

# ONE SICK CHILD AWAY FROM BEING FIRED:

*When “Opting Out” Is Not an Option*



## WORK LIFE LAW

UC Hastings College of the Law

*One Sick Child Away From Being Fired:  
When “Opting Out” Is Not an Option<sup>1</sup>*

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*Dedicated to Ruth Fallon Dempsey and to Xavier Dempsey, United  
Steelworkers of America, Local 895*

## OVERVIEW

Whenever the employer required the workers to work overtime, the group of women [factory workers] had their babysitters drop their children off at their workplace. When the security guards saw the children, they were dumbfounded, and when the women were confronted by their managers, they said, “I would be put in prison and my children would be taken away from me if I leave them home alone – I cannot do that. You told me to stay, so they’re going to come here.”<sup>2</sup>

Professional women are not the only Americans whose jobs are in jeopardy because of work/family conflict. This report discusses a study of 99 union arbitrations that provide a unique window into how work and family responsibilities clash in the lives of bus drivers, telephone workers, construction linemen, nurses aides, carpenters, welders, janitors, and others – men as well as women – in working-class jobs.

The media tends to cover work/family conflict as the story of professional mothers “opting out” of fast-track careers.<sup>3</sup> Surveys confirm that working class Americans feel work/family conflict acutely: two-thirds of unionized fathers said they were unhappy with the amount of time they dedicated to their children; half of the mothers agreed.<sup>4</sup> The arbitrations communicate the stories of Americans caught between inflexible jobs, lack of resources, and their commitment to do right by their families. Here are the major findings:

1) *Working class families face inflexible schedules that clash with family needs.*

A bus driver was fired when she arrived three minutes late because her severely asthmatic son had had an asthma attack.<sup>5</sup> A packer was fired when she left work in response to a call that her daughter was in the emergency room with a head injury.<sup>6</sup> A press operator at the *Chicago Tribune*, who was the primary caregiver for her mother, came to work late because she said she was up until midnight monitoring her mother’s blood pressure,

which was dangerously out of control. She returned home to find that her one-year-old was having trouble sleeping, and fell asleep while rocking the child in a rocking chair. The next morning she overslept, called in to report she would be late, but was fired when she arrived 20 minutes late.<sup>7</sup>

For families dealing with chronic disease, the lack of child care and social services, along with job inflexibility, create a toxic brew. A single mother who worked for the Chicago Transit Authority was fired for tardiness stemming chiefly from her son's Crohn's disease. Each morning she had to unhook her son from his IV, bandage him, administer medication, get him off to school, take two buses to take her toddler to his babysitter, and then take a third bus to get to work. When she was late, she often worked through her lunch hour to make up the time. The Transit Authority allowed her to come 30 minutes late, but given the lack of suitable child care and other social supports, she ultimately lost her job.<sup>8</sup> Twenty percent of American families are caring for a child with special needs; 30% of these caregivers either reduce their hours or end up without work as a result.<sup>9</sup>

When family crises strike, these families do not have the resources to hire help or seek out professional care for needy or troubled family members. A flood of cases involve phone company workers fired for monitoring their own telephones in a dazzling array of family crises that range from drug-dealing teenagers, to suicide threats, to asthmatic children left home alone, to elders in danger in poor neighborhoods and suffering from dementia.<sup>10</sup> An important right these families lack is one that professional workers take for granted: to make a phone call, especially in the summer, when one in ten children aged 6 – 12 is home alone or with a sibling under 13.<sup>11</sup>

2) *Mandatory overtime leaves single mothers, divorced dads, and tag team families in jeopardy of losing their jobs.* In a high-hours economy, single mothers often face no-win situations. *Tenneco Packaging Burlington Container Plant* involved a janitor who was the divorced mother of a 17-year old son with the mentality of an 18-month old. She had failed to report to work one Saturday when her son's caregiver could not work because her own child was sick.<sup>12</sup> The janitor had been working 60-hour weeks for months. She was fired after 27 years' service.

Divorced dads face often discipline or discharge due to mandatory overtime. In *Marion Composites*,<sup>13</sup> a factory worker was suspended three days for insubordination when he left after eight hours of a 12-hour overtime shift. He was, according to the arbitrator, "an excellent employee who consistently worked overtime when asked to do so. . . . He was never absent. He accepted overtime whenever the Company needed him. Indeed, his dedication to his work placed him in a situation that may have jeopardized his family responsibilities."<sup>14</sup> When first asked to work overtime, he said he could not because he was "tired and worn out" – his wife had recently left him, and he had been so upset he had been feeling ill. Later that afternoon, he said he would help out the company, but that he could only stay for eight hours because he had to get home to care for his two children. He stayed after the eight hours was up, but became "distraught" after receiving a call from his wife, and left after 8 hours and 20 minutes. He was suspended for three days.

Overtime also poses problems for "tag team" families where dad and mom work opposite shifts and each care for the kids when the other is at work. Tag teaming makes the design of overtime systems a major work/family issue. In *U.S. Steel Corp.*,<sup>15</sup> a

factory worker stated that when his regular babysitter was sick, he rather than his wife took off work because his wife's employer had a stricter absenteeism policy; he was suspended for fifteen days for an unexcused absence. While his frankness was unusual, the problem is widespread.

3) *Working class men often are unable or unwilling to bring up their family needs with their employers. Instead, they suffer in silence or try to “come in under the radar screen” – with unhappy results.* In *Tractor Supply Co.*, a grandfather was fired for insubordination when he refused to stay at work past his regular shift because he had to get home to care for his grandchild.<sup>16</sup> When his supervisor asked why he would not stay, the worker told him it was none of his business. That worker was reinstated by the arbitrator, but a UPS package delivery driver was not so lucky when he was fired for “theft of time” when he took off an extra hour and a quarter on two different days without telling his supervisors. He explained:

I took a three-week vacation when my second son was born. . . . Prior to this my wife had quit her job due to early contraction and had difficult her last trimester. I was working up to 50 – 60 hrs week. . . . At times, I was to return . . . [to work] with just 8 hours off in between. Barely enough time to sleep or recuperate. . . . On my vacation time, with my new baby boy and my 2 ½ year old, my wife was laid up . . . recuperating. . . . I had even less sleep. . . . I was taking care of my two kids while I let my wife rest. . . . Since [then] things haven't calmed down [but] I returned to work . . . since I can no longer afford to be off for so long. One week later my wife got sick due to an infection in her breast . . . [and] ended up with a temperature of 104. . . . Meanwhile, my first son was coughing and had the flu. As the newborn is still feeding every two hours, I was getting by on 2-3 hours of sleep a day. . . . I didn't know whether I was coming or going. . . . [I went] home and spent my lunch and breaks there to make sure every one at home was okay. But I lost track of time. . . . My intention was [to be] there for my family but not to steal time, as I was accused of.<sup>17</sup>

He pointed to his two years of service, and said “I've always given the best of my ability to get the job done. . . . Taking away my job from me has put my family in a financial

hardship. I cannot survive with having two babies. And my wife being out of work. I deeply regret for what I've done, but I need my job back." He was fired.

4) *Many workers are one sick child away from being fired. Work/family issues are core union issues: empowering workers to organize or exercise their rights requires unions to protect their members from the work/family conflicts they will inevitably face.*

The union movement often views work/family issues as a luxury item rather than a central bargaining and organizing issue. In fact, work/family issues are core union issues, given that American workers rely heavily on family members to provide care for family members. In the absence of union protection, workers are vulnerable to discipline or discharge for doing what any conscientious parent, child, or spouse would do.<sup>18</sup> Unions should use their ability to protect workers who need to fulfill their family responsibilities as a valuable organizing tool.

5) *Employers' inflexibility may well defeat their own business needs.* The business case for family-responsive policies, almost always framed in terms of the need to retain highly trained professionals, may be even more pressing in the working-class context. The business case for family-responsive policies in the working-class context includes: improved quality and consumer safety; improved worker engagement and commitment, which has a direct link to profits; enhanced customer service and productivity; reduced stress, which drives down health insurance costs; cost savings due to enhanced recruitment and decreased turnover and absenteeism; and avoiding a loss of employer control in unionized workplaces. One example of the business case is an arbitration in which a quality control technician was required to report for work despite the fact that the hospital had instructed him that his wife, who had just had a miscarriage,



should not be alone for the first 24 hours. The technician, who was 56 and had fifteen years of seniority, became rattled when he called home and his wife did not answer the phone. He was fired after he failed to properly inspect carton seals but signed inspection forms saying he had done so.<sup>19</sup>

6) *Flexibility is possible in working-class jobs.* We often hear that flexible work options “just aren’t possible” in working-class jobs. This misconception stems from the assumption that the only available model of workplace flexibility consists of individualized arrangements negotiated between an individual worker and an individual supervisor. That model, developed for professionals, often is unsuitable for nonprofessionals. Nonetheless, both employers and workers stand to benefit when workplaces provide flexibility for nonprofessionals. This report outlines five crucial steps any employer can take to help match the workplace to today’s workplace, including (1) providing family leave as required by law; (2) creating additional leaves to address work/family conflict, rather than leaving workers only with the option of calling in sick when they need to care for family members; (3) designing family-responsive overtime systems; (4) providing reduced hours and other flexible work options, and (5) recognizing that workplace inflexibility hurts the bottom line. The report ends outlining the specific kinds of workplace flexibility that are feasible and cost-effective in working-class jobs.

These arbitrations help explain why nearly one-third of all unionized employees surveyed – men as well as women – said that their biggest work-related concern was not having enough time for family and personal life.<sup>20</sup> And in one recent union survey, local

presidents representing 75,000 workers said they believed work/family conflict was as bad or worse than five years ago.<sup>21</sup> These workers are the lucky ones: all except the UPS driver saw their discipline reduced or dismissals overturned when their union filed a grievance. The 92% of American workers who are not unionized have no appeal. Their fate is dramatized by two incidents from California.

- When a California restaurant worker's child care fell through, she brought her daughter to the restaurant, where the child sat at an empty table while she completed her day's work. Her boss said nothing, but fired her at the end of the day.
- A California father took a day off work to enroll his son in grade school when his son came to live with him because his ex-wife was incarcerated. He called his employer to say that he had a family emergency, and his employer responded that he could not take the day off. When the dad reported for work the following day, he had lost his job.

Grievances are an aspect of union life unfamiliar to most Americans. Not much background is needed. In a unionized workplace, when a worker is disciplined or fired, the union may file a grievance on the worker's behalf, arguing that the employer lacked just cause. If attempts to negotiate a settlement are unsuccessful, the case goes to arbitration. Most arbitrations are not public: this study reports on arbitrations that either were published, or were made available to us through unpublished databases.

This report is a follow-up to the Center for WorkLife Law's initial report, *Work/Family Conflict, Union Style*, written by Martin H. Malin, Maureen K. Milligan, Mary C. Still & Joan C. Williams and published on the web in 2004.<sup>22</sup> Since then, we

have found additional published arbitrations, and also have gained access to the arbitrations of three unions that generously made their databases available to us: the Communication Workers of America (CWA), the Amalgamated Transit Union (ATU), and the Teamsters (UPS database only). (We are currently seeking access to other arbitration databases; please contact the author!)

The workers discussed in this report have far more protection than the average Joe: not only were they unionized, but their unions chose to grieve their discipline. Most workers have far fewer protections, given that most disputes are settled informally, most arbitrations are never published, and most workplaces are not unionized. We could expect the consequences of work/family conflict to be more severe in non-unionized workplaces where workers typically have fewer rights.

In short, these arbitrations skirt the surface of a larger sea of pain. This is the new face of work/family conflict, one that is not captured by uplifting stories of professional mothers opting out.

*Messages for the press, policymakers, unions, and employers*

This study holds important messages for the press, for policymakers, for unions, and for employers.

*For the press*, the report raises the question of whether work/family conflict should continue to be reported chiefly as a problem faced by professional women. This approach is understandable, given the hydraulic work/family pressures often experienced by reporters and editors. In this situation, however, the reporter's adage that a trend is something that has happened to three of an editor's friends has several undesirable

effects. First, it misrepresents the face of an important economic issue. The press would never cover unemployment by interviewing a handful of Yale students or a few laid-off friends from Princeton.<sup>23</sup> Yet that's how it typically covers work/family conflict, which also involves a major economic issue: in an era when 70% of households have all adults in the labor force<sup>24</sup>, workplaces still often assume an ideal worker without child or other family care issues. In addition – and most important – the press's overly autobiographical approach to covering work/family conflict has a negative impact on public policy.

*For policymakers* the crucial message is that work/family conflict is not just a professional women's issue. "My boss is not interested in the problems of professional women," one Capitol Hill staffer confided in an interview. Yet public policy is urgently needed: Americans' conflicts are so acute because of the lack of affordable child care, paid family leaves, limits on mandatory overtime, and scheduling flexibility that are available in other countries. Similar proposals in the U.S. will lack a constituency in the U.S. so long as work/family conflict is understood as "just a professional woman's problem."

*For unions*, this report points out that many workers either are single parents or "tag team" (where dad and mom work opposite shifts and each care for the kids when the other is at work). American dual-earner couples work far longer hours than do workers in any other industrialized country,<sup>25</sup> which is why surveys report that nearly one-third of unionized employees state that their biggest work-related concern is not having enough time for family and personal life.<sup>26</sup> In fact, work/family conflict often places workers at risk: working class families typically do caregiving work themselves because they cannot

afford to buy the kind of high-quality replacement care professionals depend upon. An important message for a union movement newly focused on organizing is that, without contract protection, many workers are one sick child away from being fired. A key potential benefit of unions, *for men as well as women, grandparents as well as parents*, is that they will be protected when they need to respond to their families' legitimate needs for care. Work/family issues are core union issues.

*For employers*, this report provides a glimpse of the “business case” for family-responsive policies for hourly workers. Studies that show that a family friendly workplace helps businesses' bottom line typically focus on employers' need to retain highly trained professionals. But hourly workers, too, “put family first”; a workplace that assumes they won't places an employer's bottom line – and consumer safety – at risk.

## ANALYSIS

### *1. Working class families face inflexible schedules that clash with family needs.*

When I was a young bus driver and my children were very small (ages 4, 2, and 1), I worked the late shift and my wife went to school during the day. We couldn't afford child care, and this way one of us was always home. One day in the middle of winter, I was scheduled to work at 4 pm. The babysitter didn't show up or call to say she wasn't coming. I had to bundle up the kids and take them to work. They had to ride my bus with me. After about two hours I was lucky enough to see my wife studying in a coffee shop, so I stopped the bus and ran in and handed her the kids.<sup>27</sup>

*-John Goldstein, Past President, Milwaukee Labor Council*

Typically media coverage of work/family conflict focuses on professional women who have “opted out” in the face of inflexible career paths and very long workweeks.<sup>28</sup>

While U.S. professionals often work long hours, working-class Americans typically lack the kind of flexibility professionals take for granted. While a professional may well have no trouble taking time off to attend a school class trip, leave work or telephone to check up on a sick child, or take a family member to the doctor, blue- or pink-collar workers are closely supervised. Typically they “punch in” and adhere to rigid schedules, unable to leave except during lunch and designated breaks; arriving or leaving even a few minutes late may lead ultimately to dismissal.

Nearly three-quarters of working adults say they have little or no control over their work schedules.<sup>29</sup> Lower-income workers tend to have the least control over their schedules. One study found that flexible scheduling is available for nearly two-thirds of workers with incomes of more than \$71,000 a year but to less than one-third of working parents with incomes less than \$28,000.<sup>30</sup> Another found that one-third of working-class

workers cannot decide when to take breaks, nearly 60% cannot choose starting or quitting times, and 53% cannot take time off for sick children. In addition, 68% of working-class families have two weeks or less of vacation and sick leave combined.<sup>31</sup>

Workplace inflexibility has particularly harsh impacts because American families with children and two earners work far longer hours than do equivalent families in other industrialized countries. The differences can be dramatic: while only 6% of Swedish two-job families with children work in excess of 80 hours/week, over two-thirds (64%) of U.S. families do.<sup>32</sup> This long family workweek reflects the sharply higher penalty for part-time work here than elsewhere: in the U.S., the wage penalty for part-time work is a whopping 21%.<sup>33</sup> Despite this, one recent survey found *higher* demand for part-time work among U.S. hourly workers than among professionals, evidence of the desperate hunger for family time.<sup>34</sup> The time famine is sharply higher in the U.S. than elsewhere: fully 95% of women and 90% of men in the U.S. wish they had more time with family.<sup>35</sup>

Inflexible schedules work in combination with “no fault” progressive discipline systems. These systems give workers points for absenteeism regardless of the cause, unless the situation is covered by work rules or union contract. A worker who garners enough points is first disciplined and then fired, regardless of the reasons for the absences in question. Some of the workers in the arbitrations discussed in this report have excellent attendance records, while many others have struggled with child care, elder care, transportation and other problems that have resulted in unenviable absenteeism records. The issue is not whether employers have a right to count on employees to show up – clearly they do. The issue is whether employees who have done everything they could to put in place dependable routine and back-up care should be fired when a family

emergency triggers the final point that leads them to be fired, an issue that is discussed below. A second issue is whether absences covered by the Family and Medical Leave Act can be legitimately treated as garnering points under a “no fault” system. Some influential commentators have argued they cannot.<sup>36</sup>

Inflexible work schedules work in poisonous combination with an unusually heavy reliance on family members for child care. Unlike in countries such as France, Sweden and Denmark, where high-quality child care is readily available and affordable, child care in the U.S. is both expensive and of highly variable quality. Consequently, working-class families typically patch together a crazy quilt of family-delivered care, with parents working different shifts and/or grandparents and other family members are drafted to help with child care. These arrangements mean that if parent or grandparent is forbidden to leave or is ordered to stay overtime, workers may well face discipline, or even job loss. The commonness of this situation is highlighted by a study that found that, in the month surveyed, 30% of those surveyed had to cut back on work for at least one day in order to address family care needs.<sup>37</sup> One manager stated that “nothing gets done around here between 3 and 3:30 when all the moms are calling up to check and see that their kids got home safely from school.”<sup>38</sup> For many workers, the ability to make a simple phone call is a crucial work/family issue.

