

William & Mary Journal of Race, Gender, and Social Justice

Volume 16 (2009-2010)
Issue 3 *William & Mary Journal of Women and
the Law*

Article 4

April 2010

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EXTENDING THE VISION: AN EMPOWERMENT IDENTITY APPROACH TO WORK-FAMILY REGULATION AS APPLIED TO SCHOOL INVOLVEMENT LEAVE STATUTES

KIRSTEN K. DAVIS*

ABSTRACT

Using school involvement leave legislation as the focus for analysis, this article proposes the “empowerment identity” approach to work-family legislation as an alternative or complement to the commonly used accommodation and antidiscrimination approaches. In many households, working parents struggle to meet routine demands of parenting, such as caring for a sick child or attending a child’s school activity. Interestingly, one of the most common forms of state-level legislation designed to address the routine demands of parenting is school involvement leave legislation. Although state school involvement leave statutes vary widely in how and for what reasons they permit time away from work for parents to attend a child’s school functions, they represent the common view that the purpose of work-family legislation is to (1) accommodate episodic parenting needs when those needs interfere with work obligations or (2) prohibit discrimination by an employer when a worker-parent requires time away from work to attend to those caregiving needs.

After analyzing existing school involvement leave legislation and demonstrating that this legislation takes both accommodation and antidiscrimination approaches to regulating school involvement leave, this article suggests that an alternative approach to critiquing and crafting work-family legislation, particularly school involvement leave legislation, is the empowerment identity approach. An empowerment identity approach, adapted from organizational communication

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theory, frames legislation as a discursive structure in which worker-parents should be empowered to construct individualized worker-parent identities through language and related action. Accordingly, after explaining the empowerment identity approach, this article concludes that school involvement leave statutes, re-envisioned as discursive frameworks for constructing identity, fall short of full empowerment but have the potential to empower parents to accomplish plural, individualized, and authentic identities as both worker-parents and as important stewards of their children's educations.

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INTRODUCTION

Parenting in contemporary American society is subject to a dominant narrative that tells a story of families where “mother” and “father” have specific identities.¹ Mothers are women who have “opted out” of full-time paid work to engage in full-time parenting while fathers are men who vigorously engage in the workplace and whose workplace personas are unencumbered by family life.² The reality of the relationship between work and family, and the identities of mothers and fathers, is significantly different in most American households, however. The majority of children, in fact, roughly two-thirds, are raised in households where mother and father do not embody traditional identities: both parents or a single parent work full-time and are also responsible for the day-to-day care of children.³

1. See, e.g., Naomi Cahn, *The Power of Caretaking*, 12 YALE J.L. & FEMINISM 177, 188, 194 (2000) (noting the myth and observing that “parenthood remains a highly gendered concept in our culture, with different expectations for mothers than for fathers”).

2. See Judith G. Gonyea & Bradley K. Googins, *The Restructuring of Work and Family in the United States: A New Challenge for American Corporations*, in THE WORK-FAMILY CHALLENGE: RETHINKING EMPLOYMENT 63, 65 (Suzan Lewis & Jeremy Lewis eds., 1996) (noting that the “guiding metaphor” for social policy in the United States is the idea that women are at home with free time and can provide care to children); see also JOAN WILLIAMS, UNBENDING GENDER 14-20 (2000) (discussing prevailing “choice rhetoric” where the marginalization of women as market participants because of their caregiver status is the product of women’s choice); Cahn, *supra* note 1, at 192 (recognizing that “women are still expected to devote themselves to the home”); Laura T. Kessler, *Keeping Discrimination Theory Front and Center in the Discourse Over Work and Family Conflict*, 34 PEPP. L. REV. 313, 320-22 (2007) (discussing, and ultimately rebutting, the “opt-out revolution” theory); Lisa Belkin, *The Opt-Out Revolution*, N.Y. TIMES, Oct. 26, 2003, § 6 (Magazine), at 42 (describing women’s choice to opt out); JOAN C. WILLIAMS ET AL., UNIV. CAL. HASTINGS COLL. OF LAW, “OPT OUT” OR PUSHED OUT?: HOW THE PRESS COVERS WORK/FAMILY CONFLICT: THE UNTOLD STORY OF WHY WOMEN LEAVE THE WORKFORCE 10-29 (2006), available at <http://www.worklifelaw.org/pubs/OptOutPushedOut.pdf> (critiquing the dominant narrative of the “opt-out revolution” and offering a new narrative of the relationship between women and work).

3. See JODIE LEVIN-EPSTEIN, CTR. FOR LAW & SOC. POLICY, GETTING PUNCHED: THE JOB AND FAMILY CLOCK 3 (2006), available at <http://www.clasp.org/admin/site/publications/files/0303.pdf> (noting that “[sixty-five] percent of families with children are headed by two employed parents or by a single working parent”). The Sloan Work and Family Research Network reports this number at seventy percent. Mary Curlew & Julie Weber, *School Involvement Leave: Providing Leave for Parental Involvement in School*

As a result, many parents experience conflict between their job responsibilities and routine parenting responsibilities, such as caring for a sick child, taking a child to a doctor's appointment, or attending a child's school function.⁴

In legislation designed to alleviate the conflicts worker-parents face in managing the relationship between work and family, two dominant approaches have emerged: the accommodation and antidiscrimination approaches.⁵ The accommodation approach views legislation as a tool for mandating that employers accommodate the special needs of parents so long as the accommodation does not create an undue hardship for the employer.⁶ The antidiscrimination approach posits that legislation should protect parents from being disadvantaged at work as a result of caregiving obligations.⁷

Some states have enacted statutes that provide parents leave from work to attend to "routine" parenting demands, such as the need to care for a sick child, to take a child to a doctor's appointment, or to attend a child's school activities; other statutes protect parents from

Activities, 2009 SLOAN WORK & FAMILY RES. NETWORK POL'Y BRIEFING SERIES, http://www.bc.edu/wfnetwork/pdfs/policy_makers18.pdf.

4. See, e.g., Nancy E. Dowd, *Work and Family: The Gender Paradox and the Limitations of Discrimination Analysis in Restructuring the Workplace*, 24 HARV. C.R.-C.L. L. REV. 79, 86-87 (1989) (recognizing the conflict); see also JODY HEYMANN, *THE WIDENING GAP: WHY AMERICA'S WORKING FAMILIES ARE IN JEOPARDY AND WHAT CAN BE DONE ABOUT IT* (2000) (discussing working conditions, work-family disruptions, and the consequences for caregivers and dependents across social classes).

5. See Rachel Arnow-Richman, *Public Law and Private Process: Toward an Incentivized Organizational Justice Model of Equal Employment Quality for Caregivers*, 2007 UTAH L. REV. 25, 28 (noting that the dominant approaches to protecting caregivers in the workplace have been mandated accommodation and protection against discrimination).

6. See Debbie N. Kaminer, *The Work-Family Conflict: Developing a Model of Parental Accommodation in the Workplace*, 54 AM. U. L. REV. 305, 332-60 (2004) (describing the accommodation approach based on Title VII religious accommodations); Peggie R. Smith, *Accommodating Routine Parental Obligations in an Era of Work-Family Conflict: Lessons from Religious Accommodations*, 2001 WIS. L. REV. 1443, 1445-48, 1465-86 (same); cf. Laura T. Kessler, *The Attachment Gap: Employment Discrimination Law, Women's Cultural Caregiving, and the Limits of Economic and Liberal Legal Theory*, 34 U. MICH. J.L. REFORM 371, 457-59 (2001) (describing the accommodation approach under the Americans with Disabilities Act). Others argue, on the other hand, that accommodation and antidiscrimination approaches are overlapping categories and are not mutually exclusive approaches. See, e.g., Christine Jolls, *Commentary, Antidiscrimination and Accommodation*, 115 HARV. L. REV. 642, 645-46 (2001) (describing the similarities of the antidiscrimination and accommodation approaches).

7. See Joan C. Williams & Nancy Segal, *Beyond the Maternal Wall: Relief for Family Caregivers Who Are Discriminated Against on the Job*, 26 HARV. WOMEN'S L.J. 77, 79-81, 85-87 (2003) (articulating an antidiscrimination approach); see also Joan C. Williams & Stephanie Bornstein, *The Evolution of "FReD": Family Responsibilities Discrimination and Developments in the Law of Stereotyping and Implicit Bias*, 59 HASTINGS L.J. 1311, 1326-30 (2008) (describing the need for an antidiscrimination approach); Kessler, *supra* note 2, at 320-22 (supporting an antidiscrimination approach).

workplace discrimination based on these responsibilities.⁸ One of the most common forms of this state-level legislation designed to address the routine demands of parenting is school involvement leave legislation.⁹ Twelve states and the District of Columbia have statutes that provide at least some worker-parents with time away from work to attend a child's school activities,¹⁰ and over a dozen more states have school involvement leave bills pending,¹¹ as does the United States Congress.¹²

School involvement leave legislation is somewhat unique among the types of legislation designed to help parents with the routines of childrearing. School involvement leave statutes do not address child-rearing situations where parent presence is a physical necessity, as in the situation where a child is ill and must have a caregiver present. Rather, school involvement leave legislation facilitates parents' involvement in an important but non-health-related, ongoing, and typically outsourced caregiving activity: the child's education, where, for example, a teacher has the primary responsibility for the child's physical care and well-being at the time. By focusing on the auxiliary nature of the parent as caregiver in this context, the school involvement leave statutes uniquely recognize and protect the stewardship¹³ role of a worker-parent in the educational context.

8. *See infra* Part II.B.

9. *See infra* Part II.B., Appendix.

10. *See infra* Part II.B., Appendix. These states include California, Colorado, Hawaii, Illinois, Massachusetts, Minnesota, Nevada, North Carolina, Rhode Island, Tennessee, Texas and Vermont.

11. *See* SLOAN WORK & FAMILY RESEARCH NETWORK, BOSTON COLL., 2009 LEGISLATIVE SUMMARY SHEET: BILLS RELATED TO SCHOOL INVOLVEMENT LEAVE RECENTLY INTRODUCED INTO STATE LEGISLATURES 1-4 (2009), http://www.wfnetwork.bc.edu/pdfs/BillsbyTheme_SchoolInvolvement.pdf (listing pending school involvement leave legislation (some providing paid leave, but the majority providing unpaid leave) in Colorado, Georgia, Indiana, Nevada, New Jersey, New Mexico, New York, Oklahoma, South Carolina, Texas, Virginia, West Virginia, and Wisconsin); *see also* Curlew & Weber, *supra* note 3 (noting pending legislation).

12. *See, e.g.*, Family and Medical Leave Enhancement Act of 2009, H.R. 824, 111th Cong., § 4(a) (2009) (includes provisions that give parents and grandparents unpaid leave to attend school and community events involving their children and grandchildren).

13. A "steward" is defined as "[o]ne who manages another's property, finances, or other affairs." THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1701 (4th ed. 2000). In the context of religious stewardship, the word suggests the grateful and responsible use of common resources, behaving in a way that provides for future generations, considering the impact of choices on others, exercising wisdom, and engaging compassionately and with joy. *See, e.g.*, The Episcopal Church, Working Definition of Christian Stewardship, http://www.episcopalchurch.org/stewardship_3272_ENG_HTML.htm?menu=undefined (defining "stewardship"); The Presbyterian Church, Stewardship, <http://www.pcusa.org/stewardship/> (defining "stewardship"). Here, the term "educational stewardship" is used to suggest that parents work to manage their children's educational affairs and, accordingly, be responsible to use common educational resources wisely, thoughtfully, and in an engaged manner.

Importantly, school involvement leave statutes not only give worker-parents time and opportunity to participate in their children's educational experiences, but the statutes are also discursive resources¹⁴ for worker-parents to use to develop parental identities in relationship to their employers, their children, and their children's educators. Viewing school involvement leave legislation as a discursive resource for developing worker-parent identity means viewing the law as a rhetoric,¹⁵ an institutionalized vocabulary that both employers and worker-parents draw upon to define themselves and their relationships to one another.¹⁶ When work-family legislation is viewed as a language constitutive¹⁷ of identity, a key question for scholars interested in crafting effective work-family policy becomes how the statutory language expands, limits, and otherwise communicates to individuals opportunities for creating, enacting, and embodying certain identities, both descriptively and normatively.¹⁸ This article takes up that question and contributes to the ongoing discussion about work-family policy by offering the "empowerment identity" approach as a language- and identity-centered perspective for crafting and critiquing work-family legislation.

14. A "discursive resource" is a socially constructed frame of language that individuals can draw upon to interpret their experiences in concrete contexts. See Timothy Kuhn & Natalie Nelson, *Reengineering Identity: A Case Study of Multiplicity and Duality in Organizational Identification*, 16 MGMT. COMM. Q. 5, 7-8 (2002) (describing discursive resource). Here, school involvement leave legislation is a discursive resource for worker-parents (and for employers and others as well) because the statutes are a language that describes the relationship between work, home, and educational contexts that can be drawn upon to help individuals make sense of their experiences as worker-parents in those contexts.

15. JAMES BOYD WHITE, *HERACLES' BOW: ESSAYS ON THE RHETORIC AND POETICS OF THE LAW* 28 (1985) (noting that law is a rhetoric, "the central art by which culture and community are established, maintained, and transformed" through language, a "constitutive rhetoric"); see also Williams & Segal, *supra* note 7, at 113 (noting that "[t]heorists have long recognized that law . . . is constitutive of who we are").

16. Erika L. Kirby et al., *An Organizational Communication Challenge to the Discourse of Work and Family Research: From Problematics to Empowerment*, 27 COMM. Y.B. 1, 14-15 (2003) (discussing how institutions provide linguistic resources for crafting identity).

17. WHITE, *supra* note 15, at 28 (recognizing the constitutive nature of law).

18. This author's descriptive and normative exploration of work-family law as a constitutive rhetoric is ongoing. In an earlier article, this author explored the specific meaning of "accommodation" as it is used in legal discourse and concluded that the term has certain denotative and connotative problems when imported into work-family policy discussions. Kirsten K. Davis, *The Rhetoric of Accommodation: Considering the Language of Work-Family Discourse*, 4 ST. THOMAS L. J. 530, 550-55 (2007). This article extends and expands that earlier work by not only critiquing the language of work-family legislation but also by developing a communication-theory-based construct for evaluating work-family legislation and applying that theoretical construct to the specific problem of parental leave for school activities.

Under the empowerment identity approach, work-family issues cannot be adequately addressed by only prohibiting gender or care-giver discrimination or accommodating worker-parents who cannot conform their identities and behaviors to that of the “ideal worker” — a worker who is available for work twenty-four hours a day, seven days a week, who is on a continuous career path, and who is unencumbered by family responsibilities.¹⁹ Instead, an empowerment identity approach focuses on how legislative language creates (or does not create) an empowered identity for worker-parents, an identity invested with both the responsibility and power to reconcile²⁰ the demands of work and family in a way that represents the unique, fluid intersection of work and family for that worker-parent.

