



FAMILY FORWARD
OREGON

Smart policies for today's families.

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Employment Protections for Caregivers (HB 4088)

Codifying Oregon's local ordinances and creating a consistent statewide policy

Discrimination based on familial status, also called caregiver discrimination, is employment discrimination against workers based on their off-duty family caregiving responsibilities.

Pregnant women, mothers and fathers of young children, and employees with aging parents or sick spouses or partners may encounter family responsibilities discrimination. They may be rejected for hire, passed over for promotion, demoted, harassed, or terminated — despite good performance — simply because their employers make personnel decisions based on outdated stereotypical notions of how they will or should act given their family responsibilities.

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; or
- **Harassing or penalizing workers** who take time off to care for their aging parents or sick spouses or partners.

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

In addition, the percentage of households with both children under 18 and adults over the age of 64 has been rising for the past 30 years. The majority of people (63%) providing unpaid eldercare have jobs, with about half of caregivers working full-time. Parents who also provide eldercare have even higher rates of employment—78% are employed, and 62% work full-time. These members of the “sandwich generation” —those caring for elderly relatives and young children — face special challenges in balancing work and family.⁴

¹ *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).

² Daniel Aloï, *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>.

³ Stephan Benard, In Paik, and Shelley J. Correll, “Cognitive Bias and the Motherhood Penalty,” *Hastings Law Journal* 59 (June 2008): 1359.

⁴ *Id.*



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Existing Protections for Familial Status

There is a patchwork of protections under state and federal law against familial status discrimination and inconsistent protections for Oregon caregivers:

- **Oregon civil rights law specifically prohibits discrimination *in housing* based on familial status**, but there is no similar state law for employment protections for familial status (ORS 659A.421);
- In the absence of specific employment protections for familial status in state or federal law, **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**; unfortunately, this legal approach leaves many gaps in protections against caregiver discrimination; and
- 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.⁵ These protections should be extended to all working caregivers in the state.

Existing laws and local ordinances cover the vast majority of workers in Oregon, but they leave several gaps around the state and *do not explicitly cover elder care*.

The result is 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.

HB 4088 would create a clear statewide standard to protect against caregiver discrimination. This protection would operate and be enforced in the same manner as existing employment protections in Oregon civil rights law (ORS Chapter 659A).

In addition, HB 4088 would define "familial status" 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.

HB 4088 would protect employees across the state, regardless of where they live, from all types of familial status discrimination.

⁵ 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