In *General Telephone Company of Indiana*,<sup>39</sup> a service clerk who had just had a baby was ordered, the day she returned from child care leave, to attend a two-week out-of-town training course. Because she was given less than a week’s notice, she was unable to get babysitting, and her husband (who also worked for the phone company) was on assignment out of town. She asked that the class be scheduled when she had sufficient



time to arrange babysitting. The supervisor suggested that she start the class several months later; she agreed. Yet a few days later she was informed that attending the training program was a requirement of her job, and that she would be terminated if she did not attend. A few days later, she was given the choice to be demoted to an operator job or fired.

With pressing child and elder care responsibilities, workers who lack workplace flexibility must devise creative methods of resolving work/family conflicts. Many rely on family members for assistance, with low-income families more likely to rely on relative and family care than more affluent families.<sup>40</sup> One-third of low-income families must rely on a relative to care for their children while they are at work.<sup>41</sup> Heavy reliance on family-delivered care continues in families with older children. Nearly one-fifth of children aged 6 through 12 are cared for by relatives outside of school hours.<sup>42</sup> A study of child care in Massachusetts found that 4 out of 10 low-income parents were forced to miss work because of problems with child care arrangements; nearly three-fourths lost pay due to work/family conflicts.<sup>43</sup> These informal child care arrangements break down more often than do more formal ones,<sup>44</sup> as happened in *Chicago Transit Authority*,<sup>45</sup> in which a male bus driver failed to come to work because his mother, who had agreed to watch his four children, never showed up.

Many cases won involve workers who had tried to arrange reliable child care, plus one or more back-up systems so they could attend work if regular child care broke down, only to have their best-laid plans go awry. For example, in *Princeton City School District Board of Education*,<sup>46</sup> a teacher requested a personal leave day when her normal day care provider became suddenly sick. Her husband was out of town, and her mother-

in-law was scheduled to work. School officials denied leave in the absence of proof that she had tried to arrange for back-up through a commercial day care center. She had not tried to do so on the date in question because she had learned, several years earlier, that local centers (like most centers in the U.S.) did not accept short-notice one-day clients. Arbitrator Michael Paolucci held that the personal day should have been granted because the teacher did have a back-up plan – relying on her husband and mother-in-law – that had worked in the past.

The arbitrator also found in favor of the worker in another situation involving back-up child care, in *Social Security Administration, Westminster Teleservice Center*.<sup>47</sup> The case involved a Contact Representative who was treated as absent without leave (AWOL) when she did not report to work because her regular babysitter had car problems and her backup babysitter's husband was hospitalized with a heart attack. The worker, a single mother with no relatives nearby, made persistent efforts to reach her supervisor, expressing mounting anxiety over the cost of her long distance calls. Her direct supervisor never returned her calls. She remained at home, eventually using foul language to express her frustration; she was disciplined for being AWOL, a decision that was overturned by the arbitrator, who held that she was entitled to emergency annual leave under the contract because she

had met the commonly understood meaning of 'emergency': She had a childcare emergency. It is not disputed that the two people she reasonably and legitimately depended upon for childcare were suddenly and unexpectedly unavailable. . . . Indeed, her circumstances exactly met the situation described in [the contract], that is, there was an unexpected change in her child care arrangements."

The 24-hour economy produces nontraditional work schedules that place many parents at risk. The evening shift is the most common alternative work schedule,

accounting for 40% of all nonstandard work shifts among full-time workers and more than half of those among part-time workers.<sup>48</sup> Nonstandard schedules that work for a married couple do not work if the couple divorces. One divorcing mother lost her job at a factory that produced night-vision goggles due to a shift change that meant she would (she felt) lose custody of her children.<sup>49</sup>

Men as well as women are affected by child care break-downs, in significant part because of “tag teaming,” where parents work different shifts so that each parent can care for the children while the other is at work. Tag teaming exists in professional families, but is very common in nonprofessional families, in part for simple economic reasons: given the lack of government subsidies, the average price for child care for a one-year old is higher in every state than the average cost of college tuition at the state’s university.<sup>50</sup> In addition, tag teaming avoids having working class families’ lack of market power translate into poor quality child care: most experts estimate that more than half of paid care in the U.S. is “poor” to “adequate” and only about 10% of paid care provides developmentally enriching care.<sup>51</sup> Said one influential observer, “For most working-class families, child care is often patched together in ways that leave parents anxious and children in jeopardy.”<sup>52</sup> In fact, 60% of child care in the U.S. is of “poor or mediocre” quality, according to a National Institute for Child Health and Human Development study.<sup>53</sup> In one illustrative family, the nine-year old was a latchkey child, home alone after school. The babies, both under three, went to the wife’s mother two days a week.

But she works the rest of the time, so the other days we take them to this other woman’s house. It’s the best we can afford, but it’s not great because she keeps too many kids and I know they don’t get good attention. Especially the little one....She’s so clingy when I bring her home; she can’t let go of me, like nobody’s paid her any mind all day.”<sup>54</sup>

Tag teaming often seems a more attractive alternative. About one in three working families with children under six, and one in four with children, handle child care by tag teaming.<sup>55</sup> Often, tag teaming includes not only parents but also grandparents. These fragile, patched-together systems break down often. One study found that 30% of workers surveyed had to cut back on work for at least one day during the week surveyed in order to care for family members: nearly one-quarter of men as well as over one-third of women.<sup>56</sup> Cutbacks were more frequently among lower-income workers with the most inflexible schedules, presumably because they were only half as likely to rely on child care centers.<sup>57</sup>

When faced with child care emergencies, tag-team families face difficult choices as to whether the mother or the father will face discipline or discharge for taking time off to attend to children, as in *U.S. Steel Corp.*<sup>58</sup> described at the beginning of the report, where a factory worker whose regular babysitter was in the hospital took off work because his wife's employer had a stricter absenteeism policy than his did.

Among "tag teamers," fathers act as primary caregivers when their wives are at work.<sup>59</sup> Another case provides a vivid example. The father of a toddler started his warehouse job at 7:00 a.m. in order to be available to pick up his daughter from preschool at 3:00; his wife brought the child to preschool in the mornings. The father won a grievance challenging his employer's attempt to change him entirely to a 9 to 5 schedule, on the grounds that the union contract did not allow the company to unilaterally change start times.<sup>60</sup> A third involved a bus operator whose daughter needed a ventilator to breathe. He had been absent from work due to child care problems he said arose when his daughter's mother had to work, attend school, and get emergency surgery; his

daughter was ill when confusion arose about an extra work assignment and when an alarm clock did not go off. In yet another case, the arbitrator reduced a father's discharge to a one-month suspension for refusing to take an assignment because he had to pick up his daughter.<sup>61</sup> In another arbitration, when a carpenter left work to pick up his children, the employer argued that he should have obeyed the order to stay and grieve later. The arbitrator disagreed: "[t]he 'work now, grieve later' rule has no application. [He] could not both continue working and pick up his children."<sup>62</sup> In another tag team case, *Piedmont Airlines*,<sup>63</sup> an employer insisted that its needs meant that its employee, a flight attendant, should trump her spouse's need to be at work. The simple fact is that both parents' schedules cannot simultaneously have priority.

One unexpected finding is that men's work/family conflicts stem not just from tag teaming, but from divorce. One example involved a 22-year employee, most recently an extruder operator in vinyl extrusion, who explained that his stay-at-home wife left him in June 1995, leaving him to care for their four-year-old son. He was notified that social services authorities were investigating him for child neglect. They found none, and subsequently tried to help him find day care for his son, but all he could find during the summer were high school babysitters who were inconsistent and unreliable. At the end of August he finally found an approved day care provider, but not until he had been fired for excessive absenteeism under the employer's no fault policy.<sup>64</sup> *Interlake Conveyors*<sup>65</sup> involved a material handler who was fired (but reinstated by the arbitrator) when he was not allowed to produce documentation that, as the divorced father of an asthmatic son, he needed to stay home because his son was ill.

Even when families are able to rely on child care centers or family day care, they still must cope with the provider's often inflexible hours and policies. Most centers close before normal business hours, and charge steep fees (often \$1 per minute) if children are picked up late. Even more important, the steep fees signal that child-care teachers get upset when children are picked up late, so that parents who arrive late risk losing their child care arrangement, which often means they lose their jobs. In five of the arbitrations studied, workers lost their jobs after they lost their child care.<sup>66</sup> Another common scenario is when an employer unilaterally changes a worker's starting and stopping times, often without much notice, and the parent's child care provider cannot, or will not, take the child at the new time. Sometimes a schedule change affects not child, but eldercare, as in *Simpson v. District of Columbia Office of Human Rights*.<sup>67</sup> A secretary challenged her employer's insistence that she start work one hour and a half earlier, thereby making it impossible for her to care for her elderly and ailing father before she arrived at work. In certain jobs, an employer is not in a position to offer flexibility – obviously, one cannot stop a factory line to accommodate a babysitter. But many employers could offer far more flexibility than they actually offer without jeopardizing their business needs.

The inflexibility of working class jobs has particularly harsh consequences in cases involving family crises. In one, a bus driver was suspended for five days from a company where she had worked for eight years when she missed a day of work because, as she described, her 17-year-old daughter, who was using drugs and had threatened suicide, was discovered in the bathtub in a fetal position and refused to speak. The daughter was taken by ambulance to the hospital, where a psychologist arranged to meet with her mother the following day. The bus driver phoned the dispatcher to explain the

situation and say that she would not report for work, offering to make up the time on one of her days off. At the dispatcher's request, she submitted her request in writing, but did not "spill her guts" on paper; a recent study found that working-class people are more concerned than middle-class people with privacy.<sup>68</sup> Her supervisor denied her request saying she lacked a "real good reason." She took the time off anyway, calling in to report she would not be at work, and was suspended.<sup>69</sup> A worker who is suspended has, in many workplaces, begun a cycle that brings her one step closer to being fired should her work/family problems continue.

The vision of families in crisis emerges strongly in an arbitration that involved more than 30 phone company workers fired for tapping into telephone lines. One reported to have a mentally unstable son who had threatened to kill her, her family, and himself. Three different workers had children who they said threatened and/or attempted suicide. Another had a step-daughter who was physically threatening her daughter. Another became worried and called her house 52 times in a single day; when she broke in to monitor the line, she heard her son acknowledging taking drugs. Two workers monitored the phones of parents; one had a mother who was "suffering from confusion"; the other's father was ill and, according to the worker, had been threatened with harm from other tenants in her building.<sup>70</sup> In another arbitration, a 25-year employee was fired for monitoring her phone to check up on her young children, one of whom was asthmatic.<sup>71</sup> Finally, in still another, a 14-year employee on probation for absenteeism was fired when he failed to report to work because his pregnant wife, who subsequently died of a brain hemorrhage, broke the phone in a fit of rage, and he decided he could not leave his children alone with her.<sup>72</sup>

In addition to child care breakdowns and family crises, family illness may lead to discipline or job loss because of the lack of sick leave that employees can use to care for family members who are ill. Routine childhood illness is a major concern. Families with infants with special needs visit the doctor an average of eleven times a year; other infants visit the doctor an average of four to six times a year. For children two to four, the number of doctor's visits falls to seven for kids with special needs, and four for others.<sup>73</sup>

In the 70% of families in which all adults are employed, one working parent needs to stay home when a child is sick. (Studies have shown that children stay sick longer when parents cannot stay home to care for them,<sup>74</sup> and that sick children infect other children and adults if they cannot stay home).<sup>75</sup> *Naval Air Rework Facility* involved a child with chickenpox.<sup>76</sup> Grievant and her husband both worked for a machinist and aerospace plant. Since the child care facility would not accept the child within his contagious period of the chicken pox, the mother had no choice but to stay home with her ill child. She was denied sick leave upon returning to work, and as a result, discharged. The arbitrator held for the employer, finding that the employee did not provide the necessary documentation from the local health authorities that her child's illness required isolation.<sup>77</sup>

Even more common are arbitrations involving families whose children have serious illnesses including a divorced father with custody of an asthmatic son,<sup>78</sup> the father of a severely handicapped son,<sup>79</sup> the stepfather of a young man paralyzed as the result of a gunshot wound,<sup>80</sup> a male train operator with a diabetic son,<sup>81</sup> a male rental car shuttle driver whose son had a "serious heart condition,"<sup>82</sup> a child who needed a ventilator in order to breathe,<sup>83</sup> a child with special needs,<sup>84</sup> a janitor whose son had severe mental



and physical disabilities,<sup>85</sup> and five families whose children threatened or attempted suicide.<sup>86</sup>

Of course, under the Family and Medical Leave Act (FMLA), workers caring for an immediate family member (spouse, child or parent) with a serious health condition are entitled to up to 12 weeks of unpaid leave each year, so long as they have worked for at least one year at an employer with 50 or more employees.<sup>87</sup> Workers can take leave for serious health conditions in an intermittent pattern, which is particularly useful for workers who need to bring family members for doctors' appointments or who have family members with chronic diseases.<sup>88</sup> Yet many workers are not covered.<sup>89</sup> Others fail to request FMLA leave in a manner the employer could recognize<sup>90</sup> or to obtain the necessary medical documentation;<sup>91</sup> sometimes it is unclear whether the FMLA was ever considered.<sup>92</sup> Regardless, FMLA leave covers a small proportion of the leave that families require to negotiate the joys and travails of everyday life.

Even if children are not ill, they need adult attention long after they leave preschool. Emotional support and one-on-one interactions with children are crucial during the adolescent years where high parental involvement can significantly help build self esteem and educational accomplishment.<sup>93</sup> Active parental involvement and supervision into the high school years can help prevent juvenile crime and other risky behavior: most teenage pregnancies and teen violence occur between 3 p.m. and 6 p.m.<sup>94</sup> Several arbitrations involve adolescents, including several involving suicidal daughters,<sup>95</sup> a son injured in a gang beating,<sup>96</sup> a step-son confined to a wheelchair by a shooting,<sup>97</sup> a father fired for absences caused by family illnesses and "delinquent children,"<sup>98</sup> a father fired due to

absenteeism caused (among other things) by the drug overdoses of his daughter,<sup>99</sup> and a mother who had to take her son for a high school placement test.<sup>100</sup>

Parents of young children are not the only workers who find their jobs at risk due to the lack of suitable child care in the U.S. In *Department of Veterans Affairs Medical Center*,<sup>101</sup> a grandmother was suspended from her job as a nursing assistant when she was unable to work her scheduled shift (3:30 p.m. – midnight) because she was unable to find child care. *Mercer County*<sup>102</sup> also involves a grandmother who needed time off to care for her grandchildren. She happened to have custody, but grandparents frequently provide regular child care: over one-fifth of preschool-aged children are primarily cared for by grandparents when their parents are at work,<sup>103</sup> and a new study reports that 2.4 million grandparents have primary responsibility for the care of their grandchildren.<sup>104</sup> Over one-fourth had cared for their grandchildren for five or more years.<sup>105</sup> Recall the grandfather in *Tractor Supply Co.*, who was fired when he left to take care of his 18-month-old grandson.<sup>106</sup> In another case, a grandmother bus driver lost her chance at promotion because she had been absent for a significant period caring for her injured son.<sup>107</sup>

Because the average age at which Americans become grandparents for the first time is now 47, three-fourths of grandmothers and almost 9 out of 10 grandfathers are in the labor force.<sup>108</sup> Thus, more than one-third of grandmothers who provide care for preschool-aged children are otherwise employed.<sup>109</sup> Many grandmothers tag team with their daughters.<sup>110</sup> These older family caregivers are vulnerable to the same work/family conflicts faced by their grown children. This is true even if a grandparent does not provide routine child care. One arbitration involved a School Isolation Monitor who was

suspended from work for 20 days (reduced by the arbitrator to 10) when she took more leave than had been authorized to care for her pregnant daughter and granddaughter.<sup>111</sup> Another involved an employee who was fired when she left work unauthorized because her pregnant teenage daughter went into labor. She had not received permission to leave and yelled at a supervisor when she was told she needed permission.<sup>112</sup> Yet another involved a four-year Base Assembler in a steel plant who was fired when she stayed home to care for her adult daughter, who had been injured in a car accident.<sup>113</sup>

Grandparents sometimes ease parents' work/family conflicts; but eventually parents, as well as children, need care: 1 in 4 families also take care of elderly relatives.<sup>114</sup> Among people age 50 to 64 needing support for their health and emotional needs, 84 percent rely on informal care giving networks.<sup>115</sup> Almost one in five caregivers say they provide 40+ hours of care per week,<sup>116</sup> and the average length of care is 4.3 years.<sup>117</sup> Fully 57% of working caregivers say that they have had to go to work late, leave early, or take time off during the day to provide care.<sup>118</sup> One arbitration involving an elderly parent is *Sprint/Central Telephone Co. of Texas*,<sup>119</sup> in which a phone customer service representative failed to meet her sales quota because of the stress caused by caring for her mother, who had died by the time of the arbitration.

***This is a face of work/family conflict that is not well known because it rarely reported in the mainstream press. It may well not be understood even in many union circles.***

2. *Mandatory overtime poses severe challenges for single moms, divorced dads, and tag team families.*

Our members were being fired because they refused to stay for mandatory drug and alcohol tests, which last up to 3 hours. They had no problem taking the tests; the problem was that they were triggered at or near the end of their shifts. And with little or no advance notice they could not stay even as paid overtime, because they had to get home to take care of their kids. While certain limits can be negotiated, these are not common in transit industry contracts and the problem persists.