Part I of this article describes the prevailing misconceptions and statistically supported realities of work and family in contemporary society; sketches the framework of existing parental leave laws, including school involvement leave laws; and describes why school involvement leave laws provide a suitable and unique context for considering the question of work-family identity.²¹ Part II adds a detailed, synthesized, categorical review of existing school involvement leave statutes and distinguishes them from other types of parental leave legislation.²² Part III examines the dominant approaches underlying work-family policy legislation, the accommodation and antidiscrimination approaches, describes the critiques to those approaches, and briefly demonstrates that the language of the school involvement

19. WILLIAMS, *supra* note 2, at 20-24 (describing the ideal worker standard); Williams & Bornstein, *supra* note 7, at 1337-39; *see also* Arnow-Richman, *supra* note 5, at 36-45 (critiquing antidiscrimination and accommodation approaches); Kirby et al., *supra* note 16, at 16 (offering the critique that an accommodation approach is insufficient for solving work-family issues).

20. “Reconciliation” is a term used in relationship to European Union efforts to address the conflict between workplace and caregiving demands. Peter Moss, *Reconciling Employment and Family Responsibilities: A European Perspective*, in THE WORK-FAMILY CHALLENGE: RETHINKING EMPLOYMENT, *supra* note 2, at 20, 20-21. Reconciliation suggests “an attempt to harmonize or bring together different activities or interests so that they can be conducted with as little friction, stress and disadvantage as possible.” *Id.* at 23. Reconciliation is a “dynamic process, in which an equilibrium that equally meets the needs and interests of all parties is unobtainable yet constantly sought through a process of debate, review, negotiation and conflict.” *Id.* This author finds this term to be particularly useful here as opposed to “balance,” which is the typical term used to describe the relationship between work and family, because “reconcile” suggests process, negotiation, and harmonization, ideas consistent with this author’s earlier work. *See* Davis, *supra* note 18, at 550-54 (suggesting “facilitate” or “negotiate” as possible replacement terms for “accommodate” in work-family context).

21. *See infra* Part I.

22. *See infra* Part II. Other sources also provide summaries of pending state school involvement leave legislation, *see infra* note 95 and accompanying text, and existing legislation, *see infra* note 103 and accompanying text.

leave statutes embodies the accommodation and antidiscrimination approaches and is subject to some of the same critiques.²³

Part IV outlines identity theory as developed in organizational communication research on work-family issues and explains how identity is discursively constructed in the workplace.²⁴ This section then discusses current approaches to work-family research and their shortcomings and discusses a corrective proposed by organizational communication scholars, an empowerment approach.²⁵ Part IV then synthesizes identity theory with the empowerment approach to offer an “empowerment identity” approach to work-family regulation, an approach that complements other approaches for thinking about the regulation of work and family.²⁶

Part IV then analyzes how worker-parent identities are empowered or constrained in the school involvement leave statutes.²⁷ Specifically, when school involvement leave statutes are viewed as a discursive resource for crafting worker-parent identity, as a whole they are not successful in empowering worker-parents to construct identities that further the reconciliation of work and family life. Often they create rigid boundaries between work and family, offer limited resources for understanding one’s role as a worker-parent, offer formulaic responses to individual work-family situations, and speak with a managerial voice that limits the voice of worker-parents in the process.²⁸ By rethinking these statutes consistent with the empowerment identity approach, these limitations might be avoided.²⁹

Ultimately, this article heeds the call to give more “attention to the central role of discourse in shaping personal identities and in maintaining and transforming institutional structures”³⁰ by examining law as discourse, by offering an approach that critiques work-family legislation from the perspective of identity and communication theory, and by reorienting our legislative approach to work and family as one concerned with legal language as a discursive resource for constructing individual identity. In addition, by explicitly offering an empowerment identity approach as an alternative or complement to the accommodation and antidiscrimination approaches, this article explores and offers new ways of using law to extend greater dignity³¹

23. See *infra* Part III.

24. See *infra* Part IV.A.

25. See *infra* Part IV.B.

26. See *infra* Part IV.C.

27. See *infra* Part IV.C.

28. See *infra* Part IV.C.

29. See *infra* Part IV.C.

30. See Kirby et al., *supra* note 16, at 3.

31. See David C. Yamada, *Human Dignity and American Employment Law*, 43 U. RICH. L. REV. 523, 539-44 (2009) (describing a “dignitarian” model for employment law

to worker-parents and to positively transform the relationship between work and family for the benefit of employers, worker-parents, and children.

I. POPULAR NARRATIVES, MODERN REALITIES, AND THE IMPORTANCE OF SCHOOL INVOLVEMENT LEAVE LEGISLATION

In the modern economy, children with a parent at home full-time to address caregiving responsibilities are a statistical minority.³² Rather, there has been a substantial uptick in the number of children with no full-time stay-at-home parent caregiver.³³ School involvement leave legislation recognizes this reality by creating opportunities for worker-parents to take time off work to participate in their child's school activities.

A. Popular Imaginations and Prevailing Realities of Working Families

In the United States, our collective imagination about how work and family should be managed is shaped by media accounts of affluent wives who "opt out" of the workforce to care for children and provide stay-at-home support for a working husband.³⁴ In this version of managing work and family, highly educated, married women with employed, high-earning spouses, voluntarily, happily, and with relief, trade demanding and well-paying careers of their own for equally demanding and more satisfying³⁵ but unsalaried work as full-time

that would seek to reframe the discussion of employment law issues from one of markets and management to one of honor and respect for employees).

32. See, e.g., Curlew & Weber, *supra* note 3 ("The majority . . . of families with children are headed by two employed adults or by a single working guardian.").

33. See *id.* (discussing how the two-working-parent household has become increasingly more common, leaving parents with less flexibility to take care of their children's needs and less time to address family concerns).

34. Kessler, *supra* note 2, at 320-22 (discussing, and ultimately rebutting, the opt-out theory); Belkin, *supra* note 2, at 42-44 (describing women's choice to opt out); WILLIAMS ET AL., *supra* note 2, at 10-28 (critiquing the dominant narrative of the opt-out revolution and offering a new narrative of the relationship between women and work); see also WILLIAMS, *supra* note 2, at 14-15 (discussing prevailing "choice rhetoric" where the marginalization of women as market participants because of their caregiver status is the product of women's "choice"). Additionally, this dominant view is heteronormative; it excludes same-sex couples from dominant cultural narratives about work and family. Kirby et al., *supra* note 16, at 30 (noting that "[h]eterosexual couples have the luxury of being able to explain the need for a day off because of a sick spouse or child" but gay and lesbian worker-parents may find it difficult to talk about work-family issues because their relationships may not be "socially sanctioned").

35. This view is reflected in recent popular writings. See, e.g., LAURA SCHLESSINGER, IN PRAISE OF STAY-AT-HOME MOMS 23 (2009) ("While women find the transition from

caregivers to their children. These mothers are available on a full-time basis to address the needs of their children, their spouses, and their communities, and they have the financial resources, supplied by their husbands, to do so. Moreover, fathers married to those stay-at-home moms are able and choose to dedicate the majority of their time and efforts to advancing their careers and increasing the family's financial resources. At the same time, these fathers enjoy the benefits of a "flow of family work"³⁶ from their stay-at-home wives that minimizes the attention they need to give to managing the routine aspects of family life so that when they do have time, they are able to enjoy the benefits of a well-managed family. In short, in the traditional story, the boundaries between work and family are distinct and the identities of parents are stable, traditional, and unambiguous. The two spheres are independently managed by parents who can, and desire to, devote their singular attention to that sphere.³⁷

Although this story may hold true for some families in the modern economy, the reality for many working parents is quite different than the traditional narrative. First, the idea that women have willingly chosen to leave the paid workforce to care for children ignores the fact that the conditions of paid work marginalize women as caregivers and can make caregiving nearly impossible, thereby making "choice" an inaccurate description of the situation.³⁸ Second, the narrative disregards men as primary, full-time, stay-at-home caregivers.³⁹ Third, and even more importantly, the narrative ignores the modern reality of dual-earner families, households with both partners working outside of the home for pay, who make up a larger portion of the population than ever before.⁴⁰ The presence of children within those

frenetic schedules and work environments to [stay-at-home motherhood] emotionally jarring . . . most women who make the change ultimately find peace and happiness and a profound sense of importance they didn't anticipate.").

36. WILLIAMS, *supra* note 2, at 20-24 (describing "flow of family work" as the immunity a male worker has from responsibility for any caregiving or household responsibilities).

37. For an overview of the historical development of domesticity or the notion of separate spheres, see Cahn, *supra* note 1, at 188, and WILLIAMS, *supra* note 2, at 19-24.

38. See WILLIAMS ET AL., *supra* note 2, at 7 (highlighting the false nature of choice in the context of being pushed out of the workforce to engage in full-time caregiving).

39. This invisibility in the narrative parallels research findings on the perceived undesirability of stay-at-home fathers. One study from Yale University showed that stay-at-home fathers are perceived as the "worst parent" among working and stay-at-home mothers and fathers, are held in low social regard, and "are neither liked nor respected." Victoria L. Brescoll & Eric Luis Uhlmann, *Attitudes Toward Traditional and Nontraditional Parents*, 29 PSYCHOL. WOMEN Q. 436, 440 (2005).

40. ELLEN GALINSKY ET AL., FAMILIES & WORK INST., TIMES ARE CHANGING: GENDER AND GENERATION AT WORK AND AT HOME 8 (2008), http://www.familiesandwork.org/site/research/reports/Times_Are_Changing.pdf ("In 2008, 79% of married/partnered employees lived in dual-earner couples — 85% of women and 75% of men."). Those partners are also working more, at home and at work. Over the last three decades, the total number of

households has also increased. In the 1960s, 70% of families had one or more parents at home full-time.⁴¹ Today, that statistic is nearly a mirror image: 65% to 70% of families with children have two employed parents or a single parent who is employed.⁴² Thus, most of today's children are growing up in families where both parents (or the sole parent in a single parent household) work for pay and cannot devote themselves full-time to caregiving.⁴³

In addition, mothers of children under eighteen have strikingly increased their participation in the workforce over the last three decades. In 1975, only 47% of mothers were in the workforce; in 2007, they made up 71% of the workforce.⁴⁴ This statistic is even more striking when compared with the changes in overall participation of men and women in the workforce generally. Whereas mother participation in the workforce increased approximately 24% since 1975, the number of women overall in the workforce has increased by only 15% from 1950 to 2007 (from 42% to 57%), and the number of men participating in the workforce has actually declined by about 16% over the same time period (82% to 66%).⁴⁵

Relatedly, the number of working fathers with identifiable responsibilities at home continues to increase. Fathers report that they spend one-third more time per day with their children than they did in 1977.⁴⁶ They report doing more of the household chores like cooking, cleaning, and childcare.⁴⁷ Now that they have more responsibilities for children and home-life, more than half of the dual-earner fathers report experiencing work-family conflict, notably at higher rates than

work hours for dual-earner couples increased from eighty-one hours per week to ninety-one hours per week. JAMES T. BOND ET AL., FAMILIES & WORK INST., HIGHLIGHTS OF THE NATIONAL STUDY OF THE CHANGING WORKFORCE: EXECUTIVE SUMMARY 2 (2002), <http://familiesandwork.org/site/research/summary/nscw2002summ.pdf>. In addition, the time spent caring for children on workdays has increased by one hour from 5.2 hours to 6.2 hours. *Id.*

41. LEVIN-EPSTEIN, *supra* note 3, at 3.

42. *Id.* (citing 65%); Curlew & Weber, *supra* note 3 (citing 70%).

43. Joan Williams notes that among dual-earner families, 64% of parents report that they work more than eighty hours per week. JOAN C. WILLIAMS, THE CTR. FOR WORKLIFE LAW, UNIV. CAL. HASTINGS COLL. OF LAW, ONE SICK CHILD AWAY FROM BEING FIRED: WHEN "OPTING-OUT" IS NOT AN OPTION 8 (2006), <http://www.worklifelaw.org/pubs/OneSickChildovervu.pdf>.

44. GALINSKY ET AL., *supra* note 40, at 4; *see also* Economic News Release, U.S. Bureau of Labor Statistics, Employment Characteristics of Families in 2008 (May 27, 2009), available at <http://data.bls.gov/news.release/famee.nr0.thm> ("The labor force participation rate . . . for all mothers with children under 18 was 71.4 percent in 2008.").

45. GALINSKY ET AL., *supra* note 40, at 5. The statistics for men and women, generally, begin in 1950 whereas the statistics for mothers in the workforce begin in 1975. *Id.*

46. *Id.* at 14 (noting increase in time spent with children from two to three hours per work day). Fathers also report having more responsibility for childcare arrangements. *Id.* at 16.

47. *Id.* at 17-18.

working mothers in dual-earner couples: 59% of the fathers experience conflict while only 45% of mothers do.⁴⁸

In sum, the reality is that most children have parents who work outside the home, who have responsibility for childcare at home, and who experience conflict in addressing both.

B. School Involvement Leave: An Important Context for Legislation

In the late 1980s, the first widespread public policy discussions about the needs of working parents, particularly working mothers, to manage the demands of work with the demands of family life⁴⁹ culminated in the passage of the Family and Medical Leave Act of 1993 (FMLA).⁵⁰ The FMLA has been important in helping some workers (those working a minimum number of hours, for at least twelve months, for employers with more than fifty employees)⁵¹ manage family episodes,⁵² such as the birth of a child or the serious illness of a family member.⁵³ A number of states also have unpaid FMLA-type workplace leave legislation.⁵⁴ Two states, however, New Jersey and California, have gone beyond the unpaid leave offered in the FMLA and provide some workers in those states paid leave to care for a new child or to care for a seriously ill family member.⁵⁵ A similar paid leave statute is set to go into effect in Washington in 2012.⁵⁶

48. *Id.* at 19. For men, this is a significant increase over the thirty-five percent reported in 1977. *Id.* at 18.

49. See Nancy E. Dowd, *Envisioning Work and Family: A Critical Perspective on International Models*, 26 HARV. J. ON LEGIS. 311, 314 n.7 (1989) (noting that “[w]ork-family issues . . . first became a national campaign issue in the 1988 presidential election”).

50. Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601-2654 (2006).

51. *Id.* § 2611(2), (4) (defining employee and employer).

52. This author uses the term “episode” because the Family and Medical Leave Act (FMLA) treats family demands as intermittent, episodic disruptions to an individual worker’s commitment to the workplace. See, e.g., Kessler, *supra* note 6, at 424 (noting that the “FMLA does little to address the everyday leave needs of caregivers”); Katharine B. Silbaugh, *Is the Work-Family Conflict Pathological or Normal Under the FMLA? The Potential of the FMLA to Cover Ordinary Work-Family Conflicts*, 15 WASH. U. J.L. & POL’Y 193, 195 (2004) (noting the “emergency” character of FMLA). A different view of regulating parental obligations in terms of the workplace, suggested here and elsewhere, would be to treat the demands of dependency relationships, such as the relationship of dependency that a parent has with a child, as ongoing and as valuable as those relationships of paid service in the workplace. See, e.g., Maxine Eichner, *Square Peg in a Round Hole: Parenting Policies and Liberal Theory*, 59 OHIO ST. L.J. 133, 169 (1998) (noting that work needs to be done “to insure that men as well as women recognize the importance of parenting”).

53. § 2612(a)(1).

54. See discussion *infra* Part II.B.

55. CAL. UNEMP. INS. CODE §§ 3300-3306 (West Supp. 2010); Temporary Disability Benefits Law, N.J. STAT. ANN. §§ 43:21-25 to 21-31 (West 2010).

