides analysis of a variety of policy models for FRD legislation offered by local laws.

For all involved, the message is clear: FRD is not only litigable using a variety of legal theories under federal and state employment laws; it is also explicitly prohibited as a protected classification in the employment discrimination provisions of at least 63 localities in 22 states nationwide.

# I. LAY OF THE LAND OF EXISTING LAW

## A. Federal Employment Discrimination Law

Existing federal statutory law does not explicitly prohibit employers from discriminating against employees based on family responsibilities, like it does based on sex, race, religion, disability, national origin, and age. Nevertheless, employees have successfully brought lawsuits for FRD using a variety of legal theories under existing federal law, including sex discrimination under Title VII of the Civil Rights Act, violations of the Family and Medical Leave Act, associational discrimination under the Americans with Disabilities Act (for example, for having a disabled child or spouse), and violations of ERISA.<sup>8</sup>

Federal government workers, however, are explicitly protected against discrimination based on parenthood through an Executive Order. Signed by President Clinton on May 2, 2000, Federal Executive Order 13152 amended federal EEO law to prohibit employment discrimination against federal government employees on the basis of their “status as a parent”—including biological, adoptive, foster, or stepparent, a custodian or in loco parentis, or a person in the process of seeking custody or adoption.<sup>9</sup> Remedies under this Executive Order are available, yet are more limited than under federal statutory law.<sup>10</sup>

## B. State Employment Discrimination Laws

As with federal law, all but a handful of state anti-discrimination laws do not expressly prohibit employment discrimination based on family responsibilities; yet also like federal law, many plaintiffs have successfully sued for FRD using

other legal theories under state laws, including state law theories of employer liability based on sex discrimination or association with a person with a disability, and state family and medical leave laws. Plaintiffs also have sued for FRD under a variety of state common law claims—for example, for breach of contract or intentional infliction of emotional distress.<sup>11</sup>

While the vast majority of states have no explicit protections against FRD, laws or regulations in Alaska, Connecticut, New Jersey, and the District of Columbia are the exceptions to the rule.

**Alaska law.** Alaska’s state employment anti-discrimination law includes “parenthood” as a protected classification.<sup>12</sup> According to the statute, the policy of the state and purpose for enacting this provision was to prevent discrimination in employment because of parenthood.<sup>13</sup> The statute applies to all private employers with one or more employee, as well as the state and its subdivisions,<sup>14</sup> and provides a private right of action for aggrieved employees.<sup>15</sup>

**District of Columbia law.** More encompassing in the caregiving relationships it covers, the District of Columbia includes the term “family responsibilities,” as a protected classification in its employment anti-discrimination law.<sup>16</sup> Under D.C. law, family responsibilities means “the state of being, or the potential to become, a contributor to the support of a person or persons in a dependent relationship, irrespective of their number, including the state of being the subject of an order of withholding or similar proceedings for the purpose of paying child support or a debt related to child support.”<sup>17</sup> In *Simpson v. DC OHR*, the D.C. Court of Appeals questioned the scope of this definition, noting that “[t]he statute does not reveal whether the family responsibilities must rise

to the level of a legal duty...or whether a moral obligation to care for an ill parent is sufficient.”<sup>18</sup> The District of Columbia Human Rights Act provides for an administrative procedure and allows a private right of action for damages and other related relief.<sup>19</sup>

**Connecticut prohibition.** While Connecticut does not establish FRD as a protected classification, its employment anti-discrimination provisions prohibit employers from requesting or requiring employee information related to “familial responsibilities” unless the information is directly related to a bona fide occupational qualification.<sup>20</sup> Unlike the Alaska and D.C. statutes, this is not a general prohibition against employment discrimination on the basis of familial responsibilities, but rather a limitation on an employer’s right to collect personal information that could be used for a discriminatory purpose.<sup>21</sup> The Connecticut employment discrimination statute also provides a private right of action to employees.<sup>22</sup>

**New Jersey regulation.** Similarly, New Jersey does not include FRD as a protected classification in its employment anti-discrimination protections, but, like the federal Executive Order, the regulations accompanying the state anti-discrimination laws expressly prohibit state (but not private) employers from discriminating against their employees based on familial status.<sup>23</sup> The regulation prohibits not only discriminatory acts and harassment based on familial status but also retaliation for participation in the complaint process.<sup>24</sup> For enforcement, it authorizes use of a wide range of remedial measures including training, therapy, termination of employment, and referral to other agencies for prosecution.<sup>25</sup>

Worth mentioning, but beyond the scope of this report is that, in the past two legislative sessions, state legislators in eight states (California, Florida, Maine, New Jersey, New York, Pennsylvania, Iowa, and Michigan) and legislators in New York City

have introduced legislation that would expressly prohibit FRD, and legislators in two other states (Arizona and Montana) have introduced legislation that contains FRD-related provisions.<sup>26</sup> In California, a bill that would have added “familial status,” defined as including some caregiving responsibilities, to employment anti-discrimination protections passed through the entire legislature in 2007, but was ultimately vetoed by the Governor.<sup>27</sup> In April 2009, a similar, but not identical bill to prohibit employment discrimination based on familial status was introduced in the State Assembly; to date, the bill is active in committee.<sup>28</sup> While none of these bills has yet to become law,<sup>29</sup> interest in the issue of FRD is increasing among state public policymakers.

## C. Local Employment Discrimination Laws: Overview of Survey Results

In previous reports, the Center for WorkLife Law has identified the few existing explicit state and federal prohibitions against FRD, as described above. This report goes beyond state and federal

**While no federal and few state laws make any explicit reference to family responsibilities in employment discrimination protections, at least 63 city and county laws—many in major urban areas—enacted in 22 different states explicitly prohibit employment discrimination based on parental status, familial status, or family responsibilities.**

law, undertaking for the first time a study of *local* laws. The results were surprising: At least 63 city and county laws—many in major urban areas—

enacted in 22 different states *explicitly* prohibit employment discrimination based on parental status, familial status, or family responsibilities. Each of these local laws includes familial status, family responsibilities, parenthood, or another similar term as a protected class—that is, as one of the bases upon which employers doing business in that locality may not discriminate.

**At the outset, it is important to note that this list of 63 local laws is not exhaustive:** researching local laws across the nation is particularly difficult because there is no one database that collects and publishes local laws, as there are with all 50 states. Indeed it is even difficult to estimate correctly the complete number of localities (cities, counties, and municipalities) in the United States; according to the U.S. Census Bureau, in 2000, there were over 3200 counties and over 25,000 “places” (defined as “all Incorporated and Census Designated places in the 50 states, the District of Columbia and Puerto Rico as of the January 1, 2000”).<sup>30</sup>

This report’s survey included searching four large databases of local laws and the local laws of any state’s capital or most populous city not encompassed within the four databases—in total, reviewing nearly 3700 local government laws.

**Yet any locality that was not a part of the 3700 surveyed may or may not include family responsibilities discrimination.** For a complete discussion of our research methodology, see Appendix B.

That said, while only three states and the District of Columbia have any explicit protections against family responsibilities discrimination in their employment laws, at least 63 local governments in 22 states do. Terms used for the protected class vary among the ordinances, but “familial status” appears most frequently. Table 1, below, provides the state, the local government, the key term, and the citation for each local law collected in this survey. For more detailed information about each local law, see Appendix A and visit our companion webpage, [www.worklifelaw.org/pubs/LocalFRDLawsDetail.html](http://www.worklifelaw.org/pubs/LocalFRDLawsDetail.html).

**For more information about each local law collected in this survey, visit our companion webpage, [www.worklifelaw.org/pubs/LocalFRDLawsDetail.html](http://www.worklifelaw.org/pubs/LocalFRDLawsDetail.html). The webpage includes a comparison of local laws in greater detail, including: definitions of the protected class and covered employer and employee; a description of unlawful employment practices; whether retaliation is prohibited; limitations, exceptions, and defense available to employees; what administrative agency oversees the law; whether administrative exhaustion is required by employees; whether employees have a private right of action; and the penalties and remedies available under each local law.**



**Table 1: Local FRD Laws Surveyed, by State and Key Term<sup>31</sup>**

STATE	LOCAL GOVERNMENT	KEY TERM	ORDINANCE CITATION
Alaska	Soldotna	Parenthood	Soldotna Code §§ 2.28.010-.290
Arizona	Tucson	Familial status	Tucson Code §§ 10-1 to -22, 17-1, 17-11 to -16
Colorado	Crested Butte	Family responsibility	Crested Butte Code §§ 2-4-20, 10-1-10 to -11-60
Florida	Cutler Bay	Familial status	Cutler Bay Code §§ 11A-25 to -28
	Jupiter	Familial status	Jupiter Code §§ 15-11 to -69.6
	Key West	Parental status	Key West Code §§ 38-191 to -227
	Miami Beach	Familial status	Miami Beach Code §§ 62-31 to -113
	Miami-Dade County	Familial status	Miami-Dade County Code §§ 11A-1 to -10, 11A-25 to -28
	Monroe County	Familial status	Monroe County Code §§ 13-101 to -123
	Palm Beach County	Familial status	Palm Beach County Code §§ 2-261 to -313
	Tampa	Familial status	Tampa Code §§ 12-16 to -51
Georgia	West Palm Beach	Familial status	West Palm Beach Code §§ 42-31 to -46
	Atlanta	Familial and parental status	Atlanta Code §§ 94-110 to -114, 94-10 to -41
Illinois	Champaign	Family responsibilities	Champaign Code §§ 17-1 to -5, 17-76 to -77, 17-101 to -104, 17-121 to -128
	Chicago	Parental status	Chicago Code §§ 2-160-010 to -120, 4-404-010 to -080, §§ 2-74-010 to -160
	Cook County	Parental status	Cook County Code §§ 42-30 to -42, §§ 44-41 to -56
Indiana	Lafayette	Familial status	Lafayette Code §§ 2.07.010-.050
Kansas	Leavenworth	Familial status	Leavenworth Code §§ 58-36 to -45, 58-66 to -72
	Topeka	Familial status	Topeka Code §§ 86-111 to -137
	Winfield	Familial status	Winfield Code §§ 42-1 to -2, 42-61 to -64
Kentucky	Ashland	Familial status	Ashland Code §§ 35.01-.13
	Paducah	Familial status	Paducah Code §§ 58-1 to -3, 58-61 to -63
Maryland	Cumberland	Familial status	Cumberland Code §§ 9-26 to -30
	Frederick County	Familial status	Frederick County Code §§ 2-2-1 to -69
	Howard County	Familial status	Howard County Code §§ 12.200-.218
	Montgomery County	Family responsibilities	Montgomery County Code §§ 27-1 to -21
Massachusetts	Prince George's County	Familial status	Prince George's County Code §§ 2-186, 2-222
	Boston	Parental status	Boston Code §§ 12-9.1 to .15
	Cambridge	Family status	Cambridge Code §§ 2.76.030, 2.76.120, 2.76.160
Michigan	Medford <sup>32</sup>	Familial status	Medford Code §§ 2-541 to -548
	Albion	Family status	Albion Code §§ 54-26 to -60
	Ann Arbor	Family responsibilities	Ann Arbor Code §§ 9:150-:164
	Shelby	Familial status	Shelby Code §§ 2-141 to -179
	Wayne County	Familial status	Wayne County Code §§ 120-191 to -193
Minnesota	Ypsilanti	Familial status	Ypsilanti Code §§ 58-61 to -79
	St. Paul	Familial status	St. Paul Code § 183
Missouri	Kansas City	Familial status	Kansas City Code §§ 38-1 to -6