*-Robert Molofsky, General Counsel of the American Transit Union*

One particular form of workplace inflexibility shows up again and again in the arbitrations: mandatory overtime. Unions and policymakers need to recognize that the design of mandatory overtime systems can make or break workers' ability to avoid discipline or discharge when work and family conflict.

The overtime issue is important, in part, because Americans work longer hours than workers in virtually any other developed economy.<sup>120</sup> Long hours are largely the province of men: 95% of mothers aged 25 – 44 work less than 50 hours a week year-round.<sup>121</sup> While managerial and professional men are more likely to work 50+ hours a week, *so do one in five male hourly workers.*<sup>122</sup> *Many more work overtime:* working-class men average 42 to 43 hours a week, far longer than their European counterparts.<sup>123</sup>

Long hours among working-class Americans stem, in part, from our lack of national health insurance. Because health insurance is delivered as a job benefit, employers' benefits packages in the U.S. are expensive: a good benefits package typically costs 30% of wages. This gives employers an incentive to overwork current employees, thereby amortizing the cost of benefits over more hours rather than hiring new employees, which would incur the cost of a new benefits package.

Single parents often find themselves in untenable situations when employers demand long hours of overtime work. A leading example is *Tenneco Packaging Burlington Container Plant*, which involved a janitor who was the divorced mother of a 17-year old son with the mentality of an 18-month old child. She was fired, after working 27 years for her employer, for failing to report one Saturday in August when her son's caregiver could not work because the caregiver's child was sick. The janitor had been working 60-hour weeks, including every Saturday except one for the prior four months. This overtime led to attendance problems. For the absence for which she was fired, she called in twice and left a message telling her employer she could not work. When she returned on Monday, she was denied her request for a vacation day and fired. The arbitrator reinstated her, saying:

The Company had been scheduling six-day work weeks for an extended period of time. This heavy work schedule was likely to have a substantial impact on any single parent employees, and would have a particularly heavy impact on an employee with a child in need of permanent care and assistance. [The worker] had legitimate reasons for missing two of the 23 Saturdays when she had been scheduled to work overtime.<sup>124</sup>

He continued, "the demands of a regular six day work week would be a strain on a caregiver," especially given the "ten-hour days. . . . Under such circumstances, it is not surprising that there would be problems in persuading the caregiver to regularly work on the weekends, as well as long days, with some regularity even if her child had not become ill."<sup>125</sup> She was ordered reinstated with full back pay – although most workers, being non-unionized, would have been fired without appeal.<sup>126</sup>

Another arbitrator took a pro-active role in *State of New York, Rochester Psychiatric Center*,<sup>127</sup> in which a health center fired a mental health aide<sup>128</sup> who had worked for the employer for nine years. The aide had a history of attendance problems,

almost all of which stemmed from her status as a single parent.<sup>129</sup> Due to understaffing and the need for round the clock care,<sup>130</sup> aides were expected to work mandatory overtime on a regular basis.<sup>131</sup> If an employee refused overtime, she remained at the top of the list until she took it, which is why, after the aide refused to work overtime, she was ordered five days later to work an additional eight-hour tour after her regular shift ended at 11:20 p.m. Her sitter could not stay because of a day job.<sup>132</sup> The aide asked her supervisor if she knew anyone who could watch her children at such short notice. The supervisor, while sympathetic, did not. Then the aide said she could stay if she could bring her children in so they could sleep at the center, but that she could not leave her children alone: “If I have to stay, my kids have to stay here.”<sup>133</sup> Once again, the arbitrator overturned the worker’s discharge, opining that the situation was

shocking to one’s sense of fairness. . . . The [worker] may not be a woman of means, but she is a woman of substance. . . . She does not hold a high-paying job. She would probably be better off financially if she chose to stay home, watch her kids, and go on the dole. However, instead of becoming a public charge, she has chosen to make a public contribution. . . . Her recent performance evaluation indicates “she can function well on any ward she is assigned.” As the parties are aware, I take a very dim view of time and attendance infractions and insubordination. . . . However, [she] deserves every conceivable “break”. . . . Her children were well-groomed, neatly dressed, and well-behaved. It is her efforts to be a good parent that have created her problems at work.<sup>134</sup>

The arbitrator directed the aide to identify, 30 days in advance, three days a month when she could work overtime (given that aides typically worked overtime two to three days a month). This is an example of how to design an overtime system that does not have a punitive impact on adults with family responsibilities – particularly if it is combined, to the maximum extent possible, with a system that relies on voluntary overtime. In two other arbitrations, nurses’ aides were not so lucky. Both were fired, and were not

reinstated, when they refused mandatory overtime because they had no one to care for their children.<sup>135</sup>

In *GTE California Inc.*,<sup>136</sup> a single-parent telephone installer was fired when she left work in defiance of a new telephone company policy that workers had to stay until every customer who had called before 3 p.m. had been served. Her supervisor had a policy that only one person per shift could avoid overtime; if more than one person requested to leave without working overtime, all workers requesting to do so had to come to an agreement as to who could leave and who would stay. The installer was fired for insubordination when she left work after being ordered to stay because she and a co-worker both wanted to leave without working overtime.<sup>137</sup> The arbitrator overturned her dismissal, saying that the worker was entitled to leave rather than obeying the supervisor's order and filing a grievance later because her situation was covered by a rule concerning safety. Said the arbitrator, "[w]hen the parent is unreasonably asked to work and when there is no one to care for an infant, the parent can be excused for not waiting to file a grievance. By way of clarification, I am not saying that the employee does not bear the burden of meeting the demands of child care or that a parent can walk off the job any time that child care needs are unmet."

I do not know what would have happened to the child if [her mother] had not arrived to pick her up. Chances are that the child would have been cared for. However, it was clear that the [worker] also did not know what would happen to the child, although she did know that she was running the risk of losing day care service. In these circumstances, the [worker] did what I believe any unintimidated parent would have done. She ran the risk of discipline.<sup>138</sup>

The arbitrator held that a parent could be disciplined if left unjustifiably, but she need not "obey now, grieve later" in the face of an unreasonable system that placed a child at risk.

Men as well as women are sanctioned for refusing overtime, which makes sense, given that, outside of nursing, overtime is largely a masculine phenomenon.<sup>139</sup> In *Bryant v. Bell Atlantic Maryland*,<sup>140</sup> an African-American construction lineman who was the single father of two minor children was fired for refusing overtime. The arbitrator held that the employer lacked just cause to terminate, and “strongly suggested that Bryant be placed “in a position that did not require overtime,” or, in the alternative, that “Bryant be scheduled for overtime in a manner that would allow him to meet his workplace and child care obligations.”<sup>141</sup> This arbitration was reported in a court case; the court noted Bryant’s claim that child care difficulties of white workers had been accommodated, but his had not.

In a number of arbitrations, divorced fathers were disciplined for refusing mandatory overtime that conflicted with the hours they were scheduled to care for their children.<sup>142</sup> In *Suprenant Cable Corp.*, discussed earlier, a father was fired for excessive absenteeism under the employer’s no fault policy as the result of an inability to find child care.<sup>143</sup> Said the arbitrator:

Such policies are not best suited to dealing with long-term employees who, like [this worker], have overall good records and who run into an unusual period of bad luck and hard times. Anyone can – most of us will – experience at least one period of adversity in a lifetime. Otherwise good, long term employees are entitled to understanding and sympathy during those rare periods. Their seniority does not exempt them from the expectations of the workplace but may require that they be applied more flexibly and sensitively.

*Marion Composites*,<sup>144</sup> discussed above, also involves a divorced father. In it, a father faced discipline because his child care responsibilities rendered him unable to work a full shift of mandatory overtime.



Mandatory overtime, particularly on short notice, poses family problems for married as well as single parents. For example, in *General Telephone Company of Indiana*,<sup>145</sup> a service clerk who had just had a baby was ordered, the day she returned from parental leave, to attend a two-week out-of-town training course. Because she was given less than a week's notice, she was unable to get babysitting, and her husband (who worked for the same company) was on assignment out of town. She asked to attend the class at a later time so that she would have sufficient time to arrange babysitting. The supervisor suggested that she start the class several months later, and she agreed. Yet a few days later she was informed that attending the training course was a requirement of her job, and that she would be terminated if she did not attend. After a few more days, she was told she had the choice of being demoted to an operator job or being fired. She refused to take the operator job because she believed that this would mean losing her seniority. The arbitrator reinstated her with full back pay, benefits, and seniority, noting that "no effort whatever was made to accommodate [her] very real child care needs," despite the fact that two other employees had been excused from the same training for compelling personal reasons. If the inability to find a suitable babysitter when neither spouse nor relatives are available "is not a compelling personal reason," the arbitrator opined, "it is hard to imagine what sort of excuse would be acceptable." This is but one of many cases in which workers, most of them fathers, are disciplined or discharged for refusing to work overtime because of family needs.

Child care is not the only family need that conflicts with unscheduled overtime. Some cases involve care for ill spouses. In *Allied Paper*, a plant worker refused a Saturday callback because his wife, who had cancer, was severely depressed, and his

water was out. He needed to get to the store to buy a new pump, and refused to leave “a severely sick woman without water, in case of a fire.”<sup>146</sup> He was so concerned about his wife’s cancer and depression that he had previously sacrificed thousands of dollars to avoid overtime that would have left her home alone. Said the arbitrator, “[h]is wife had stood by him in sickness and tragedy, and he was trying to return it. He owed it to her.”<sup>147</sup>

3. *Working class men may be unwilling to bring up their family needs with their employers. Instead, they may suffer in silence or to try to “come in under the radar screen” – often with unhappy results.*

Roughly 55% of the arbitrations involve men: one recent study found that men reported significantly higher levels of work interference with their families than similarly situated women.<sup>148</sup> (In part this may be because men are more likely than women to work overtime.<sup>149</sup>) While we found no case involving a woman who flatly refused to discuss work/family conflicts, some men were willing to risk discipline or even discharge rather than tell their employers that they needed to leave work to care for children.<sup>150</sup> This is important because employers often have rules that allow workers to refuse overtime for legitimate reasons; even where these rules are lacking, supervisors are more likely to allow a worker to attend to pressing family needs than to accommodate a worker who refuses to disclose his reason for wanting to leave; and when employers remain staunchly inflexible, arbitrators are more likely to find in favor of a worker who had communicated his reasons for needing to leave than a worker who remained silent.

The classic example is *Tractor Supply Co.*,<sup>151</sup> in which an employer posted notice of two hours of mandatory overtime the day before it was to be worked. Workers had the option of staying late or reporting two hours early the following day. The employer later took down the overtime notice and a supervisor clarified that the next day's work could be handled by voluntary overtime. The notice was reposted, but by that time the worker had left. Had he known of the overtime, he would have reported to work early. But he did not learn of the overtime until the following day, and he refused to stay

at work past his regular shift because he had to get home to care for his grandchild.<sup>152</sup> When his supervisor asked why he would not stay, he replied that it was none of his business. The supervisor said that accommodations could be made for reasonable excuses and then asked again why he could not stay. The worker again said it was none of his business. The supervisor ordered him to stay, and he was fired for insubordination.<sup>153</sup>

The factory worker in *Tractor Supply* is not the only man to be willing to risk discipline or even dismissal rather than explain that he had family care issues. In *Midwest Body, Inc.*,<sup>154</sup> the arbitrator upheld the dismissal of an industrial worker who failed to report for overtime work on Saturday or for work on Monday. When asked why, “he replied he had family problems and declined to be more specific,”<sup>155</sup> again refusing to explain at a meeting with two supervisors and a union representative. “Reluctance to give specific information with respect to ‘family problems’ may be understandable,” said the arbitrator, “but an employee who is unwilling to give [it] should refrain from using that sort of excuse.”<sup>156</sup> Another worker, who when he needed to leave to pick up his son said only that he needed to leave for personal reasons.<sup>157</sup> Again in *Ashland Oil*,<sup>158</sup> a carpenter left after explaining “that he had obligations at home without specifically mentioning child care.” Yet again in *VA Medical Center of Indianapolis*,<sup>159</sup> a pharmacy technician with a good work record called in to request eight hours of emergency annual leave; he refused to elaborate on the reason, saying only that it was personal. The supervisor gave him two hours, and when he failed to report to work in the next six, he was disciplined. Only later did the technician explain to the arbitrator that the emergency was family related. In still another case, *City of Columbus*,<sup>160</sup> an operating engineer said even less when he left to pick up a carpool of his son and another

first-grader from school after his crew was told to remain at work due to an impending snow storm. Company policy was that employees were excused from overtime if they advised their supervisors of a reasonable excuse prior to the end of their normal workday.<sup>161</sup> In fact, another employee had requested and received an excuse to leave for a short time to pick up his pregnant wife from work. Noted the arbitrator, “[i]f Benton’s situation was considered to be a reasonable excuse, then certainly [this worker’s] excuse that he had to pick up his first grade son as well as another first grader from school would also be found to have been a reasonable excuse under the contract.”<sup>162</sup> But the engineer did not tell the street maintenance foreman of his difficulty. After asking for two supervisors and being told they were not there, he simply left and was later suspended.<sup>163</sup>

Why risk discipline or dismissal rather than simply provide a reasonable excuse? Recent studies of working class men suggest an explanation. Recall that the current generation of men has seen high-school educated men’s wages fall sharply: Their real wages have fallen by 25% since 1973.<sup>164</sup> While their fathers and grandfathers could supply the “good life” - a house, a car, a washing machine - on their salaries alone, or with only intermittent part-time work from their wives - they often can’t. To quote a white 30-year-old forklift operator, “I know she doesn’t mind working, but it shouldn’t have to be that way. A guy should be able to support his wife and kids. But that’s not the way it is these days, is it? Well, I guess those rich guys can, but not some ordinary Joe like me.”<sup>165</sup> Studies of working-men have found consistently that their inability to “support their families” is one of the “hidden injuries of class,” to use the phrase from the famous 1973 study by Richard Sennett and Jonathan Cobb.<sup>166</sup> A 1994 study reported that working class men feel badly when they “can’t support their wives.”<sup>167</sup> A 1987 study of

a blue-collar mill town found that over two-thirds of women either said that their husbands didn't like them working or said things like, "He doesn't really mind."<sup>168</sup> A 1996 study confirmed this finding among older men.<sup>169</sup>

I wouldn't let my wife work. I told her; I said, "Look, you got the kids, you stay home. When the kids go to school all day, then you work." That's fine, up to a point. I tried to do it on my own. Working 20 hours a day to make everything go. She said, "Hey, look, I gotta go to work." I was against it, but it had to be done. As far as I was brought up, Pop did the work, Mom stayed home with the kids. Alright? I was raised that way, and that's the way I saw it.<sup>170</sup>

A 2000 study also reported that working-class men still aspire to being able to "support their families," although many no longer expect to be able to do so.<sup>171</sup>

These studies remind us that the housewife as a cultural type was invented in the late 18<sup>th</sup> century as a way of signaling the difference between working- and middle-class families.<sup>172</sup> For much of the 19<sup>th</sup> century, being able to keep "the wife at home" remained a key dividing line between working- and middle-class families; after World War II, for two brief generations, domesticity was democratized. Today, once again, having a wife at home full time signals class privilege.<sup>173</sup> Studies by historians, anthropologists, and sociologists provide important context for understanding working-class men's reluctance to admit that they need to leave to attend to child care. Whereas middle-class men tend to "talk the talk but not walk the walk" in terms of gender equality, talking gender equality but failing to share equally in household work; working-class men tend to "walk the walk but not talk the talk," sharing more equally in household work as a group but less willing to espouse a verbal commitment to gender equality.<sup>174</sup> No wonder working-class men find it hard to speak up when they need to leave to care for children.

A father who does not feel internal constraints about discussing his need to get home to care for children may well encounter external constraints. Motherhood is such a salient role for women that it may well be easier for mothers to bring up their need to leave to provide care than for fathers to do so. According to Professor Peter Richardson, an anthropologist at the University of Michigan who has both worked in blue-collar jobs and studied them,

It makes sense to me that working class men would be less forthcoming about their family responsibilities on the job than women would. On the factory floor, the women's status as mothers is front and center. It is always part of the conversation. Men's status as fathers doesn't enter into everyday conversations in the same way. So for a mother to say she has to leave because of child care would feel natural, but for a father to say so would feel like it was coming from left field.<sup>175</sup>

In addition, working class men – like higher status ones – probably recognize the stigma triggered when men request workplace accommodations.<sup>176</sup> When a 1986 study surveyed employers about how much time they expected men to take off work after the birth of a child, 63% answered “none,” and 17% said they expected men to take off two weeks or less.<sup>177</sup> A 2004 survey of 500+ employees found that, when compared to mothers, fathers who took a parental leave were recommended for fewer rewards and viewed as less committed, and that fathers with even a short work absence due to a family conflict were recommended for fewer rewards and had lower performance ratings.<sup>178</sup> Unlike women, men who experienced a work/family conflict encountered lower overall performance ratings and lower reward recommendations.<sup>179</sup> No wonder men are reluctant to explain why they need to leave.