56. WASH. REV. CODE §§ 49.86.030-.060 (2009).

Additionally, a few states have recognized that worker-parents need time to attend to not only episodic family obligations but also to those routine obligations that can conflict with work schedules. In those states, parents have legislatively guaranteed time off work to care for children with common, non-serious illnesses, to address children's routine medical appointment needs, and to be involved in children's school activities and educational process.⁵⁷

Of the state statutes that address routine parenting demands, statutes that provide leave for parents to be involved in children's school activities are the most common form of leave addressed. Twelve states — California, Colorado, Hawaii, Illinois, Massachusetts, Minnesota, Nevada, North Carolina, Rhode Island, Tennessee, Texas, and Vermont — and the District of Columbia have legislation guaranteeing to all or some portion of worker-parents the opportunity to use unpaid leave to be involved in children's educational activities.⁵⁸ In those jurisdictions, parents are legislatively guaranteed a certain number of leave hours per year, ranging from two to forty hours, to attend a variety of children's school functions, such as parent-teacher conferences or extra-curricular events.⁵⁹ These statutes vary widely in the number of leave hours, the types of leave-eligible activities, and the individuals who are entitled to the guaranteed leave.⁶⁰

These statutes occupy a somewhat unique position among parental leave statutes because the parental role is distinctive in the context of attending a child's school activities. The distinction is that, typically, a parent's role in school activities is as an auxiliary caregiver who participates in or facilitates an educational opportunity for a child rather than performs as a caregiver who has primary responsibility for a child's care or supervision.⁶¹ For example,

57. See, e.g., *infra* Part II.A (discussing Vermont and Massachusetts leave statutes). Vermont and Massachusetts also recognize the caregiving demands imposed upon workers by other dependents, including elderly relatives. Accordingly, the statutes guarantee time off from work to attend to those caregiving needs as well as to take elderly dependents to routine medical appointments. VT. STAT. ANN. tit. 21 §§ 470-473 (2009) (granting unpaid leave); MASS. GEN. LAWS ANN. ch. 149, § 52D(b)(3) (2009) (same). The issue of leave for elder care or other types of caregiving is important and should not be overlooked; this article, however, focuses on the demands of parents in relation to dependent children. For a good discussion of the question of regulating time off work for the care of elderly dependents, see Peggie R. Smith, *Elder Care, Gender, and Work: The Work-Family Issue of the 21st Century*, 25 BERKELEY J. EMP. & LAB. L. 351, 354 (2004) (reviewing existing work-family laws and applying them to elder care issues).

58. See *infra* Part II.

59. See *infra* Part II. In Hawaii, two hours per child for up to two conferences per year is allocated for state employees. HAW. REV. STAT. ANN. § 78-31 (LexisNexis 2009). In California, forty hours per year is available for employees to attend a child's school activity. CAL. LAB. CODE §230.8(a)(1) (West 2003).

60. See *infra* Part II.

61. WILLIAMS, *supra* note 2, at 34 (distinguishing between "lessons" as "opportunities" for children and "medical appointments" as "necessities").

student-teacher conferences are not mandatory for most parents; a child's education continues whether or not a parent attends a conference. Similarly, a parent is not typically legally and physically essential for a child to participate in a school play or field trip; generally, a child is supervised by teachers, school employees, and other volunteers during those activities, regardless of whether the parent is present. Child neglect statutes demonstrate that this distinction between auxiliary participation and primary caregiving is salient: a parent who fails to care for a sick child might be prosecuted for child neglect, but a parent likely would not be prosecuted for neglect because she did not attend a child's otherwise supervised school play.⁶²

Although attending a child's school function generally would not fall into the category of primary caregiving, some state legislatures have found it important to mandate leave from work for parents to attend school functions, because the value of parents participating in a child's educational activities is repeatedly demonstrated in social science research.⁶³ "[A]ctive parental involvement in a child's education

62. See CAL. PENAL CODE § 11165.2 (West 2000) as an example of a neglect statute that would not apply to a missed school play but would apply to a parent's failure to provide needed medical care or supervision for a child.

"[N]eglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. . . .

(a) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, . . . including the intentional failure to provide adequate food, clothing, shelter, or medical care. . . .

(b) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

Id.; see also Cahn, *supra* note 1, at 187 ("The familial zone of privacy is further limited by laws governing abuse and neglect."); Melissa Murray, *The Networked Family: Reframing the Legal Understanding of Caregiving and Caregivers*, 94 VA. L. REV. 385, 395-96 (2008) (noting that "parents have the rights and authority to provide caregiving as they see fit" but "[t]he state may intervene into the family to usurp parental decisionmaking authority only in limited circumstances, such as abuse, neglect, and abandonment").

63. In 1994, the California legislature passed its Family School Partnership Act and acknowledged that:

(b) The evidence is beyond dispute that parent involvement improves pupil achievement.

(c) Pupils whose parents are involved in their formal education have better grades, test scores, long-term academic achievement, attitudes, and behavior.

. . . .

(e) Parents represent the single most important citizen group in terms of school support.

(f) The building of a network of parent volunteers to support children in public schools is central to the well being of the community.

is one of the most important factors in determining the degree of success that a child will have in school.”⁶⁴ “Parental involvement is critical to children’s educational, developmental and health outcomes.”⁶⁵ “Children whose parents are involved in school-related activities perform better academically, put more effort into their school work, and maintain better concentration at school.”⁶⁶ Additionally, “[p]arental involvement is associated with better performance in language and mathematics, as well as social development, and appears to decrease dropout rates.”⁶⁷ In addition, parental involvement in low-wage families is disproportionately essential. One report noted that “children of low-income families tend to need greater educational support.”⁶⁸ Yet, even though the impact of parental involvement is well-documented, a national study found that nearly seventy-five percent of working parents could not rely on workplace flexibility to meet with their children’s teachers.⁶⁹

Family School Partnership Act, § 2(b)-(c), (e)-(f), 1994 Cal. Stat. 8287 (portions codified at CAL. LAB. CODE § 230.8 (West 2003)).

64. Beth E. Schleifer, Comment, *Progressive Accommodation: Moving Towards Legislatively Approved Intermittent Parental Leave*, 37 SETON HALL L. REV. 1127, 1132 (2007) (citing CAREY OLMSCHIED, PARENTAL INVOLVEMENT: AN ESSENTIAL INGREDIENT (1999)); see also HEYMANN, *supra* note 4, at 53 (noting that “[o]ne of the most important factors affecting how children fare in school is parental involvement”); WILLIAMS, *supra* note 2, at 34 (noting that “a correlation exists between parental involvement and children’s school success”).

65. BARNARD CTR. FOR RESEARCH ON WOMEN, THE WORK-FAMILY DILEMMA: A BETTER BALANCE: POLICY SOLUTIONS FOR ALL NEW YORKERS 7 (2007).

66. Wis. Women Equal Prosperity, Economic Sufficiency: Work-Family, <http://www.wiwep.org/TAP/WorkAndFamily> (last visited Feb. 18, 2010) (citing Sharon Vandivere et al., *Indicators of Early School Success and Child Well-Being*, CROSSCURRENTS, Oct. 2004, at 1, 1).

67. Curlew & Weber, *supra* note 3; see also HEYMANN, *supra* note 4, at 53-57 (discussing the beneficial impact of parental involvement); JODY HEYMANN ET AL., INST. FOR HEALTH AND SOC. POLICY, THE WORK, FAMILY, AND EQUITY INDEX: HOW DOES THE UNITED STATES MEASURE UP? 7 (2007), http://www.nationalpartnership.org/site/DocServer/McGill_Study_2007.pdf?docID=1581 (“When parents are involved in their children’s education, children achieve more in elementary school, junior high school and high school.”).

68. Curlew & Weber, *supra* note 3 (citing Press Release, CCH, CCH Survey Finds Most Employees Call In “Sick” For Reasons Other Than Illness (Oct. 10, 2007), <http://hr.cch.com/press/releases/20071010h.asp>); see also JEAN FLATLEY MCGUIRE & KAITLYN KENNEY, GEORGETOWN UNIV. LAW CTR., WORKPLACE FLEXIBILITY 2010: FACTS ON SHORT TERM TIME OFF 2 (2010), http://www.law.georgetown.edu/workplaceflexibility2010/definition/general/STO_FactSheet.pdf (discussing workers’ concerns over a lack of workplace flexibility that would allow them time off to attend to children and family demands).

69. JEAN FLATLEY MCGUIRE ET AL., GEORGETOWN UNIV. LAW CTR., PROMOTING CHILDREN’S WELL-BEING: THE ROLE OF WORKPLACE FLEXIBILITY 2 (2010), http://www.law.georgetown.edu/workplaceflexibility2010/documents/FF_Color_CD_Facts.pdf. Another study found that, as a general matter, seventy percent of employed parents reported that they did not have enough time with their children. FAMILIES AND WORK INST., 1997 NATIONAL STUDY OF THE CHANGING WORKFORCE: EXECUTIVE SUMMARY 6, available at <http://familiesandwork.org/site/research/summary/1997nscwsumm.pdf>; see also HEYMANN, *supra* note 4, at 53 (noting that “many parents lacked the paid leave and flexibility they needed to take time from work to help their children with school problems”).

The statutory recognition of worker-parents' educational stewardship is important for ensuring that worker-parents have the necessary flexibility to participate in their children's education. Moreover, the statutes make visible and legitimize workers as individuals with responsibility for a routine obligation of parenting: facilitating a child's educational success. By having these protections in place, worker-parents can expand their identities as caregivers to participants in the educational development of their children, as partners with the school and its mission, and as auxiliary but critical stewards of the educational process.

The next section provides a more detailed review of the existing state school involvement leave provisions that regulate the participation of worker-parents in students' school activities.

II. SCHOOL INVOLVEMENT LEAVE LEGISLATION: LEGALLY RECOGNIZING THE EDUCATIONAL STEWARDSHIP OF WORKER-PARENTS

A. Overview of Existing Leave Policies Related to Parental Caregiving

School involvement leave legislation at the state level is the result of regulatory gap-filling in the only significant piece of federal parental leave legislation, the Family and Medical Leave Act of 1993 (FMLA).⁷⁰ In fact, the FMLA has been specifically criticized for its failure to address the routine demands of raising children, such as needing time off from work to attend school functions,⁷¹ and instead having an emergency or crisis view of parenting, demonstrated by extending leave and discrimination protection to parents only when parents need leave to handle an extraordinary family event or a family medical crisis.⁷² Specifically, the FMLA gives some worker-parents

70. Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601-2654 (2006).

71. See, e.g., Peggie R. Smith, *Parental-Status Employment Discrimination: A Wrong in Need of a Right?*, 35 U. MICH. J.L. REFORM 569, 615 (2002) (noting that the FMLA provides "no protection for the many routine parental obligations and exigencies that most commonly clash with work demands"); see also HEYMANN, *supra* note 4, at 24 (noting that a study of working families showed that the FMLA covered only a "small fraction" of leave needs).

72. For examples of scholars recognizing the emergency or crisis nature of the FMLA, see Silbaugh, *supra* note 52, at 196 (noting the crisis or emergency nature of FMLA) and Kessler, *supra* note 6, at 424 (noting that the FMLA does not reach routine demands of caregiving).

The quality of the FMLA as a gender discrimination statute is a point of dispute. Both the United States Supreme Court and Congress have characterized the FMLA as a statute designed to remedy discrimination against women. *Nev. Dep't of Human Res. v. Hibbs*, 538 U.S. 721, 728 (2003) (noting that "[t]he FMLA aims to protect the right to be free from

up to twelve weeks of unpaid leave when children are born or adopted into a family or when a family member suffers from a “serious health condition.”⁷³ Worker-parents who qualify for FMLA leave are those who have worked at least 1250 hours in the last year for an employer with fifty or more employees.⁷⁴

Some states have statutes that also provide FMLA-type leave to employees.⁷⁵ All but three states offer this crisis event leave unpaid to employees of private employers. Currently, California and New Jersey provide paid FMLA-type family and medical leave, administered through the states’ disability insurance programs,⁷⁶ and in October 2012, Washington will begin providing paid family leave.⁷⁷

gender-based discrimination in the workplace”); 29 U.S.C. § 2601(b)(4) (2006) (stating that the goal of the act is to “minimize[] the potential for employment discrimination on the basis of sex”). Others note, however, that even though the FMLA has been characterized as a statute that provides relief from gender discrimination because the statute covers childbirth and emergency medical situations, it does little to redefine the way in which everyday caregiving is gendered and borne primarily by women. *See* Smith, *supra* note 71, at 617 (noting that the FMLA addresses caregiving within “gendered norms and assumptions” about women as caretakers). In fact, although women continue to be greater contributors to the overall financial earnings of the household, they still bear the greater amount of caregiving duties in dual-earner families. GALINSKY ET AL., *supra* note 40, at 8-9. Others reject the notion that the FMLA is an antidiscrimination statute at all. *See, e.g.,* Smith, *supra* note 71, at 614 (noting that “the FMLA is not an anti-discrimination statute but a labor standard statute” that “functions in a manner that is different from anti-discrimination statutes” because it imposes “an affirmative duty to help workers harmonize work and family”).

73. § 2612(a)(1)(D).

74. § 2611(2)(A)(ii), (4)(A).

75. For examples of statutes that require private employers to provide FMLA-type leave, see CONN. GEN. STAT. §§ 31-511l(a) to -51pp (2009) (requiring sixteen weeks leave every two years for birth or adoption of a child or serious illness of a family member); HAW. REV. STAT. §§ 398-3 to -10 (2009) (requiring four weeks leave per year for birth, adoption, or serious illness of a family member); and ME. REV. STAT. ANN. tit. 26, §§ 843-844 (2009) (requiring ten weeks of leave every two years for birth, adoption, or serious illness of a family member). For comprehensive listings of FMLA-type state leave provisions, see WORKPLACE FLEXIBILITY 2010, STATE-BY-STATE GUIDE TO UNPAID, JOB-PROTECTED EXTENDED TIME OFF LAWS (2006), http://www.law.georgetown.edu/workplaceflexibility2010/definition/documents/state_FMLA_chart_FINAL.pdf, and NAT’L CONFERENCE OF STATE LEGISLATURES, STATE AND FAMILY MEDICAL LEAVE LAWS THAT DIFFER FROM THE FEDERAL FMLA (2008), <http://www.ncsl.org/print/employ/fam-medleave.pdf> (providing an overview of state statutes that allow for leave benefits different from the federal FMLA).

76. In California, the Paid Family Leave Program gives all workers up to six weeks partial pay to bond with a new child or to care for a “seriously ill child, spouse, parent [or] domestic partner.” CAL. UNEMP. INS. CODE § 3301(a)(1)(b) (Supp. 2010). New Jersey provides a similar plan to its workers. N.J. STAT. ANN. §§ 43:21-25 to :21-31 (West 2010). Both plans are administered through the state disability insurance. *Id.* § 43:21-28; CAL. UNEMP. INS. CODE § 3301(b).