STATE	LOCAL GOVERNMENT	KEY TERM	ORDINANCE CITATION
New Jersey	Monroe <sup>33</sup>	Familial status	Monroe Code §§ 50-1 to -7
	Newark <sup>34</sup>	Familial status	Newark Code §§ 2:2-84.4
	Passaic	Familial status	Passaic Code §§ 35-1 to -15
	Rocky Hill	Familial status	Rocky Hill Code §§ 24-1 to -20
New York	Wanaque	Familial status	Wanaque Code §§ 29-1 to -24
	Ithaca	Familial status	Ithaca Code §§ 215-1 to -36
	Rye Brook	Parental status	Rye Brook Code §§ 24-1 to -9
Ohio	Westchester County	Familial status	Westchester County Code §§ 700.01-.18; Exec. Work Order No. 5-2002
	Xenia	Familial status	Xenia Code §§ 604.01, 620.01-.99
	Beaverton	Familial status	Beaverton Code §§ 5.16.010-.060
	Benton County	Familial status and family responsibilities	Benton County Code §§ 28.005-.115
	Corvallis	Familial status	Corvallis Code §§ 1.23.010-.120
	Eugene	Familial status	Eugene Code § 4.613 <i>et seq.</i>
	Hillsboro	Familial status	Hillsboro Code §§ 9.34.010-.040
	Multnomah County	Familial status	Multnomah County Code §§ 9.010-.260
	Portland	Familial status	Portland Code § 23.01.050(B)
	Salem	Familial status	Salem Code Ch. 97
Pennsylvania <sup>35</sup>	Harrisburg	Familial status	Harrisburg Code §§ 4-101 to -115
	Lancaster	Familial status	Lancaster Code §§ 125-1 to -18
	Lansdowne	Familial status	Lansdowne Code §§ 38-1 to -5
	State College	Familial status	State College Ordinance 1887 (Dec. 17, 2007)
	West Chester	Familial status	West Chester Code § 37A-1 to -7
Texas	Chico	Familial status	Chico Code §§ 31.40-.41
Washington	Tacoma	Familial status	Tacoma Code §§ 1.29.010-.090
Wisconsin	Milwaukee	Familial status	Milwaukee Code §§ 109-1 to -25
	Racine	Familial status	Racine Code §§ 62-26 to -48

### For Public Policymakers: WorkLife Law's Technical Guidance

The Center for WorkLife Law has a unique, six-stakeholder model of working with employers, employees, plaintiffs' employment lawyers, management-side employment lawyers, unions, and public policymakers to develop effective measures to eliminate family responsibilities discrimination (FRD). Based on this perspective, WorkLife Law offers direct technical guidance and data to public policymakers interested in addressing the problem of FRD, designed to make policy efforts workable and fair. Guidance is provided by our experienced attorneys, some of whom have represented employers, and some of whom have represented employees or unions. For more information and assistance, visit our FRD public policy webpage at <http://www.worklifelaw.org/FRD.html> or email [info@worklifelaw.org](mailto:info@worklifelaw.org).

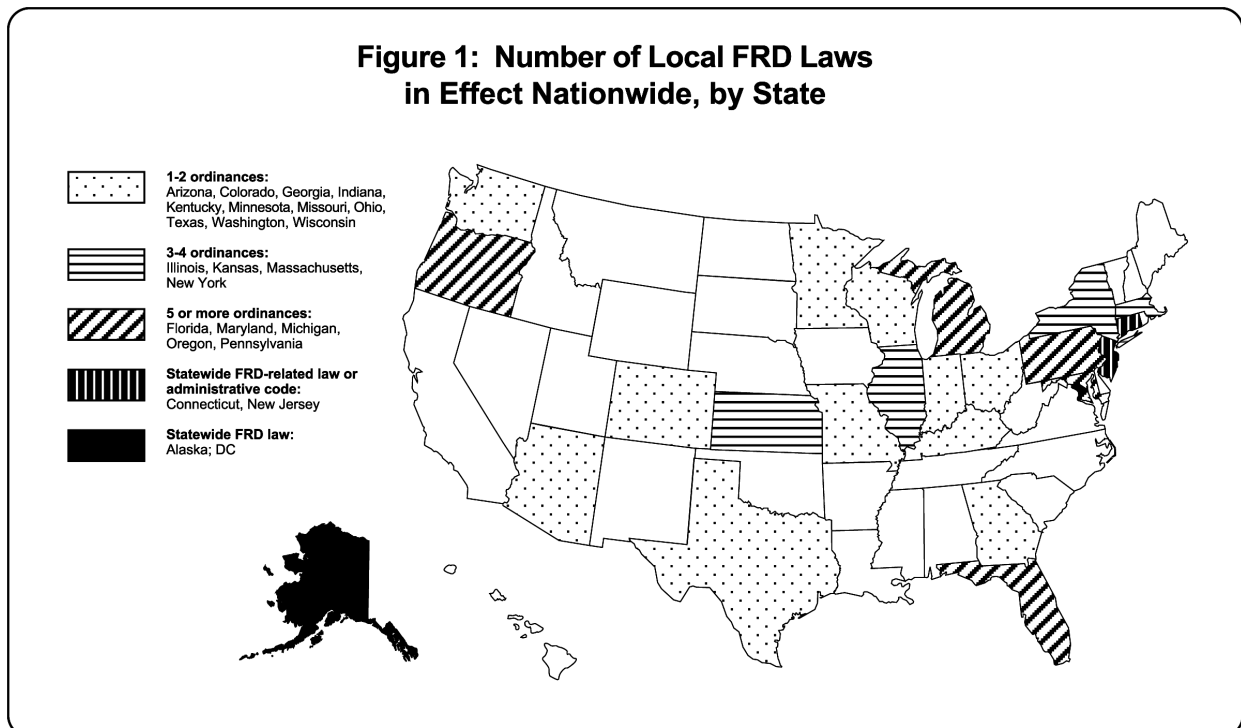
## II. ANALYSIS OF LOCAL LAWS

Comparisons of the 63 local laws identified reveal some key lessons for employers, employees, attorneys, and public policymakers, alike. First, local laws explicitly prohibiting FRD are in effect nationwide, in nearly half of all U.S. states. They are not limited to particular regions of the country or to what have been characterized as “red” states or “blue” states. Second, several states, including Florida, Maryland, Michigan, Oregon, and Pennsylvania, have a significant number of local FRD laws, increasing the likelihood that a business or an employee in that state may be covered. Third, while some local FRD laws apply only to public employees, most apply to private employers—some to businesses as small as those with one employee. Fourth, while all local FRD laws prohibit employment discrimination against parents, some go further to include employment protections for other family caregiving relationships as well. Fifth, the range of practices that are included in local laws also varies, some

prohibiting harassment and retaliation in addition to discrimination based on family responsibilities. Sixth, complaint procedures and remedies vary widely by jurisdiction. Lastly, despite all of these variations, the majority of local FRD laws include public policy statements stating that the laws may be interpreted broadly for maximum protection of local citizens.

### A. Local FRD Laws Are in Effect Nationwide, in Nearly Half of the States

As the map in Figure 1, below, shows, local laws expressly prohibiting FRD are in effect in cities and counties across the nation, in nearly half (22) of all states. States from all major regions of the U.S. are represented, including the Northeast, Southeast, Midwest, Southwest, and Northwest.



Of the 22 states in which local FRD ordinances are in effect, half (11) have one or two local ordinances, while about one-quarter (4) have three or four ordinances. Nearly one-third (7) of the states with local FRD laws have five or more ordinances or a statewide law in effect—in addition to state laws in Connecticut and the District of Columbia—that prohibit at least some employment discrimination based on family responsibilities.

The prevalence of local FRD laws in states throughout the country offers important lessons to employers and public policymakers:

- *For employers and their attorneys*, it signals that employers with multi-state or national business operations may be subject to multiple local discrimination standards.
- *For policymakers*, it indicates that laws prohibiting employment discrimination based on family caregiving responsibilities are not endemic to only “red states” or “blue states.” Nearly half (22) of all states have localities that prohibit FRD, from New York to Florida, from Oregon to Texas. While analysis of local legislative history and intent is beyond the scope of this survey, the prevalence of local FRD laws across the country is compelling.

## **B. Several States Have a High Concentration of Local FRD Laws, Making Businesses and Workers in Those States Likely to Be Covered**

Among the 22 states in which there are localities with FRD laws, nearly one-quarter (5) of the states have five or more local laws in effect.

- Florida has the greatest number of local FRD laws, with FRD laws in three counties and six cities across the state, covering an estimated 1.7 million of Florida’s labor force of 8.78 million.<sup>36</sup>
- Oregon is a close second, with local FRD laws in six cities and two counties statewide, that apply to an estimated over half a million of Oregon’s labor force of 1.9 million.<sup>37</sup>
- In Maryland, four of the most populous counties and one city explicitly prohibit FRD, applying to an estimated 1.24 million of Maryland’s labor force of 3 million.<sup>38</sup>

In addition, Pennsylvania has five cities with local FRD laws, and Michigan has one county and four cities that prohibit FRD. And, in New Jersey, five cities have FRD laws, in addition to the statewide regulation prohibiting FRD against state employees.<sup>39</sup> In these six states, the combined reach of existing FRD laws is vast.

Yet even in states with only a few local FRD laws, often they are found in populous urban areas that are major labor markets within the state. For example, among the states with three or fewer local FRD laws, localities that explicitly prohibit FRD include:

- Tucson, Arizona
- Atlanta, Georgia
- Cook County, Chicago, and Champaign, Illinois
- Boston, Cambridge, and Medford, Massachusetts
- St. Paul, Minnesota
- Kansas City, Missouri
- Tacoma, Washington; and
- Milwaukee, Wisconsin.<sup>40</sup>

Employers operating in these states are likely to be affected by even one local FRD law if it applies to workers in a major city within that state.

### **C. Local FRD Laws May Apply to Both Public and Private Sector Employers, Some to Businesses with as Few as One Employee**

Whether a business or a worker in a particular locality are covered by a local FRD law depends on how the law defines the employers and employees it covers. Most local FRD laws surveyed cover private employers, and cover businesses with *fewer than 15* employees—the threshold number of employees required for coverage by federal anti-discrimination law (Title VII of the Civil Rights Act).

**Most local FRD laws surveyed cover private employers and cover businesses with *fewer than 15* employees—the threshold number of employees required for coverage by federal anti-discrimination law (Title VII of the Civil Rights Act).**

#### ***Private sector employers covered under local FRD laws***

The definition of “employer” varies among jurisdictions depending upon two factors: (1) the number of employees employed by the business; and (2) how long the employees have worked during the year (i.e., to address whether the workers are seasonal or more permanent). Of the 63 local FRD laws surveyed, 47 apply to private businesses, all but six of those (41) to businesses of 10 or fewer employees—that is, businesses too small to be covered by Title VII—and 20 of those to businesses with as few as one employee.<sup>41</sup> Only 13 local laws put any restrictions on how long an employee must have worked for the business to be covered—six of these counting employees who worked as few as four weeks, and the remaining seven requiring 13 to 20 calendar weeks in a year—still fewer than five months.<sup>42</sup>

Table 2, FRD Ordinances Applying to Private Employers, lists local jurisdictions that prohibit private sector employers from discriminating on the basis of family responsibilities or other related terms. The columns of the table from left to right show the local jurisdiction, the minimum number of employees that an employer must employ in order to be covered, and the minimum duration of employment in weeks, if any.