Even where men are willing to admit they need to leave work to attend to childcare responsibilities, they may be less willing than women to engage in informal

negotiations in order to get permission to leave. For example, in *Southern Champion Tray*, a mechanic, after having told his supervisor repeatedly he could not stay because he had to pick up his son, was fired for insubordination after he simply walked off the job. Asked why he did not explain to his supervisor that his back-up plan had fallen through when his wife's car broke down, he replied, "I thought I did all I could and I was tired of fussing. I didn't feel anything else could be worked out."<sup>180</sup> Working-class men have traditionally worked hard to avoid the need for the kind of informal negotiations on which women rely to gain access to flexibility. Recall the focus in the American union movement on clear-cut rules, precisely to avoid the need to engage in informal negotiations, highlighting that working-class men are "order takers" rather than "order givers."<sup>181</sup>

A final issue of importance to unions is that, like affluent men, the working-class men often have little knowledge of their children's everyday arrangements. Studies show that fathers' knowledge about their children's lives typically is limited.<sup>182</sup> Even men who play an active role in providing family care often play little role in arranging child care or other household management tasks.<sup>183</sup> These patterns can hurt the job prospects of men in working-class jobs, because both employers and arbitrators hold them responsible for being pro-active, if necessary, to arrange back-up child care, yet the men may lack the knowledge about how to do so. Fathers' disengagement from household management played a role in *U.S. Steel Corp.*,<sup>184</sup> where a factory worker received a 15-day suspension when he phoned the plant the day before his shift in order (he said) to give them plenty of time to arrange alternative staffing. He could not work the next day because his babysitter was in the hospital. The arbitrator, who upheld the suspension, was influenced



not only by the worker's prior unenviable disciplinary record but also by the fact that he had not attempted to find another babysitter, nor attempted to swap shifts to ensure that the shift was covered. "If he had tried to swap and was not permitted . . . that would have presented a different case. Here [he] simply did nothing." According to the factory worker, he had been told not to swap; he did not try to arrange babysitting because, he said, he worked two jobs so that he was usually not at home except to sleep. He simply was not familiar with how to make such arrangements. In addition, in *Southern Champion Tray*, a father who was fired for leaving work to pick up his son at school was faulted for not using an after-school program; if he was like most fathers, he simply did not know about it.

These findings give rise to three suggestions. First, unions and employers need to formalize the process by which workers ask for time off to respond to legitimate family needs, with a system that responds to workers' desire to preserve their privacy. Helpful would be a process that allows them to state their needs on a form once, rather than out loud in public over and over again.

Second, unions and employers need to notify men that they are expected to know how to arrange back-up care if necessary, because both employers and arbitrators will hold them responsible for doing so. That said, employers and arbitrators who insist that working-class fathers know the details of household management should ask themselves whether they are holding them to a standard that they themselves could meet. Employers and arbitrators should not assume that workers, male or female, have more child care options than in fact exist: in one case, a supervisor faulted a worker for failing to explore whether local child care centers took drop-ins; the arbitrator pointed out that the center-

like virtually all centers in the U.S. – did not take drop-ins and so was not a realistic option.

The third point is a message for unions alone. A promising approach is to reframe the issue of workers' need for time off for family caregiving as an issue of *workers' rights*. The question, from a union standpoint, is whether employers are entitled to place profits above the welfare of workers with sick family members or small children who cannot be left alone. This reframing will help avoid situations in which working-class men are fired for insubordination when they refuse to say that they need to leave to do child care. In many situations, a supervisor will be more sympathetic if he or she knows that a worker is responding to a family member's need for care than if the worker says nothing or gives the vague explanation that he needs to attend to personal business. If unions can persuade men to think about their need to leave for family reasons as an issue of *worker empowerment* to do right by their families rather than as a situation that advertises their inability to be effective "providers," family caregiving can become an effective organizing issue rather than a key cause of worker vulnerability.

Recent studies of working class men suggest the promise of this approach. They highlight that a crucial source of pride for working-class men is their belief that, unlike the "suits" who are obsessed with money and status, they put family first.<sup>185</sup> According to one influential recent study by Michelle Lamont, working-class men see themselves as more moral than professional/managerial men (hence "family values" as a language of class conflict). One of the moral flaws working-class men attribute to higher-status groups is what they see as the "poor quality of their interpersonal relationships."<sup>186</sup> Lamont quotes a factory foreman: "Money isn't a big thing in my life. I don't have to be

a rich man. I have riches. As long as you have the love and a tight family and that my kids grow up good, I don't need a lot of money. . . . I have the respect of people who know me. . . . I have those kinds of things, so I have a sense of self-worth.”<sup>187</sup> Asked why he likes his best friend, he says, “He's a family man. His family comes first to him as well.”<sup>188</sup> It is in this cultural context that workers choose family over work even when they risk severe work consequences for doing so. As the carpenter in *Ashland Oil* told his unhappy supervisor (who told him “my ass is on the line”) as he left work to pick up his children, “I must do what I have to do.”<sup>189</sup>

Unions can tap the working-class pride in putting family first by bargaining for, and then by training workers to use, workplace entitlements that enable them to place the needs of their families over their employers' needs for profit.

4. “One sick child away from being fired,” and other messages for unions and employers.

Family is number one.

- Tom Rice Buick, Pontiac & GMC Truck, Inc. <sup>190</sup>

A common view among unions is that most workers are not affected by work/family conflict because relatively few are women with small children, so unions are better off concentrating on issues of interest to all of their members. The snapshots provided by the arbitrations discussed in this report, along with the demographic data in Section 1, show that many different types of workers sometimes need to be absent from work because of family caregiving responsibilities.

In an era of tag team families and single parents, workers without union protection are at greater risk of being disciplined or fired for doing what any conscientious parent or family member would do.<sup>191</sup> Work/family issues are key organizing issues: a crucial benefit unions offer is the ability to protect workers from job loss due to work/family conflict.

Another important message for unions is that they need to do more to educate workers on their rights under the Family and Medical Leave Act, including their rights to take intermittent FMLA leave. In several cases, workers were discharged when they were so overwhelmed by misfortune that they did not take the steps required by the FMLA, as when the bus driver in *Budget-Rent-A-Car*<sup>192</sup> did not file for FMLA leave, and the brake mechanic in *Greater Cleveland Regional Transit Authority*<sup>193</sup> did not request family and medical leave despite being notified that he could do so. The latter also did

not use the resources of the Employee Assistance Program although he was repeatedly urged to do so, and failed to provide proper documentation for an illness even when given an extra two weeks to do so.

A third message for unions is that the design of mandatory overtime systems is a make or break issue for many union members. Such systems should recognize that some members desire overtime, while others desire to avoid it. The kind of system at work in *Rochester Psychiatric*<sup>194</sup>, which provided that if a worker turned down overtime at short notice, s/he would remain on the top of the overtime list until s/he worked overtime, is a recipe for disaster for single and tag team parents. So too in the system in *GTE California Inc.*,<sup>195</sup> which leaves the workers themselves to decide who will be relieved of the obligation to work overtime. Neither type of system will offer either workers or employers the necessary predictability: the workers will lack the notice they need to arrange for child care; the employer will lack predictability because its overtime system may not be enforced should it reach an arbitrator in a grievance case with compelling facts, as is evidenced by the fact that the arbitrators in *Rochester Psychiatric*,<sup>196</sup> *California Inc.*,<sup>197</sup> and other cases found for the workers on the grounds that the overtime systems were unreasonable. The elements of an overtime system that will not unduly penalize adults with family responsibilities are later discussed.

A final important message for unions concerns the design of “no fault” progressive discipline systems. The move to “no fault” absenteeism systems co-exists uneasily with the fact that workers have unshakeable family care responsibilities. The most dramatic example is *Knauf Fiber Glass*,<sup>198</sup> which involved a packer who had worked nine years at her company. She was a good worker (according to her supervisor)

but had always had “a serious absenteeism problem,” including 27 (!) written warnings. But she always avoided accumulating the extra point or two that would have led to discharge. In part because of the complaints of co-workers who had worked involuntary overtime during her no-shows, she was placed on special probation, which allowed her only one excused and one unexcused absence during a three-month period. She was told she would be discharged if she exceeded two absences. She used one when she was ill one day without a doctor’s excuse, and her second when she took her daughter to the doctor. Then one day she received a call from her brother-in-law saying that her four-year-old daughter had fallen, had hurt her head, and was being taken to the emergency room. She left, despite being told that her job would be in jeopardy if she did so. She was fired. The highly respected arbitrator Roger Abrams reinstated her:

For more than half a century, labor arbitrators have been asked to review discharges based on the “just cause” standard. Over this long history, no mechanical formula has evolved for determining whether that standard has been met. An arbitrator cannot do his job simply by programming a computer and punching in “RUN.” There is judgment to be exercised solving a discharge case. But that judgment cannot be based on the subjective values of an individual neutral. The needs and interests of the parties and their legitimate expectations must control.<sup>199</sup>

“Absenteeism is a scourge in the industrial workplace,” he noted, and a worker’s first responsibility is to be there, on time. “A company is not a social service agency,” and an “individual employee may have serious personal problems which produce an abominable attendance record, but management need not carry an employee on the rolls if prior experience proves that reasonable attendance requirements cannot be met.”<sup>200</sup> Yet for just cause to exist “that final ‘point’ must be found to have been warranted in order to justify termination.” In assessing this, “it is important why the [packer] left the plant.”<sup>201</sup>

It is fundamentally unfair to discharge an employee for leaving work because she was informed that her four-year-old daughter had fallen, was injured, and was being taken to the Emergency Room. Fair-minded people would not disagree that she was compelled to leave work. She had no real choice in the matter. . . . When [she] left work on December 3, she was not continuing her pattern of regular absenteeism. She could not have prevented the occurrence or rescheduled the accident. That event was not the type of absenteeism which indicates that [she] cannot fulfill reasonable attendance requirements.<sup>202</sup>

As the arbitrator highlighted, this does not mean that an employer must live forever with a worker who does not show up when scheduled to work. It simply means that an employee cannot be discharged for doing what any conscientious parent would do because this kind of absence is not part of the prior pattern of absenteeism. The arbitrator, appropriately, sent a very clear message that the worker needed to address her attendance posthaste. Although he reinstated her, she received no back pay, and he put her on special probation for 90 days, with only one unexcused absence:

It was apparent at the hearing that [the worker] felt deeply about her personal obligations and responsibilities as the unwed mother of three children. While understandably her son and daughters may be of paramount importance to her, her employer can insist that she meet reasonable attendance requirements. [She] can meet those requirements, keep her job and support her children. If she cannot meet those requirements now and in the future, she will lose her job and her children will suffer as a result. It will require great effort on her part to meet her dual responsibilities, but it certainly is worth the effort.<sup>203</sup>

*Knauf Fiber* contains important messages both for employers and for unions. It suggests, first, that if an employer wants its rules to be enforced in the event it goes to arbitration, the best approach is to provide an exception to “no fault” absenteeism systems for bona fide family care emergencies. For unions, the message is the one highlighted through this report – that responsible workers need to be protected from being disciplined or discharged for acting on values that are widely shared, by management as well as workers. To quote arbitrator Dennis Nolan, “[i]f all attempts fail

[to satisfy parental obligations without interfering with the employer's business], the family must come first, as most employers would readily agree."<sup>204</sup>



5. *Employers' inflexibility can defeat their own business needs.*

On the morning of February 16 there was an employee problem (lack of a babysitter) and a management problem (need for the worker's services). Ms. Granico's [refusal to grant emergency annual leave when [her] regular babysitter had car trouble and her backup sitter's husband had a heart attack] did not resolve either problem. Instead, they resulted in an angry employee and a vacant space at the [agency].

*-Social Security Administration, Westminster Teleservice Center*<sup>205</sup>

Employers are not social service agencies.<sup>206</sup> They have legal obligations to their shareholders and a business imperative to attend to the bottom line. This does not preclude flexibility because in many contexts workplace inflexibility is bad management. The positive business impact of flexibility is the "business case."

A moment's thought explains why flexibility can enhance business effectiveness. An example is *Town of Stratford*,<sup>207</sup> in which a police officer was suspended when she failed to report for an "orderback" (i.e. an unscheduled shift). She had arranged babysitting for her three children for the regular shift starting at 4 p.m., but she could not, with no notice, find babysitting to cover the noon to 4 p.m. orderback period. To quote the arbitrator:

It is Town's position that a Police Officer's personal/family needs are separate matters from their responsibility to the job of police work. A refusal to report as a result of "orderback" is insubordination whether the reason is personal or not. The Police Department is a para-military organization, an "orderback" is a firm requirement of the necessary discipline that surrounds police work. [She] is expected to have her family life secured in a manner that does not conflict with her professional responsibilities.<sup>208</sup>

Note that the test here is not whether the police officer made concerted and conscientious efforts to find a babysitter. Instead, the message is that she was not a suitable police officer because she lacked a "family life secured" so as never to conflict with work

responsibilities. This is impossible, particularly where unscheduled overtime work is demanded at short notice, unless one has no children – a relatively unusual situation in working class couples<sup>209</sup> – or a spouse (typically a wife) who is available to care for the children without regard to her own job, presumably because she does not have one, or much of one.<sup>210</sup> This also is an unusual situation in working-class couples – only 16% are breadwinner-homemaker families. One might argue that the police are different – that it is so important to have police on duty that police officers should not expect family concerns to be taken into account in any way. Yet, in the other case involving a police officer with family care responsibilities, the arbitrator upheld an officer’s right to use her bargained-for sick leave for child care with no sense that this would jeopardize effective police work any more than do sick leave, personal days, vacations, or leaves to address substance abuse problems.<sup>211</sup> The issue is not whether the police need coverage. Like other employers, they clearly do. The issue is whether such coverage is best achieved by being inflexible when officers cannot report due to legitimate child or other family care issues they have taken all realistic steps to avoid. Or, to put the issue more broadly, the issue is whether – in an economy where all adults are in the labor force in 70% of households<sup>212</sup> – employers should operate their workplace on the assumption that workers have “a family life secured” so as never to interfere with their job. This is an entirely unrealistic assumption: it yields a workplace/workforce mismatch that makes no sense either on a macroeconomic, or a microeconomic level.

Matching one’s workplace to one’s workforce, not surprisingly, increases businesses’ effectiveness and improves their bottom line. The “business case” literature

highlights that employers need to create family-responsive workplaces not as a gesture of good will, but to maximize profits.

“We concluded,” said Alice Campbell of Baxter Healthcare, “that offering flexibility and some degree of control over time is fundamental to getting a strong return on human capital investments.”<sup>213</sup> This section will first discuss the major elements of the business case for flexibility in working-class jobs, and then will discuss the types of flexibility most promising for workers in those jobs. The major elements of the business case are:

- (1) Improved quality control and consumer safety
- (2) Improved worker engagement and commitment, which has a direct link to profits
- (3) Enhanced consumer service and productivity
- (4) Reduced levels of stress, which drives down health insurance and other costs
- (5) Direct and indirect cost savings due to enhanced recruitment and decreases in turnover and absenteeism
- (6) Avoiding a loss of employer control in unionized workplaces

(1) *Improved quality control and consumer safety*

The most dramatic message about the business imperatives of workplace flexibility emerges from *Dial Corp., Bristol Pa.*,<sup>214</sup> in which a quality control technician failed to properly inspect carton seals when he was denied leave to stay with his wife, who had just had a miscarriage. The hospital’s discharge orders said she should not be left alone for 24 hours, but he was denied leave. He became frantic with worry when he called to check up on her and no one answered the phone. *Dial Corp.* suggests that a family-hostile workplace can jeopardize quality control and consumer safety.

Workplace safety is also at issue. Consider *Piedmont Airlines*, which involved a flight attendant who was ordered to take an additional flight. Her husband was

unavailable, and she was unable to secure babysitting for her two toddlers at such short notice. In fact, there was another flight attendant flying “deadhead” (returning home from a prior flight), but she was so “preoccupied” with her child care crisis that she did not think to tell this to crew scheduling.<sup>215</sup> How would she have reacted in an in-flight emergency?

