



**FAMILY FORWARD**  
**OREGON**

*Smart policies for today's families.*

February 5, 2016

Testimony in Support of HB 4088: Employment Protections for Caregivers  
House Business and Labor Committee  
Submitted by Kate Newhall, Family Forward

Thank you for the opportunity to provide testimony in support of HB 4088. **Family Forward supports protecting workers from discrimination based on their off-duty caregiving responsibilities or “familial status”**- We believe that no worker should ever be treated differently based on family obligations that occur outside of the workplace that don't impact job performance.

Family Forward is committed to advancing policies that support families and help them succeed, both in the workplace and at home. Our mission is to create a family-friendly Oregon where all families can be economically secure and successful at work and still meet their family's caregiving needs. Today, too many families are forced to sacrifice one or the other. Family Forward supports family friendly policies, like employment protections for caregivers in Oregon.

Family status discrimination, also called caregiver discrimination, is discrimination in the workplace based on an employee's responsibility, real or perceived, to care for family members. Family responsibilities include being pregnant or an assumption that an employee may become pregnant, or caring for a spouse, child, aging parent, family member with a disability, and more.

Some examples of familial status discrimination include:

- **Passing over highly qualified mothers for hire or promotion** in favor of less qualified fathers or women without children;
- **Denying flexibility to employees who request it for child care reasons**, while allowing flexibility to employees for non-family reasons (e.g., to participate on a sports team);
- **Firing or demoting employees whose spouses or elderly parents become disabled** for fear of increased absenteeism or higher health insurance premiums;
- **Harassing or penalizing workers** who take time off to care for their aging parents or sick spouses or partners; and



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We know that discrimination against caregivers, especially mothers, exacerbates the wage gap.<sup>1</sup> Mothers are less likely to be hired and are offered lower salaries than women without children (and fathers).<sup>2</sup> In addition, mothers earn 5% less *per child* than non-mothers, even when statistically controlled for education, work experience and other variables.<sup>3</sup>

In addition, more and more Americans are shouldering elder and family care responsibilities - about half of the U.S. workforce expects to be providing elder care in the coming five years.<sup>4</sup> Most family caregivers are women (66%) and they spend as much as 50% more time providing care than male caregivers do.<sup>5</sup> Lower-income women carry a particularly heavy caregiving burden: 52% of women caregivers with incomes at or below the national median of \$35,000 spend 20+ hours each week providing care.<sup>6</sup>

## **Oregon workers, women and mothers in particular, need HB 4088**

HB 4088 would explicitly protect parents and caregivers from being discriminated against at work just because they provide care. The mechanism to achieve this is relatively simple and uses our existing method of providing for and enforcing basic civil right law in Oregon. This law would simply require employers to give caregivers equal treatment in the workplace.

This is also not a new concept. On the local level, **seven jurisdictions in Oregon have enacted familial status protections that go beyond state and federal law and expressly prohibit employment practices that target people with family responsibilities.** Beaverton, Corvallis, Eugene, Hillsboro, Portland, Salem and Benton County all have specific employment protections against familial status discrimination and have had these protections for over a decade.<sup>7</sup>

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<sup>1</sup> *A Fair Share for All: Pay Equity in the New American Workplace: Hearing Before the U.S. Senate Comm. on Health, Educ., Labor*, 113th Cong. (Mar. 11, 2010) (statement of Stuart Ishimaru, Acting Chairman of the Equal Employment Opportunity Commission).

<sup>2</sup> Daniel Aloj, *Mother's Face Disadvantages in Getting Hired, Cornell Study Says*, Cornell University News Service, (Aug. 4, 2005), <http://www.news.cornell.edu/stories/Aug05/soc.mothers.dea.html>.

<sup>3</sup> Stephan Benard, In Paik, and Shelley J. Correll, "Cognitive Bias and the Motherhood Penalty," *Hastings Law Journal* 59 (June 2008): 1359.

<sup>4</sup> Joan C. Williams et al., *Protecting Family Caregivers from Employment Discrimination*, AARP Public Policy Institute, 2, [http://www.aarp.org/content/dam/aarp/research/public\\_policy\\_institute/health/protecting-caregivers-employment-discrimination-insight-AARP-ppi-ltc.pdf](http://www.aarp.org/content/dam/aarp/research/public_policy_institute/health/protecting-caregivers-employment-discrimination-insight-AARP-ppi-ltc.pdf).

<sup>5</sup> *Id.*

<sup>6</sup> Women and Caregiving: Facts and Figures, Family Caregiver Alliance, [http://www.caregiver.org/caregiver/jsp/content\\_node.jsp?nodeid=892](http://www.caregiver.org/caregiver/jsp/content_node.jsp?nodeid=892).

<sup>7</sup> Beaverton City Code §§ 5.16.010-.060; Benton County Code §§ 28.005-.115; Corvallis City Code §§ 1.23.010-.120; Eugene City Code § 4.613; Hillsboro City Code §§ 9.34.010-.040; Portland City Code § 23.01.050; Salem City Code Ch. 97



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**While these local ordinances cover the vast majority of workers in Oregon, they do not explicitly cover elder care.** These ordinances could be construed as to only provide employment protections for parents and not for employees caring for an aging relative.

In addition, some workers have been able to bring successful suits under existing sex discrimination and family medical leave laws when they have been discriminated against for caregiving responsibilities, even in the absence of specific employment protections for familial status in state or federal law. Unfortunately, this legal approach leaves many gaps in protections against caregiver discrimination. Combined with the local ordinances, it also creates a patchwork approach that leaves employers in many situations having to guess how the courts will interpret existing laws when caregiver discrimination is at issue. Often, employers don't know that they can't discriminate against mothers and end up facing expensive lawsuits. A definitive law would remove the uncertainty for Oregon employers.

In addition, HB 4088 would define "familial status" broadly to encompass all types of caregiving relationships, including children, parents, grandparents, non-traditional family members and another person who is dependent on the employee for care. No employee should face employment discrimination based on their off-duty caregiving responsibilities.

Thank you for the opportunity to bring this important issue forward. Discrimination based on familial status hurts mothers, caregivers and the families who rely on them. Eliminating this type of discrimination will help families' better care for each other by allowing women and caregivers to be treated equally in the workplace.

**Please support HB 4088 to protect employees across the state from caregiver discrimination and give employers a consistent standard.**