77. Washington’s statute will provide a benefit of \$250 per week for five weeks to worker-parents who take leave to care for newborns and newly adopted children. WASH. REV. CODE ANN. § 49.86.030 (West 2010); § 49.86.010 (definition of family leave); § 49.86.050 (duration of leave); § 49.86.060 (amount of benefit). The Washington legislation is controversial, however. Although the legislation was to go into effect in October 2009,

Other states have gone beyond legislation mirroring the emergency-type leave available under the FMLA and instead have enacted leave legislation that reach routine parenting obligations sometimes described as “small necessities” laws.⁷⁸ As a general matter, small necessities laws give worker-parents (and sometimes other working caregivers) leave from work to address three routine parenting obligations not covered by the FMLA-type statutes: taking children (and sometimes elderly relatives) to medical appointments, caring for children (and other relatives) when routine but not serious, illnesses strike, and attending a child’s school activities.⁷⁹

Two states, Vermont and Massachusetts, have the most expansive small necessities statutes covering the routines associated with caregiving. In Vermont, the legislature recognized that “[w]hen employees have security about their employment and the well-being of their children, parents, and other family members, businesses benefit economically from increased worker productivity and stability.”⁸⁰ Accordingly, the Vermont Parental and Family Leave Act provides “short term family leave” for employees who have worked an average of thirty hours per week or more for any public or private employer⁸¹ to “participate in preschool or school activities directly related to the academic educational advancement of the employee’s child, stepchild, foster child, or ward who lives with the employee;”⁸² to “attend or to accompany the employee’s child, stepchild, foster child or ward who lives with the employee or the employee’s parent, spouse, or

legislation was passed recently that delays the effective date until October 1, 2012. 2009 Wash. Sess. Laws ch. 544. In January 2009, Washington House Bill 1160 was introduced to repeal the paid leave statute altogether. H.B. 1160, 61st. Leg., Reg. Sess. (Wash. 2009).

78. *E.g.*, Massachusetts Small Necessities Leave Act, MASS. GEN. LAWS ANN. ch. 149, § 52D (Supp. 2010); *see also* BUSINESS & LEGAL REPORTS, SMALL NECESSITIES LAWS: NEW STATE LEAVE REQUIREMENTS FOR EMPLOYERS 9 (2001) (noting that “[t]hese statutes go by a number of different official names, but are frequently referred to collectively as ‘small necessities laws,’ a term originating from Massachusetts”).

79. *See e.g.*, VT. STAT. ANN. tit. 21, § 472a (2010); *see also* BUSINESS & LEGAL REPORTS, *supra* note 78 (describing purposes of small necessities laws).

80. VT. STAT. ANN. tit. 21, § 470(b) (2010).

81. VT. STAT. ANN. tit. 21, § 471(3) (2010). On the face of the statute, the definition of “employer” for purposes of the short term leave statute is unclear. Although Vermont’s FMLA-type parental and family leave statute applies to employers that have a minimum number of employees, ten for parental leave and fifteen for family leave, working an average of thirty hours a week, *id.* § 471(1), the statute does not specifically state the minimum number of employees an employer must have to be subject to the short term leave provision. *Id.* § 472a(a). The short term leave provision has been interpreted to apply to employers with fifteen or more employees, similar to the family leave provisions. *See* GOVERNOR’S COMM’N ON WOMEN, FEDERAL FAMILY & MEDICAL LEAVE ACT V. STATE PARENTAL & FAMILY LEAVE ACT, *available at* <http://www.atg.state.vt.us/assets/files/Table%20Comparing%20Vermont%20and%20Federal%20Family%20Leave%20Laws.pdf>.

82. § 472a(a)(1).

parent-in-law to routine medical or dental appointments;”⁸³ to take a “parent, spouse, or parent-in-law” to appointments “related to their care and well-being;”⁸⁴ and “[t]o respond to a medical emergency involving the employee’s child, stepchild, foster child or ward who lives with the employee or the employee’s parent, spouse, or parent-in-law.”⁸⁵ The leave is limited to no more than four hours in a thirty day period and no more than twenty-four hours in a twelve month period.⁸⁶

Under the similar Massachusetts Small Necessities Leave Act,⁸⁷ an employee who has worked more than 1250 hours in the last twelve months for an employer who has fifty or more employees⁸⁸ is “entitled to a total of [twenty-four] hours of leave during any [twelve]-month

83. *Id.* § 472a(a)(2).

84. *Id.* § 472a(a)(3).

85. *Id.* § 472a(a)(4). Interestingly, the statute uses the word “emergency” to describe the conditions under which short term leave can be taken, although the statute appears to reach routine illnesses and the caregiving needs required by those illnesses, because short term leave is separate from the leave for a “serious illness” described in the statute. *Id.* § 471(5).

86. *Id.* § 472a(a)(4). The difference between the amount of time available for leave for serious illnesses covered by FMLA-type statutes (typically multiple weeks) and leave for routine illnesses covered by small necessities laws demonstrates that there may be a gap for parents when dealing with a child’s illness that keeps the child out of school or day care for a few days at a time. For example, if a child has a cold with a fever, a parent may need to stay home for a few days with the child. A parent in Vermont would quickly exceed the four-hours-in-thirty-days maximum under the short-time leave statute, but likely would not qualify for FMLA-type leave for “serious illness[es].” *See id.* § 471(5) (defining “serious illness” as “accident, disease or physical or mental condition that . . . poses imminent danger of death; . . . requires inpatient care in a hospital; or . . . requires continuing in-home care under the direction of a physician”).

Some states, however, have enacted legislation to fill that gap for some working parents. California provides that if an employee receives paid sick leave, up to half of that sick leave may be used to care for ill family members. CAL. LAB. CODE § 233 (West 2010). Minnesota provides that “[a]n employee may use personal sick leave benefits” to care for an ill child for “reasonable periods as the employee’s attendance with the child may be necessary.” MINN. STAT. § 181.9413 (2009). Oregon provides that the twelve weeks of unpaid family leave available to employees for the care of adopted children, newborns, and relatives with serious illnesses is also available for the “care [of] . . . a child of the employee who is suffering from an illness, injury or condition that is not a serious health condition but that requires home care.” OR. REV. STAT. § 659A.159(1)(d) (2007). In Washington, if an employee is entitled to “sick leave or other paid time off,” then that time can be used to care for a child’s “health condition that requires treatment or supervision.” WASH. REV. CODE § 49.12.270(1) (2010). The legislative findings of the Washington statute note that because of increased numbers of “working mothers, single parent households, and dual career families[,]” the “needs of families must be balanced with the demands of the workplace to promote family stability and economic security.” 1988 Wash. Legis. Service ch. 236.

87. MASS. GEN. LAWS ANN. ch. 149, § 52D (West Supp. 2009).

88. In Massachusetts, eligible employees are those employees who can receive benefits under the federal Family and Medical Leave Act. *Id.* § 52D(a). An eligible employee is defined in the FMLA. 29 U.S.C. § 2611(2)(A) (2006).

period, in addition to leave available under the federal act” to attend “school activities directly related to the educational advancement of a son or daughter,”⁸⁹ to take the “son or daughter . . . to routine medical or dental appointments,”⁹⁰ and to take “an elderly relative . . . to routine medical or dental appointments” or to other professional services appointments.⁹¹

While Vermont and Massachusetts have the most expansive laws protecting routine caregiving, other states most frequently protect school involvement. For example, whereas only Vermont and Massachusetts provide leave for routine medical appointments, nine states — California, Colorado, Illinois, Massachusetts, Minnesota, North Carolina, Nevada, Rhode Island, and Vermont — and the District of Columbia have either statutes mandating that worker-parents in both public and private workplaces have a certain number of hours of leave from work to be involved in a child’s school activities, or statutes protecting worker-parents from being terminated if they must attend certain types of school activities during the work day.⁹² Three states, Hawaii, Tennessee, and Texas, extend school involvement leave to state employees but not to private employees.⁹³ At least one state, Louisiana, permits but does not require employers to give

89. § 52D(b)(1). The statute gives two examples of such activities: “parent-teacher conferences or interviewing for a new school.” *Id.* “School” includes not only private and public elementary and secondary schools but also licensed child care facilities, allowing parents to be involved in the school-related activities of preschool-age children. *Id.* § 52D(a).

90. *Id.* § 52D(b)(2). These routine appointments include “check-ups or vaccinations.” *Id.*

91. *Id.* § 52D(b)(3). “Professional services” must be “related to the elder’s care,” and can include appointments for things such as “interviewing at nursing or group homes.” *Id.*

92. For a description of some of these statutes, organized by state, see NAT’L P’SHP FOR WOMEN & FAMILIES, LEAVE FOR PARENTAL INVOLVEMENT IN SCHOOL ACTIVITIES 1-3 (2009), available at http://www.nationalpartnership.org/site/DocServer/School_Leave_FINAL_2009.pdf.

Interestingly, an employee working for a private employer is more likely to be guaranteed time off work for bone marrow and organ donation than to have time off work to deal with a child’s routine illnesses. For example, in Connecticut, an employee can receive up to twenty-four weeks off work over two years to be an organ or bone marrow donor. CONN. GEN. STAT. § 5-248a(a) (2007). In Maine, ten weeks over two years is allowed for organ donation. ME. REV. STAT. ANN. tit. 26, §§ 843-844 (2007). In Minnesota, forty hours can be taken each year to donate bone marrow or organs. MINN. STAT. §§ 181.945, 181.9456 (2009). In Louisiana, employers with twenty or more employees are required to give up to forty hours of a *paid* leave of absence to an employee who undergoes a procedure to donate bone marrow. LA. REV. STAT. ANN. § 40:1299.124(B) (2009). At least four more states — New York, Virginia, South Carolina, and Arkansas — have bone marrow or organ donation leave statutes. See National Conference of State Legislatures, State Leave Laws Related to Medical Donors, <http://www.ncsl.org/default.aspx?tabid=13383> (last visited Jan. 13, 2010) (describing state statutes).

93. HAW. REV. STAT. ANN. §§ 78-31 (LexisNexis 2009) (codified in public employees title); TENN. CODE ANN. § 49-6-7001 (2009); TEX. GOV’T CODE ANN. § 661.206 (Vernon 2004).

worker-parents time off work to attend a child's school activity.⁹⁴ Additional state legislation is pending throughout the country.⁹⁵ The existing state legislation⁹⁶ is analyzed below.

B. School Involvement Leave Legislation — A Topical Analysis

School involvement leave is generally unpaid leave when available to both public and private employees (but is more often paid leave in states where such leave is available only to public employees)⁹⁷ and guarantees parents time off work to attend the school activities of their children. The statutes, however, vary widely regarding how "school activity," "parent," and "child" are defined;⁹⁸ the amount of leave given;⁹⁹ the limitations an employer can impose on the process for getting leave;¹⁰⁰ the employee's documentation and notice requirements for leave;¹⁰¹ and the obligations of a school relative to the leave.¹⁰² The statutes are classified below and analyzed according to these topics. For readers who are interested in seeing much of this same information compiled in a state by state format, the Appendix contains a table that details these key topics of school involvement leave legislation by state.¹⁰³

94. LA. REV. STAT. ANN. § 23:1015.2(A) (2009).

95. The Sloan Work and Family Research Network reports that fourteen states recently introduced legislation to require school involvement leave. Curlew & Weber, *supra* note 3. These statutes range from acts guaranteeing leave for any school activity or for special events to those allowing leave for mandatory school visits, such as parent-teacher conferences or special education meetings. *Id.* Two states proposed legislation that would combine school involvement leave with leave for routine medical appointments and caregiving, and three states proposed legislation that would give employers tax credits for extending paid school involvement leave. *Id.* See also SLOAN WORK & FAMILY RESEARCH NETWORK, *supra* note 11, at 1-3 (listing pending school involvement leave legislation (some providing paid leave and employer tax incentives, but the majority providing unpaid leave) in Colorado, Georgia, Indiana, Louisiana, Nevada, New Jersey, New Mexico, New York, Oklahoma, South Carolina, Texas, Virginia, West Virginia, and Wisconsin).

96. States can also address school activities leave as an administrative law matter. For example, Florida allows state employees to take one hour of administrative leave per month to attend a child's school activities. FLA. ADMIN. CODE ANN. R. 60L-34.0051(7) (2009). Only legislative action is addressed in this article.

97. HAW. REV. STAT. ANN. § 78-31 (LexisNexis 2009); TEX. GOV'T CODE ANN. § 661.206 (Vernon 2004). *But see* TENN. CODE ANN. § 49-6-7001 (2009) (statute does not state whether the leave is paid or unpaid).

98. See *infra* Parts II.B.1-B.2.

99. See *infra* Part II.B.3.

100. See *infra* Part II.B.4.

101. See *infra* Part II.B.5.

102. See *infra* Part II.B.6.

103. For additional useful summaries of these laws, see A BETTER BALANCE, FACT SHEET: EDUCATIONAL LEAVE 1-2 (2007), available at http://www.abetterbalance.org/docs/Factsheet_EducationalLeave.pdf (describing state and local educational leave initiatives);

1. Protected "School Activities"

School activities for which a parent can take leave under the state statutes ranges from narrowly to broadly defined. Most narrowly, the definition of school activities is limited to conferences required by a school administrator or to parent-teacher conferences. Specifically, under California's discipline leave statute, the first of two California statutes guaranteeing worker-parents leave for school activities,¹⁰⁴ a parent is protected from adverse employment action¹⁰⁵ if that parent is summoned to visit a student's classroom for all or part of a school day as required by a teacher who has suspended a student for statutorily defined behavior, which includes "obscen[ity,] . . . habitual profanity, or vulgarity" or disruption to or defiance of school officials in completing their duties.¹⁰⁶ Similarly, Nevada, under its emergency or requested conference leave provisions, makes it unlawful for any employer to terminate, "demote, suspend, or otherwise discriminate against" an employee who appears at a conference about his or her

and NAT'L P'SHIP FOR WOMEN & FAMILIES, *supra* note 92, at 1-3 (discussing state educational leave legislation).

104. The California Labor Code provides leave for school activities in two situations: (1) where any "parent or guardian of a pupil" is summoned to school because the pupil has been suspended for certain statutorily-defined behavior, CAL. LAB. CODE § 230.7 (West 2010), and (2) to allow certain worker-parents to participate in a child's routine school activities. *Id.* § 230.8. Hereinafter, in the main text, the first statute will be called the "discipline leave statute" and the second will be referred to as the "school activities statute."

105. These actions include discharges or threats of discharge, demotion, suspension, or any other kind of discrimination "in the terms and conditions of employment." *Id.* § 230.7(b). An employer who violates the leave statute must reinstate the employee and reimburse for any lost wages or benefits caused by the employer's wrongful act. *Id.* Discrimination or retaliation claims are to be brought before the Division of Labor Standards Enforcement. *Id.* § 230(f)(1). The Division reports, however, that only four claims were brought under this section between 2002 and 2007. DIV. OF LABOR STANDARDS ENFORCEMENT, CAL. DEP'T OF INDUS. RELATIONS, 2002 DISCRIMINATION COMPLAINT REPORT (LABOR CODE § 98.75) Exhibit A; DIV. OF LABOR STANDARDS ENFORCEMENT, CAL. DEP'T OF INDUS. RELATIONS, 2003 DISCRIMINATION COMPLAINT REPORT (LABOR CODE § 98.75) Exhibit A; DIV. OF LABOR STANDARDS ENFORCEMENT, CAL. DEP'T OF INDUS. RELATIONS, 2004 DISCRIMINATION COMPLAINT REPORT (LABOR CODE § 98.75) Exhibit A; DIV. OF LABOR STANDARDS ENFORCEMENT, CAL. DEP'T OF INDUS. RELATIONS, 2005 DISCRIMINATION COMPLAINT REPORT (LABOR CODE § 98.75) Exhibit A; DIV. OF LABOR STANDARDS ENFORCEMENT, CAL. DEP'T OF INDUS. RELATIONS, 2006 DISCRIMINATION COMPLAINT REPORT (LABOR CODE § 98.75) Exhibit A; DIV. OF LABOR STANDARDS ENFORCEMENT, CAL. DEP'T OF INDUS. RELATIONS, 2007 DISCRIMINATION COMPLAINT REPORT (LABOR CODE § 98.75) Exhibit A. These reports are all available online at <http://www.dir.ca.gov/dlse/DLSEReports.htm>.