**Table 2: FRD Ordinances Applying to Private Employers**

LOCAL JURISDICTION	MIN. NO. OF EMPLOYEES	MIN. DURATION OF EMPLOYMENT IN WEEKS
Beaverton, Or.; Benton County, Or.; Champaign, Ill.; Chicago, Ill.; Cook County, Ill.; Corvallis, Or.; Crested Butte, Colo.; Eugene, Or.; Hillsboro, Or.; Lafayette, Ind.; Lansdowne, Pa.; Milwaukee, Wis.; Montgomery County, Md.; Portland, Or.; Racine, Wis.; Salem, Or.; St. Paul, Minn.; West Chester, Pa.	1	0
Prince George's County, Md.	1	1
Tucson, Ariz.	1	20
Harrisburg, Pa.; Ithaca, N.Y.; Lancaster, Pa.; Leavenworth, Kan.; State College, Pa.; Westchester County, N.Y.; Winfield, Kan.; Xenia, Ohio	4	0
Ann Arbor, Mich.; Ypsilanti, Mich.	5	0
Cutler Bay, Fla.; Miami Beach, Fla.; Miami-Dade County, Fla.	5	4
Tampa, Fla.	5	13
Howard County, Md.	5	20
Cambridge, Mass.; Kansas City, Mo.	6	0
Boston, Mass.	7	0
Tacoma, Wash.	8	0
Paducah, Ky.	8	20
Atlanta, Ga.	10	0
Frederick County, Md.	15	0
Palm Beach County, Fla.; West Palm Beach, Fla.	15	4
Cumberland, Md.; Key West, Fla.; Monroe County, Fla.	15	20

Given the reach of two-thirds of the local laws surveyed to employers too small to be covered by federal law, the message is clear: in all of these jurisdictions, even the smallest businesses should be mindful of the potential for liability for family responsibilities discrimination.

### ***Local governments as employers under FRD laws***

In addition to the 47 local laws that apply to private sector employers (most of which also likely cover local governments through their definition of “employer”<sup>43</sup>), 16 ordinances *specifically* apply to local public employers, prohibiting the city, county, town, borough, or village as an employer

from discriminating against its own employees or officers based on family responsibilities.<sup>44</sup> Three of these (Chicago, Ill., Cook County, Ill., and Tucson, Ariz.) have separate sections of code that apply to private sector employment as well;<sup>45</sup> the remaining 13 cover public employment solely. Many of the FRD laws covering public employment are short on details, possibly because, as with other laws protecting public employees, their complaints may be subject to internal procedures. Yet three New Jersey ordinances specify basic procedures for even a public employee to bring a complaint of unlawful discrimination based on familial status under local law.<sup>46</sup>

Table 3, FRD Ordinances Applying Specifically to Public Employers, shows the 16 FRD ordinances

that specifically apply to public employment, listing each local government employer and citing the section of its code which applies the prohibition to public employment. An asterisk (\*) next to the name of a local government employer indicates that it also has an independent section of code prohibiting FRD by private employers.

**Table 3: FRD Ordinances Applying Specifically to Public Employers**

LOCAL GOVERNMENT EMPLOYER	CODE CITATION
City of Soldotna, Alaska	§ 2.28.010
City of Tucson, Ariz.*	See § 10.2
Town of Jupiter, Fla.	§ 15-14
City of Chicago, Ill.*	See § 2-74-020
Cook County, Ill.*	§ 44-44
City of Topeka, Kan.	§ 86-114
City of Ashland, Ky.	Chapter 36
City of Albion, Mich.	§ 54-26
City of Shelby, Mich.	§ 2-171
City of Newark, N.J.	§ 2:2-84.4
City of Passaic, N.J.	§ 35-6
Borough of Rocky Hill, N.J.	§ 24-9
Borough of Wanaque, N.J.	See § 29-1A, B
Village of Rye Brook, N.Y.	§ 24-2
County of Multnomah, Or.	§ 9.020(A)
City of Chico, Tex.	See § 31.40

### D. All Local FRD Laws Prohibit Employment Discrimination Against Parents; Some Include Other Family Caregivers, Too

Local FRD laws use a variety of related terms for the protected classification that prohibits family responsibilities discrimination. The terms fall into three broad categories: familial status; parental status; or familial responsibilities. Fifty-one ordinances use the term “familial status” or “family

status”; six use “parental status” or “parenthood”; one uses both “parental status” and “familial status”; four use “family responsibilities” or “family responsibility”; and one uses both “family responsibilities” and “familial status.”<sup>47</sup>

#### *Familial or family status*

Familial or family status is the term most frequently adopted in local FRD ordinances, though treatment of the term varies. Of the 51 ordinances using this term, 22 provide no definition of familial status within a related section of code,<sup>48</sup> while 20 others adopted a definition identical or substantially similar to the one set forth in their housing anti-discrimination provisions, modeled on the federal Fair Housing Act (FHA).<sup>49</sup> Some of the drafters of these ordinances localized the language of the FHA definition,<sup>50</sup> but each of these local definitions preserves four key elements of the FHA definition: (1) an individual under 18; (2) who is domiciled with a parent or legal custodian or designee with written permission from a parent or custodian; (3) or status as a pregnant woman; or (4) a person in the process of securing legal custody.<sup>51</sup> In short, an employee is protected against familial status discrimination if she or he has or lives with a minor child or dependent, or is in the process of having or gaining custody of a child or dependent.

Nine other local governments that use “familial status” as a protected classification in their employment anti-discrimination provisions define it differently than the FHA. Four simply omit elements of the federal housing definition, one removes pregnancy and adds custodial relationships created by court order, and three provide substantially different definitions. The most common change to the federal definition is an omission of elements (3) and (4), the status of a pregnant woman, and a person in the process of securing legal custody, but leaving intact elements (1) and (2), an individual’s minor status and the domicile requirement.<sup>52</sup> Tucson, Arizona’s ordinance eliminates pregnancy status from its

definition but adds a special provision regarding custodial relationships created by court order, including foster parents.<sup>53</sup>

The four remaining localities that use the term “familial status” go beyond the traditional FHA definition. Cambridge, Massachusetts defines “family status” as “the actual or supposed condition of having minor children living with the individual or not,”<sup>54</sup> which suggests that those discriminated against based on the *perception* that they have minor children are also protected, even if they do not. Ypsilanti, Michigan relies on consanguinity to define familial status as “the state of being related by blood of affinity to the fourth degree,”<sup>55</sup> clearly including many family relationships beyond dependent children.

Lastly, State College, Pennsylvania and Monroe County, Florida include the relationships covered by the traditional FHA definition, as well as a wide array of family relationships and caregiving responsibilities. While still using the term “familial status,” each defines it broadly: State College to include “the state of being married, single, divorced, separated, widowed,” of being pregnant or “a parent...stepparent, foster parent, or grandparent of a minor child,” or of being “a provider of care to a person or persons in a dependent relationship...whether in the past, present, potentially in the future, or pursuant to employer perception”; Monroe County to also include “any familial relationship whatsoever,” including living with a same sex partner or a dependent parent.<sup>56</sup> These two expanded definitions of “familial status” provide examples of how, using the same term for the protected classification, communities may greatly expand the reach of their protections to cover any family caregiving relationship by how they define the term.

### ***Parental status or parenthood***

Among the seven ordinances that use or include “parental status” for the protected classification, four local governments, which include the City of Chicago and Cook County, Illinois, Key West, Florida, and Boston, Massachusetts, define it functionally as “the status of living with one or more dependent minor or disabled children.”<sup>57</sup> Two ordinances vary from this norm: (1) the government of Rye Brook, New York does not define the term; and (2) Atlanta, Georgia, which uses both parental status and familial status, defines parental status in terms of relationships as “being a parent, step-parent, adoptive parent, guardian, foster parent or custodian of a minor child or children.”<sup>58</sup> Used but once, “parenthood” makes its only appearance in a Soldotna, Alaska ordinance but is left undefined in the Soldotna personnel system code.<sup>59</sup>

### ***Family responsibility or responsibilities***

Five localities, including Crested Butte, Colorado, Ann Arbor, Michigan, Champaign, Illinois, Montgomery County, Maryland, and Benton County, Oregon go beyond parental and familial status to use broader terms that reflect caregiving responsibilities employees may have for their family members. The Crested Butte, Colorado ordinance is unique in its usage of “family responsibility” in the singular rather than a plural form, but it does not provide a definition for the term.<sup>60</sup> The remaining four localities use the term “family responsibilities,” yet again, how they define the term varies.

Ann Arbor, Michigan defines “family responsibilities” as “the state of being or the potential to become a contributor to the support of a person or persons in a dependent relationship”—the focus being on support provided in a dependent relationship, regardless of what relation the person is to the covered employee.<sup>61</sup> The Champaign, Illinois ordinance is substantially similar to the Ann Arbor ordinance but expressly adds that the protection applies “irrespective of [the] number” of dependents and that it “include[s]



single parents.”<sup>62</sup> Both of these ordinances could be interpreted to cover not only children, but dependent spouses, parents, and other family members for whom the employee provides or may provide support. Likewise, Montgomery County, Maryland 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.”<sup>63</sup> As with the Ann Arbor and Champaign ordinances, Montgomery County applies its protection in an encompassing way to a dependent person regardless of what the family relation and regardless of age. Finally, Benton County, Oregon uses both the terms “familial status” and “family responsibilities,” but provides no further definition of either.<sup>64</sup>

Thus, while the majority of local FRD laws uses the term “familial status” and focuses on covering parents of dependent children, two localities define it broadly (State College, Pa and Monroe County, Fla.), and five opt for or include the term “family responsibility” or “family responsibilities,” most defining the term broadly to cover a wider array of family caregiving relationships. This nationwide experimentation at the local level with the definition of the protected class of caregivers underscores the variety in FRD law nationwide and may provide models for public policymakers on the state level.

## **E. Local FRD Laws Prohibit a Range of Discriminatory Practices; Some Include Harassment and Retaliation**

As a preliminary matter of drafting, all local FRD laws surveyed add familial status or a related term to the list of protected classifications, but the manner in which each expresses the prohibition against discrimination varies. Some of the local laws adopt language substantially similar to federal law—specifically Title VII of the Civil Rights Act of 1964—which prohibits discrimination in

employment on the basis of race, color, religion, sex, and national origin.<sup>65</sup> The key provision of Title VII barring unlawful employer practices, section 703(a) of the statute, offers a model (well known to employment lawyers) with which local FRD laws may be compared. Title VII provides:

It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.<sup>66</sup>

A significant group of local governments adopted something like the federal approach, expressing the prohibition against FRD by barring a list of unlawful employment practices rather than by defining what discrimination is in a larger sense. Some of these governments use just the practices described in the federal prohibition—(1) to fail to hire or discharge, or (2) to discriminate in compensation, terms, conditions, or privileges of employment, or (3) to limit, segregate, or classify to deprive or affect status; others add practices to these.<sup>67</sup> Several jurisdictions omit one or more of the federal practices.<sup>68</sup>

Unlike Title VII, however, many of the localities surveyed define discrimination and use this definition as the primary means for prohibiting FRD, instead of setting out unlawful employment practices.<sup>69</sup> Among these, a small group uses a definition of discrimination as the sole means of prohibiting FRD;<sup>70</sup> a larger group defines discrimination and also identifies specific unlawful employment practices.<sup>71</sup>

## What's an Employer to Expect? The Example of Florida

For private-sector employers, Florida offers a microcosm of the potential impact of multiple local FRD laws. With nine local FRD ordinances in effect across the state—in the cities of Cutler Bay, Jupiter, Key West, Miami Beach, Tampa, and West Palm Beach, and the counties of Miami-Dade, Monroe, and Palm Beach—a business operating statewide in Florida could easily be confused.

