

Clarification or Complaints?

The Impact of Family Responsibilities Discrimination Laws on State Enforcement Agencies

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About the Center for WorkLife Law

The Center for WorkLife Law is a research and advocacy organization that seeks to advance gender, racial, and class equity in employment and education. We collaborate with employees, employers, attorneys, and government officials to identify practical and legal solutions to work-family issues. More information about WorkLife Law can be found at worklifelaw.org.

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Summary of Key Research Findings

In June 2021, the Center for WorkLife Law at the University of California, Hastings Law released a report that found the passage of state-level family responsibilities discrimination statutes does not meaningfully increase litigation rates.¹ By conducting a comprehensive review of lawsuits against employers filed in the four states that prohibit discrimination against family caregivers - Alaska, Delaware, Minnesota, and New York² - WorkLife Law researchers identified a total of 71 total lawsuits filed against private employers, averaging one lawsuit per state per year.³ The annual likelihood a company will be sued is essentially zero (0.001%).⁴ The authors of [Litigation or Clarification: The Impact of Family Responsibilities Discrimination Laws](#) hypothesized that explicitly labeling the protected category of workers keeps litigation rates low by providing clarity that may help employers avoid litigation.⁵

This report builds on that prior research and explores another important legislative consideration: whether and to what extent family caregiver discrimination laws increase the number of complaints filed with state agencies tasked with enforcing them.

Key Findings

- In New York and Minnesota, the average total number of discrimination complaints filed with state enforcement agencies decreased in the years following enactment of caregiver discrimination statutes.
- The majority of complaints alleging family caregiver discrimination also included claims of other types of discrimination, like sex discrimination, indicating the possibility that they would have been filed even in the absence of an explicit prohibition on caregiver discrimination.
- Single-basis caregiver discrimination claims made up less than one percent of all employment discrimination complaints filed with state enforcement agencies (0.64% in Alaska and 0.52% in Minnesota).

These data show that the passage of family responsibilities discrimination statutes does not significantly increase the burden on state enforcement agencies. This outcome may be because employees facing discrimination due to their family caregiving responsibilities are already filing complaints under other existing laws, like those that prohibit discrimination on the basis of associational disability, gender, marital status, race, pregnancy, lactation, and childbirth. When family caregivers are clearly labeled as a protected class, employers are less likely to discriminate against them.⁶

Background on Family Responsibilities Discrimination Agency Complaints

Family responsibilities discrimination (FRD) – also called family caregiver discrimination – occurs when an employee with unpaid family caregiving responsibilities is terminated or suffers other negative employment action due to discrimination instead of actual job performance.⁷ No federal law expressly prohibits discrimination on the basis of family responsibilities.⁸ However, Alaska, Delaware, Minnesota, New York, and over 200 local jurisdictions have enacted laws making it illegal to discriminate against an employee because they care for a child or other family member.⁹

Employees who wish to pursue action against an employer for discrimination are typically either permitted or required to file a complaint with a state enforcement agency before, or instead of, filing a discrimination lawsuit in court. Sometimes, the submission is a pro forma prerequisite before an employee may bring a lawsuit. Other times, agency adjudicators thoroughly evaluate and/or investigate claims. Employees may allege in their agency complaints one or more bases of discrimination, depending on the facts of their situation. For example, an employee who believes they were discriminated against because of their religion alone may so allege this “single basis.” An employee who believes they were discriminated against on “multiple bases,” e.g. because of their religion, and also because of their race and sex, may allege all three bases.