106. § 230.7(a); *see also* CAL. EDUC. CODE § 48900(i),(k) (West 2010) (defining types of behavior). Schools are not required to have this policy, however. The statute states that the "governing board of each school district" may adopt a parental attendance policy. *Id.* § 48900.1(a).

child requested by a school administrator or who is notified at work that there is an emergency regarding the child.¹⁰⁷

Other states also limit “school activity” to parent-teacher conferences, but they do not limit them to required conferences or to emergencies. In Hawaii and Texas, for example, where only state employees are entitled to leave, the definition of school activity is limited to parent-teacher conferences but there is no mention of whether the conferences can be voluntary or mandatory.¹⁰⁸ For Hawaii, school includes public and private kindergarten through twelfth grade schools and licensed child care facilities.¹⁰⁹ For Texas, school is limited to grades “from prekindergarten through [twelfth] grade.”¹¹⁰ In Colorado, leave is limited to “[a]cademic activit[ies],” which are defined as “meetings or conferences” that include parent-teacher conferences and a narrow class of statutorily defined meetings, which address special education, intervention, “dropout prevention[,] attendance[,] truancy[,] or disciplinary issues.”¹¹¹

Illinois expands “activities” to mean not only parent-teacher conferences but also classroom activities related to an employee’s child “enrolled in a primary or secondary public or private school” that is in Illinois or in a state that borders Illinois.¹¹² In California, Rhode Island, Minnesota, and Nevada, the definition expands from the classroom to school activities more generally. Under California’s school activities leave statute, the second of two school involvement leave statutes in California, parents cannot be penalized¹¹³ for taking leave to “participate in activities of the [kindergarten to grade twelve]

107. Act effective Aug. 15, 2009, ch. 292, 2009 Nev. Stat. 1246. Similar to California, Nevada has two types of school involvement leave. The first is for emergencies or requested conferences, and the leave is available for all worker-parents. *Id.* The second is for parent-teacher conferences and other types of school-related activities and is for only a particular subset of worker-parents. *Id.* Hereinafter, in the main text, the first type of leave will be called “emergency or requested leave” and the second will be referred to as “school activities leave.”

108. The Hawaii statute was enacted in 2003, and the Texas statute took effect in 1997. HAW. REV. STAT. ANN. § 78-31(1), (2) (LexisNexis 2010); TEX. GOV’T CODE ANN. § 661.206(a), (b) (Vernon 2004).

109. HAW. REV. STAT. ANN. § 78-31 (LexisNexis 2010).

110. TEX. GOV’T CODE ANN. § 661.206 (Vernon 2004).

111. COLO. REV. STAT. § 8-13.3-102(1) (2009).

112. 820 ILL. COMP. STAT. ANN. 147/10(c), 147/15 (West 2008). In Illinois an “employer who violates this Act is guilty of a petty offense and may be fined not more than \$100 for each offense.” *Id.* 147/45.

113. Employees discharged or discriminated against in violation of the statute are “entitled to reinstatement and reimbursement for lost wages and work benefits.” CAL. LAB. CODE § 230.8(d) (West 2010). Between 2002 and 2007, employees made eighteen claims of retaliation or discrimination with the California Division of Labor Standards Enforcement under the school activities statute. *See supra* note 105 (providing enforcement statistics).

school or licensed child day care facility of any of his or her children.”¹¹⁴ A similar definition is applied in Rhode Island where employers are prohibited from interfering with leave for a worker-parent to attend a child’s “school conferences or other school-related activities.”¹¹⁵ In Minnesota, leave is permitted for worker-parents to “attend school conferences or school-related activities related to the employee’s child.”¹¹⁶ Both Illinois and Minnesota require that leave be taken only for activities that cannot be scheduled during non-work hours.¹¹⁷ Similarly, under Nevada’s school activities leave provisions, the statute includes parent-teacher conferences, “school-related activities during regular school hours,” and “school-sponsored events.”¹¹⁸

In Vermont and Massachusetts, the focus of leave broadens to the category of “educational advancement,” although the parent-teacher conference is mentioned specifically as an example. In Vermont, parents can have leave to “participate in preschool or school activities directly related to the academic educational advancement of the employee’s child . . . such as a parent-teacher conference.”¹¹⁹ Likewise, in Massachusetts, parents may participate in primary or secondary, public or private school, Headstart, or licensed child care facility “activities directly related to the educational advancement

114. § 230.8(a).

115. R.I. GEN. LAWS § 28-48-12(a) (2010). Employers may not interfere with the exercise of school involvement leave, or discharge or discriminate against an employee for taking the leave or for opposing practices that interfere with the leave. *Id.* § 28-48-5. To enforce their rights under the statute, employees can bring a civil action for injunctive and equitable relief, but not for damages. *Id.* § 28-48-6; *Reid v. Citizens Sav. Bank*, 887 F. Supp. 43, 47-48 (D.R.I. 1995). In addition, they can file a claim with the Director of Labor and Training, who can take steps to protect the employee’s rights. § 28-48-7. Employers are subject to additional civil penalties for each violation of the statute. *Id.* § 28-48-8. Employers are required to post a notice apprising employees of their right to take school visitation leave and describing how the right may be enforced. *Id.* § 28-48-10(a). Employers may face a fine of up to \$100 for failing to post the notice. *Id.* § 28-48-10(b).

116. MINN. STAT. § 181.9412 subdiv. 2 (2009). The Minnesota Division of Labor Standards and Apprenticeship is charged with informally investigating and attempting to resolve situations where an employer may have violated the Act. *Id.* § 181.9435. In addition, an employee can bring a civil action to recover damages, including reasonable attorney’s fees. *Id.* § 181.944.

117. 820 ILL. COMP. STAT. ANN. 147/15 (West 2008); MINN. STAT. § 181.9412 subdiv. 2 (2009).

118. Act effective Aug. 15, 2009, ch. 292, § 1, 2009 Nev. Stat. 1246, 1247.

119. VT. STAT. ANN. tit. 21, § 472a(a)(1) (2010). In Vermont, both the employee and the state can enforce the short term leave statute. *Id.* § 474. The state can sue the employer for injunctive relief, damages, and court costs. Although the state can investigate a claim to obtain a “voluntary conciliation,” an investigation is not required before filing a suit. *Id.* § 474(a). An employee can sue his employer for “injunctive relief, economic damages . . . attorney fees and court costs.” *Id.* § 474(b).

of a [child] . . . , such as parent-teacher conferences or interviewing for a new school.”¹²⁰

Tennessee, interestingly, does not mention parent-teacher conferences at all, but instead focuses on activities that permit parents to “observe and understand” the educational process.¹²¹ The Tennessee statute applies school involvement leave to activities related to the “educational and teaching process at the school.”¹²² The statute specifies that this includes activities such as acting as an “educational assistant, library assistant, hall monitor, recreation supervisor and any other activity that enables the parent to more fully observe and understand the school, the faculty, the students and the educational and teaching activities.”¹²³ Interestingly, the statute mandates that the “parent’s participation shall be varied.”¹²⁴

North Carolina and Washington, D.C., have the broadest definitions of school activity. In North Carolina, leave is available for the purpose of attending and being “involved” in the child’s public or private school, preschool, or childcare facility.¹²⁵ In Washington, D.C., the District of Columbia Parental Leave Act gives leave for any “school-related events,”¹²⁶ which are broadly defined as “an activity sponsored by either a school or an associated organization” and include “a student performance such as a concert, play, or rehearsal,” sports games and practices, and parent-teacher meetings.¹²⁷ The statute applies only when the child is a participant in or subject of the event; if the child is a “spectator,” no leave is required.¹²⁸

120. MASS. GEN. LAWS ANN. ch. 149, § 52D(a), (b)(1) (West Supp. 2009). The Massachusetts Attorney General can criminally and civilly enforce the Act. *Id.* § 52D(f). A criminal penalty of up to \$500 is possible for employers that violate the statute. Op. Mass. Att’y Gen. 98/1, 4 (1998), *available at* http://www.lawlib.state.ma.us/docs/small_necessitiesadvisory.pdf. Civilly, the Attorney General can seek injunctive or declaratory relief, and an employee can institute a lawsuit seeking injunctive relief and damages against the employer for failing to grant the requested leave, for failing to restore the employee to the position or an equivalent position, or for discharging the employee in retaliation. *Id.* at 3. If the employee prevails, he or she is entitled to treble damages, costs, and “reasonable attorney fees.” § 150.

121. TENN. CODE ANN. § 49-6-7001(b)(2) (2009).

122. *Id.* § 49-6-7001(b)(1).

123. *Id.* § 49-6-7001(b)(2).

124. *Id.* § 49-6-7001(b)(3).

125. N.C. GEN. STAT. § 95-28.3(a) (2009). In North Carolina, if an employer takes an adverse employment action, including discharge or demotion, against the employee for exercising his rights under the statute, the employee may bring a civil action within one year to recover any lost wages or benefits and to be reinstated to the original position as if he or she had not been discharged or demoted. *Id.* § 95-28.3(b), (c). The employee bears the burden of proof in the civil case. *Id.* § 95-28.3(c).

126. D.C. CODE § 32-1202 (2010).

127. *Id.* § 32-1201(3).

128. *Id.* Employers who violate the statute must pay lost compensation plus interest, an additional penalty described in the statute as a calculation based on lost compensation

2. Defining "Parents" and "Children"

Who counts as a "parent" or a "child" under the school involvement leave acts often turns on the characteristics of the worker-parent's workplace, the relationship of the worker-parent to the child, the age of the child, and the school enrollment status of the child.

In Hawaii, Tennessee, and Texas, all public employees are entitled to school leave.¹²⁹ In contrast, in states where the statute covers both public and private employees, a parent who can qualify for leave under the statutes often has a job tenure, workplace size, or work type limitation. In California, a parent qualifies for leave under the school activities leave statute if he or she works for an employer with twenty-five or more employees.¹³⁰ Under the Illinois statute,¹³¹ a parent who has worked at least part-time for six months¹³² for an employer with fifty or more employees,¹³³ and who is not an independent contractor,¹³⁴ qualifies for the leave. In Massachusetts, employees meeting the definition of "employee" for the purposes of the federal Family and Medical Leave Act, having worked for at least twelve months for an employer with fifty or more employees, receive leave.¹³⁵

In Minnesota, employees who worked at least part-time for public and private employers of any size are entitled to leave, but independent contractors are not eligible.¹³⁶ Under Nevada's school activities leave provisions, an employee can take leave if the employer has "50 or more employees for each working day in each of 20 or more calendar weeks in the current calendar year."¹³⁷ In Rhode Island, the

and medical expenses not covered by health insurance, costs, and reasonable attorney's fees. *Id.* § 32-1204(b)(6)(A), (B)(7). An employer is entitled to a reduction in the damage award, however, if it "proves that the violation occurred in good faith and that the employer had reasonable grounds to believe that the employer's action or omission was not in violation of [the] chapter." *Id.* § 32-1204(b)(6)(C). Moreover, if the employer is the prevailing party in the action, the employee pays the employer's costs and reasonable attorney's fees. *Id.* § 32-1204(b)(7).

129. HAW. REV. STAT. ANN. § 78-31 (LexisNexis 2010); TENN. CODE ANN. § 49-6-7001(b)(5) (2009); TEX. GOV'T CODE ANN. § 661.206 (Vernon 2004).

130. CAL. LAB. CODE § 230.8(a)(1) (West 2010).

131. 820 ILL. COMP. STAT. ANN. 147/1-147/49 (West 2008).

132. *Id.* 147/10(a).

133. *Id.* 147/40.

134. Independent contractors are specifically excluded from the Act. *Id.* 147/10(a)(2).

135. MASS. GEN. LAWS ANN. ch. 149, § 52D(b) (West Supp. 2009); 29 U.S.C. § 2611(2)(A), (4)(A) (2006). Employees are defined as those who work for an employer with fifty or more employees working within seventy-five miles of the worksite of the employee requesting the leave. In addition, the employee must be employed at least twelve months with the employer and have worked at least 1250 hours during that twelve month period. *Id.* § 2611(2)(A).

136. MINN. STAT. § 181.940 subdiv. 2 (2009).

137. Act effective Aug. 15, 2009, ch. 292, § 1, 2009 Nev. Stat. 1246, 1247.

leave can be used only by an employee who has been working at least thirty hours a week, for a year, for a private employer who employs fifty or more employees or for the state.¹³⁸ In Vermont, an employee who works an average of thirty hours a week for a year for an employer of fifteen or more full time employees¹³⁹ can take family leave.

Colorado combines definitional limitations. In addition to using the FMLA limits on the definition of employer, it adds that the employee must be in a “nonexecutive or nonsupervisory capacity” and must not be an independent contractor, domestic servant, seasonal worker, or farm laborer, although a part-time employee can receive proportionally reduced benefits.¹⁴⁰ Conversely, in Washington, D.C., North Carolina, and under the California discipline leave statute, employer size, job tenure, and job type do not matter; all employees, both public and private, are entitled to leave.¹⁴¹

Beyond the job tenure, workplace size, and work type requirements, two states make being a parent for the purpose of school involvement leave contingent on being summoned to the school for a problem or emergency. In Nevada’s emergency leave provisions, a qualifying parent is anyone who is the “parent, guardian or custodian of a child” who has been asked to appear at a conference by a school administrator or who has been notified of a child’s emergency at school.¹⁴² Similarly, the California discipline leave statute applies to employees who miss work during school hours to visit a child’s school at the school’s request.¹⁴³

The nature of the relationship of the employee to the child who is involved in the activity, the child’s age, and the child’s school enrollment status also make a difference as to who counts as a parent under the statute. Typically, when parents are defined, they include natural parents, guardians and custodians.¹⁴⁴ California also includes grandparents who have custody of children.¹⁴⁵ Washington, D.C.,

138. R.I. GEN. LAWS § 28-48-1(2), (3)(i) (2010).

139. VT. STAT. ANN. tit 21, § 471(1) (2010).

140. COLO. REV. STAT. §§ 8-13.3-102(3), -103(3) (2009).

141. D.C. CODE § 32-1202(a) (2010); N.C. GEN. STAT. § 95-28.3(a) (2009); CAL. LAB. CODE § 230.7(a) (West 2010).

142. Act effective Aug. 15, 2009, ch. 292, sec. 5(1)(b), 2009 Nev. Stat. 1246, 1249.

143. CAL. LAB. CODE § 230.7 (West 2010).

144. *See id.* § 230.7(a) (applying to a “parent or guardian”); *id.* § 230.8(a)(1) (including parents and guardians); COLO. REV. STAT. § 8-13.3-102(3) (2009) (applying to “parent or legal guardian”); D.C. CODE § 32-1201(2)(A)-(E) (2010) (applying to natural parents, individuals with legal custody, individuals who act as guardians, aunts, uncles, or grandparents, or the spouse or domestic partner of any of the aforementioned); Act effective Aug. 15, 2009, ch. 292, § 1(1), 2009 Nev. Stat. 1246, 1247 (applying to “parent, guardian or custodian of a child”); N.C. GEN. STAT. § 95-28.3(a) (2009) (applying to “parent, guardian, or person standing in loco parentis”); R. I. GEN. LAWS § 28-48-12(a) (2010) (applying to “parent, foster parent or guardian”).