- *What is covered?* While eight of the nine ordinances prohibit discrimination based on “familial status,” Key West uses the term “parental status.” And Monroe County’s ordinance defines “familial status,” broadly to include “the status of living alone or in any familial relationship whatsoever, including, but not limited to, living with a partner, whether maintaining the legal status of being single, married, divorced, separated or widowed, and whether the partner is same sex or opposite sex, and of living with one (1) or more dependents, whether minor or disabled children or parents.”<sup>72</sup>
- *Which employers are covered?* Eight ordinances apply to at least some private sector employers, while Jupiter’s ordinance is limited to the town government. Each defines “employer” itself, with Cutler Bay, Miami Beach, and Miami-Dade County covering employers of 5 or more employees who work at least 4 weeks per year; Tampa covering employers of 5 or more who work 13 weeks per year; Palm Beach County and West Palm Beach covering employers of 15 or more who work 4 weeks per year; and Key West and Monroe County covering employers of 15 or more who work for 20 weeks per year.<sup>73</sup>
- *Who administers the local law?* Seven of the nine localities have their own board or administrator who oversees the law. Key West and Monroe County do not specify an administrative agency.<sup>74</sup>
- *What remedies are available to employees?* Employees in six of nine localities have a private right of action in court for a violation of the local ordinance, with available remedies varying, some including injunctive relief, actual and punitive damages, and attorney’s fees and costs. Among the other three localities—Cutler Bay, Jupiter, and Miami Beach—one limits recovery to up to \$15,000 in penalties, while another allows the agency director to order injunctive relief and/or damages, attorneys fees and costs, civil fines, and interest.<sup>75</sup>

The lesson for employers in Florida and other states with multiple ordinances? Better safe than sorry when it comes to preventing discrimination against workers with family responsibilities.

### *Unique features and coverage under local FRD laws*

Beyond the major categories covered by most local FRD laws, several localities add specific activities or definitional terms into their laws. Below is a sampling of this unique coverage:

- Soldotna, Alaska’s FRD law makes discrimination, harassment, and *denigration* unlawful acts, but leaves each of these general practices undefined.<sup>76</sup>
- Milwaukee, Wisconsin expressly bars discrimination based on affiliation with or perceived affiliation with any protected category including familial status.<sup>77</sup> Cook County, like Milwaukee, offers protection against discrimination based on actual or perceived association with a person with parental status.<sup>78</sup>
- Harrisburg, Pennsylvania defines “discriminate” in part as any difference in treatment based on familial status.<sup>79</sup> Other ordinances from Cumberland, Maryland, Xenia, Ohio, Lancaster and Lansdowne, Pennsylvania similarly rely upon differentiation or difference in treatment as key concepts in the definition of discrimination.<sup>80</sup>
- Westchester County, New York adds a unique provision barring “segregation, separation, harassment, *physical intimidation and acts of hate and physical violence*.”<sup>81</sup>

- Tacoma, Washington makes it unlawful for an employer to require an applicant to provide information regarding familial status.<sup>82</sup> Wayne County and Albion, Michigan, likewise, prohibit collection of information regarding familial status.<sup>83</sup>

A considerable number of local laws prohibit discrimination on the basis of an employer’s perception that a worker is a member of a protected class, regardless of whether that perception is accurate. For example, Champaign, Illinois defines unlawful discrimination as “any practice or act which is based wholly or partially on or the *perception* of an individual based on...family responsibilities...unless such practice or act is permitted as an exception....”<sup>84</sup> Other localities that protect against the perception of family responsibilities discrimination include Cook County, Ill.; Cumberland, Md.; Ypsilanti, Mich.; Ann Arbor, Mich.; Ithaca, N.Y.; Westchester County, N.Y.; West Chester, Pa.; and Milwaukee, Wisc.<sup>85</sup>

Two local laws expressly prohibit preferences granted on the basis of familial status. Tucson, Arizona’s ordinance governing public employment prohibits actions by the city as an employer that in any way favor or discriminate against a worker due to his or her familial status.<sup>86</sup> Similarly, Cumberland, Maryland, bars any act or practice of preference in treatment based on the actual or perceived familial status.<sup>87</sup>

### *Retaliation*

At least 38 FRD ordinances expressly prohibit retaliation, reprisal, or discriminatory acts consistent with retaliation. A typical anti-retaliation provision makes it an unlawful practice for an employer to discriminate against an employee or applicant because he or she opposed an unlawful discriminatory practice

or participated in an investigation or proceeding under the ordinance.<sup>88</sup> Some local governments surveyed impose a good faith requirement on the employee's participation in the complaint process;<sup>89</sup> at least one local law goes further to require that the complainant's statements must be found to be truthful.<sup>90</sup> On the other hand, at least one city, Tacoma, Washington, expressly protects a participant from retaliation even if the discriminatory practice alleged is not found to exist.<sup>91</sup>

Some ordinances expressly prohibit unlawful agreements to discriminate including conspiring to discriminate, aiding and abetting discriminatory acts, and causing another to act in a discriminatory manner.<sup>92</sup> For example, the Human Rights Ordinance of Harrisburg, Pennsylvania expressly prohibits a person from directing another to retaliate against a person seeking to comply with the ordinance or enforce rights granted by it.<sup>93</sup>

### ***Indirect discrimination or disparate impact***

Some of the FRD ordinances appear on their face to prohibit actions that have a disparate impact—that is, where facially neutral actions by the employer result in a disproportionate negative effect on members of a protected class.<sup>94</sup> Leavenworth, Topeka, and Winfield, Kansas each make it an unlawful employment practice for an employer to “follow any employment procedure or practice which, *in fact, results in discrimination, segregation or separation without a valid business motive.*”<sup>95</sup>

Other local jurisdictions focus on how the employee is affected by the employer's actions. Howard County, Maryland defines discrimination as including “acting or failing to act, or unduly delaying any action regarding any person because of ... familial status in such a way that such person(s) are adversely affected in the area of employment.”<sup>96</sup> Likewise, Ann Arbor, Michigan focuses scrutiny on the effect on the employee, stating “[n]o person shall adopt, enforce or employ

any policy or requirement which has the *effect of creating unequal opportunities* according to actual or perceived ... family responsibilities ... except for bona fide business necessity.”<sup>97</sup>

### ***Available employer defenses***

Like Title VII and other federal and state laws prohibiting employment discrimination, some local FRD ordinances include limitations on employer liability through available defenses.<sup>98</sup> The bona fide occupational qualification (BFOQ) ranks first among limitations in the FRD ordinances; other exemptions from liability include differences resulting from a bona fide seniority or merit system.<sup>99</sup> A few ordinances present noteworthy limitations on liability including protections against false charges and special allowances for “preferential treatment” to correct demographic imbalances.<sup>100</sup>

At least 22 FRD jurisdictions provide a BFOQ defense to employer liability. Some, like the one for Miami-Dade County, apply the BFOQ defense to sex, national origin, and religion only, and not other classifications including familial status.<sup>101</sup> A more typical BFOQ defense provision, like the one for Howard County, Maryland, authorizes the defense without restricting it to a limited set of protected classes.<sup>102</sup>

## **F. Complaint Procedures and Available Remedies Vary Widely by Jurisdiction**

With 63 local laws comes 63 localized complaint procedures; a general summary of procedures and remedies currently in use by local governments shows diverse approaches to enforcement. Perhaps most importantly, in many of these localities, an employee who successfully complains of discrimination based on familial status or responsibilities may receive a substantial monetary recovery.

In many jurisdictions, an employee who successfully complains of discrimination based on familial status or responsibilities may receive a substantial monetary recovery.

### *Complaint procedures in local jurisdictions*

At least 26 FRD jurisdictions authorize a private right of action whereby an employee who believes he or she has experienced familial status discrimination at work may seek relief in court. About two-thirds of these allow the employee to go directly to court without exhausting any administrative requirements or in addition to pursuing an administrative process.<sup>103</sup> The remainder require exhaustion of some administrative process before the employee can seek relief in court.<sup>104</sup> Yet often the administrative requirement is as simple as filing a certified complaint with a local agency and obtaining a right to sue letter.<sup>105</sup>

Some jurisdictions do not expressly authorize a private right of action but outline an administrative process for bringing a complaint—for example, in Chicago, the Commission on Human Relations receives and investigates complaints.<sup>106</sup> In public sector employment, local laws may simply direct an employee to a city officer or administrative agency without further specifying complaint procedures in the code.<sup>107</sup> A handful of FRD laws provide neither a private right of action nor administrative procedures for bringing an FRD complaint, but appear to delegate the administrative process to a local agency, which may develop complaint procedures outside the municipal code.<sup>108</sup>

### *Remedies range from conciliation to compensatory and even punitive damages and attorney's fees*

At least 23 localities allow employees who make a successful complaint of familial status or responsibilities discrimination to recover damages from their employers, with six expressly allowing recovery of punitive damages and 14 of attorney's fees.<sup>109</sup> In addition, 11 localities direct that remedies be equal to or cumulative with all those available in court or under state and/or federal law.<sup>110</sup> At least 25 localities provide for some injunctive relief, for example, reinstatement of the employee or discipline for the employer, and 22 allow for the imposition of fines.<sup>111</sup>

FRD ordinances that apply only to public employees expressly authorize penalties and discipline in place of private causes of action. The Cities of Soldotna, Alaska, and Passaic, Rocky Hill, and Wanaque, New Jersey call for progressive discipline beginning with a verbal warning and ending in discharge from employment.<sup>112</sup> Two of these jurisdictions, Shelby, Michigan and Ithaca, New York, open the courthouse doors by making discriminatory acts a misdemeanor punishable by fines and imprisonment.<sup>113</sup> Wayne County, Michigan prohibits familial status discrimination in public contracting and ensures compliance by imposing penalties including disqualification for future contracts, rescission or termination of contracts, withholding of payment, disqualification for bidding for 3 years, injunction, damages and other remedies under contract law.<sup>114</sup>

## Think local laws lack teeth? Think again.

### One employer's violation of a local FRD ordinance will cost it over \$300,000.

Dena Lockwood, a single mother of two, applied for a position as a sales representative at a medical services company. In her job interview, when Lockwood mentioned she had children, a manager asked whether that would “prevent her from working seventy hours a week.” When Lockwood assured them it would not, she was offered the job, yet at a salary that was half to two-thirds as much as that earned by her coworkers who did not have children. Lockwood negotiated a higher salary, but her commission rate was reduced to lower than that offered to employees without children. (Indeed, once hired, Dena learned of the company's preference to hire, as one owner described it, “young, single people who live in the city,...who would have no other responsibilities to worry about.”)

The company had a lax approach to attendance...for people without children. One employee claimed to have a “personal arrangement” allowing her to take more days off than the ten allowed in her contract; others were regularly excused to deal with personal emergencies, for example a plumbing problem at one employee's house.

Yet after Lockwood rescheduled a meeting because her daughter was ill, she was told she could resign or be fired. The next work day (the day of her son's high school graduation) she was fired without explanation. Her contract stated that she could only be fired “for cause” and was to be given 30 days notice. She had performed consistently, with sales higher than many of her coworkers. She never heard any criticism from her employers about her performance or attendance.

Lockwood filed a complaint for employment discrimination based on parental status under Chicago's Human Rights Ordinance (Chicago Municipal Code § 2-160-030, see Appendix A for details). The Chicago Commission on Human Relations agreed, imposing \$215,000 in damages and fines on her employer—including \$100,000 in punitive damages—plus over \$87,000 in attorneys fees and costs (final review of which is still pending).