*(2) Improved worker engagement and commitment, which has a direct link to profits*

“How could I not be grateful to a company that granted me this, that helped my son incredibly,” asked one Bell South worker who took six months off to care for a sick child.<sup>216</sup> Happy workers make for happy customers, according to a business literature sometimes referred to as the “service process chain approach.”<sup>217</sup> When First Tennessee Bank used flexibility as the centerpiece of its service process chain approach, employee retention at the affected branch banks was 50% higher than normal, which contributed to a 7% higher customer retention rate – which translated into an additional \$106 million profit over two years.<sup>218</sup> Companies who adopted the strategy of retaining customers by keeping employees happy had a larger increase in stock price over a 10-year period of employers than the average of comparison companies listed by the Standard & Poor’s.<sup>219</sup> Research by the Corporate Leadership Council estimates that every 10% improvement in commitment increases employees’ level of discretionary effort by 6% and employee performance by 2%, and that highly committed employees perform at a 20% higher level than do employees who are not committed.<sup>220</sup> These findings are confirmed by Hewitt Associates, which found that companies whose growth has been in the double digits have

39% more highly engaged employees and 45% fewer highly disengaged employees than single-digit growth companies.<sup>221</sup>

Workers care deeply about workplace flexibility. A survey by AstraZeneca, a pharmaceutical company, found that 96% of employees said that flexibility influences their decision to stay with the company.<sup>222</sup> A study by Allstate Insurance found that 92% of their employees rated flexibility as “important” or “very important,” and that hourly employees valued flexibility as much or more than salaried managerial/professional workers. Another study by Bristol-Myers Squibb found that 87% of hourly employees (as compared to 90% of employees overall) use flexibility; 71% say it is “very important” (78% of women and 65% of men).<sup>223</sup> Effective programs to aid work/life balance play an important role in employee morale.<sup>224</sup>

“The dramatic effect of flexibility on employee commitment is one of the most powerful components of the business case for flexibility,” according to the Corporate Voices report.<sup>225</sup> According to that report, hourly

workers are...likely to be in environments (such as manufacturing and clerical) where they must be attentive to quality and accuracy: disengaged employees are much less likely to take responsibility for making systems work and solving problems as they arise. To the extent that [working-class] jobs can be routine or tiring, it is all the more important that the company give attention to practices that will keep these employees energized and focused.<sup>226</sup>

High levels of engagement and commitment are harder to achieve in many hourly jobs when workers have lower levels of autonomy; hourly workers are also more likely to be in client-facing roles, such as in retail, hospitality, call centers, customer service, nurses aides, in which lack of commitment can have a very direct impact on client satisfaction.<sup>227</sup> Commitment and engagement also is important for hourly workers in manufacturing and clerical, as noted above, because they need to be attentive to detail

and quality control.<sup>228</sup> In fact, noted the Corporate Voices report, the effects of flexibility on increasing commitment and decreasing burnout are “almost identical” for hourly as for salaried workers.<sup>229</sup>

(3) *Enhanced consumer service and productivity*

“I need 15% core workers who work regular hours or longer. If benefits for part-timers were pro-rated, there would be no cost – in money or in efficiency – to splitting one job into two, or two jobs into three, or instituting flextime. It would probably increase the plant’s efficiency.”<sup>230</sup>

Flexible policies can improve productivity in three basic ways: by allowing employers to stay open longer hours with the same number of employees, yielding direct productivity increases; by improving staffing during vacations, illness, and emergencies; and by decreasing “presenteeism” and the TGIF syndrome.<sup>231</sup> For the sake of brevity, I provide only a few white and blue-collar examples:<sup>232</sup>

(a) *Direct productivity increases.* StrideRight added 30 hours to its workweek at only 3% additional cost when it put one of its customer service units on flexible scheduling.<sup>233</sup> When PNC’s Eastwick, Pennsylvania Operations Center piloted a compressed workweek, it found a dramatic decrease in processing time for safety deposits, bond inquiries, and other banking services – while extending customer service hours by an hour and a half a day. (Absenteeism also dropped from 60 days to 9, and turnover costs decreased by \$112,750 over a seven-month period.)<sup>234</sup>

(b) *Improved staffing during vacations, illnesses, and emergencies.* One Aetna Manager said he would like a whole department of job sharers, because “when one is sick or on vacation, the other one is always there.”<sup>235</sup> Maslon, Edelman, Barman and Brand, a Minneapolis law firm with 15% of its clerical staff on flexible schedules, found that it

never had to hire a temp.<sup>236</sup> At Marquette Electronics, where a work team can stagger team members' work hours to allow individual workers to come in late or to accommodate a family emergency, employees who miss work can make up the time during another shift. The firm's philosophy is that "Everyone has bad days and days when they give 120%."<sup>237</sup>

(c) *Decreasing "presenteeism" and TGIF.* "Presenteeism" is when a worker is present in body only: the TGIF syndrome that can decrease productivity any day of the week. New York State, which allows flexibility for all of its 200,000 employees, found that job sharing increases productivity by decreasing the fatigue factor. When a vice president at Schreiber Foods job-shared an executive assistant job, she found she got a fresh person mid-week, just when others in the office were starting to tire or react to job stress.<sup>238</sup> Job sharing in blue-collar jobs could provide the same benefit.

(4) *Reduced stress, which drives down health insurance and other costs*

Stress is the leading cause of unscheduled absence and is linked with higher turnover and is also a major factor in productivity loss.<sup>239</sup> Chrysalis Performance Strategies found that stress is responsible for 19% of absenteeism, 40% of turnover, 55% of employee assistance program costs, 30% of short- and long-term flexibility costs, 10% of costs of psychotherapeutic drugs, 60% of workplace accidents, and many workers' compensation claims and lawsuits. At Bristol-Myers Squibb, employees on flexible work arrangements scored, on average, 30% lower in stress and burnout. A New England-based financial services company found that employees who say they have control over their work schedules have burnout index scores less than half that of employees who do not have control over their work schedules.<sup>240</sup>

Work absence caused by stress played a role in *Los Angeles County Dept. of Public Social Services*.<sup>241</sup> The County refused to allow an eligible worker time off to take her adoptive mother, who was visiting her from Mexico and spoke no English, to the airport. The worker did so anyway, saying that she had no choice because her mother, who had taken her in when she had no one else, would consider it an insult if she dropped her off at the airport alone. “[She] testified that she knew it was wrong not to come into work that day. But she said that she felt compelled to honor her commitment to her adoptive mother.”<sup>242</sup> Although the worker’s shift did not end until 4:30 p.m., she did not attempt to report to work after the plane departed at 1 p.m. because, she said, she became “anxious and sick” from worrying about her work/family conflict.<sup>243</sup>

*(5) Direct and indirect cost savings due to enhanced recruitment and decreased turnover and absenteeism*

Anyone who has ever been an employer knows that hiring is a crapshoot. When employees are working out well, strong incentives exist to keep them. “Flexible policies are one way to get people to stay,” said one small business owner.<sup>244</sup> The cost of replacing an hourly worker typically ranges from 40 to 75% of the worker’s annual salary.<sup>245</sup> These costs quickly add up. For example, it costs roughly \$2,100 to replace an unskilled hotel worker<sup>246</sup>; hotel chains employ thousands.

The arbitrations dramatize how inflexible workplaces can lead to attrition among desirable workers. An arbitrator in *Internal Revenue Service*<sup>247</sup> conditionally reinstated a typist who had been fired for persistent tardiness due primarily to child care problems, in the face of evidence that her problems only began seven years after she was hired when she separated from her husband. She was one of the best typists in the work unit,



according to the arbitrator, and her work had not been affected by the personal challenges that led to her tardiness – in fact, she had consistently received incentive pay awards.

Another outstanding worker ran into problems in *Miami Valley Regional Transit Authority*,<sup>248</sup> which involved a bus driver whose absences were caused by child care and transportation problems, and problems with her extended family. The driver was proactive in trying to solve her problems, but had not worked for her employer long enough to be eligible for family leave and was never told of a compassionate leave policy until after she was fired. Said the arbitrator:

“During the hearing . . . I found her to be a very caring person, a people-oriented person. There is no doubt she set a good example by her demeanor on the job and in her attitude toward her passengers. She had a good driving record with no recorded complaints. Unfortunately, because of her [low] seniority position she was assigned to shifts that were difficult for her to properly service because of her family situation.”

It is unclear that firing this driver was a good business decision in a demographic context where this worker’s replacement might well encounter work/family conflicts as well.

One national survey found absenteeism and tardiness dramatically reduced by flextime.<sup>249</sup> Another study, by the American Management Association, found that flexibility cut absenteeism by 50%.<sup>250</sup> The Pella Corporation found that job sharing not only decreased absenteeism by 81%, but also increased performance reviews. Other businesses have also reported positive results.<sup>251</sup> The growing literature on low-wage workers documents that much of the attrition that plagues employers of minimum-wage workers stems from breakdowns in child care.<sup>252</sup> Employers who allow workers to be open about family care issues may find that, instead of calling in sick for the whole day, employees instead miss only part of the day, because they do not have to pretend they were sick. When employees are allowed to be forthcoming about family care crises or

children's and elders' medical appointments, some employers have found workers more likely to make up time missed due to family care.<sup>253</sup> Human services director Frank Guzzo of Union County, New Jersey reported that employees on flextime seemed to be scheduling appointments on their days off.<sup>254</sup>

Finally, flexible work can be an effective recruiting tool. Bristol-Myers Squibb found that its flexible work options program had helped it recruit one in five of its workers – and one in three of its women.<sup>255</sup> When the Minneapolis law firm discussed above advertised a job-share clerical position, they got a “deluge” of applicants. “We had a hot ticket!” said the human resources director.<sup>256</sup>

#### *(6) Avoiding a loss of employer control in unionized workplaces*

One major finding is that an employer who makes no attempt to deal with workers' legitimate family care responsibilities risks losing control of how work/family issues are treated in a unionized workplace. This result occurs because arbitrators often do not rigidly enforce workplace rules when workers face discipline or discharge because of family care needs, so long as they have adequate child (or other) care and back-up care in place. For example, in *General Telephone of Indiana*,<sup>257</sup> discussed above, the arbitrator reinstated a telephone operator who had refused overtime for child care reasons, saying:

If the inability to employ a responsible individual to provide full-time babysitting care when neither spouse nor relatives are available for that purpose is not a ‘compelling personal reason,’ then it is hard to imagine what sort of excuse would be acceptable.<sup>258</sup>

This approach is not uncommon. Despite the fact that arbitrators rarely make split decisions, more than a third (35%) of the arbitrations involving family care produced split

decisions, often in situations where the arbitrator refused to enforce full discipline although a work rule had clearly been broken. In this context – unlike in most others – arbitrators routinely second guess the discipline imposed by management, imposing less severe discipline in an attempt to balance the equities because both workers and employers lack the choices they need. To state this differently, arbitrators often treated workers’ family care responsibilities as a mitigating factor (although in many cases, this is not the formulation adopted by the arbitrators).<sup>259</sup> The clear message, for unionized workplaces, is that employers who want to retain control over work/family issues need to address them pro-actively.

6. *Best practice: flexibility is possible in working-class jobs*

One of the many “false truisms” that abound in the work/family arena is that there are certain industries, or certain jobs, where flexible work options “just aren’t possible.” This is untrue.

Any job can be restructured to be family friendly, although (not surprisingly) different kinds of flexibility are suitable for different kinds of jobs. The arbitrations highlight this point. For example, in *Sutter Roseville Medical Center*, the arbitrator was understandably vexed with a worker who flatly refused to face the fact that he could no longer refuse overtime work, leaving his co-workers to shoulder an additional burden. In ruling for the employer, the arbitrator relied in part on the point that dependable staffing is vital in medical facilities that treat seriously ill patients.<sup>260</sup> For precisely that reason, however, medical facilities have elaborate back-up staffing systems to ensure that, if one worker is not available, another can be found. In sharp contrast, the arbitrator in *Department of Veterans Affairs Medical Center*, faced with a more sympathetic worker, allowed for flexibility without mentioning the particular problems presented by staffing issues in medical facilities.<sup>261</sup> Perhaps the type of facility played a role. Perhaps not. After all, the real issue is not whether police, medical, and other 24-hour/day workplaces need reliable staffing. Clearly they do. The real issue is whether the best way to ensure reliable staffing is to discipline or fire workers who cannot report due to unavoidable family care responsibilities – or whether a more effective approach is cross-train workers and provide reliable back-up systems so that when workers with reliable regular and back-up child care cannot report, the employer’s needs still will be met. Providing such back-up may be *easier* in medical workplaces, because they already have an elaborate

system of back-up arrangements, including “floaters,” on-call staff, registry, and other back-up arrangements, due to the exigencies of the field.

The airline industry also highlights the fact that flexibility is not inconsistent with reliable staffing. Airlines typically staff flights through a computerized bidding system in which flight attendants bid for their flights a month in advance. Many flight attendants, male as well as female, handle child care through tag teaming and careful bidding for shifts when their spouse will not be at work.

The misconception that flexibility is not suitable in working-class jobs stems chiefly from the assumption that workplace flexibility is available only by means of individualized arrangements negotiated between individual worker and individual supervisor. That model, applied primarily to professionals, is suitable primarily for professionals. Indeed, one recent study by Bristol-Myers Squibb found that hourly employees were considerably less likely than professionals to use informal flexible work arrangements (22% v. 35% overall).<sup>262</sup> This makes sense: informal arrangements are most effective for high-human capital workers with the unique skills to negotiate an individual “deal,” something most hourly workers lack.

Nonetheless, employers, as well as workers, would benefit from ending workplace/workforce mismatch in working-class jobs.<sup>263</sup> Here are five crucial steps towards eliminating workplace/workforce mismatch:

1. *COMPLY WITH THE FMLA AND ANY APPLICABLE STATE LEAVE PROVISIONS.* An important first step is for employers who are covered by the federal Family and Medical Leave Act (FMLA)—and any applicable state leave laws—to comply with these legal mandates, and publicize these rights. Under the FMLA, this

includes providing eligible workers (generally those who have worked for the employer for a year and for 1250 hours in the year prior to the requested leave) with twelve weeks of unpaid leave each year to care for a newborn, newly adopted, or new foster child or to care for an immediate family member with a serious health condition. A serious health condition can be, among other things, a medical condition for which a family member has seen a doctor and requires treatment (such as taking prescription medicine) for three or more days, including, for example, a child's strep throat or asthma. Under the FMLA, a worker can take leave on an intermittent basis when medically necessary or when the employer agrees. In addition, some states—including California—provide additional leave and benefits to workers under state law. Employers should find out about and comply with all applicable state and federal leave laws.

2. *CREATE LEAVES FOR WORKERS WITH UNAVOIDABLE WORK/FAMILY CONFLICTS.* A variety of kinds of leaves are workable in virtually any working-class job:

- (1) Sick leave available for care of a worker's children or parents<sup>264</sup>
- (2) Day-at-a-time personal leave or vacation, available without notice or with minimal notice for emergencies
- (3) Vacation or personal leave available in two-hour increments to address family care emergencies (e.g. the babysitter does not show up), routine or emergency medical appointments not covered by FMLA leave, with an expedited process for applying for leave without prior notice for emergencies

Baxter's employees identified "as needed" flexibility as the most important kind of flexibility. <sup>265</sup>
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- (4) Breaks, with access to phones, to allow parents to call home to check up on latchkey kids after school, or on sick children who are home alone
- (5) Gradual return to work after childbearing: a reduced-hours schedule following childbirth for a limited period
- (6) Personal leaves (unpaid but with reinstatement rights) for absences in excess of twelve weeks, for care of a newborn or newly adopted child or an ill family member, with family defined broadly so as not to disadvantage grandmothers caring for grandchildren and others in nontraditional families

These leaves should be accompanied by back-up or cross-training systems to buffer the impact of unanticipated absences – systems that will also help ensure continuity and productivity in the case of unwanted attrition. Finally, large employers also may find it worthwhile to contract with a child care provider to run day camps on site during the summer and on school breaks (including snow days).

An important point is that employers already are paying for many of the work absences these leaves represent – the absences are just being counted as sick leave for an employee’s own illness.

3. *FAMILY-RESPONSIVE OVERTIME*. Another important challenge is to design an overtime system that will ensure effective overtime coverage for employers without driving conscientious workers out. Two principles are:

- (1) Rely as much as possible on voluntary rather than mandatory overtime; allocating overtime equally among the workforce makes no sense, given that some workers positively desire overtime, while others feel a pressing need to avoid it;

(2) Provide a system that enables workers with bona fide child care and other family care needs to refuse overtime if need be, and provide them with an alternative approach that sets aside certain specific days or other periods when they will be on call for overtime, so that they can arrange family care coverage in advance. This is the system developed *ad hoc* by arbitrators in a variety of cases, notably *Rochester Psychiatric*<sup>266</sup> and *Allied Paper*.<sup>267</sup>

Another important principle, in blue-collar jobs, is that apprenticeships and other on-the-job training programs should not be offered only after working hours. Not only will this preclude women from advancement; so also will it preclude many divorced men, and men in tag team families.

4. *REDUCED HOURS AND FLEXIBLE WORK OPTIONS*. Reduced or flexible hours options also exist for virtually every job, but different ones are suitable for different types of positions. Another false truism is that only professionals want reduced-hours work. A recent study by Allstate Insurance found that hourly workers were actually *more likely than professional/managerial workers to want a part-time schedule*.<sup>268</sup> In addition to the demand for jobs less than 40 hours/week, in workplaces where full-time is defined as 50+ hours, most mothers will want reduced schedules: fully 95% of mothers aged 25 – 44 work less than 50 hours/week year-round.<sup>269</sup> Many kinds of reduced-hours schedules are suitable for working-class jobs, keeping in mind that such jobs, if they are to achieve the business goals associated with ending workforce/workplace mismatch, should pay at least pro-rated benefits (in sharp contrast to the practice of switching jobs from full- to part-time in order to avoid to decrease labor costs by eliminating benefits).

*Here is a rough typology:*



***On-site blue-collar jobs in manufacturing and medical/police/emergency personnel, including medical techs, nurses, and nurses aides***

In some jobs, being on-site is an essential part of the job, either because that is where the customers are or because the job requires extensive equipment and/or teamwork. Reduced schedule options in these types of jobs include:

- Compressed workweeks, where workers work four 10-hour days and have the fifth day off, or “nine-day fortnight,” where workers work for nine-hour days for 8 days and have every other tenth day off.

At Texas instruments, over 60% of hourly workers are on compressed workweeks. <sup>270</sup>
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- Job sharing, where two people split one job, for example with one person working two days a week and the other working three days a week, with each worker receiving at least pro-rated benefits.
- Proportional work with benefits, as when some workers work a four-day week while the extra days are covered by retirees who want to “keep their hand in” or by “floaters” whose work consists of filling in for workers on their days off.

***On-site white collar jobs such as secretaries, who have a personal relationship with an individual boss***

- Compressed working time, job sharing, proportional work with benefits
- Flexwork: flexible starting and stopping times

***On-site service work, from retail sales to auto repairs to computer tech to government benefits worker***

- Compressed working time, job sharing, proportional work with benefits, flexible starting and stopping times

***Clerical jobs such as billing, and telephone jobs such as customer service and call centers***

- Compressed working time, job sharing, proportional work with benefits, flexible starting and stopping times
- Telecommuting is often an option for these workers

When GlaxoSmithKline's Consumer Healthcare division implemented a compressed workweek, 89% of customers felt service had not been disrupted, and 98% said their inquiries had been answered in a timely manner.<sup>271</sup>

***Off-site jobs such as jobs in sales***

- Compressed working time, job sharing, proportional work with benefits, flexible starting and stopping times

The Consumer Health Care Division of GlaxoSmithKline implemented flexible work arrangements, particularly job sharing, among customer service reps as a way of retaining talent. Increased productivity and extra coverage resulted.<sup>272</sup>

AstraZeneca, a pharmaceutical company, found that job sharing and part-time sales positions in its field sales force performed as well as sales reps with conventional schedules.<sup>273</sup>

## CONCLUSION

Mr. Ball testified that he again urged the worker to seek counseling [under the Employee Assistance Program to remedy his absenteeism problem . . . Mr. Ball] stated at the hearing that he did in fact review his situation with a counselor shortly thereafter but . . .the counselor informed him that the program would be of little assistance to him inasmuch as his problem with attendance was not directly attributable to his own personality as much as it involved the care of his [severely mentally handicapped] child.