145. CAL. LAB. CODE § 230.8(a)(1) (West 2009).

includes grandparents even when they do not have custody.¹⁴⁶ In Rhode Island, foster parents are expressly included in the definition.¹⁴⁷ Vermont appears to require that the child live with the parent before a parent is entitled to take time for school activities.¹⁴⁸ Of all the definitions of parent, the District of Columbia's statute is perhaps the broadest. There, parents include natural parents, individuals with legal custody of a child, individuals who act as a guardian even if not legally appointed, aunts, uncles, grandparents, and anyone who is married to any of these individuals.¹⁴⁹

Two states have proposed legislation to expand the class of worker-parents entitled to leave. In Rhode Island, legislation has been proposed that would make the leave available for an employee's domestic partner to attend the activity of the employee's child.¹⁵⁰ Additionally, in 2007, a bill was introduced in Minnesota that would expand the categories of employees that would be eligible for school involvement leave.¹⁵¹ The bill proposed that the "parent or guardian" employee could "designate a significant individual" who could also take advantage of the school visitation leave to attend a child's school functions.¹⁵² The significant individual had to be someone who "reside[d] with the child and participate[d] actively in the child's care and upbringing."¹⁵³ The bill appears to have not made it out of committee during the legislative term.¹⁵⁴

Some statutes expressly define "child" or "children" to designate the employees to which the statute applies. For example, Illinois's statute specifically refers to adopted, step, and foster children.¹⁵⁵ Some statutes apply to children of only certain ages or grade levels. For example, the California school activities statute applies only to children in grades kindergarten through twelve or in a licensed

146. See D.C. CODE § 32-1201(2) (2010) (including grandparent in the definition with no reference to custody).

147. R.I. GEN. LAWS § 28-48-12(a) (2010).

148. VT. STAT. ANN. tit. 21, § 472a(a)(1) (2010).

149. D.C. CODE § 32-1201(2)(A)-(E) (2010).

150. S.B. 2737, 2008 Gen. Assem., Jan. Sess. (R.I. 2008).

151. H.B. 744, 85th Leg., Reg. Sess. (Minn. 2007).

152. *Id.*

153. *Id.*

154. Minnesota State Legislature, HF0744 Status in House for Legislative Session 85, https://www.revisor.mn.gov/revisor/pages/search_status/status_detail.php?b=House&f=HF0744&ssn=0&y=2007 (last visited Mar. 26, 2010). Portions of this bill were incorporated into an omnibus education bill later vetoed by the governor on May 13, 2008. See S.B. 3001, 85th Leg., Reg. Sess. (Minn. 2008) (omnibus education bill); Minnesota State Legislature, SF3001 Status in Senate for Legislative Session 85, https://www.revisor.mn.gov/revisor/pages/search_status/status_detail.php?b=Senate&f=SF3001&ssn=0&y=2008 (last visited Mar. 26, 2010) (detailing the omnibus education bill's legislative history).

155. 820 ILL. COMP. STAT. ANN. 147/10(c) (West 2008).

child care facility.¹⁵⁶ In Illinois, leave is available for an employee's "child . . . who is enrolled in a primary or secondary public or private school."¹⁵⁷ Schools that are covered by the statute must be within Illinois or in states that share "a common boundary with Illinois."¹⁵⁸ In Massachusetts, the statute applies only to children in "a public or private elementary or secondary school; a Head Start Program," or a licensed child care facility.¹⁵⁹ Colorado is the only state to cover homeschooled children; the ability of parents to attend school meetings and conferences is expressly extended to those whose children attend public and private school or are "in a nonpublic home-based educational program."¹⁶⁰

Three states consider a child's age as a prerequisite for leave. In Massachusetts, "child" is limited to a "son or daughter," who is a person "under [eighteen] years of age" or over eighteen and "incapable of self-care because of a mental or physical disability."¹⁶¹ In Minnesota, an employee's child is defined as "an individual under [eighteen] years of age or an individual under age [twenty] who is still attending secondary school."¹⁶² In North Carolina, children must be "school-aged."¹⁶³

In Tennessee, Texas, and Hawaii, the states that extend school involvement leave to public employees only, and in Nevada's school activities leave provisions, the focus is on the school enrollment status of the child. In Texas, public employees who are parents of "a child who is a student attending a grade from prekindergarten through [twelfth] grade" are entitled to leave.¹⁶⁴ For public officers and employees in Hawaii, leave is permitted for a child enrolled in "a licensed group child care center" or in "a public or private school in grades kindergarten through twelve."¹⁶⁵ Tennessee's statute applies to "child[ren] enrolled in school."¹⁶⁶ Nevada's school activities provisions apply to any child enrolled in public or private school.¹⁶⁷

156. CAL. LAB. CODE § 230.8(a)(1) (West 2010).

157. 820 ILL. COMP. STAT. ANN. 147/10(c)-(d) (West 2008).

158. *Id.*

159. MASS GEN. LAWS ANN. ch. 149, § 52D(a) (West Supp. 2009).

160. COLO. REV. STAT. § 8-13.3-102(3)(a) (2009).

161. MASS GEN. LAWS ANN. ch. 149, § 52D(b)(1) (West Supp. 2009) (describing "son or daughter"); Family and Medical Leave Act of 1993, 29 U.S.C. § 2611(12) (2006) (including age in its definition of "[s]on or daughter," which Massachusetts has adopted in its statute).

162. MINN. STAT. § 181.940 subdiv. 4 (2009).

163. N.C. GEN. STAT. § 95-28.3(a) (2009).

164. TEX. GOV'T CODE ANN. § 661.206 (Vernon 2004).

165. HAW. REV. STAT. ANN. § 78-31 (LexisNexis 2009).

166. TENN. CODE ANN. § 49-6-7001(b)(1) (2009).

167. Act effective Aug. 15, 2009, ch. 292, §§ 1, 3, 2009 Nev. Stat. 1246, 1247.

3. Available Leave

The amount of leave available under school involvement leave statutes ranges from an annual maximum of two hours per conference per child in Hawaii (travel included)¹⁶⁸ to no limitations in California or Nevada, where the statutes are directed toward disciplinary problems and student emergencies.¹⁶⁹ When a specific leave amount is designated, California's school activities statute provides the greatest amount of leave; an employee can take up to 40 hours per year of school involvement leave.¹⁷⁰ In Massachusetts and Vermont, employees can take up to twenty-four hours per year, but those hours must be shared with time off for other "small necessities," including children's doctor's visits and elder care obligations.¹⁷¹ Washington, D.C., on the other hand, makes twenty-four hours of leave available for school visits alone.¹⁷² Colorado allows eighteen hours of leave per year;¹⁷³ Minnesota provides sixteen hours per year;¹⁷⁴ Rhode Island gives ten;¹⁷⁵ Illinois and Texas, eight hours;¹⁷⁶ Tennessee, "one day" per month;¹⁷⁷ and North Carolina, four hours.¹⁷⁸ Nevada's school activities leave is available for a maximum of four hours, but, like in Hawaii, that limitation applies to each child, not as an overall total amount.¹⁷⁹

Some states also provide limits on the number of hours that can be used per day or per month. In California, parents are limited to eight hours per month.¹⁸⁰ In Colorado, time is limited to no more than

168. HAW. REV. STAT. ANN. § 78-31 (LexisNexis 2009).

169. CAL. LAB. CODE § 230.7(a) (West 2010); Act effective Aug. 15, 2009, ch. 292, § 2, 2009 Nev. Stat. 1246, 1247.

170. CAL. LAB. CODE § 230.8(a)(1) (West 2010).

171. In Vermont, "short-term family leave," as it is termed in the statute, can also be used for children's "routine medical or dental appointments," for accompanying other family members to "appointments for professional services related to their care and well-being," and for responding to medical emergencies of family members. VT. STAT. ANN. tit. 21, § 472a(a)(2)-(4) (2010). In Massachusetts, the twenty-four hours of leave can also be used for routine medical appointments for children or elderly relatives. MASS. GEN. LAWS ANN. ch. 149, § 52D(b) (West Supp. 2009).

172. D.C. CODE § 32-1202(a) (2010).

173. COLO. REV. STAT. § 8-13.3-103(1) (2009). In Colorado, this leave is not required if the employer already provides leave, such as vacation or personal leave, to the employee that can be taken for school leave purposes. *Id.* § 8-13.3-103(7).

174. MINN. STAT. § 181.9412 (2009).

175. R.I. GEN. LAWS § 28-48-12(a) (2010).

176. 820 ILL. COMP. STAT. ANN. 147/15(a) (West 2008); TEX. GOV'T CODE ANN. § 661.206(b) (Vernon 2004).

177. TENN. CODE ANN. § 49-6-7001(b)(5) (2009).

178. N.C. GEN. STAT. § 95-28.3(a) (2009).

179. Act effective Aug. 15, 2009, ch. 292, § 1, 2009 Nev. Stat. 1246, 1247; *see also* HAW. REV. STAT. ANN. § 78-31 (LexisNexis 2009) ("The employee shall take no more than two mutually-scheduled conferences, per child, in a single academic year.").

180. CAL. LAB. CODE § 230.8(a)(1) (West 2010).

six hours per month, and employers may limit time to increments of no more than three hours.¹⁸¹ In Illinois, time is limited to no more than four hours per day.¹⁸² Conversely, in Vermont, an employer can require an employee to use the leave in increments no smaller than two hours.¹⁸³ In Nevada, minimum increments are one hour.¹⁸⁴

4. *Leave Limits*

The statutes limit the use of school involvement leave in two ways. The first limit is on the employee's ability to use school leave independent of other types of leave. Three states require that employees use other types of leave before or along with the school involvement leave. Under California's school activities statute, vacation, personal, or compensatory leave must be used concurrently with school activities leave.¹⁸⁵ In Illinois, the statute requires that employees exhaust all other paid or unpaid leave, except for sick leave and disability leave, before school involvement leave is available.¹⁸⁶

Other states give discretion to the employee or employer to make leave concurrent. For example, in Vermont, employees may use accrued paid leave concurrently with the short-term leave.¹⁸⁷ In California, Rhode Island, and Washington, D.C., if the employer already provides time off without pay, the employee may use it concurrently with or substitute it for the school involvement leave.¹⁸⁸ In Massachusetts, the employee can choose, or an employer can require, substitution of accrued paid leave for the leave.¹⁸⁹ Interestingly, in Colorado, not only can an employee or employer elect to substitute paid leave for unpaid school involvement leave, an employer is not required to provide leave under the statute at all if the other types of paid or unpaid leave it provides, such as vacation or personal leave, are sufficient to meet the school involvement leave statute.¹⁹⁰

Second, some statutes give the employer significant power in limiting the leave use, particularly where the leave would be disruptive to the employer. In Washington, D.C., an employer may deny leave if granting it "would disrupt the employer's business and make the

181. COLO. REV. STAT. § 8-13.3-103(1)(a), (2) (2009).

182. 820 ILL. COMP. STAT. ANN. 147/15(a) (West 2008).

183. VT. STAT. ANN. tit. 21, § 472a(a) (2010).

184. Act effective Aug. 15, 2009, ch. 292, § 1, 2009 Nev. Stat. 1246, 1247.

185. CAL. LAB. CODE § 230.8(b)(1) (West 2010) (requiring concurrent use).

186. 820 ILL. COMP. STAT. ANN. 147/15(a) (West 2008).

187. VT. STAT. ANN. tit. 21, § 472a(c) (2010).

188. CAL. LAB. CODE § 230.8(b)(1) (West 2010); R.I. GEN. LAWS § 28-48-12(c) (2010); D.C. CODE § 32-1202(d) (2010).

189. MASS. GEN. LAWS ANN. ch. 149, § 52D(c) (West Supp. 2009).

190. COLO. REV. STAT. § 8-13.3-103(7) (2009).

achievement of production or service delivery unusually difficult.”¹⁹¹ In Illinois, employers are not required to give employees school visitation leave if doing so “would result in more than [five percent] of the employer’s work force” taking visitation leave at the same time.¹⁹² Under California’s school activities statute, an employer can prohibit both of a child’s parents employed at the same worksite from taking leave simultaneously.¹⁹³ In Hawaii, the state can refuse leave if it will “adversely interfere” with work or require additional costs.¹⁹⁴ Tennessee makes state employees’ leave “subject to department approval or the approval of the employees’ immediate supervisor.”¹⁹⁵

In Colorado, the limitations an employer can impose upon the leave turn not only on the impact the leave might have on the employer’s business, but also on the reason the parent needs to attend the school activity. First, an employer can deny leave where the employee’s absence would “result in a halt of service or production.”¹⁹⁶ In addition, although the leave statute specifically applies to parent-teacher conferences and other statutorily defined meetings, an employer can limit the leave to only those conferences and meetings “in cases of emergency or other situations that may endanger a person’s health or safety.”¹⁹⁷

In other situations, the employer is not given the power to prohibit the leave, but the burden is on the employee to avoid or attempt to avoid disruptions. In Minnesota and Rhode Island, an employee must make reasonable efforts not to disrupt the operations of the employer by taking the leave.¹⁹⁸ In Illinois, the employee is required to “consult with the employer to schedule the leave so as not to disrupt unduly the operations of the employer.”¹⁹⁹ In Vermont and Colorado, the employee is expected to make reasonable attempts to schedule the appointments during non-work hours.²⁰⁰ In North Carolina’s and Nevada’s school activities leave provisions, the time of the leave must be mutually agreed upon by the employee and employer.²⁰¹

191. D.C. CODE § 32-1202(c) (2010).

192. 820 ILL. COMP. STAT. ANN. 147/49 (West 2008).

193. CAL. LAB. CODE § 230.8(a)(2) (West 2009).

194. HAW. REV. STAT. ANN. § 78-31 (LexisNexis 2009) (stating leave is not available if it will “adversely interfere with the operations of the work unit [or] require the applicable agency to incur additional human resources or overtime costs”).

195. TENN. CODE ANN. § 49-6-7001(b)(5) (2009).

196. COLO. REV. STAT. § 8-13.3-103(c) (2009).

197. *Id.*

198. MINN. STAT. § 181.9412 subdiv. 2 (2009) (employee must make “reasonable effort” to not “disrupt unduly” the employer’s business by taking leave); R.I. GEN. LAWS § 28-48-12(b) (2010) (same).

199. 820 ILL. COMP. STAT. ANN. 147/15(a) (West 2008).

200. VT. STAT. ANN. tit. 21, § 472a(b) (2010); COLO. REV. STAT. § 8-13.3-103(3) (2009).

201. N.C. GEN. STAT. § 95-28.3(a)(1) (2009); Act effective Aug. 15, 2009, ch. 292, § 1, 2009 Nev. Stat. 1246, 1247.

Two states impose a duty upon the employer to allow employees to make up time missed from taking school involvement leave. In Illinois, employees are given the “right[]” to make up the time for the school visitation “on a different day or shift as directed by the employer,”²⁰² and employers are expected to make a “good faith effort” to give a “reasonable opportunity” for the make up work.²⁰³ In Colorado, an employer and an employee can agree to allow the employee to take paid leave for the “academic activity” and make up those hours of paid leave during the same work week.²⁰⁴

5. Notice and Documentation Requirements

Most statutes require that employers receive some kind of advance notice of an employee’s intent to take school involvement leave. The most broadly worded provisions simply require advance notice with no time frame specified. In Texas, for example, an employee is required to give “advance notice” of the intent to use the leave.²⁰⁵ Other states, including California²⁰⁶ and Minnesota,²⁰⁷ provide an open-ended reasonable notice requirement.