“The City of Chicago did an excellent job investigating and enforcing the Ordinance preventing employers from discriminating against parents,” explained Lockwood's attorney, Ruth Major. “Ms. Lockwood felt strongly about how other people are affected by this type of discrimination. We believe that her tenacity in seeing this case through has set a precedent that will help other parents who are faced with similar problems.”<sup>115</sup>

## **G. The Vast Majority of Local Ordinances Include Public Policy Statements Setting Out Broad Interpretation**

Lastly, local FRD laws typically place technical provisions of the law in relation to larger communal goals through policy statements affirming freedom from discrimination and equal opportunity in the workplace, and including broad interpretation to meet these ends.<sup>116</sup> Fully 86% (54) of the 63 FRD ordinances surveyed include a policy or purpose statement that serves these ends.

Among the FRD ordinances that include a policy statement, two fundamental policy concerns are most often recited: (1) to provide equal opportunity in employment; and/or (2)

to end discrimination on the basis of familial responsibilities.<sup>117</sup> Some local governments enacted FRD legislation because, as they stated, existing state and federal laws inadequately protect workers from discrimination, leaving the local government as the primary protector of workers with caregiving responsibilities.<sup>118</sup> A few local governments not only sought to end unlawful discrimination but also aspired to affirmatively foster employment of people in their fullest capacities, regardless of caregiver status.<sup>119</sup> Although policy statements vary from place to place, these enactments, as a body of law some 63 strong in number, give evidence that local governments may interpret their local laws broadly to affect their goals.

## CONCLUSION

Given the already complicated overlap of state and local employment laws across the nation, it is not surprising that laws on the local city and county level may escape notice. When it comes to the developing law of family responsibilities discrimination, however, local laws merit serious attention.

As this survey of 63 local laws that expressly prohibit employment discrimination on the basis of parental or familial status or family responsibilities show, employers and employment attorneys alike need to be aware of local FRD laws. Laws on the local level provide additional protections for employees and additional risks of liability for employers—risks that, as a recent \$300,000 award under a local Chicago law demonstrates,<sup>120</sup> should not be taken lightly.

While the additional legal protections for caregivers documented in this survey appear to create a complex patchwork, several themes are clear. Local FRD laws exist in urban centers and in small towns across the country, in nearly half of all U.S. states. Most local FRD laws apply to even the smallest of employers, including those too small to be covered by federal anti-discrimination law. And enforcement procedures and available remedies for employees vary widely, from small fines to large monetary recoveries, including punitive damages and attorneys' fees.

Also clear are lessons for employers, employees, and their attorneys, and for advocates and policymakers nationwide. Employers, especially those with statewide or nationwide operations, and their attorneys need to be aware of the additional risks employers face from failing to prevent bias and discrimination in the workplace against those with family responsibilities. Employees and their attorneys should also be aware of the additional

protections and legal recourse they have should they experience caregiver discrimination at work. Work/family advocates and policymakers interested in helping families balance work and caregiving obligations can look to local laws for policy models from the cities and counties in their states.

As this report illustrates, a significant body of local laws go further than state and federal statutes to protect caregivers at work. Gaining an awareness of these laws is important to completing the picture for anyone interested in the developing law of family responsibilities discrimination.



# ENDNOTES

- \* Stephanie Bornstein is the Associate Director of the Center for WorkLife Law (WLL) at U.C. Hastings College of the Law. Robert J. Rathmell is a solo practitioner in San Francisco and a 2008 graduate of U.C. Hastings. In 2008-09, he was a Graduate Research Fellow at WLL. The authors wish to thank: WLL Director Professor Joan C. Williams, without whose guidance and support this report would not have been possible; Aleksandr Gembinski for his design expertise; Alek Felstiner, Molly Wilkens, and Veronica Williams for their research assistance; and Professor David Jung, Director of the U.C. Hastings Center for State and Local Government Law.
- 1 See *Lockwood v. Professional Neurological Services*, No. 06-E-89, Final Order on Liability and Relief (City of Chicago Commission on Human Relations, July 8, 2009); *Lockwood v. Professional Neurological Services*, No. 06-E-89, Final Recommended Ruling Regarding Complainant's Fee Petition (City of Chicago Commission on Human Relations, November 23, 2009).
  - 2 See, e.g., *Trezza v. The Hartford, Inc.*, No. 98 CIV. 2205 (MBM), 1998 WL 912101 (S.D.N.Y. Dec. 30, 1998) (promotion); *Knussman v. Maryland*, 272 F.3d 625, 628-30 (4th Cir. 2001) (paternity leave); Plaintiff's Memorandum in Opposition to Defendant's Motion for Partial Summary Judgment, *Schultz v. Advocate Health & Hosps. Corp.*, No. 01 C 0702, 2002 WL 1263983 (N.D. Ill. June 5, 2002); Dee McAree, *Family Leave Suit Draws Record \$11.65M Award: Chicago Verdict May Be Sign of Emerging Trend*, NAT'L L.J., Nov. 11, 2002, at A4 (ailing parent).
  - 3 See, e.g., Gloria Gonzalez, *Benefits Management: Family Care Bias Suits Rise as Workers Assert Rights*, BUS. INS., June 19, 2006, at 11; Lisa Belkin, *Family Needs in the Legal Balance*, N.Y. TIMES, July 30, 2006, § 10, at 1; Monique Gougisha & Amanda Stout, *We Are Family*, HR MAGAZINE, Apr. 2007, at 117; Amy Joyce, *Looking Out for the Caregivers: New Guidelines Widen the Scope of Anti-Discrimination Protection*, WASH. POST, May 27, 2007, at F3; Eyal Press, *Family-Leave Values*, N.Y. TIMES MAG., July 29, 2007, at 37.
  - 4 MARY C. STILL, LITIGATING THE MATERNAL WALL: U.S. LAWSUITS CHARGING DISCRIMINATION AGAINST WORKERS WITH FAMILY RESPONSIBILITIES (Center for WorkLife Law, 2006), available at <http://www.worklifelaw.org/pubs/FRDreport.pdf>.
  - 5 An updated statistical report on FRD cases filed is forthcoming in 2010, and will be published on the Center for WorkLife Law website when available, at <http://www.worklifelaw.org/Reports.html>.
  - 6 *Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities*, 2 EEOC Compl. Man. (BNA) § 615 (May 23, 2007), available at <http://www.eeoc.gov/policy/docs/caregiving.pdf>; U.S. EEOC, Employer Best Practices for Workers with Caregiving Responsibilities, <http://www.eeoc.gov/policy/docs/caregiver-best-practices.html> (last visited December 1, 2009).
  - 7 The Center for WorkLife Law has identified 17 such theories. See JOAN C. WILLIAMS AND CYNTHIA THOMAS CALVERT, WORKLIFE LAW'S GUIDE TO FAMILY RESPONSIBILITIES DISCRIMINATION (Center for WorkLife Law, 2006).
  - 8 *Id.*
  - 9 Exec. Order No. 13152, 65 Fed. Reg. 26115 (May 2, 2000).
  - 10 The relief a federal government employee complaining of parental status discrimination under this Executive Order could receive is limited to a commitment that the unlawful conduct will stop and corrective action will be taken by the agency, equivalent job placement and make-whole relief for loss of earnings, and the possibility of reasonable attorney's fees and costs. See 29 C.F.R. §§ 1614.501(a), (e).
  - 11 See WILLIAMS AND CALVERT, *supra* note 7.
  - 12 See ALASKA STAT. § 18.80.220(a) (2007).
  - 13 *Id.* at § 18.80.200.
  - 14 *Id.* at § 18.80.300(4).
  - 15 See *id.* at § 18.80.145.
  - 16 D.C. CODE ANN. §§ 2-1401.01, 2-14101.02, 1-2502(12) (2007).
  - 17 *Id.* at §§ 2-1401.02(12).
  - 18 *Simpson v. DC OHR*, 597 A.2d 392, 404-405 (D.C. Ct. of App. 1991).
  - 19 D.C. CODE ANN. §§ 2-1403.13, 2-1403.16
  - 20 CONN. GEN. STAT. § 46a-60(a)(9).
  - 21 See *id.* at § 46a-60(a)(1) (omitting the term "familial status" from the list of protected classifications).
  - 22 *Id.* at §§ 46a-100, 46a-86.
  - 23 N.J. ADMIN. CODE § 4A:7-3.1(a) (2008).
  - 24 *Id.* at § 4A:7-3.1(h).
  - 25 *Id.* at § 4A:7-3.1(g).
  - 26 See WorkLife Law's State FRD Legislation Tracker, <http://www.worklifelaw.org/pubs/StateFRDLegisTracker.pdf> (last visited Dec. 1, 2009).
  - 27 S.B. 836, 2007-2008 Sess. (Ca. 2007); Complete bill history, S.B. No. 836, [http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb\\_0801-0850/sb\\_836\\_bill\\_20080114\\_history.html](http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb_0801-0850/sb_836_bill_20080114_history.html) (last visited December 1, 2009).
  - 28 A.B. 1001, 2009-2010 Sess. (Ca. 2009).
  - 29 See WorkLife Law's State FRD Legislation Tracker, *supra* note 26.
  - 30 U.S. Census Bureau, *Census 2000 U.S. Gazetteer Files* (June 8, 2009), available at <http://www.census.gov/geo/www/gazetteer/places2k.html> (last visited Oct. 15, 2009).
  - 31 Note, also collected, but omitted from this Table is an ordinance from Orange County, N.C., which prohibited discrimination on the basis of "familial status" in employment. In *Contra Williams v. Blue Cross Blue Shield of N.C.*, 581 S.E.2d 415, 428-31 (N.C. 2003), despite "commendable motives," the employment provisions of the Orange County Civil Rights Ordinance were held to violate the state constitution's prohibition against local regulation of labor and trade.
  - 32 Section 2-541 of the Medford Massachusetts Code articulates a policy of providing "equal opportunity to each person regardless of ... familial status ... where unlawful discrimination exists in housing, employment,