*-Boise Cascade Corp., Insulite Division*<sup>274</sup>

Many employers have recognized the need for Employee Assistance Programs (EAP) due to alcoholism, drug abuse or other personal problems, but have yet to aid responsible workers whose only problem is that they are also responsible for family caregiving. The exclusion of family care from employee assistance programs is one symptom of the larger problem: employers need to recognize and address workforce/workplace mismatch. In an era when 70% of families have all adults in the labor force,<sup>275</sup> it is not only unrealistic for employers to insist that employees have “a family life secured” from the demands of child and elder care, it is uneconomic. A human resources policy stuck in the 1950s is bad for the bottom line.

*For employers*, this report provides a concrete list of best-practice policies that should be implemented to adapt today’s workplace to today’s families. Continuing to define the ideal worker as someone who never has competing family responsibilities is not only unrealistic and uneconomic – it does not fit with the kind of family values that workers and their employers share.

In addition to messages for employers, this report also has other important messages:

*For the press*, it provides a new story line for coverage of work/family conflict. It is time to stop relegating coverage to the “Style” sections of newspaper and to stories that cover only the work/family conflicts of professional women. As this report vividly shows, ordinary Joe and Jane can’t opt out: instead, they have to soldier on, daily facing situations in which they have to choose between jobs and the caregiving their families need to survive.

The “opt-out revolution” is one symptom of a major economic issue: our workplace still assumes workers with “a family life secured” (presumably through the effort of a stay-at-home spouse) in an era when breadwinner/homemaker households comprise only 30% of the workforce – and 16% of working class families. Do employers improve our international competitive position by perpetuating workplace/workforce mismatch?

The simple answer is no. For the press, the key message is that work/family conflict should be covered as a major economic issue. No editor would cover unemployment only through human-interest stories discussing the experience of a few of the reporter’s unemployed professional friends; such stories are similarly inappropriate as the sole “story line” for covering work/family conflict.

*For policymakers* the crucial message is that work/family conflict is not just a professional women’s issue. The press’s overly autobiographical approach to covering work/family issues has a negative impact on public policy. Policymakers (state and federal) need to come to terms with a hard fact: their inaction leaves many conscientious workers vulnerable for doing what virtually any parent, spouse, or child would do. American workers are far more vulnerable than workers in other countries because they

lack basic protections available to workers in many other advanced industrialized countries. Alone among such countries, they lack paid maternal leave.<sup>276</sup> Unlike workers in all European countries, they lack working time regulations such as the right to request flexible work arrangements, the right to proportional pay for proportional work, mandated vacation time, parental leave, and sick leave available both for illness of the worker and close family members.<sup>277</sup> Apart from the small Head Start program available to very low income workers, Americans also lack high-quality, subsidized child care. Once the press stops covering work/family issues as just a problem for professional women, policymakers will stand face to face with a central irony: In a country committed to the family values of caring for children, elders, and the ill, the lack of supports for hard-working families creates everyday crises for many ordinary Americans.

*For unions*, the key message is that work/family issues are a core union issue. Until employers match the workplace to the workforce, workers' unacknowledged family needs will continue to make them vulnerable to being disciplined or fired when they act on the family values that form a precious core of working-class identity. These arbitrations highlight poignant situations in which unions prevent conscientious workers from losing their jobs; more people need to know about them. Last but not least, the important message for a union movement newly focused on organizing is that, without contract protection, ***many workers are one sick child away from being fired.*** As this report shows vividly, this includes *men as well as women, grandparents as well as parents – indeed, it includes anyone with a family member who may become sick and need care.*

*For policymakers, employers and unions, the core message is the same. It is time for Americans to act on family values that are widely shared.*

## APPENDIX A Methodology

Arbitrations were culled from a variety of sources; the list of full text sources and summaries provided in *Researching Labor Arbitration and Alternative Dispute Resolution in Employment* by Suzanne Thorpe and Laura J. Cooper served as a starting point. Scanning the print editions of Labor Arbitration Reports showed that publication's head notes concerning the topic (including absenteeism, tardiness and FMLA) provided a basis for search terms in this and other databases. Additional search terms were kept broad, to cast the widest net. They included absent, tardy, "child care", "care giving", "elderly parent," child!, parent, family, ill, sick. Where databases were of manageable sizes and searching options were limited, a review of the entire database was conducted. Cases culled from these sources were then read and selected or discarded based whether they were substantively about work/family conflict.

The majority of the arbitrations found were in the *Labor Arbitration Reports*. Publisher website <http://www.laborandemploymentlaw.bna.com> provides advanced search options that, when one is familiar with the head notes commonly associated with these arbitrations yielded comprehensive lists of potential sources. The major drawback of this website is that it makes available only those arbitrations published in its print copy.

Most additional online research occurred on Westlaw, as its arbitration databases were, in general, more complete than Lexis. The database LA-UNP covered those arbitrations not chosen for publication in the print copy of Labor Arbitration Reports. The Labor Arbitration Information System (LAIS on Westlaw) provides mostly summaries of arbitrations, rather than full text. Yet using common terms -- absenteeism, tardiness, child, parent, family, care giving – turned up cases not found in other databases. Finally, PersonNet (PNET-ARB) provided a few additional arbitrations involving the federal government.

Lawmemo.com allows for free arbitration searches, but its catalog is limited to arbitrator submissions and its search engine is basic. However, because of the limited number of arbitrations available on the site, it was possible to examine these cases individually to determine if they met the criteria needed.

Of the discipline and discharge arbitrations, most (79%) involved child care; 10% involved care for a parent; 9% involved care for an extended family member; 2% involved care for a grandparent; and 6% involved care for a spouse. In 65% of the cases, the workers were AWOL or had an unexcused absence or involved excessive absenteeism. Roughly 18% involved workers who refused overtime or an assignment. 11% encountered charges of insubordination. 11% involved tardiness. In the cases that involved discipline and discharge, management prevailed in 43% of the arbitrations; the union prevailed in 21%; the remaining 35% were split decisions.<sup>278</sup>

**APPENDIX B**  
**Union contract language limiting mandatory overtime**  
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**OVERTIME ON A VOLUNTARY BASIS**

**USW Local 9777 & Alberto-Culver USA, Inc.**

**Scheduling and Assigning Overtime**

Overtime work shall be assigned on a voluntary basis. The Company and the Union recognize the importance of overtime work to meet the needs of our customers and to ensure the success of our Company, and as such, pledge full, mutual cooperation in locating qualified volunteers providing the Company notifies the Union of its requirements at least 24 hours in advance.

**OVERTIME ON A VOLUNTARY BASIS**

**IBT Local 630 & Certified Grocers of California, Ltd**

**Overtime is Voluntary and Based on Seniority**

A voluntary overtime system shall be established by the Employer as follows: Annually regular employees shall be given the opportunity to elect whether they wish to decline overtime work after eight (8) hours or the sixth (6th) or seventh (7th) day for the succeeding twelve-month period. If an employee elects to decline to work overtime, he will not be offered, or can he claim, overtime work during the succeeding twelve-month period, subject, however, to the limitation that no more than 25% of the employees of the Employer in each classification and on each shift and in each department where separate seniority has historically been established may make such an election. If more than 25% wish to make such an election, selection will be made by seniority. The election to decline overtime work shall not be effective during any week in which this Agreement provides for paid holiday

**RIGHT TO BE EXCUSED FROM OVERTIME**

**UAW Local 383 & Bosch Braking Systems**

**Right to be Excused from Overtime**

Beginning July 1, 1999, the Company will afford employees the right to be excused from scheduled overtime for up to forty-eight (48) hours per year.

- a. Such excused time will be without pay.
- b. The employee must notify his/ her supervisor of his/ her request for excused overtime no more than ninety (90) days before the requested date and no later than the start of his/ her normal shift on which the overtime is offered.
- c. The Company has the right to schedule the next lowest person to replace an employee who has been excused from overtime.

The Company will make a sincere effort to accommodate the employee's request.



## **RIGHT TO BE EXCUSED FROM OVERTIME DUE TO FAMILY RESPONSIBILITIES**

### **IAM District 143 & Northwest Airlines, Inc**

Ground Operations managers who administer the ESSC contract are expected to use good judgment and discretion in balancing both the interests of the Company and the employee and his/her individual circumstances in cases of forced overtime.

The following situations should be considered as valid and compelling reasons for declining forced overtime:

**Unavoidable child care problems where, for example, due to lack of advance notice of the overtime requirement or other reasonably unforeseeable circumstances, the employee has a young child who will be unattended by an adult or person of suitable age and discretion.** On the other hand, this is not intended to apply to a situation where, for example, a high school age student would be home alone for a period of hours. This is also not intended to apply to a situation where, for example, the employee has sufficient notice of a forced overtime situation to make alternative suitable arrangements or where, for example, an employee has repeatedly declined such overtime and failed to make any reasonable alternative arrangements

## **VOLUNTARY OVERTIME EXCEPT IN CASES OF EMERGENCY**

### **IAM & United Airlines Inc**

#### **Mandatory Overtime**

- a. Employees will not be required to work overtime against their wishes, except in emergencies where the companies operations cannot otherwise be maintained.
- b. No employee will be forced to work overtime until all readily available employees within the basic classification have been offered an opportunity to work the overtime hours. Readily available means 1) employees who are currently at work, and if there are insufficient volunteers from among those employees, then 2) employees who are not at work but based upon time and proximity could reasonably be expected to cover the overtime if they were available.
- c. Mandatory overtime will be limited to the number of employees and hours required to cover the emergency.
- d. Mandatory overtime will be assigned in inverse seniority order to the junior qualified employee(s).

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## ENDNOTES

<sup>1</sup> This research was also written up in a law review article designed for arbitrators, entitled *Work/Family Conflict: The Arbitrator's Role*, to be published in *ARBITRATION 2005: THE EVOLVING WORLD OF WORK*, copyright © 2006 The Bureau of National Affairs, Inc., published by BNA Books ([www.bnabooks.com](http://www.bnabooks.com)). Many thanks to Mary Still, Chris Knowlton, Netsy Firestein, and Kathy Christensen; without their friendship, support, and expertise, this report would never have been written. Thanks also to Susan Kwiatkowski and Francis Shehadeh for diligent and expert research assistance; to Stephanie Bornstein and Manar Morales for helping me prepare this report for publication; to Stephanie Coontz for help with the title; and to Alek Gembinski for his outstanding design work. Last but not least, I am very deeply grateful to the Alfred P. Sloan Foundation, to Abigail Disney, and to Dean Mary Kay Kane of the University of California, Hastings College of the Law, whose generous financial support makes the work of WorkLife Law possible.

<sup>2</sup> Naomi Gerstel & Dan Clawson, *Union's Responses to Family Concerns*, 48 *Social PROBLEMS* 284-85 (2001).

<sup>3</sup> Lisa Belkin, "The Opt-Out Revolution," *The New York Times Magazine* (October 26, 2003) 42; Rick Heglund, "The Family Track; Opting for a richer home life over a high-powered career," *Buffalo News* (December 21, 1997) 1F; Peggy O'Crowley, "More women are choosing to make a career out of raising their children," *The Newark Star-Ledger* (April 18, 2002); Michelle Osborn, "Women change career paths; More choose to stay home with children," *USA Today* (May 10, 1991) 1B.

<sup>4</sup> American Federation of Laborers-Congress of International Organizations (AFL-CIO), *Bargaining Fact Sheet: Control Over Work Hours and Alternative Schedules* 1 (2001), available at <http://www.aflcio.org/issues/workfamily/upload/workhours.pdf>. (66% and 51% respectively).

<sup>5</sup> ATU database: *Chicago Transit Authority*, case no. 97-0166 (Hayes, 1999)(arbitrator reinstated a female bus driver with no loss of seniority, but put her on probation and gave her partial back pay, after she was discharged because of absences due to a flat tire, a family funeral, misunderstandings about a vacation day and extra board duty, a suspended driver's license, and time lost spent taking her son to a high school placement test).

<sup>6</sup> *Knauf Fiber Glass*, 81 LA 333 (Abrams, 1983)(arbitrator reinstated the grievant without back pay and put her on probation, concluding: "[The grievant] felt deeply about her personal obligations and responsibilities as the unwed mother of three children. While understandably her son and daughters may be of paramount importance to her, her employer can insist that she meet reasonable attendance requirements. The grievant can meet those requirements, keep her job and support her children. If she cannot meet those requirements now and in the future, she will lose her job and her children will suffer as a result. It will require great effort on her part to meet her dual responsibilities, but it certainly is worth the effort.").

<sup>7</sup> *Chicago Tribune Co.*, 119 LA 1007 (Nathan, 2003)(arbitrator reinstated the grievant after holding that her oversleeping, which led to her tardiness, was an FMLA-qualified event because it resulted from exhaustion from her responsibilities as primary caregiver for her mother).

<sup>8</sup> ATU database: *Chicago Transit Authority*, case no. 96-080 (Goldstein, 1997)(arbitrator upheld the discharge of a single mother whose tardiness stemmed primarily from her need to unhook her son, who had Crohn's disease, from his IV, bandage him, administer medication, get him off to school, take two buses to take her toddler to his babysitter, and then take a third bus to work).

<sup>9</sup> Netsy Firestein, *A Job and A Life: Organizing & Bargaining for Work Family Issues: A Union Guide*, Labor Project for Working Families 17 (2005), available to order from <http://www.laborproject.org/bargaining/guide.html>.

<sup>10</sup> CWA database: *Ameritech*, case no. 4-99-39 (Bellman, 2001)(arbitrator reinstated a 25-year employee, without back pay, discharged for monitoring her phone to check up on her young children, one who was asthmatic).

<sup>11</sup> Firestein, *supra* note 9, at 15.

<sup>12</sup> *Tenneco Packaging Burlington Container Plant*, 112 LA 761 (Kessler, 1999)(arbitrator reinstated with full back pay the grievant, a single parent of a mentally handicapped son, who was terminated after 27 years for failing to report to work when her son's caregiver could not work).

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<sup>13</sup> *Marion Composites*, 115 LA 95 (Wren, 2001)(arbitrator reduced the grievant's suspension to a written warning and awarded him back pay after the grievant was suspended for insubordination for leaving after eight hours of a 12-hour overtime shift to care for his children).

<sup>14</sup> *Id.*

<sup>15</sup> *U.S. Steel Corp.*, 95 LA 610 (Das, 1990)(arbitrator sustained the grievant's suspension for failure to report to mandatory overtime due to child care difficulties).

<sup>16</sup> The boy's father worked as the only manager on duty during the evening, had joint custody of his 18-month old, and, because of the boy's medical condition, the court required that the child be cared for by a family member. The worker was reinstated by the arbitrator, in part of confusion over the timing of the posting of the mandatory overtime.

<sup>17</sup> UPS database: *UPS*, case no. 97-222(B) (McKay, 1998)(arbitrator upheld the grievant's discharge, pointing to an established arbitral history of discharge for "stolen time" and faulting grievant for lying when he claimed overtime rather than admitting he had not been at work for part of the regular workday).

<sup>18</sup> *Tom Rice Buick, Pontiac & GMC Truck, Inc.*, 334 NLRB 785 (2001)(NLRB upheld the dismissal of the grievant who left work 15 minutes early to pick up his 13-year-old son).

<sup>19</sup> The worker was denied leave because he had not given 30 days' notice. The arbitrator found it "very significant" that others had been granted leave without giving such notice.

<sup>20</sup> Will Friedman & Jill Casner-Lotto, Work in America Institute, *Time is of the Essence: New Scheduling Options for Unionized Employees 3* (2003), available at

<http://www.laborproject.org/publications/pdf/time.pdf>. (29%).

<sup>21</sup> Michael J. Siano, "Work/Family Conflict, Issues, Solutions," *In Transit* (March/April 2005), retrieved March 6, 2006 from [http://www.atu.org/docs/publications/In\\_transit/2005\\_mar\\_apr/MAIT05pp7-16.pdf](http://www.atu.org/docs/publications/In_transit/2005_mar_apr/MAIT05pp7-16.pdf).

<sup>22</sup> Available at [http://uchastings.edu/site\\_files/WLL/conflictunionstyle.pdf](http://uchastings.edu/site_files/WLL/conflictunionstyle.pdf). In an article published shortly after WorkLife Law's report, two authors also reviewed the published arbitrations involving caregiving. Neither set of authors was aware of the other until their respective pieces were published. Benjamin Wolkinson & Russell Ormiston, *The Reconciliation of Work/Family Conflicts in Arbitration*, 59 DISPUTE RESOLUTION J. 84 (2004).

<sup>23</sup> Belkin, *supra* note 3.

<sup>24</sup> Karen Kornbluh, *The Parent Trap*, 291 THE ATLANTIC MONTHLY 111-14 (2003).

<sup>25</sup> Janet C. Gornick & Marcia K. Meyers, FAMILIES THAT WORK: POLICIES FOR RECONCILING PARENTHOOD AND EMPLOYMENT 60, 62 fig. 3.3 (2003) (66% and 51% respectively).

<sup>26</sup> AFL-CIO, *Bargaining Fact Sheet*, *supra* note 4.

<sup>27</sup> Firestein, *supra* note 9, at 7.

<sup>28</sup> Joan C. Williams, Stephanie Bornstein & Jessica Manvell, *Opt Out or Kicked Out?: A New Perspective on Work/Family Conflict*, Center for WorkLife Law (*forthcoming* 2006).

<sup>29</sup> AFL-CIO, *Work and Family*, available at <http://www.aflcio.org/issues/workfamily>.