Still other states require a specific period of advance notice for leave, including seven days’ notice in Illinois,²⁰⁸ Vermont,²⁰⁹ and Massachusetts;²¹⁰ one week notice in Colorado,²¹¹ ten days’ notice

202. 820 ILL. COMP. STAT. ANN. 147/20 (West 2008).

203. *Id.*

204. COLO. REV. STAT. § 8-13.3-103(1)(a) (2009).

205. TEX. GOV’T CODE ANN. § 661.206(c) (Vernon 2004).

206. CAL. LAB. CODE §§ 230.7(a), 230.8(a)(1) (West 2010) (requiring employee to give “reasonable notice” that a school visit is required).

207. MINN. STAT. § 181.9412 subdiv. 2 (2009).

208. 820 ILL. COMP. STAT. ANN. 145/15(a) (West 2008). Under the statute, written notice is required. In *Cisneros v. Condell Medical Center*, the plaintiff brought Title VII discrimination, harassment, and retaliation actions along with a pendant state claim for a violation of the School Visitation Rights Act. *Cisneros*, No. 01 C 3826, 2002 WL 1424557, at *3-*5 (N.D. Ill. June 28, 2002). The federal district court granted the employer’s motion for summary judgment in part because the employee had failed to give seven days advance notice for a visit and did not contact the school to reschedule the meeting for a time after work. *Id.* at *5.

209. VT. STAT. ANN. tit. 21, § 472a(b) (2010).

210. MASS GEN. LAWS ANN. ch. 149, § 52D(d) (West Supp. 2009). In *Mellen v. Trustees of Boston University*, the United States Court of Appeals for the First Circuit declined to decide whether specific reference to the Small Necessities Act was necessary in order to give notice. *Mellen*, 504 F.3d 21 (1st Cir. 2007). The court, however, held that “[d]isagreement about a return date” did not amount to a request for leave under the act, and that statements that indicated that the Federal Family and Medical Leave Act leave would be enough to cover the needed time off were not sufficient to put the employer on notice of a Small Necessities Act leave request. *Id.* at 27-28.

211. COLO. REV. STAT. § 8-13.3-103(4) (2009).

in Washington, D.C.,²¹² five days' notice via written request for Nevada's school activities leave;²¹³ and twenty-four hours' notice in Rhode Island.²¹⁴ In Illinois, the advance notice is required even before the employee makes arrangements for the attendance.²¹⁵ In North Carolina, an employer may require a written notice forty-eight hours in advance.²¹⁶

Some states have an exception to the specific notice requirement for an emergency or unforeseeable situation. For example, in Washington, D.C., and Minnesota the advanced notice requirement does not apply if the event "cannot be reasonably foreseen."²¹⁷ In Vermont, an employee does not have to give notice in the case of an "emergency," which is defined as a situation where the notice requirement would have "significant adverse impact on [a] family member."²¹⁸ In Massachusetts, if the school event is "not foreseeable," the employee must provide "practicable" notice.²¹⁹ In Illinois, if the visit is because of an emergency, the employee needs to give the employer no more than twenty-four hours' advance notice.²²⁰ In Colorado, if the activity is an "emergency," notice must be given "as soon as possible."²²¹

In some states, employees are either statutorily required to provide verification of the school visit or may be required to do so by their employers, and some of the statutes are quite specific regarding the kind of notice that can be required. In Illinois, employees are required to submit verification of the school visit to the employer that includes "the exact time and date the visitation occurred and ended."²²² If the employee does not submit the verification within two working days of the visitation, the employee can be subject to the "standard disciplinary procedures imposed by the employer for unexcused absences."²²³ In Massachusetts, the employer can request a "certification" from the employee for the leave²²⁴ that describes the

212. D.C. CODE § 32-1202(e) (2010).

213. Act effective Aug. 15, 2009, ch. 292, § 1, 2009 Nev. Stat. 1246, 1247.

214. R.I. GEN. LAWS § 28-48-12 (2010).

215. 820 ILL. COMP. STAT. ANN. 147/15(a) (West 2008).

216. N.C. GEN. STAT. § 95-28.3(a)(2) (2009).

217. D.C. CODE § 32-1202(e) (2010); MINN. STAT. § 181.9412 subdiv. 2 (2009).

218. VT. STAT. ANN. tit. 21, § 472a(b) (2010).

219. MASS. GEN. LAWS ANN. ch. 149, § 52D(d) (West Supp. 2009).

220. 147/15(a).

221. COLO. REV. STAT. § 8-13.3-103(4) (2009).

222. 147/30. Under the statute, the Department of Labor and the State Superintendent are to suggest a "standard form of documentation" for school use. *Id.* The Illinois Department of Labor provides a school visitation leave form on its website. *See* Ill. Department of Labor, School Visitation Form, <http://www.state.il.us/agency/idol/laws/LAW147.htm> (providing a link to the School Visitation Leave Form) (last visited Feb. 3, 2010).

223. 147/30.

224. MASS. GEN. LAWS ANN. ch. 149, § 52D(e) (West Supp. 2009).

date, duration, and purpose of the leave.²²⁵ An employer can request addition verification so long as it is not “unduly burdensome” and is “reasonable.”²²⁶

Other statutes are less specific. In Colorado, Nevada and North Carolina, the employer may request verification of the school visit.²²⁷ For leave under the California school activities statute, the employer may require the employee to provide documentation from the school or child care facility as proof of attending a school-related event.²²⁸ The required documentation, however, is only what the school, and not the employer, deems “appropriate and reasonable.”²²⁹

6. School Obligations

A minority of the school involvement leave statutes impose requirements upon the school as part of the leave process. Under California’s discipline leave statute, a school’s policy for requiring parents to come for required meetings must “take into account reasonable factors that may prevent [a parent’s] compliance with a notice to attend.”²³⁰ Additionally, under California’s school activities statute, schools are required to give documentation of attendance if it is requested by the employer.²³¹ In Colorado and Tennessee, schools must give documentation verifying participation if it is requested by the employee.²³² Colorado also requires that schools “make their best efforts to accommodate the schedules of employees.”²³³ In Illinois, schools are required to have “regular school hours and evening hours” available for non-emergency visits.²³⁴ Additionally, schools, not employers, are required to notify “parents or guardians” of their school visitation rights.²³⁵

C. Sidenote: Louisiana’s “Permissive” Approach to School Leave

Louisiana has taken an unusual approach to school involvement leave but rather permits an employer to give up to sixteen hours of

225. 940 MASS. CODE REGS. 20.02 (2010) (describing the elements of a “sufficient” certification and supplying a form for employers to use).

226. *Id.* 20.04.

227. COLO. REV. STAT. § 8-13.3-103(2) (2009); Act effective Aug. 15, 2009, ch. 292, § 1, 2009 Nev. Stat. 1246, 1247; N.C. GEN. STAT. § 95-28.3(a)(3) (2009).

228. CAL. LAB. CODE § 230.8(c) (West 2010).

229. *Id.*

230. CAL. EDUC. CODE § 48900.1(a) (West 2006).

231. § 230.8(c).

232. COLO. REV. STAT. § 8-13.3-103(2) (2009); TENN. CODE ANN. § 49-6-7001(b)(5) (2009) (referring to state employees).

233. § 8-13.3-103(3).

234. 820 ILL. COMP. STAT. ANN. 147/15(c) (West 2008).

235. *Id.* 147/25.

unpaid leave per year to worker-parent employees “to attend, observe or participate in conferences or classroom activities related to the employee’s dependent children for whom he is the legal guardian that are conducted at the child’s school or day care center.”²³⁶ The leave can be granted only for activities that “cannot reasonably be scheduled” during off work hours.²³⁷ An employee must provide “reasonable notice” to the employer prior to the leave and must make “reasonable efforts” to not “unduly disrupt” the employer’s operations by the leave.²³⁸ Although the leave is unpaid, the employee is entitled to substitute any paid leave for the school conference leave.²³⁹

In 2008 legislative session, a bill that died in committee would have amended the statute to require an employer with twenty or more employees to provide school involvement leave.²⁴⁰ A bill proposed in 2009 contained language permitting employers to take a corporate income tax deduction if the employer gave employees paid leave to attend a child’s school activities, thereby giving employers an economic incentive to provide leave.²⁴¹

236. LA. REV. STAT. ANN. § 23:1015.2(A) (1998).

237. *Id.*

238. *Id.*

239. *Id.* § 1015.2(B).

240. H.B. 1323, 34th Leg., Reg. Sess. (La. 2008). The employer would also have been required to provide written notice of the statute to employees, either in the employee handbook or in a separate written document. *Id.*

241. H.B. 269, 35th Leg., Reg. Sess. (La. 2009). Tennessee, Oklahoma, and Oregon have also taken or explored permissive-style approaches to the school involvement leave problem. In 1999, the Tennessee legislature introduced a joint resolution “fervently urg[ing] and encourag[ing]” Tennessee employers to permit employees to attend their children’s parent-teacher conferences, without forfeiting vacation or sick leave to do so, as long as the employee gave “twenty-four (24) hours notice.” H.J. Res. 56, 101st Gen. Assem., Reg. Sess. (Tenn. 1999). The joint resolution expressed the views or sentiments of both houses of the legislature and was signed by the governor on May 13, 2000. See Bill Information for HJR 0056, <http://www.capitol.tn.gov/legislation/archives.html> (last visited Feb. 4, 2010) (follow “101st General Assembly” hyperlink; then follow “Bills and Resolutions” hyperlink; then follow “HJR0001-HJR0100” hyperlink; then follow “HJR0056” hyperlink).

Oklahoma currently requires its State Board of Education to “establish a program for encouraging private employers to give employees who have children in preschool programs, kindergarten, or school programs time off to visit the schools for parent-teacher conferences at least once each semester.” OKLA. STAT. ANN. tit. 70, § 10-105.2(C) (West 2010).

As part of a larger overhaul of education law, Oregon directed that its schools have parental and community involvement policies. OR. REV. STAT. ANN. § 329.125 (West 2009). In that statute, the legislature recommends that “employers be encouraged to extend appropriate leave to parents or guardians to allow greater participation in that process during school hours.” *Id.* § 329.125(3). Since 2006, the State Superintendent has developed sample parental involvement policies that comply with federal requirements. These policies, however, do not mention employers giving paid or unpaid leave to employees to participate in school activities. OR. DEPT OF EDUC., SAMPLE PARENTAL INVOLVEMENT POLICY 1-6 (2006), available at <http://www.ode.state.or.us/initiatives/familycommunity/files/odeschdistrparinvpolicy.doc>.

III. DOMINANT APPROACHES TO PARENTAL LEAVE LEGISLATION

Two theories have emerged as the dominant approaches for crafting legislation regulating the relationship between work and family in the workplace.²⁴² The antidiscrimination approach has been based primarily on gender discrimination under Title VII of the Civil Rights Act.²⁴³ This view suggests that the failure of employers to account for family issues in the workplace is because gendered notions of workplace norms define the “ideal” worker from a stereotypically masculine and patriarchal view,²⁴⁴ and that workplaces continue to be organized around the “full-time face-time norm,” which has as its “default preferences . . .[:] full-time positions, unlimited hours, rigid work schedules, an uninterrupted worklife, and performance of work at a central location.”²⁴⁵ As a result, discrimination against caregivers is a structural issue that requires a “norm based” approach rather than an individual accommodation response.²⁴⁶ By using a norm-based approach, the structure of the workplace can be altered through litigation addressing that discrimination, and the public discussions that result from that litigation can result in regulatory changes.²⁴⁷ Some regulatory changes, have, in fact, resulted from this discourse. For example, Alaska, the District of Columbia, and a number of municipalities have added classifications like “parenthood,” “family responsibilities,” and “parental status” as protected classes in their employment discrimination statutes.²⁴⁸ Additional similar state legislation is pending.²⁴⁹

242. See Arnow-Richman, *supra* note 5, at 28 (noting dominant approaches to protecting caregivers in the workplace have been mandated accommodation and protection against discrimination).

243. 42 U.S.C. §§ 2000e to 2000e-17 (2006).

244. For a recent articulation of this position, see Williams & Bornstein, *supra* note 7, at 1320 (“Most good jobs in the United States still assume an ideal worker — a workplace model that was designed for a workforce of male breadwinners whose wives took care of family and household matters.”).

245. Michelle A. Travis, *Recapturing the Transformative Potential of Employment Discrimination Law*, 62 WASH. & LEE L. REV. 3, 6 (2005).

246. Williams & Bornstein, *supra* note 7, at 1325.

247. See Williams & Segal, *supra* note 7, at 113 (describing the relationship between public discourse, “discrimination language,” and regulation); see also *infra* notes 256-260 and accompanying text.

248. See Stephanie Bornstein & Julie Weber, *Addressing Family Responsibilities Discrimination*, 2008 SLOAN WORK & FAMILY RES. NETWORK POLY BRIEFING SERIES, http://www.bc.edu/wfnetwork/pdfs/policy_makers16.pdf (discussing state legislative prohibitions on discrimination against parents).

249. SLOAN WORK & FAMILY RESEARCH NETWORK, BOSTON COLL., 2009 LEGISLATIVE SUMMARY SHEET: BILLS RELATED TO FAMILY RESPONSIBILITIES DISCRIMINATION RECENTLY INTRODUCED INTO STATE LEGISLATURES 1-2 (2009), http://www.bc.edu/wfnetwork/pdfs/BillsbyTheme_FRD.pdf (describing legislation that would add classifications like “familial

The accommodation approach asserts that the encroachment of family life into the workplace should be handled like disability and religious practice issues: by making accommodations for the needs of workers who cannot otherwise fit into the workplace without individualized adjustments to the working conditions.²⁵⁰ This approach is based upon the accommodation requirement of the Americans with Disabilities Act²⁵¹ and the accommodations required for employees' religious practices required under Title VII of the Civil Rights Act.²⁵² Under this approach, the overall structure of the workplace is not altered by the individual accommodations made to bring in or keep in the workplace a worker who does not conform to the ideal.

A. Antidiscrimination Approach

The antidiscrimination approach to remedying the problems of caregivers in the workplace "define[s] work-family conflict as a structural problem"²⁵³ and sees "the difficulties experienced by family caregivers [as related to] documented patterns of gender bias."²⁵⁴ This approach views work-family balance as an issue of facing disadvantage at work because of caregiving responsibilities,²⁵⁵ and these disadvantages can be remedied by (1) discrimination litigation under Title VII of the Civil Rights Act²⁵⁶ as well as under other statutes, and (2) "rights talk" that can bring about workplace restructuring.²⁵⁷ At minimum, a discrimination approach can redefine which party in an employee-employer relationship owes obligations to the other.²⁵⁸ Further, "[r]ights talk[,] [which] redefines work-family conflict[]

status," "family responsibilities," and "family caregiver status" to existing employment discrimination protections).

250. See, e.g., Kaminer, *supra* note 6, at 306 (describing an accommodation approach); Smith, *supra* note 6, at 1445 (same).

251. The Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213 (2006).

252. See Kaminer, *supra* note 6, at 356 (discussing the Americans with Disabilities Act model); Smith, *supra* note 6, at 1445 (discussing the religious accommodation model).

253. Williams & Segal, *supra* note 7, at 116.

254. *Id.* at 90.