- education, public accommodations, services, and facilities,” but it does not include a separate section prohibiting familial status discrimination in employment. That notwithstanding, the ordinance must be construed liberally for the accomplishment of its purposes, and it establishes a Medford Human Rights Commission with enumerated functions, duties, and powers which include initiating investigations into unlawful discrimination in employment. *See* MEDFORD, MASS. CODE §§ 2-545 and 2-542.
- 33 The Monroe Township, N.J. ordinance does not expressly prohibit familial status discrimination in employment but charges the Monroe Township Human Relations Commission with the duty to adopt policies and procedures that aid in the elimination of “all types of discrimination,” presumably including employment discrimination.” *See* MONROE, N.J. CODE § 50-5(A).
- 34 The Newark, N.J. ordinance announces a policy for the city as an employer that it must adhere to state nondiscrimination policies and not discriminate against any employee or applicant for employment because of familial status. NEWARK, N.J. CODE § 2:2-84.4.
- 35 Note, also collected, but omitted from this Table is an ordinance from Pittsburgh, Penn. Although the policy statement in section PITTSBURGH, PA. CODE § 651.02(b) supports a broad prohibition against discrimination that expressly includes familial status in employment, the exclusion of the term in section 659.02 raises a question as to whether the prohibition expressly applies in employment discrimination. *Compare* PITTSBURGH, PA. CODE § 651.02 with § 659.02.
- 36 All figures are estimates generated by compiling relevant labor pool data from the U.S. Census Bureau’s American FactFinder website. Within each state, estimates of each relevant locality’s population in the labor force (limited to those in the “government” labor force for each locality with a public sector only ordinance) were combined. U.S. Census Bureau, American Community Survey, 2005-2007 Summary Tables, generated using American FactFinder, <http://factfinder.census.gov> (August 12, 2009).
- 37 *Id.*
- 38 *Id.*
- 39 *See* N.J. ADMIN. CODE § 4A:7-3.1(a)(2008) and Table 1, *supra*, for citations to the local New Jersey, Michigan, and Pennsylvania ordinances.
- 40 *See* Table 1, *supra*, for citations to these ordinances.
- 41 *See, e.g.*, COOK COUNTY CODE § 42-31 (“Employer means [a]ny person employing one or more employees, or seeking to employ one or more employees [i]f the person has its principal place of business within Cook County[,] or [d]oes business within Cook County”).
- 42 *See, e.g.*, MONROE COUNTY, FLA. CODE § 13-102 (“Employer means any person employing fifteen (15) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year, and any agent of such person, but such term does not include the United States or a corporation wholly owned by the government of the United States”).
- 43 Most of the ordinances that apply to private sector employers can be interpreted to cover public employees of the locality as well, based on how each code defines “employer.” For analysis on this topic under each individual law, visit our companion webpage at [www.worklifelaw.org/pubs/LocalFRDLawsDetail.html](http://www.worklifelaw.org/pubs/LocalFRDLawsDetail.html).
- 44 *See, e.g.*, TOPEKA, KAN. CODE § 86-114 (prohibiting discrimination by city officials, department heads, agents or employees of the city); but see JUPITER, FLA. CODE § 15-14 (applying its personnel code, including its discrimination provision, to associated individuals but not the Town Manager, Town Attorney, Mayor, council members, and appointed members of boards and commissions). For specific coverage of each law, visit our companion webpage at [www.worklifelaw.org/pubs/LocalFRDLawsDetail.html](http://www.worklifelaw.org/pubs/LocalFRDLawsDetail.html).
- 45 *See, e.g.*, TUCSON, ARIZ. CODE §§ 10-2 (stating the general purpose of the chapter is to provide a merit system for city employment) and 17-11(e) (“[e]mployer ... means a person who has one (1) or more employees, not to exceed one hundred (100) employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year, and any agent of such a person”).
- 46 *See, e.g.*, PASSAIC, N.J. CODE § 35-11 (directing an employee to report harassment to the City Business Administrator); ROCKY HILL, N.J. CODE § 24-12 (authorizing an employee to report to the mayor or state authorities); WANAQUE, N.J. CODE § 29-24 (authorizing reporting to the administrator, the administrator’s powers of investigate and take disciplinary action).
- 47 *See* Table 1, *supra*, for a complete table showing each local government and the term(s) used for the protected classification.
- 48 FRD ordinances without a definition of familial status in a related section of code include Cutler Bay, Fla., Jupiter, Fla., Tampa, Fla., West Palm Beach, Fla., Leavenworth, Kan., Topeka, Kan., Paducah, Ky., Medford, Mass., Albion, Mich., Shelby, Mich., Wayne County, Mich., Monroe, N.J., Newark, N.J., Passaic, N.J., Rocky Hill, N.J., Wanaque, N.J., Westchester County, N.Y., Beaverton, Or., Corvallis, Or., Hillsboro, Or., Lansdowne, Pa., and West Chester, Pa.
- 49 *Compare* 42 U.S.C. § 3602(k) with MIAMI-DADE COUNTY, FLA. CODE § 11A-2(9), PALM BEACH COUNTY, FLA. CODE § 2-263, LAFAYETTE, IND. CODE § 2.07.010, ASHLAND, KY. CODE § 35.13(A), CUMBERLAND, MD. CODE § 9-26, FREDERICK COUNTY, MD. CODE § 2-2-68(c)(2)(i), HOWARD COUNTY, MD. CODE § 12.201.VII, PRINCE GEORGE’S COUNTY, MD. CODE § 2-186(a)(7.1), ST. PAUL, MINN. CODE § 183.02(11), KANSAS CITY, MO. CODE § 38-1, ITHACA, N.Y. CODE § 215-2, XENIA, OHIO CODE § 604.01, EUGENE, OR. CODE § 4.615, MULTNOMAH, OR. CODE § 9.010 (using “family status” and incorporating the statutory definition in ORS Chapter 659), SALEM, OR. CODE § 97.001, *et seq.* (same), LANCASTER, PA. CODE § 125-4, CHICO, TEX. CODE § 31.40-.41 (incorporating the statutory definition in TEX. LOC. GOV’T CODE ANN. § 301.004 (Vernon 2008)), TACOMA, WASH. CODE § 1.29.040, MILWAUKEE, WIS. CODE § 109(3)(9), and RACINE, WIS. CODE § 62-26.
- 50 *See, e.g.*, LAFAYETTE, IND. CODE § 2.07.010 (defining the term as “one or more persons under eighteen (18) who live with a parent, legal custodian, or designee; pregnant women; or people in the process of obtaining legal custody of a child”), CHICO, TEX. CODE § 31.40-.41 (incorporating a definition from the Texas Fair Housing Act, which states “[a] discriminatory act is committed because of familial status if the act is committed because the person who is the subject of discrimination is pregnant; domiciled with an individual younger than 18 years of age in regard to whom the person is the parent or legal custodian; or has the written permission of the parent or legal custodian for domicile with that person; or in the process of obtaining legal custody of an individual younger than 18 years of age”).

- 51 42 U.S.C. § 3602(k) (“‘Familial status’ means one or more individuals (who have not attained the age of 18 years) being domiciled with a parent or another person having legal custody of such individual or individuals; or the designee of such parent or other person having such custody, with the written permission of such parent or other person. The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years”).
- 52 *See, e.g.*, MIAMI BEACH, FLA. CODE § 62-31; WINFIELD, KAN. CODE § 42-1, PORTLAND, OR. CODE § 23.01.050(B) (incorporating definitions in section 659A.001 of the Oregon Revised Statutes); HARRISBURG, PA. CODE § 4-101.6(o).
- 53 *See* TUCSON, ARIZ. CODE § 17-11(g) (adding to the FHA definition “[a] foster parent or other person with whom a minor child under the age of eighteen (18) is placed by court order” and omitting pregnancy status).
- 54 CAMBRIDGE, MASS. CODE § 2.76.030(6).
- 55 YPSILANTI, MICH. CODE § 58-62.
- 56 STATE COLLEGE, PA. ORDINANCE 1887, § 903 (DEC. 17, 2007); MONROE COUNTY, FLA. § 13-102.
- 57 CHICAGO, ILL. CODE § 2-160-020(i); Reg. 100(23); *See also* KEY WEST, FLA. CODE § 38-192; COOK COUNTY, ILL. CODE § 42-31; BOSTON, MASS. CODE § 12-9.2.
- 58 *See* RYE BROOK, N.Y. CODE §§ 24-1 to -9; ATLANTA, GA. CODE § 94-10.
- 59 *See* SOLDOTNA, ALASKA CODE §§ 2.28.010-.290.
- 60 *See* CRESTED BUTTE, COLO. CODE § 10-11-20.
- 61 ANN ARBOR, MICH. CODE § 9:151(7).
- 62 CHAMPAIGN, ILL. CODE § 17-3.
- 63 MONTGOMERY COUNTY, MD. CODE § 27.6.
- 64 BENTON COUNTY, OR. CODE §§ 28.005-.115.
- 65 42 U.S.C. §§ 2000e, *et seq.*
- 66 42 U.S.C. §§ 2000e-2(a)(1)-(2).
- 67 *See, e.g.* PALM BEACH COUNTY, FLA. CODE § 2-312(a) (“It is an unlawful employment practice for an employer [t]o discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual’s ... familial status, [or to] limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual’s status as an employee, because of such individual’s ... familial status ...”); *See also* MIAMI BEACH, FLA. CODE § 62-31; TAMPA, FLA. CODE § 12-26; ATLANTA, GA. CODE § 94-112(a); LEAVENWORTH, KAN. CODE § 58-68(1); TOPEKA, KAN. CODE § 86-114; WINFIELD, KAN. CODE § 42-61(1); PADUCAH, KY. CODE § 58-61(a); MONTGOMERY COUNTY, MD. CODE §§ 27-19(a)(1)(A)-(B); WAYNE COUNTY, MICH. CODE §§ 120-192(a)(1)-(2); TACOMA, WASH. CODE §§ 1.29.050(A)(1)-(2), (4); MILWAUKEE, WIS. CODE §§ 109-9(1)-(2).
- 68 This invites a legal inquiry into whether the scope of coverage is thereby reduced. *See* ordinances omitting “to limit, segregate, or classify:” TUCSON, ARIZ. CODE § 17-12(b), CRESTED BUTTE, COLO. CODE § 10-11-30, WEST PALM BEACH, FLA. CODE § 45-35, BOSTON, MASS. CODE § 12-9.3, CAMBRIDGE, MASS. CODE § 2.76.120(A), ST. PAUL, MINN. CODE § 183.03(2), and EUGENE, OR. CODE § 4.620(1); ordinances using “to segregate” but omitting other acts include WESTCHESTER COUNTY, N.Y. CODE § 700.03(1), HARRISBURG, PA. CODE § 4-101.6(k), and LANCASTER, PA. CODE §§ 125-4, -8(A); ordinances omitting “privileges of employment include HOWARD COUNTY, MD. CODE § 12.208.II(a), PRINCE GEORGE’S COUNTY, MD. CODE § 2-222, and ITHACA, N.Y. CODE § 215-3.
- 69 *See* 42 U.S.C. §§ 2000(e)(a)-(n) (omitting a general definition of discrimination).
- 70 *See* CHAMPAIGN, ILL. CODE § 17-3 (defining discrimination as “any practice or act which is based wholly or partially on or the perception of an individual based on ... family responsibilities ... unless such practice or act is permitted as an exception in this Chapter of any individual”); LAFAYETTE, IND. CODE § 2.07.010 (“any difference in the treatment of a person, including exclusion or segregation, because of ... familial status”); PADUCAH, KY. CODE § 58-2 (“Any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial or any other act or practice of differentiation or preference in the treatment of a person or persons because of ... familial status ... or the aiding, abetting, inciting, coercing or compelling thereof”); and XENIA, OHIO CODE § 604.01 (“[a]ny difference in treatment, based on ... familial status ... . Discrimination includes segregation and separation”).
- 71 *See, e.g.*, PADUCAH, KY. CODE §§ 58-61(a) (prohibiting unlawful employment practices by employers), 58-2 (defining discrimination).
- 72 KEY WEST, FLA. CODE § 38-192; MONROE COUNTY, FLA. CODE § 13-102.
- 73 *See* CUTLER BAY CODE § 11A-25; JUPITER CODE § 15-14; KEY WEST CODE § 38-192; MIAMI BEACH CODE § 62-31; MIAMI-DADE COUNTY CODE §§ 11A-25 TO -28; MONROE COUNTY CODE § 13-102; PALM BEACH COUNTY CODE § 2-263; TAMPA CODE § 12-17; WEST PALM BEACH CODE § 42-32.
- 74 *See* CUTLER BAY CODE § 11A-27; JUPITER CODE § 15-19; KEY WEST CODE §§ 191 TO -227; MIAMI BEACH CODE § 62-56(A); MIAMI-DADE COUNTY CODE §§ 11A-28, -3 TO -5; MONROE COUNTY CODE § 13-101-123; PALM BEACH COUNTY CODE §§ 2-301, -311; TAMPA CODE § 12-49; WEST PALM BEACH CODE § 42-42.
- 75 *See* CUTLER BAY CODE § 11A-28; JUPITER CODE §§ 15-11 TO -69.6; KEY WEST CODE § 38-193; MIAMI BEACH CODE § 62-65; MIAMI-DADE COUNTY CODE § 11A-5; MONROE COUNTY CODE § 13-104; PALM BEACH COUNTY CODE § 2-311; TAMPA CODE §§ 12-49, -50; WEST PALM BEACH CODE §§ 42-45, -46.
- 76 SOLDOTNA, ALASKA CODE § 2.28.080(F)(8); *See* §§ 2.28.010-.290 (emphasis added) (providing no definition for “discriminates, harasses, or denigrates”).
- 77 MILWAUKEE, WIS. CODE § 109.9(9).
- 78 COOK COUNTY, ILL. CODE § 42-31; *See also* HARRISBURG, PA. CODE § 4-101.6(k) (barring discrimination based on association with or advocacy on behalf of a person on the basis of her familial status).
- 79 HARRISBURG, PA. CODE § 4-101.6(k).
- 80 CUMBERLAND, MD. CODE § 9-26 (“Discrimination” means “any direct or indirect act, policy or practice of exclusion, distinction, restriction, segregation, limitation,