Agency Data and Analysis

This analysis relies on agency data generously provided by the Alaska State Commission for Human Rights, the Minnesota Department of Human Rights, and the New York State Division of Human Rights. Researchers supplemented publicly available data with additional, specific data requests from the state enforcement agencies.¹⁰ Delaware does not maintain the relevant data on discrimination complaints and thus is not included in this report.¹¹

Impact of FRD Laws on the Total Number of Complaints Received by Enforcement Agencies

WorkLife Law researchers studied data from New York and Minnesota to compare the number of complaints filed with the agencies in the years following the passage of an FRD law to the number of complaints filed prior to its passage. Because the COVID-19 pandemic likely impacted the number of complaints filed, researchers analyzed the number of complaints both with and without data from the pandemic years. Alaska is not included in the analysis because its caregiver discrimination law went into effect in 1975, and the necessary data is unavailable for several key years. However, when Alaska passed its law in 1975, the Alaska State Commission for Human Rights' Annual Report stated, "Case statistics... show that no great flood of new complaints uniquely attributable to the new coverage materialized."¹²

Figure 1: Total Number of Employment Complaints Filed with State Agency, Before and After FRD Law (Including Pandemic Years)

	No FRD Law	FRD Law In Effect	Change in Number of Discrimination Complaints Filed Following FRD Law
NEW YORK	FY2010/11- FY2014/15	FY2016/17- FY2020/21	
Annual Average # of Complaints Filed	5603.4	4828.6	13.8% Decrease
MINNESOTA	2011-2013*	2015-2021	
Annual Average # of Complaints Filed	481.0	413.6	14.0% Decrease

* Minnesota data was not available prior to 2011.

Figure 2: Total Number of Employment Complaints Filed with State Agency, Before and After FRD Law (Excluding Pandemic Years)

	No FRD Law	FRD Law In Effect	Change in Number of Discrimination Complaints Filed Following FRD Law
NEW YORK	FY2010/11- FY2014/15	FY2016/17- FY2019/20	
Annual Average # of Complaints Filed	5603.4	5271.0	5.9% Decrease
MINNESOTA	2011-2013*	2015-2021	
Annual Average # of Complaints Filed	481.0	453.6	5.7% Decrease

These data show the total number of employment complaints filed with state enforcement agencies went down following the passage of laws prohibiting discrimination against family caregivers by between 5.7 and 14 percent, depending on the state and whether the COVID-19 pandemic years are included.

Analysis of FRD Complaints Filed with Enforcement Agencies

While total agency complaints decreased following enactment of FRD laws, another useful indication of impact is the raw number of FRD complaints filed, and how many of those complaints alleged additional bases of discrimination. The following chart presents the percentage of total complaints received by enforcement agencies that allege a caregiver discrimination claim.

Figure 3: FRD Complaints Filed with State Enforcement Agencies

State (Years of Available Data)	Average Annual # of Discrimination Complaints Filed, All Bases (e.g., race, sex, etc.)	Average Annual # of Discrimination Complaints Filed, All FRD Claims	Percentage of Agency Complaints that Allege FRD
ALASKA (2017-2021)	187.6	2.6	1.4%
MINNESOTA (2015-2021)	413.6	7.3	1.8%
NEW YORK (FY 2016/17- FY 2020/21)	4828.6	302.2	6.3%
All States, Average			3.2%

The data from Alaska, Minnesota, and New York show that the percentage of all agency employment discrimination complaints that make an allegation of discrimination on the basis of family responsibilities is, on average, 3.19%. While this number makes clear that agencies will need to train investigators on the newly protected category of employees, it does not represent the additional number of total complaints state agencies can expect to receive following passage of an FRD law (as indicated in Figures 1 and 2 above, those numbers went down). This is because many of these complaints would have been filed even in the absence of an FRD protection under other bases, such as sex, disability, marital status, race, pregnancy, lactation, and childbirth.

In fact, the majority of discrimination complaints filed in the states that explicitly prohibit caregiver discrimination allege one or more additional basis of discrimination, as shown in the chart below. (New York is excluded from this analysis as we were unable to obtain the relevant data for that state.)

Figure 4: Percentage of FRD Employment Complaints with Multiple Bases

State (Dates Studied)	Average # of FRD Complaints Filed Annually	Average # of FRD Complaints Alleging Additional Bases	Percentage of FRD Complaints Alleging More than One Basis of Discrimination
ALASKA (2017-2021)	2.6	1.4	53.85%
MINNESOTA (2015-2021)	8.14	6	73.71%

* Data on the number of complaints alleging single versus multiple bases is not available prior to 2017 from Alaska.