<sup>30</sup> AFL-CIO, *Family Friendly Work Schedules*, available at <http://www.aflcio.org/issues/workfamily/workscheduls.cfm>. (62% and 31% respectively).

<sup>31</sup> Jody Heymann, THE WIDENING GAP: WHY AMERICA'S WORKING FAMILIES ARE IN JEOPARDY & WHAT CAN BE DONE ABOUT IT 115 fig. 6.1 (2000).

<sup>32</sup> Gornick & Meyers, *supra* note 25, at 62.

<sup>33</sup> *Id.* at 63.

<sup>34</sup> Corporate Voices for Working Families (WFD Consulting), *Business Impacts of Flexibility: An Imperative for Expansion* 16 (November 2005), available for download from <http://www.cvwf.org/>.

<sup>35</sup> Gornick & Meyers, *supra* note 25, at 81.

<sup>36</sup> Jeanne M. Vonhoff & Martin H. Malin, *What a Mess! The FMLA, Collective Bargaining and Attendance Control Plans*, 21 ILL. PUB. EMPLOYEE REL. REP. 1 (2004).

<sup>37</sup> Heymann, *supra* note 31, at 24.

<sup>38</sup> Lisa Dodson, Tiffany Manuel, & Ellen Bravo, *Keeping Jobs and Raising Families in Low-Income America: It Just Doesn't Work*, The Radcliffe Public Policy Center (2002), available at <http://www.radcliffe.edu/research/pubpol/boundaries.pdf#search='dodson%20bravo%20keeping'>.

<sup>39</sup> CWA database: *General Telephone Company of Indiana*, case no. 5-80-934 (Walt, 1981)(arbitrator reinstated the grievant who was terminated after not attending an out-of-town training program that began the day she returned from child care leave).

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- <sup>40</sup> Jeffery Capizzano, Gina Adams & Freya L. Sonenstein, *Child Care Arrangements for Children Under Five*, The Urban Institute (March 15, 2000), available at <http://urban.org/url.cfm?ID=309438>.
- <sup>41</sup> Heather Boushey, *Who Cares? The Child Care Choices of Working Mothers*, Center for Economic and Policy Research, Data Brief No. 1 (May 6, 2003), available at [http://www.cepr.net/publications/child\\_care\\_2003.htm](http://www.cepr.net/publications/child_care_2003.htm).
- <sup>42</sup> Jeffrey Capizzano, Kathryn Tout & Gina Adams, *Child Care Patters of School-Age Children with Employed Mothers* 6, tbl.1, The Urban Institute (September 2000), available at <http://www.urban.org/UploadedPDF/occa41.pdf>.
- <sup>43</sup> *Id.*
- <sup>44</sup> Dodson et al., *supra* note 38.
- <sup>45</sup> ATU database: *Chicago Transit Authority*, case no. 00-373 (Gundermann, 2001)(arbitrator reinstated without back pay the grievant who was discharged for failing to come to work because his mother, who had agreed to watch his children, never showed).
- <sup>46</sup> *Princeton City School District Board of Education*, 101 LA 789 (Paolucci, 1993)(arbitrator held that the personal day should have been granted after grievant was denied leave when her child day care provider became sick).
- <sup>47</sup> *Social Security Administration, Westminster Teleservice Ctr.*, 93 LA 687 (Feigenbaum, 1990)(arbitrator held that grievant was entitled to emergency annual leave after she was disciplined for being AWOL when her regular babysitting arrangement broke down).
- <sup>48</sup> Heymann, *supra* note 31, at 48.
- <sup>49</sup> *ITT Industries, Night Vision Roanoke Plant*, 118 LA 1504 (Cohen, 2003)(arbitrator reinstated grievant after the employer did not allow grievant to revoke her resignation that she had submitted after the employer changed its shift schedules).
- <sup>50</sup> Heymann, *supra* note 31, at 50.
- <sup>51</sup> Gornick & Meyers, *supra* note 25, at 53.
- <sup>52</sup> Lillian Rubin, FAMILIES ON THE FAULT LINE 82-83, 93 (1994).
- <sup>53</sup> E. Smolensky & J. Appleton Gootman (eds.), WORKING FAMILIES AND GROWN KIDS: CARING FOR CHILDREN AND ADOLESCENTS (2003), cited in Shelly Waters Boots, *The Way We Work: How Children & Their Families Fare in a 21st Century Workplace*, New American Foundation, Work & Family Program (December 15, 2004), at 12.
- <sup>54</sup> Rubin, *supra* note 52.
- <sup>55</sup> Harriet B. Presser, *Toward a 24-Hour Economy*, 284 SCIENCE 1778 (June 11, 1999).
- <sup>56</sup> Heymann, *supra* note 31, at 24-25.
- <sup>57</sup> Heymann, *supra* note 31, at 36, 126.
- <sup>58</sup> *U.S. Steel Corp.*, *supra* note 15.
- <sup>59</sup> Presser, *supra* note 55, at 1779.
- <sup>60</sup> *Central Beverage*, 110 LA 104 (Brunner, 1998)(arbitrator held that unilateral change of grievant's working hours violated the contract).
- <sup>61</sup> *Jefferson Partners*, 109 LA 335 (Bailey, 1997)(arbitrator reduced a father's discharge to a one-month suspension for refusing to take an assignment because he had to pick up his daughter).
- <sup>62</sup> *Ashland Oil, Inc.*, 91 LA 1101 (Volz, 1988)(arbitrator reduced a three-day suspension to one day for carpenter who left job early to pick up his child from day care).
- <sup>63</sup> *Piedmont Airlines, Inc.*, 103 LA 751 (Feigenbaum, 1994)(arbitrator upheld a flight attendant who refused an extra flight because she could not arrange child care on short notice suspension; the grievant stated that "her husband would have had to leave work early"); See also *U.S. Steel Corp.*, *supra* note 15; *Southern Champion Tray*, 96 LA 634 (Nolan, 1990)(worker made no alternate arrangements to pick his son up from school because he believed his wife would not be able to leave work early as she had done previously).
- <sup>64</sup> CWA database: *Suprenant Cable Corp.*, case no. 1-95-85 (Bornstein, 1995)(arbitrator reinstated grievant without back pay after he was discharged for excessive absenteeism due to caring for his son after his wife left him).
- <sup>65</sup> *Interlake Material Handling Div., Interlake Conveyors Inc.*, 113 LA 1120 (Lalka, 2000)(arbitrator reinstated grievant when he was not allowed to show that he needed to stay home because his son was sick).
- <sup>66</sup> *Naval Air Rework Facility*, 86 LA 1129 (Hewitt, 1986)(arbitrator upheld the discharge of grievant who was denied sick leave to care for a child with chicken pox); *Piedmont Airlines Inc.*, *supra* note 63, at 753;

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*Southern Champion Tray Co.*, 96 LA 633 (Nolan, 1991)(arbitrator upheld the discharge of a mechanic whom he faulted for failing to make back-up child care arrangements after two warnings from his supervisor that he needed to do so); *Sutter Roseville Medical Center*, 116 LA 621 (Staudohar, 2001)(arbitrator upheld the discharge of a nuclear medicine technician who was charged with insubordination by a new supervisor after refusing to be placed on standby because he lived far away and had to care for his son); *Town of Stratford*, 97 LA 513 (Stewart, 1991)(arbitrator upheld a five-day suspension of a police officer when she failed to report for an “orderback” because she could not without notice find child care).

<sup>67</sup> *Simpson v. District of Columbia Office of Human Rights*, 597 A.2d 392 (D.C. Cir. 1991).

<sup>68</sup> Barry Schwartz, Hazel Rose Markus, and Alana Conner Snibbe, “Is Freedom Just Another Word for Many Things to Buy? That depends on your class status,” *The New York Times Magazine* (Feb. 26, 2006) 14-15.

<sup>69</sup> ATU database: *Transit Management of Decatur* (Perkovich, 1998)(arbitrator upheld a five-day suspension of a bus operator after the operator was not given a personal day when she had to care for a suicidal daughter).

<sup>70</sup> CWA database: *U.S. West Communications*, case no. 7-95-93 (Rinaldo, 1999)(arbitrator upheld the discharge of seven workers because they were not facing an “immediate, overwhelming threat to safety” and reduced to final warnings the dismissals of nine cases that met the threat-to-safety test).

<sup>71</sup> *Ameritech*, *supra* note 10.

<sup>72</sup> ATU database: *Chicago Transit Authority*, case no. 98-080 (Goldstein, 1997)(arbitrator reinstated without back pay a 14-year employee when he failed to report to work because he did not want to leave his children with his pregnant wife after she broke the phone in a fit of rage).

<sup>73</sup> Heymann, *supra* note 31, at 73.

<sup>74</sup> *Id.* at 57.

<sup>75</sup> See U.S. Census Bureau, *Children’s Living Arrangements and Characteristics: March 2002* 9, tbl.4 (2003) available at <http://www.census.gov/prod/2003pubs/p20-547.pdf>

<sup>76</sup> *Naval Air Rework Facility*, *supra* note 66.

<sup>77</sup> *Naval Air Rework Facility*, *supra* note 66.

<sup>78</sup> *Interlake Material Handling Div., Interlake Conveyors Inc.*, *supra* note 65.

<sup>79</sup> *Boise Cascade Corp., Insulite Div. International*, 77 LA 28 (Fogelberg, 1981)(arbitrator reinstated, on probation and without back pay, the father of a handicapped son who was fired after ten years of employment whose absenteeism stemmed from his need to take his son to specialists’ appointments and to an on-the-job injury).

<sup>80</sup> *State of NY, Dept. of Correctional Services*, 89 LA 122 (Handsaker, 1987)(arbitrator imposed a fine upon and reinstated a correctional officer who had been discharged for absenteeism due to caring for his wheelchair-bound step-son).

<sup>81</sup> ATU database: *Massachusetts Bay Transportation Authority* (Hodlen, 2001)(arbitrator upheld the discharge of a male train operator with a diabetic son).

<sup>82</sup> *Budget Rent-A-Car Systems*, 115 LA 1745 (Suardi, 2001)(arbitrator upheld the discipline of a male rental car shuttle driver after he failed to obtain necessary medical documentation to get FMLA leave).

<sup>83</sup> ATU database: *Chicago Transit Authority*, case no. 99-155 (Patterson, 2001)(arbitrator reinstated a bus driver, father of a disabled child, discharged for absenteeism after his daughter was born).

<sup>84</sup> ATU database: *Massachusetts Bay Authority* (Dunn, 2000)(arbitrator upheld a three-day suspension of a motor person on the Boston Red Line whose persistent tardiness stemmed largely from the fact that either he or his wife had to be up at night to care for their young daughter with special needs).

<sup>85</sup> *Tenneco Packaging, Burlington Container Plant*, *supra* note 12; *Mercer County Association for the Retarded & American Federation of State, County and Municipal Employees AFL-CIO*, 1996 WL 492101 (Hewitt, 1996)(arbitrator upheld a 3-day suspension of a residential worker in a home for the mentally handicapped who refused to work overtime because her husband was not at home and she could not leave her own mentally handicapped son alone).

<sup>86</sup> CWA database: *U.S. West Communications, Inc.*, case no. 7-95-93 (Rinaldo, 1999)(arbitrator reinstated telephone workers who were dismissed for monitoring phone calls when they were concerned about their suicidal children); *Transit Management of Decatur*, *supra* note 69.

<sup>87</sup> Family and Medical Leave Act of 1993, Pub. L. No. 103-3, 107 Stat. 6 (codified at 29 U.S.C. Sect. 2601-2654 (1994)).

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- <sup>88</sup> 29 USC § 2612(b)(1), 29 CFR § 25.203(a).
- <sup>89</sup> ATU database: *Miami Valley Regional Transit Authority*, case no. 52-390-484-00 (Campbell, 2001)(arbitrator upheld the discharge of a bus driver whose absences were caused by problems with child care and her extended family).
- <sup>90</sup> *Chicago Transit Authority*, *supra* note 5.
- <sup>91</sup> *Budget Rent-A-Car Systems*, *supra* note 82.
- <sup>92</sup> *Boise Cascade Corp., Insulite Div. International*, *supra* note 79.
- <sup>93</sup> Barbara Schneider & David Stevenson, *THE AMBITIOUS GENERATION: AMERICA'S TEENAGERS, MOTIVATED BUT DIRECTIONLESS* 145 (1999).
- <sup>94</sup> Stanford A. Newman et al., *America's After-School Choice: The Prime Time for Juvenile Crime, or Youth Achievement and Enrichment* 2-3, *Fight Crime: Invest in Kids* (2000), available at <http://www.fightcrime.org>.
- <sup>95</sup> *Transit Management of Decatur*, *supra* note 69.
- <sup>96</sup> *Chicago Transit Authority*, *supra* note 45.
- <sup>97</sup> *State of NY, Dept. of Correctional Services*, *supra* note 80.
- <sup>98</sup> *Greater Cleveland Regional Transit Authority*, 106 LA 807 (Duda, 1996)(arbitrator upheld the discharge of a brake mechanic who did not request family and medical leave despite being notified that he could do so, did not use the resources of the Employee Assistance Program although he was repeatedly urged to do so, and failed to provide proper documentation for an illness even when given an extra two weeks to accomplish this).
- <sup>99</sup> ATU Database: *Regional Transit Authority* (Vernon, 1983)(arbitrator reinstated the grievant with no loss of seniority or benefits but no back pay).
- <sup>100</sup> *Chicago Transit Authority*, *supra* note 5.
- <sup>101</sup> *Department of Veterans Affairs Medical Ctr.*, 100 LA 233 (Nicholas, 1992)(arbitrator reduced a fourteen day suspension to five days).
- <sup>102</sup> *Mercer County Association for the Retarded*, *supra* note 85.
- <sup>103</sup> U.S. Census Bureau, *Who's Minding the Kids?*, tbl. 2 (Fall 1995, Issued October 2000), available at <http://www.census.gov/prod/2000pubs/p70-70.pdf>. (21.7%).
- <sup>104</sup> U.S. Census Bureau, *Grandparents Living with Grandchildren: 2000*, at 3, (2000, Issued October 2003), available at <http://www.census.gov/prod/2003pubs/c2kbr-31.pdf>.
- <sup>105</sup> *Id.*
- <sup>106</sup> *Tractor Supply Co.*, 2001 WL 1301335 (Dichter, 2001)(arbitrator reinstated the grievant who had been discharged for insubordination for refusing to work overtime because he had to care for his grandson).
- <sup>107</sup> *Columbiana County Brd. of Mental Retardation & Disabilities*. 117 LA 13 (Skulina, 2002)(arbitrator upheld the county's decision to pass over grievant, a senior employee, for a position because the junior employee had a better attendance record; grievant had a significant amount of absences due to caring for her injured son).
- <sup>108</sup> Heymann, *supra* note 31, at 97.
- <sup>109</sup> Presser, *supra* note 55, at 1779.
- <sup>110</sup> Harriet B. Presser & Amy G. Cox, *The work schedules of low-income American women and welfare reform*, MONTHLY LAB. REV 26 (April 1997).
- <sup>111</sup> *Board of Education of the Margaretta Local School District*, 114 LA 1057 (Franckiewicz, 2000)(arbitrator reduced the grievant's suspension to 10 days).
- <sup>112</sup> *Employer and Union*. NAC. 155 (Kienast, 2000)(arbitrator upheld the discharge of an employee who left work unauthorized because her pregnant teenage daughter when into labor).
- <sup>113</sup> *Federal Mogul Corporation*, WL. 2003: 23531172 (Cohen, 2003)(arbitrator reinstated a factory worker after her employer refused to revoke her resignation).
- <sup>114</sup> Heymann, *supra* note 31, at 2.
- <sup>115</sup> Mary Jo Gibson, American Association of Retired Persons, *Beyond 50.03: A Report to the Nation on Independent Living and Disability* 59 (2003), available at [http://research.aarp.org/il/beyond\\_50\\_il.html](http://research.aarp.org/il/beyond_50_il.html).
- <sup>116</sup> Firestein, *supra* note 9, at 16.
- <sup>117</sup> *Id.* at 14.
- <sup>118</sup> *Id.*

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- <sup>119</sup> *Sprint/Central Telephone Company of Texas, Inc.*, 117 LA 1321 (Baroni, 2002)(arbitrator upheld the discharge of a customer service representative who had cared for a dying mother because the grievant did not have the skills and temperament to do her job well).
- <sup>120</sup> Gornick & Meyers, *supra* note 25, at 59.
- <sup>121</sup> Mary C. Still, *Demography of the Maternal Wall*, Center for WorkLife Law Working Paper, University of California, Hastings College of the Law (2006).
- <sup>122</sup> Gornick & Meyers, *supra* note 25, at 46 tbl. 2.2.
- <sup>123</sup> In interpreting Gornick's statistics, I have defined working class as men with high school, but not college, degrees. Gornick & Meyers, *supra* note 25, at 156-63.
- <sup>124</sup> *Tenneco Packaging Burlington Container Plant*, *supra* note 12, at 765-766.
- <sup>125</sup> *Id.* at 766.
- <sup>126</sup> *Id.*
- <sup>127</sup> *State of New York, Rochester Psychiatric Ctr.*, 87 LA 725 (Babiskin, 1986)(arbitrator reinstated grievant).
- <sup>128</sup> Based on information from the Rochester Psychiatric Center website, *available at* <http://www.omh.state.ny.us/omhweb/facilities/ropc/facility.htm>, MHTA is either "Mental Hygiene Therapy Assistant" or "Mental Health Therapy Aide."
- <sup>129</sup> *State of New York, Rochester Psychiatric Ctr.*, *supra* note 127, at 726.
- <sup>130</sup> *Id.*
- <sup>131</sup> *Id.*
- <sup>132</sup> *Id.*
- <sup>133</sup> *Id.*
- <sup>134</sup> *Id.* at 727.
- <sup>135</sup> *Rock County, Wisconsin*, 1993 WL 835474 (McAlpin, 1993)(arbitrator sustained the discharge). *Fairmont General Hospital, Inc.*, 2004 WL 3422192 (Miles, 2004)(arbitrator sustained grievant's discharge for refusal to work overtime because grievant's childcare arrangement broke down and she made no effort to make alternative arrangements).
- <sup>136</sup> CWA database: *GTE California, Inc.*, case no. 11-91-86 (Miller, 1992)(arbitrator overturned grievant's dismissal because the employee was entitled to leave rather than obeying the supervisor's order and filing a grievance later because her situation was covered by a rule concerning safety).
- <sup>137</sup> If more than one person wanted to avoid overtime work on a given day, the rule was that they had to agree which of them would not work overtime. If they could not agree, then both had to work overtime.
- <sup>138</sup> *GTE California, Inc.*, *supra* note 136.
- <sup>139</sup> Gornick & Meyers, *supra* note 25, at 247.
- <sup>140</sup> *Bryant v. Bell Atlantic Maryland*, 288 F.3d 124 (4th Cir. 2002).
- <sup>141</sup> *Id.* at 129.
- <sup>142</sup> *Interlake Material Handling Div., Interlake Conveyors*, *supra* note 65. For other tag team families, see *Marion Composites*, *supra* note 14; *Sutter Roseville Medical Ctr.*, *supra* note 66; *U.S. Steel Corp., Southern Steel Division*, *supra* note 15; ATU database: *Chicago Transit Authority*, *supra* note 83.
- <sup>143</sup> *Suprenant Cable Corp.*, *supra* note 64.
- <sup>144</sup> *Marion Composites*, *supra* note 13.
- <sup>145</sup> *General Telephone Company of Indiana*, *supra* note 39.
- <sup>146</sup> *Allied Paper*, 80 LA 435 (Mathews, 1983)(arbitrator reduced the suspension to a written warning).
- <sup>147</sup> *Id.* at 448.
- <sup>148</sup> James T. Bond et al., *Highlights of the National Study of the Changing Workforce*, Families and Work Institute, No. 3, 30 (2002, Released 2003), *available at* <http://www.familiesandwork.org/summary/nscw2002.pdf>
- <sup>149</sup> Gornick & Meyers, *supra* note 25, at 247.
- <sup>150</sup> In *Tenneco Packaging*, a woman janitor did not explain to her employer that she could not work because the babysitter had not arrived for her disabled child. Her silence appears to have been differently motivated: the arbitrator states that the worker simply did not know that management expected an explanation.
- <sup>151</sup> *Tractor Supply Co.*, *supra* note 106.