- refusal, denial or any other act or practice of *differentiation* or preference in the treatment of an individual based on, or the perception of ... familial status ... or the aiding, abetting[,] inciting, coercing or compelling thereof ...”); XENIA, OHIO CODE § 604.01 and LANCASTER, PA. CODE § 125-4 (each defining “Discrimination” as “[a]ny *difference in treatment*, based on ... familial status ... . Discrimination includes segregation and separation”) (emphasis added).
- 81 WESTCHESTER COUNTY, N.Y. CODE § 700.02(5) (emphasis added).
- 82 TACOMA, WASH. CODE § 1.29.050(A)(4).
- 83 WAYNE COUNTY, MICH. CODE § 120-192(a)(4); ALBION, MICH. CODE § 54-26.
- 84 CHAMPAIGN, ILL. CODE § 17-3 (emphasis added).
- 85 *See* COOK COUNTY, ILL. CODE § 42-32 (actual or perceived status and actual or perceived association with parental status); ANN ARBOR, MICH. CODE § 9:159 (actual or perceived family responsibilities); YPSILANTI, MICH. CODE § 58-62 (actual or perceived familial status); ITHACA, N.Y. CODE § 215-3 (actual or perceived familial status); WESTCHESTER COUNTY, N.Y. CODE § 700.03(1) (actual or perceived group identity); WEST CHESTER, PA. CODE § 37A-2 (actual or perceived familial status); and MILWAUKEE, WIS. CODE § 109-1 (affiliation with, or perceived affiliation with any protected category).
- 86 TUCSON, ARIZ. CODE § 10-18(a).
- 87 CUMBERLAND, MD. CODE § 9-26.
- 88 *See, e.g.*, MIAMI-DADE COUNTY, FLA. CODE § 11A-26(4) (“It shall be unlawful employment practice for any employer to discriminate against any of his or her employees or applicants for employment ... because he or she has opposed any practice made unlawful by this article or because he or she has testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this article”).
- 89 *See, e.g.*, KEY WEST, FLA. CODE § 38-226 (good faith charge); MONROE COUNTY, FLA. CODE § 13-103(f) (good faith charge or participation); CHICAGO, ILL. CODE § 2-160-100 (good faith charge or participation); COOK COUNTY, ILL. CODE § 42-41(a) (good faith opposition to unlawful discrimination).
- 90 *See, e.g.*, WESTCHESTER COUNTY, N.Y. CODE § 700.07(b) (“It shall be an unlawful discriminatory practice for any person engaged in any activity to which this chapter applies to retaliate or discriminate against any person because he or she ... has provided information to the commission or its members or counsel in any investigation which information was given as a verified statement not later found to lack veracity”).
- 91 TACOMA, WASH. CODE § 1.29.060(I).
- 92 *See, e.g.*, WEST PALM BEACH, FLA. CODE § 42-41(1) (prohibiting aiding and abetting another in a violation); ANN ARBOR, MICH. CODE § 9:155 (prohibiting conspiracy, assisting or coercing another to retaliate); YPSILANTI, MICH. CODE § 58-66(d) (prohibiting conspiracy, assisting or coercing another to retaliate).
- 93 HARRISBURG, PA. CODE § 4-105.7.
- 94 *See generally* *Griggs v. Duke Power Co.*, 401 U.S. 424, 431-2 (1971) (articulating the disparate impact theory of liability under Title VII, which “proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation,” for which “[t]he touchstone is business necessity”; “good intent or absence of discriminatory intent” is not enough); *See also* 42 U.S.C. 2000e-2(k) (defining burden of proof in disparate impact cases under Title VII).
- 95 LEAVENWORTH, KAN. CODE § 58-68 (emphasis added); *See also* TOPEKA, KAN. CODE § 86-114; WINFIELD, KAN. CODE § 42-61(1).
- 96 HOWARD COUNTY, MD. CODE § 12.208.I(a) (emphasis added and internal capitalization altered). *See also* MONTGOMERY COUNTY, MD. CODE § 27.19(a)(1) (prohibiting any employment action that “would deprive or tend to affect adversely any individual’s employment opportunities or status as an employee ...”); WAYNE COUNTY, MICH. CODE § 120-192(a)(2) (prohibiting actions in city contracting which “adversely affects the employment status of an employee because of ... familial status ...”).
- 97 ANN ARBOR, MICH. CODE § 9:159 (emphasis added).
- 98 *See, e.g.*, 42 U.S.C. 2000e-2(e), (h) (articulating bona fide occupational qualification and bona fide merit or seniority systems defenses to Title VII); CAL. GOV’T CODE § 12940 (articulating bona fide occupational qualification defense to California state employment anti-discrimination law).
- 99 *See, e.g.*, CUTLER BAY, FLA. CODE § 11A-26(5)(a)(iii) (permitting different standard of compensation in a bona fide written seniority or merit system); WEST CHESTER, PA. CODE § 37A-4 (authorizing religious organizations as employers to refuse to hire or employ an individual on the basis of religion).
- 100 *See, e.g.*, WANAQUE, N.J. CODE § 29-24(H) (declaring that false accusations of harassment “are, and will be treated as, a disciplinary offense and will result in a level of punishment appropriate for a person engaging in such behavior”); LAFAYETTE, IND. CODE § 2.07.040(J) (requiring the Commission on Human Rights to protect employers from unfounded charges); LEAVENWORTH, KAN. CODE § 58-72(b) (making a false complaint a misdemeanor offense); TAMPA, FLA. CODE § 12-36(d) (providing an exemption to correct imbalances between the total percent of persons of a protected class employed as compared to the community at large).
- 101 MIAMI-DADE COUNTY, FLA. CODE § 11A-26(5)(ii) (applying the defense only where “religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise”).
- 102 The code states in relevant part that “[w]hen it is demonstrated that bona fide occupational qualifications are reasonable, necessary and relevant to the normal operation of the particular business or enterprise, this section shall not apply in the case of bona fide occupation qualifications established by [a]n employer in hiring, assigning, compensating or discharging individuals ... .” HOWARD COUNTY, MD. CODE § 12.208.III(a).
- 103 *See, e.g.*, CRESTED BUTTE, COLO. CODE § 10-11-60 (“[A]ny person claiming to be aggrieved by an unlawful discriminatory act shall have a cause of action in any court of competent jurisdiction... .”); ATLANTA, GA. CODE § 94-120 (“In addition to or in lieu of filing a complaint with the human relations commission, an aggrieved person may seek prosecution of alleged violations of the human relations ordinance in Atlanta Municipal Court... .”). For specific administrative requirements of each law, visit our companion webpage at [www.worklifelaw.org/pubs/LocalFRDLawsDetail.html](http://www.worklifelaw.org/pubs/LocalFRDLawsDetail.html).

- 104 See, e.g., ST. PAUL, MINN. CODE §§ 183.17 to .170 (barring any civil enforcement unless a complaint is first filed with the St. Paul Human Rights Department or the Minnesota Department of Human Rights), 183.24(1) (providing the civil procedures for enforcement); see also MIAMI-DADE, FLA. CODE §§ 11A-28 and 11A-3(2)(h); PALM BEACH COUNTY, FLA. § 2-31(a); TAMPA, FLA. CODE §§ 12-49(a), (d); WEST PALM BEACH, FLA. CODE §§ 42-42 to -43; COOK COUNTY, ILL. CODE §§ 42-34(a), (d); STATE COLLEGE, PA. ORD. 1887 (Dec. 17, 2007) §§ 908A-B; WEST CHESTER, PA. CODE §§ 37A-7(A)-(B).
- 105 See, e.g., MIAMI-DADE COUNTY, FLA. CODE §§ 11A-28(1) (requiring complainant to file an administrative complaint), 11A-3(2)(h) (permitting complainant to request a right-to-sue letter no sooner than 180 days after filing the administrative charge), and 11A-28(10) (granting complainant 90 days from receipt of the right-to-sue letter to bring a civil action in court).
- 106 CHICAGO, ILL. CODE § 2-160-090; See also TUCSON, ARIZ. CODE §§ 17-15 to -16; CHAMPAIGN, ILL. CODE §§ 17-101 to -104, 17-121 to -123; COOK COUNTY, ILL. CODE § 42-34; LEAVENWORTH, KAN. CODE § 58-72; PADUCAH, KY. CODE § 58-132; CUMBERLAND, MD. CODE §§ 9-29 to -30; and BOSTON, MASS. CODE § 12-9-12.
- 107 See, e.g., PASSAIC, N.J. CODE § 35-11 (“Any employee who feels he or she has been subject to harassment or has knowledge of a violation of this policy should report the incident directly to the Business Administrator or his/her designee”); RYE BROOK, N.Y. CODE § 24-9(C) (delegating authority to a local ethics board to establish complaint procedures).
- 108 See, e.g., FREDERICK COUNTY, MD. CODE §§ 2-2-68(c)(1)(ii)(3) (“The board of commissioners may not authorize the human relations commission to ... [c]reate a private right of action”), and 2-2-68(c)(1)(i) (stating that with certain exceptions “the board of county commissioners by ordinance may authorize the human relations commission to provide remedial relief, including equitable relief and monetary damages”).
- 109 See, e.g., MONTGOMERY COUNTY, MD. CODE §§ 27-8, -28 (specifically authorizing damages and attorneys fees, among other remedies); SALEM, OR. CODE § 97.900 (specifically authorizing compensatory and punitive damages, backpay, and attorneys fees, among other remedies). For a complete analysis of remedies available under each ordinance, visit our companion website, [www.worklifelaw.org/LocalFRDLawsDetail.html](http://www.worklifelaw.org/LocalFRDLawsDetail.html).
- 110 See, e.g., BEAVERTON, OR. CODE § 5.16.050(E). For a complete analysis of remedies available under each ordinance, visit our companion website, [www.worklifelaw.org/LocalFRDLawsDetail.html](http://www.worklifelaw.org/LocalFRDLawsDetail.html).
- 111 See, e.g., MIAMI BEACH, FLA. CODE § 62-65 (fines); YPSILANTI, MICH. CODE § 58-61 to -79 (injunctive relief, among other remedies). For a complete analysis of remedies available under each ordinance, visit our companion website, [www.worklifelaw.org/LocalFRDLawsDetail.html](http://www.worklifelaw.org/LocalFRDLawsDetail.html).
- 112 SOLDOTNA, ALASKA CODE § 2.28.080; PASSAIC, N.J. CODE § 35-12(B); ROCKY HILL, N.J. CODE §§ 24-15(A)-(D); and WANAQUE, N.J. CODE § 29-24(E).
- 113 SHELBY, MICH. CODE § 1.7(d) (providing that all violations of the code are misdemeanors unless otherwise stated); ITHACA, N.Y. CODE § 215-9.6 (“Any individual who violates any of the provisions of this article shall, upon conviction be punishable by a fine not to exceed \$500 or imprisonment for not more than 15 days, or both such fine and imprisonment”).
- 114 WAYNE COUNTY, MICH. CODE §§ 120-193(c)(2)a-f.
- 115 See *Lockwood v. Professional Neurological Services*, *supra* note 1. A survey of cases arising under local FRD ordinances is beyond the scope of this report.
- 116 See, e.g., ANN ARBOR, MICH. CODE § 9:150 (reciting policies in favor of equal opportunity and ending discrimination that “[i]t is the intent of the city that no person be denied to equal protection of the laws; nor shall any person be denied the enjoyment of his or her civil or political rights or be discriminated against because of actual or perceived ... family responsibilities”); ST. PAUL, MINN. CODE § 183.01 (reciting a policy in favor of equal opportunity that “[t]he public policy of Saint Paul is to foster equal opportunity for all to obtain employment ... without regard to their ... familial status ... and strictly in accord with their individual merits as human beings”); HARRISBURG, PA. CODE § 4-101.2(b) (reciting a policy of ending discrimination that “it shall be the public policy of the City to prohibit discrimination because of ... familial status ... or association with or advocacy on behalf of any group protected by this Code in areas relating to employment ...”).
- 117 See, e.g., MONTGOMERY COUNTY, MD. CODE § 27.1(a) (fostering equal opportunity regardless of family status); MIAMI-DADE COUNTY, FLA. CODE § 11A-1(1) (eliminating and preventing discrimination in employment because of familial status); CAMBRIDGE, MASS. CODE § 2.76.160(B) (safeguarding equal opportunity and preventing discrimination in employment).
- 118 See, e.g., WESTCHESTER, N.Y. CODE § 700.01 (“Notwithstanding provisions of federal and state law, there have been repeated instances of intolerance and discrimination committed in Westchester County. The Board of Legislators affirms that the County of Westchester has the duty and responsibility to act to assure that every individual within the County is afforded an equal, fair and timely opportunity to enjoy a full and productive life”); HILLSBORO, OR. CODE § 9.34.005 (“It is the intent of the council to supplement the state protections against discrimination”).
- 119 See, e.g., STATE COLLEGE, PA. ORDINANCE 1887, § 902B (Dec. 17, 2007) (“It is hereby declared to be the public policy of the Borough to foster the employment of all persons in accordance with their fullest capacities regardless of actual or perceived ... familial status ... and to safeguard their right to obtain and hold employment without such discrimination, to assure equal opportunities to all individuals and to safeguard their rights”) (emphasis added).
- 120 See *Lockwood v. Professional Neurological Services*, *supra* notes 1 and 115, and text accompanying note 115.