These data suggest that many of the complaints agencies receive following passage of an FRD law might have otherwise been filed on other grounds, even in the absence of the FRD statute. Indeed, the percentage of total complaints received by the enforcement agencies that allege a single caregiver discrimination claim is low, as presented in the following chart.

Figure 5: Frequency of Single-Basis FRD Employment Complaints

State (Dates Studied)	Average Annual # of FRD Employment Complaints, Single-basis	Average Annual # of Employment Discrimination Complaints Filed, All Bases (e.g., race, sex, etc.)	Percentage of All Employment Discrimination Complaints Filed That Include Only an FRD Claim (i.e., Single-basis)
ALASKA (2017-2021)	1.2	187.6	0.64%
MINNESOTA (2015-2021)	2.14	413.6	0.52%

These data suggest that for all employment discrimination complaints filed, agencies can expect less than one percent to be single-basis FRD complaints. All other complaints would be expected to allege one or more other forms of discrimination (e.g., sex, race, pregnancy, disability, etc.).

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Endnotes:

- 1 Liz Morris, Cynthia Thomas Calvert, & Jessica Lee, *Litigation or Clarification? The Impact of Family Responsibilities Discrimination Laws* (Center for WorkLife Law, June 2021), 3, <https://worklifelaw.org/wp-content/uploads/2021/07/Litigation-or-Clarification-The-Impact-of-Family-Responsibilities-Discrimination-Laws.pdf>.
- 2 Alaska Stat. Ann. § 18.80.220 (prohibiting discrimination “on the basis of parental status”); 19 Del. Code § 711 (k) (prohibiting discrimination “because of the individual’s family responsibilities”); Minn. Stat. § 363A.08 (prohibiting discrimination “on the basis of familial status”); N.Y. Exec. Law § 296 (prohibiting discrimination “on the basis of familial status”).
- 3 Morris, Calvert, & Lee, *supra* note 1.
- 4 *Id.*
- 5 *Id.*
- 6 Research demonstrates that anti-discrimination legislation reduces instances of discrimination. See e.g., Barron, L. G., & Hebl, M. (2013). The force of law: The effects of sexual orientation antidiscrimination legislation on interpersonal discrimination in employment. *Psychology, Public Policy, and Law*, 19(2), 191–205. <https://doi.org/10.1037/a0028350>
- 7 Cynthia Thomas Calvert & Jessica Lee, *Caring Locally for Caregivers: How State and Local Laws Protect Family Caregivers from Discrimination at Work* (Center for WorkLife Law, February 2021), 2, https://worklifelaw.org/wp-content/uploads/2021/02/Caring_Locally_for_Caregivers.pdf.
- 8 *Id.*
- 9 THE CENTER FOR WORKLIFE LAW, *State and Local FRD Laws Prohibiting Employment Discrimination against Parents and Other Caregivers* (October 2021), <https://worklifelaw.org/wp-content/uploads/2021/10/State-and-Local-FRD-Law-Table.pdf>.
- 10 This report examines publicly available data and data made available by the Alaska State Commission for Human Rights from 2017 through the end of 2021, the Minnesota Department of Human Rights from 2012 through the end of 2021, and the New York State Division of Human Rights from April 2011 through March 2021.

Minnesota’s law became effective in May 2014. Minn. Stat. § 363A.08. Thus, when analyzing annual trends before and after the caregiver discrimination law is effective, this report excludes data from 2014, so the partial year does not skew the data. Similarly, New York’s law became effective in January 2016, in the middle of FY2015/2016. N.Y. Exec. Law § 296. Thus, when analyzing annual trends before and after the FRD law is effective, this report excludes data from FY2015/2016, so the partial year does not skew the data.
- 11 WorkLife Law researchers were unable to obtain data from the state of Delaware. According to a representative of the Delaware Department of Labor, the Department does not maintain the relevant data.
- 12 ALASKA STATE COMM. FOR HUMAN RIGHTS, *1975 Annual Report* (1975), 17, <https://humanrights.alaska.gov/wp-content/uploads/2017/05/1975-Annual-Report.pdf>.

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