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<sup>152</sup> The boy's father worked as the only manager on duty during the evening, had joint custody of his 18-month old, and, because of the boy's medical condition, the court required that the child be cared for by a family member.

<sup>153</sup> Arbitrator Dichter emphasized the worker's failure to explain why he could not stay, but he found that the discharge was unreasonable in the face of the worker's need to care for the child, and the confusion concerning notice the day before. He reduced the penalty to a 30-day suspension, without back pay.

<sup>154</sup> *Midwest Body, Inc.*, 73 LA 651 (Guenther, 1979)(arbitrator upheld the dismissal).

<sup>155</sup> *Id.* at 652.

<sup>156</sup> *Id.* at 653.

<sup>157</sup> *Tom Rice Buick, Pontiac & GMC Truck, Inc.*, *supra* note 18.

<sup>158</sup> *Ashland Oil*, *supra* note 62.

<sup>159</sup> *VA, Medical Center, Indianapolis*, 92 LA 691 (Doering, 1988)(arbitrator reduced an AWOL demerit to leave without pay).

<sup>160</sup> *City of Columbus*, 96 LA 32 (Mancini, 1990)(arbitrator sustained grievant's suspension).

<sup>161</sup> The worker claimed at the hearing that he had so informed his supervisor, but this claim was inconsistent with a prior statement, and the arbitrator did not believe it.

<sup>162</sup> *City of Columbus*, *supra* note 160.

<sup>163</sup> The Arbitrator notes that the worker had "two recent reprimands for committing similar offenses." *Id.* at 37. It is unclear from the decision whether that means that the worker had gotten into trouble for leaving for child care reasons before. If so, that may explain why he did not discuss his child care issues when they arose again.

<sup>164</sup> Gregory DeFreitas and Niev Duffy, *Young Workers, Economic Inequality, and Collective Action* 145, in *WHAT'S CLASS GOT TO DO WITH IT? AMERICAN SOCIETY IN THE TWENTY-FIRST CENTURY*, Michael Zweig, ed. (2004).

<sup>165</sup> Joan C. Williams, *UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT* 153 (2000).

<sup>166</sup> Richard Sennett & Jonathan Cobb, *THE HIDDEN INJURIES OF CLASS* (1973).

<sup>167</sup> Lillian B. Rubin, *supra* note 52, at 78.

<sup>168</sup> Ellen Rosen, *BITTER CHOICES: BLUE-COLLAR WOMEN IN AND OUT OF WORK* 104 (1987).

<sup>169</sup> Roberta Sigel, *AMBITION & ACCOMMODATION: HOW WOMEN VIEW GENDER RELATIONS* 159 (1996).

<sup>170</sup> *Id.* at 159. Sigel argues that attitudes have shifted among younger men, but the available evidence (including her own) raises questions about the extent of that shift. *See* Williams, *supra* note 165, at 159-60.

<sup>171</sup> Michèle Lamont, *THE DIGNITY OF WORKING MEN: MORALITY AND THE BOUNDARIES OF RACE, CLASS, AND IMMIGRATION* 34 (2000).

<sup>172</sup> Jeanne Boydston, *HOME AND WORK : HOUSEWORK, WAGES, AND THE IDEOLOGY OF LABOR IN THE EARLY REPUBLIC* 156 (1990); Williams, *supra* note 165, at 34-35.

<sup>173</sup> Williams, *supra* note 165, at 34-35, 156-157, 160-161; Rubin, *supra* note 52; Lamont, *supra* note 171; Sigel, *supra* note 169; Frank S. Levy and Richard C. Michel, *THE ECONOMIC FUTURE OF AMERICAN FAMILIES: INCOME AND WEALTH TRENDS* (1991).

<sup>174</sup> Williams, *supra* note 165, at 25-31, 157-60.

<sup>175</sup> Email from Professor Peter Richardson, University of Michigan, to Joan Williams, June 6, 2005.

<sup>176</sup> T.D. Allen, J.E. Russell & M.C. Rush, *Effects of Gender and Leave of Absence on Attributions for High Performance, Perceived Organizational Commitment, and Allocation of Rewards*, 31 *SEX ROLES* 443-464 (1994); Michael K. Judiesch & Karen S. Lyness, *Left Behind? The Impact of Leaves of Absence on Managers' Career Success*, 42 *ACADEMY OF MANAGEMENT JOURNAL* 641-651 (1999).

<sup>177</sup> Martin Malin, *Fathers & Parental Leave*, 72 *TEXAS LAW REVIEW* 1047, 1078 (1994).

<sup>178</sup> Christine E. Dickson, *The Impact of Family Supportive Policies and Practices on Perceived Family Discrimination* (dissertation, 2004).

<sup>179</sup> A.B. Butler & A.L. Skattebo, *What Is Acceptable for Women May Not Be for Men: The Effect of Family Conflicts with Work on Job Performance Ratings*, 77 *JOURNAL OF ORGANIZATIONAL PSYCHOLOGY* 553-564 (2004).

<sup>180</sup> *Id.* at 637.

<sup>181</sup> Karen D. Pyke, *Class-Based Masculinities: The Interdependence of Gender, Class, and Interpersonal Power*, 10 *GENDER & SOCIETY* 527, 531, 538-539, 541, 545 (1996).



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- <sup>182</sup> Ann C. Crouter & Melissa R. Head, *Parental Monitoring and Knowledge of Children*, in HANDBOOK OF PARENTING (Bornstein ed. 2002); Matthew F. Bumpus & Ann C. Crouter, *Work Demands of Dual-Earner Couples: Implications of Parents' Knowledge about Children's Daily Lives in Middle Childhood*, 61(2) J. OF MARRIAGE AND THE FAMILY 465 (1999).
- <sup>183</sup> Anette Lareau, *My Wife Will Tell Me Who I Know: Methodological and Conceptual Problems in Studying Fathers*, 23 QUALITATIVE SOC. 407 (2000).
- <sup>184</sup> *U.S. Steel Corp.*, *supra* note 15.
- <sup>185</sup> Lamont, *supra* note 171, at 30.
- <sup>186</sup> *Id.* at 112.
- <sup>187</sup> *Id.*
- <sup>188</sup> *Id.* at 31.
- <sup>189</sup> *Ashland Oil*, *supra* note 62.
- <sup>190</sup> *Tom Rice Buick, Pontiac & GMC Truck, Inc.*, *supra* note 18, at 786.
- <sup>191</sup> *Midwest Body, Inc.*, *supra* note 154.
- <sup>192</sup> *Budget-Rent-A-Car Systems*, *supra* note 82.
- <sup>193</sup> *Greater Cleveland Regional Transit Authority*, *supra* note 98.
- <sup>194</sup> *State of New York, Rochester Psychiatric Ctr.*, *supra* note 127.
- <sup>195</sup> *GTE California, Inc.*, *supra* note 136.
- <sup>196</sup> *State of New York, Rochester Psychiatric Ctr.*, *supra* note 127.
- <sup>197</sup> *GTE California, Inc.*, *supra* note 136.
- <sup>198</sup> *Knauf Fiber Glass*, *supra* note 6.
- <sup>199</sup> *Id.* at 336.
- <sup>200</sup> *Id.*
- <sup>201</sup> *Id.* at 337.
- <sup>202</sup> *Id.*
- <sup>203</sup> *Id.* at 338.
- <sup>204</sup> *Southern Champion Tray*, *supra* note 66, at 637; also quoted in *Tractor Supply*, *supra* note 106.
- <sup>205</sup> *Social Security Administration, Westminster Teleservice Ctr.*, *supra* note 47.
- <sup>206</sup> *Id.*
- <sup>207</sup> *Town of Stratford*, *supra* note 66.
- <sup>208</sup> *Id.* at 513-14.
- <sup>209</sup> Fertility studies of working class women are scarce, but from Sylvia Ann Hewlett, *CREATING A LIFE: PROFESSIONAL WOMAN AND THE QUEST FOR CHILDREN* 33 (2002) (stating that 33% of high-earning career women aged 40-55 are childless and the rate of childlessness among high-achieving women is about twice that of the population at large), we can infer that working class women are less likely to be childless.
- <sup>210</sup> Phyllis Moen & Yan Yu, *Effective Work/Life Strategies: Working Couples, Work Conditions, Gender, and Life Quality*, 47 SOCIAL PROBLEMS 3, 295, 311, 314 (2000).
- <sup>211</sup> *City of Titusville*, 101 LA 828, 835-836 (Hoffman, 1993)(arbitrator overturned employer's finding that grievant had abused her sick leave to care for her ill son because "the uncontested facts are that every single absence during this period was known to her supervisors, approved by them, and paid for," and thus management had waived its right to discipline).
- <sup>212</sup> Karen Kornbluh, *The Parent Trap*, 291 THE ATLANTIC MONTHLY 111-14 (2003).
- <sup>213</sup> Corporate Voices for Working Families, *supra* note 34, at 12.
- <sup>214</sup> *Dial Corp., Bristol, Pa.*, 107 LA 879 (Robinson, 1997)(arbitrator reduced the termination to a suspension).
- <sup>215</sup> *Piedmont Airlines, Inc.*, *supra* note 63, at 755.
- <sup>216</sup> Williams, *supra* note 165, at 93.
- <sup>217</sup> James L. Heskett, W. Earl Sasser, Leonard A. Schlesinger. *The Service Profit Chain: How Leading Companies Link Profit and Growth to Loyalty, Satisfaction, and Value* (1997).
- <sup>218</sup> Corporate Voices for Working Families, *supra* note 34, at 20.
- <sup>219</sup> *Id.*
- <sup>220</sup> *Id.* at 13.
- <sup>221</sup> *Id.*
- <sup>222</sup> *Id.* at 10.

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<sup>223</sup> *Id.* at 18.

<sup>224</sup> *Id.* at 12.

<sup>225</sup> *Id.* at 14.

<sup>226</sup> *Id.* at 16.

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> Williams, *supra* note 165, at 92.

<sup>231</sup> *Id.*

<sup>232</sup> For more examples, see Williams, *supra* note 165, at 84-94; Corporate Voices for Working Families, *supra* note 34.

<sup>233</sup> Williams, *supra* note 165, at 92.

<sup>234</sup> Corporate Voices for Working Families, *supra* note 34, at 8, 22.

<sup>235</sup> Williams, *supra* note 165, at 93.

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> Corporate Voices for Working Families *supra* note 34, at 15.

<sup>240</sup> *Id.*

<sup>241</sup> *Los Angeles County Dept. of Public Social Services*, 93 LA 1079 (Knowlton, 1989)(arbitrator upheld three day suspension for social services employee who took day off, following denial of request for leave, to help non-English speaking adoptive mother and grandchild get to airport and negotiate customs).

<sup>242</sup> *Id.* at 1081.

<sup>243</sup> *Id.* at 1081.

<sup>244</sup> Williams, *supra* note 165, at 87.

<sup>245</sup> *Id.* at 88; Corporate Voices for Working Families, *supra* note 34, at 22.

<sup>246</sup> Joan C. Williams & Nancy Segal, *Beyond the Maternal Wall*, 26 HARVARD WOMEN'S LAW JOURNAL 77, 89 (2003).

<sup>247</sup> *Internal Revenue Service*, 89 LA 59 (Gallagher, 1987)(arbitrator overturned dismissal).

<sup>248</sup> *Miami Valley Regional Transit Authority*, *supra* note 89.

<sup>249</sup> Ellen Galinsky, James T. Bond, Dana E. Friedman, *The Changing Workforce: Highlights of the National Study of the Changing Workforce*, Families and Work Institute, 88 (1993).

<sup>250</sup> See Work & Family Connection, Inc., *Work & Family: A Retrospective* 130, 123 (Survey by AMA).

<sup>251</sup> *Id.* at 126.

<sup>252</sup> Dodson et al., *supra* note 38.

<sup>253</sup> Williams, *supra* note 165, at 91.

<sup>254</sup> *Id.*

<sup>255</sup> Corporate Voices for Working Families, *supra* note 34, at 10-11.

<sup>256</sup> Williams, *supra* note 165, at 90.

<sup>257</sup> See also *Tenneco Packaging Burlington Container Plant*, *supra* note 12; *State of New York, Rochester Psychiatric Ctr.*, *supra* note 127.

<sup>258</sup> *General Telephone Co. of Indiana*, *supra* note 39.

<sup>259</sup> See Norman Brand ed., DISCIPLINE AND DISCHARGE IN ARBITRATION 105-106 (1998)(discussing when family emergency is a mitigating factor in attendance contexts). See also Roger I. Abrams & Dennis R. Nolan, *Toward A Theory of Just Cause in Employee Discipline Case*, DUKE LAW JOURNAL 594 (1985).

<sup>260</sup> *Sutter Roseville Medical Center*, *supra* note 66.

<sup>261</sup> It may be that the argument was made in *Sutter* but not in *Department of Veterans Affairs Medical Center*, *supra* note 101.

<sup>262</sup> Corporate Voices for Working Families, *supra* note 34, at 15 – 16.

<sup>263</sup> This phrase was coined by Kathleen Christensen of the Alfred P. Sloan Foundation.

<sup>264</sup> If sick leave is only available for care of children, workers who need to care for their parents will still find their jobs at risk. See *Puget Sound Hospital, Tacoma*, 109 LA 659 (Monat, 1997)(arbitrator upheld employer's denial of sick leave for a surgical supply coordinator who requested leave to travel out of state to care for her mother during and after a surgery).

<sup>265</sup> Corporate Voices for Working Families, *supra* note 34, at 18.

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<sup>266</sup> *State of New York, Rochester Psychiatric Ctr.*, *supra* note 127.

<sup>267</sup> *Allied Paper*, *supra* note 146.

<sup>268</sup> Corporate Voices for Working Families, *supra* note 34, at 16.

<sup>269</sup> Still, *supra* note 121.

<sup>270</sup> Corporate Voices for Working Families, *supra* note 34, at 17.

<sup>271</sup> *Id.* at 22.

<sup>272</sup> *Id.* at 21.

<sup>273</sup> *Id.*

<sup>274</sup> *Boise Cascade Corp., Insulite Div. International*, *supra* note 79, at 29.

<sup>275</sup> Kornbluh, *supra* note 24.

<sup>276</sup> Organization for Economic Cooperation and Development (2004), *Clocking In (and Out): Several Facets of Working Time*, OECD Employment Outlook, Chapter 1, OECD, Paris.

<sup>277</sup> *Id.*; Gornick & Meyers, *supra* note 25, at 156-72; Ariane Hegewich, "Individual working time rights in Germany and the UK - or how a little law can go a long way," in *Working time for working families: Europe and the United States*, Friedrich Ebert Stiftung (2005); available at

[http://devhector.uchastings.edu/site\\_files/WLL/FESWorkingTimePublication.pdf](http://devhector.uchastings.edu/site_files/WLL/FESWorkingTimePublication.pdf).

<sup>278</sup> Some arbitrations turned on contractual issues. The outcomes did not drastically differ when the contractual arbitrations were included in the calculations: employees prevailed in 18%, management prevailed in 39%, and 43% were split decisions. See also Mary C. Still, *Work/Family Conflict: An Analysis of Union Arbitration in the United States*, Paper given at the Annual Conference of the Institute of Women's Policy Research (June 2005).