# APPENDIX A

## FOR MORE ON STATE AND LOCAL FRD LAWS, IN DETAIL

For more information about each local law collected in this survey, visit our companion webpage:

<http://www.worklifelaw.org/pubs/LocalFRDLawsDetail.html>

The webpage includes detailed analysis of each state and local law included in this report. The webpage provides additional information on each law, as well as allows for comparison of laws across a state or nationwide.

Data on the companion webpage includes the following fields:

- State
- Statute or ordinance citation
- Protected classification key term (e.g., “parental status,” “familial status,” or “family responsibilities”)
- Definition of the classification
- Whether the law applies to public and/or private employers
- Definition of a covered employer and employee
- Description of unlawful employment practices and discrimination under the law
- Whether retaliation is prohibited
- Limitations, exceptions, exemptions, and employer defenses
- Administrative agency responsible for enforcing the law
- Whether administrative exhaustion is required
- Whether the law provides a private right of action for aggrieved employees; and
- Penalties and remedies available under the law.

## APPENDIX B

### METHODOLOGY

Attempting to conduct a nationwide survey of local laws is a difficult endeavor. In contrast to readily available 50-state surveys of *state* laws, there is no one database that collects and publishes all *city and county* laws in the country. Indeed, it is even difficult to estimate correctly the complete number of localities (cities, counties, and municipalities) in the United States: according to the U.S. Census Bureau, in 2000, there were over 3200 counties and over 25,000 “places” (defined as “all Incorporated and Census Designated places in the 50 states, the District of Columbia and Puerto Rico as of the January 1, 2000”).<sup>1</sup>

As a result, **it is important to note that the list of 63 local FRD laws included in the text of this report is *not* exhaustive.** To conduct the survey, the authors searched four key databases of local laws, as well as the individual codes of any state capital or state’s most populous city not encompassed in the four key databases. In total, we were able to review approximately 3700 local government codes. Thus, because our survey reached only a portion of localities in the country, **any locality that was not a part of the 3700 surveyed may or may not include a prohibition against family responsibilities discrimination.**

A complete description of our research methodology follows, including how to access a comprehensive list of the 3700 localities we searched. To determine whether a locality not included in our survey has an FRD law in effect, you should consult the code for that locality directly—which you can often locate online through a city or county government’s webpage.<sup>2</sup>

#### Fifty-State Statutory Survey

Research began with a fifty-state survey of state statutes prohibiting family responsibilities discrimination (FRD) in employment. We searched the LexisNexis statute database, Legal/States – Legal U.S./[state], which includes statutes for all 50 states, the District of Columbia, and U.S. territories. We queried each state’s code individually with the following search terms: employment w/seg discriminat! AND “famil! relationship” or “famil! responsibilit!” or “famil! status” or “parent! status” or parenthood or caregiver. Although this query produces false positives, we eliminated them by scanning titles and chapter headings in the code and passing over unlikely sections. Statutes prohibiting FRD in housing, but not employment, appeared most commonly as false positives. When a search string produced nothing at all or a large number of irrelevant sections, we consulted the statutory code index or used alternative search terms. (For example, searching with “discrimination” and “race” typically pulled up relevant sections, which we then reviewed for classifications related to family responsibilities.) If an employment discrimination provision included a target term, we read that statute and assessed its relevance.

#### Nationwide Local Ordinance Survey

To search for local FRD laws, we searched four online databases: American Legal Publishing, General Code E-Code, LexisNexis Municipal Code, and Municode. The size of the databases and quality of the search tools differ markedly. As a consequence, search routines to locate FRD ordinances among the host of employment and housing discrimination ordinances varied

considerably. A search method for each database is described below. The databases are discussed in the order searched.

### ***LexisNexis Municipal Code***

Completed in February 2008, our search of the LexisNexis Municipal Code Database (LMC) covered code from about 270 local governments located in 34 states. Although the smallest of the four databases we searched, the LMC yielded five FRD ordinances from local governments in five states including Alaska, Illinois, Indiana, Massachusetts, and Oregon.

Within Lexis, the database is found at “Legal/States Legal - U.S./Combined States/Find Statutes & Legislative Materials/Municipal Codes/[search with terms].” A single search string captured the target ordinances: employment w/seg discrimination AND “famil! relationship” or “famil! responsibilit!” or “famil! status” or “parent! status” or parenthood or caregiver. We then sorted relevant ordinances by review and selection.

### ***Municode***

The most comprehensive of the databases we searched, as of March 2008, the Municode database included over 1800 local governments, representing 47 of 50 states.<sup>3</sup> This search yielded 30 FRD ordinances from local governments in 13 states.

By using a Boolean operators with FRD search terms, Multiple Code Searches, retrieved all relevant local government codes. We used a relatively simple search string: employment +discrimination +race -cable.<sup>4</sup> The string yielded few false negatives, which we confirmed by eliminating “-cable” and comparing the results with the complete string. However, the string yielded many false positives; we scanned each “hit” to determine if it prohibited FRD.

### ***American Legal Publishing***

Our search of the American Legal Publishing database (ALP), completed in August 2008, found that ALP contained code from about 538 local governments, excluding special districts, located in 32 states. The ALP yielded six FRD ordinances from local governments in five states.

The local governments publishing code in the database appeared in an expandable list that operated like a Windows file directory. By clicking on a folder, the contents expanded below it. A hierarchical display of the directory appeared above the folder content. The database supported searching with Boolean terms or an advanced search form. We narrowed our search by placing “employment discrimination race” in the field for “containing all words,” and, placed “familial status” in the “exact phrase” field. We repeated the process substituting “familial status” with “family responsibilities,” “parental status,” “parenthood,” “caregiver,” or “carer.”

### ***General Code E-Code***

The General Code E-Code database (GCE) offered a large collection of local government codes concentrated by region. As of August 2008, search results showed that GCE contained code from about 1009 local governments, excluding special districts, located in 20 states. Notwithstanding a good collection of codes from Wisconsin, the database concentrated heavily in the northeastern states. The GCE yielded 9 FRD ordinances from local governments in three states.

From the search page, we selected local government codes to be searched from a field containing a complete list of all the codes in the database. We conducted a “Search Multiple Codes” search, including the key terms “familial status,” “family status,” “parental status,” “parenthood,” “caregiver,” and “carer.”



### ***State Capitals, Most Populous Cities, and Ad Hoc Searches***

After searching these four databases, we compiled a list of state capitals and the most populous city in each of the 50 states according to the U.S. Bureau of the Census, 2000 figures. In 15 states, these cities were the same. We then compared this list of 85 cities against the nearly 3700 cities included in the four databases we searched. All but 18 had been encompassed in our database searches. We then searched the city code for each of these 18 cities individually using each city government website.

Finally, we conducted ad hoc searches of several other major cities' government websites and pursued tips from other research sources. These efforts combined produced 13 ordinances in five states.

## **Comprehensive List of All Localities Surveyed**

A table listing the approximately 3,700 local governments we surveyed is available online, at [www.worklifelaw.org/pubs/LocalitiesSearched.pdf](http://www.worklifelaw.org/pubs/LocalitiesSearched.pdf). The table compiles all localities surveyed for this report, through the four databases (American Legal Publishing, General Code E-Code, LexisNexis Municipal Code, and Municode) and on local governments' websites, organized by state. This information is important not only to show the

scope of the research, which covers a significant number of local governments in all fifty states, but also as an indication of which localities were *not* reached in this survey.

To determine if a particular city or county was included in the survey, visit the table at [www.worklifelaw.org/pubs/LocalitiesSearched.pdf](http://www.worklifelaw.org/pubs/LocalitiesSearched.pdf), and look for that locality by state. If it does not appear in any of the five entries in the state's row, it was not included in the survey and you should consult the locality's code directly.

## **Endnotes**

- 1 U.S. Census Bureau, *Census 2000 U.S. Gazetteer Files* (June 8, 2009), available at <http://www.census.gov/geo/www/gazetteer/places2k.html> (last visited Oct. 15, 2009).
- 2 Should you know of a local ordinance or law that prohibits employment discrimination on the basis of familial status, parental status, or family responsibilities, that is not included in the 63 localities detailed in this report, please email the authors at [StephanieBornstein@worklifelaw.org](mailto:StephanieBornstein@worklifelaw.org), as we aim to maintain as comprehensive a database of such laws as possible.
- 3 Hawaii, Oregon, and Utah post no code in Municode.
- 4 The string includes a command to omit "cable" because ordinances governing the provision of cable television services often include nondiscrimination provisions which turn up as false positives with the other search terms, "employment," "discrimination," and "race."