255. *Id.*

256. 42 U.S.C. §§ 2000e to 2000e-17 (2006); see, e.g., Michelle A. Travis, *Equality in the Virtual Workplace*, 24 BERKELEY J. EMP. & LAB. L. 283, 332 (2003) (discussing how Title VII litigation can be applied to gender inequalities in telecommuting plans).

257. Williams & Segal, *supra* note 7, at 116; see also Joan C. Williams, *Beyond the Glass Ceiling: The Maternal Wall as a Barrier to Gender Equality*, 26 T. JEFFERSON L. REV. 1, 11 (2003) (noting that antidiscrimination law functions "as a language of social ethics").

258. See Williams & Segal, *supra* note 7, at 116 (discussing the ideal worker standard and its relationship to discrimination); see also Williams & Bornstein, *supra* note 7, at 1322 (noting "continued framing . . . of work/family conflict as an issue of individual women's 'choices' rather than as a larger economic or structural problem").

so that it is no longer seen as a personal inability to balance one's responsibilities but as a structural problem that requires a structural solution,"²⁵⁹ can promote institutional change.²⁶⁰ If the litigation taking place in courtrooms affects how the public talks about issues,²⁶¹ this antidiscrimination talk can also be "successful in the court of public opinion" and "could help spur an effort to enact legislation to protect the rights people have become convinced they have."²⁶²

Joan Williams has used the antidiscrimination approach to craft the "Family Responsibilities Discrimination" claim, which applies a Title VII gender discrimination framework to working caregivers who are either subject to adverse job actions based on stereotypical views about the competencies and preferences of mothers (as well as other caregivers), or who were treated differently from other workers who did not have caregiving responsibility.²⁶³ Other family responsibility discrimination claims based on gender stereotyping have arisen under the FMLA and the ADA.²⁶⁴

Using an antidiscrimination approach for achieving workplace equality for worker-parents or caregivers has received some criticism.²⁶⁵ First, the antidiscrimination approach, implemented primarily under Title VII, has been criticized for being unable to accomplish its stated purpose of eliminating the workplace exclusion of caregivers resulting from organizational structures premised on an ideal worker or "full-time face-time" norm.²⁶⁶ The critique suggests that these norms are so deeply embedded in Title VII and our common understandings of the nature of the workplace, that judges are

259. Williams & Segal, *supra* note 7, at 114.

260. *See id.* (discussing the redefinition of "work-family conflict," which can lead to structural and social changes).

261. *Id.* at 113.

262. *Id.*

263. Joan C. Williams, *Family Responsibilities Discrimination: The Next Generation of Employment Discrimination Cases*, in PRACTICING LAW INSTITUTE, 36TH ANNUAL INSTITUTE ON EMPLOYMENT LAW 333, 335 (2007); Williams & Bornstein, *supra* note 7, at 1313 ("FRD is discrimination against employees based on their responsibilities to care for family members."). For a guide to Family Responsibilities Discrimination, see Joan C. Williams & Cynthia Thomas Calvert, *WORKLIFE LAW'S GUIDE TO FAMILY RESPONSIBILITIES DISCRIMINATION* (2006) (providing a thorough exploration of the subject).

264. Williams & Bornstein, *supra* note 7, at 1345.

265. *See* Travis, *supra* note 256, at 319 (noting that antidiscrimination approaches cannot completely solve the problem of caregiver exclusion); Travis, *supra* note 245, at 7, n.15 (compiling commentators' critiques of the discrimination approach).

266. Travis, *supra* note 245, at 6 (noting that "Title VII has [not] done much to transform this exclusionary norm"); *see* Smith, *supra* note 6, at 1456 (asserting that antidiscrimination law does not effectively address structures that devalue worker-parents). *But see* Williams & Bornstein, *supra* note 7, at 1331-35 (arguing that antidiscrimination litigation is the only way to impact the workplace structures and eliminate the ideal worker norm).

limited in their ability to view Title VII cases in a way that challenges that norm.²⁶⁷

Second, the approach has been critiqued for focusing on the discriminatory intent of the individual actor under the Civil Rights Act and for not addressing the more subtle and unconscious bias permeating the organizational structure that perpetuates discrimination in everyday decisions, perceptions, and judgments in the workplace.²⁶⁸ To address this problem, an approach has been advocated that would hold the organization itself responsible, not just the actors within it, for failing to change the context that perpetuates bias and stereotypes in decision-making processes of the workplace.²⁶⁹ According to this critique, antidiscrimination, as currently defined, is not equipped to deal with "the more subtle forms of discrimination that . . . limit opportunity on a day-to-day basis in the modern workplace . . ."²⁷⁰

Other limitations on the effectiveness of the antidiscrimination approach in addressing caregiver needs in the workplace have been identified.²⁷¹ First, successful claims of unintentional discrimination, such as where job requirements have been based on the ideal worker standard, have been more rare because courts have been generous in finding that legitimate business reasons justify a practice that otherwise has a disparate impact.²⁷² Second, others argue that the antidiscrimination approach, as currently defined in Title VII of the Civil Rights Act, will not reach situations where men, as caregivers, have been discriminated against, because the claim has been based on discrimination against women.²⁷³

267. See Travis, *supra* note 245, at 6-7 (describing how judges essentialize the workplace according to the "full-time face-time" norm in Title VII and ADA claims); see also Dowd, *supra* note 4, at 80 (discussing that an antidiscrimination approach focused on gender under Title VII limits the ability to view work-family issues as issues of race or class, for example).

268. Tristin K. Green, *A Structural Approach as Antidiscrimination Mandate: Locating Employer Wrong*, 60 VAND. L. REV. 849, 857-58, 896 (2007) (noting current dominance of an "individualized, motivational approach" to the antidiscrimination model and the shortcomings of disparate impact theory as currently construed).

269. *Id.* at 889-90.

270. *Id.* at 862.

271. Arnow-Richman, *supra* note 5, at 36-45.

272. *Id.* at 38 (noting the "law permits employers to avoid liability for exclusionary effects where a challenged job practice is supported by a legitimate business decision"). But see Williams & Bornstein, *supra* note 7, at 1353-57 (discussing cases and new EEOC guidance that recognizes the implicit or unconscious bias underlying stereotyping and placing unconscious discrimination within the purview of FRD claims).

273. Arnow-Richman, *supra* note 5, at 38 ("An expansive reading of disparate-impact laws is premised on the notion that women, as the primary caregivers in most families, are disproportionately harmed relative to men by traditional work structures. As long as this gendered division of labor persists, men will not be able to take advantage of the theory because they will not be able to show the requisite disparate impact on the basis

Still others who have been critical of the discrimination approach and its efforts to create a protected class based on parenting status argue that a formal equality approach based on a gender discrimination model to address the needs of worker-parents falls short because it “remains wedded to a limited conception of equality.”²⁷⁴ Because parenthood is associated with neither the stigma nor presumption of inferiority that have accompanied race and gender, prohibiting employment discrimination based on parenthood does not fit well within Title VII’s prohibitions.²⁷⁵ Accordingly, this critique asserts that the legislatively mandated accommodation of parental duties, such as that found in the FMLA, is a better way to address discrimination against parents in the workplace.²⁷⁶

B. Accommodation Approach

Scholars applying the accommodation approach to work-family issues have turned to the Americans with Disabilities Act and to Title VII of the Civil Rights Act’s religious accommodation requirement as the basis for arguing that “employer[s] must reasonably accommodate” employees’ work-family balance needs.²⁷⁷ Specifically, those advocating an accommodation approach assert that “employers should have a duty to accommodate parental obligations that conflict with work obligations when employers can achieve the accommodation without incurring an undue hardship.”²⁷⁸

of sex.”); see Kaminer, *supra* note 6, at 307-08 (noting the “formal equality” limitations of Title VII and its failure to expressly cover parents and children); Travis, *supra* note 256, at 320 (noting the limits of “fit[ting] work/family conflicts into a sex discrimination box”). But see Williams & Bornstein, *supra* note 7, at 1320-21 (describing how implicit gender bias and gender stereotyping of caregivers affects men and as well as women and noting that men are successful with FRD claims).

274. Smith, *supra* note 71, at 572.

275. *Id.* at 606, 616.

276. *Id.* at 613-18. At the state statute level, express prohibitions against discrimination on the basis of parenting responsibilities avoid the gender discrimination problem. *Id.* at 585-86 (describing states that protect workers from discrimination based on “parenthood,” “familial status,” and “family responsibilities”). Additionally, legislation pending in a number of states would expressly protect worker-parents from discrimination in the workplace based upon “family caregiver status,” “familial status,” or “family responsibilities.” See SLOAN WORK & FAMILY RESEARCH NETWORK, *supra* note 249, at 1-2 (listing legislation pending in California, Florida, New Jersey, New York, Pennsylvania, and Maine); Williams & Bornstein, *supra* note 7, at 1346 (noting that “Alaska, the District of Columbia, and over three dozen local governments” have legislatively protected worker-parents from discrimination based on parenting or family status); see also Arnow-Richman, *supra* note 5, at 36-38 (describing critiques of discrimination approach); Dowd, *supra* note 4, at 135-54 (same).

277. Kaminer, *supra* note 6, at 308 (arguing for a Title VII religious accommodation model); see Kessler, *supra* note 6, at 457-59 (mentioning the ADA as a model); Smith, *supra* note 6, at 1445 (arguing for a Title VII religious accommodation model).

278. Smith, *supra* note 6, at 1446 (citations omitted).

Under this approach, employers have an affirmative duty to employees to act to “accommodate” parents’ need to attend to family issues.²⁷⁹ For an employee to make a claim under the accommodation approach, the employee must “show that he or she: (1) face[d] a compelling parental obligation that conflicts with an employment requirement; (2) ha[d] informed the employer about the conflict if possible [i.e., had foreseeability of the event]; and (3) was discharged or disciplined for failing” to work when assigned.²⁸⁰ The burden would then shift to the employer to show that he made a good faith effort to accommodate or that making the accommodation would have resulted in an undue hardship.²⁸¹ Under the accommodation approach advocated by Peggie Smith, an undue hardship would not arise if the employer had to bear no “more than a moderate cost” to accommodate the need; that is, the cost to be borne would fall somewhere between a “de minimis” cost requirement and the ADA’s significant cost standard.²⁸²

The FMLA is an example of an accommodation-based regulation applied to caregivers in the workplace. Although the FMLA describes itself as a statute designed to address gender discrimination,²⁸³ ultimately it accommodates both men and women by relieving them from normal workplace demands for up to twelve weeks upon the birth or adoption of a child or the “serious health condition” of the employee or a family member, while ensuring that the employee does not suffer adverse employment action as a result.²⁸⁴

Critics fault the accommodation approach for failing to redefine workplace norms while continuing to place caregiving outside the ideal worker norm.²⁸⁵ Specifically, the critique argues that an accommodation standard fails to take into account the social and biological norms of men and women as part of the workplace.²⁸⁶ Additionally, others have asserted that an accommodation approach to work-family issues encourages employers to see the problem of work-family balance as an individual problem rather than a corporate one, which leads to defining the work-family issues as a parent problem rather

279. *Id.* at 1465-66.

280. *Id.*

281. *Id.* at 1466.

282. *Id.* at 1480.

283. Family and Medical Leave Act of 1993, 29 U.S.C. § 2601(b)(4)-(5) (2006) (noting the goal of minimizing discrimination on the basis of sex).

284. *Id.* § 2612(a)(1) (providing basis for leave); § 2614 (describing protections); § 2615(a)(2) (prohibiting discrimination).

285. See, e.g., Williams & Bornstein, *supra* note 7, at 1323-24 (critiquing the approach); see also Cahn, *supra* note 1, at 193 (noting that “accommodation of . . . parenthood often leads to perceptions that [parents] are not ‘real’ workers”).

286. Williams & Bornstein, *supra* note 7, at 1323-24.

than a workplace one, delaying large-scale structural changes.²⁸⁷ Additional reasons given for the ineffectiveness of the accommodation approach include: the courts' narrow interpretations of "reasonable" accommodation, the difficulties administering vague accommodation policies, the redistributive nature of accommodations, and the decline of employer-provided benefits and lack of justification for additional benefits in the current employment culture.²⁸⁸ Accommodation as a term to describe the rationale for caregiving leave also falls short on a rhetorical level. The use of the term in the work-family policy context invokes conflicting meanings and thus limits the vision for what might be possible for the future of work-family regulation.²⁸⁹

C. School Involvement Leave Statutes

The school involvement leave statutes are vulnerable to some of the existing antidiscrimination and accommodation approach critiques. First, the specific definitions required to avoid the vagueness problems associated with accommodation²⁹⁰ result in definitions that attempt to achieve uniformity but are more successful at distorting.²⁹¹ That is, the statutes attempt to standardize the meaning of parents, children, and school activities, but this results in a wide definitional range that ultimately provides no standardization whatsoever. In other words, attempts at definition distort who can or should be covered and what activities are relevant under the statutes. For example, under the statutes, "child" is both explicitly and implicitly defined to mean any, some, or all of the following: a biological child; a step-child; a preschool-age child; a child in a licensed day-care facility; a homeschooled child; an individual under twenty years of age if still in secondary school; a grandchild; a niece or a nephew; and anyone who has a "guardian," legal or otherwise.²⁹² None of the statutes incorporate all of these definitions, however, which reveals how the attempts to define the categories of individuals to be accommodated are distorted by definition. And, not only is it problematic to distort the category of who should be able to take advantage of the statute, but these shifting definitions create compliance problems for employers attempting to define who counts as parents under the statutes.

287. Gonyea & Googins, *supra* note 2, at 69.

288. Arnow-Richman, *supra* note 5, at 43-44.

289. Davis, *supra* note 18, at 545-50 (describing the limits of meaning for the term "accommodation" in work-family policy).

290. Arnow-Richman, *supra* note 5, at 43-44.

291. H.L.A. HART, *THE CONCEPT OF LAW* 38 (2d ed. 1994) (noting the idea of "[d]istortion as the price of uniformity").

292. See *supra* Part II.B.2.

Second, the reasons an employer can assert to avoid giving school involvement leave demonstrate that what is a reasonable accommodation for school involvement leave is construed relatively narrowly. Stated another way, the legitimate business reasons or undue hardships that justify refusing to give school involvement leave are generally expressed quite broadly. For example, Hawaii allows an employer to deny leave if it will “adversely interfere” with work;²⁹³ in Washington, D.C., employers can deny leave if the leave would cause productivity to be “unusually difficult.”²⁹⁴ In Colorado, employers can limit the otherwise statutorily guaranteed leave “in cases of emergency” and preclude leave if it would “halt . . . production,”²⁹⁵ in Illinois, leave cannot “disrupt unduly” the employer’s operations, and an employer can deny leave if more than five percent of its workforce would be absent for a school visit.²⁹⁶ In Minnesota and Rhode Island, employees must make “a reasonable effort”²⁹⁷ not to disrupt the employer’s operations. In Colorado and Vermont, employees must make “reasonable attempt[s]” to schedule the school activities during non-work hours.²⁹⁸

These examples show that school involvement leave statutes limit worker-parents’ opportunities to take leave provided for under the statute using expansive terms to describe when the statutorily authorized leave is not permitted. In addition, these limits do little to articulate the hidden assumptions that can underlie decision-making about when an employer suffers an undue disruption or undue burden by an employee’s absence or what it means to make a “reasonable effort.”

Third, the allocation of control between employer and employee expressed in some of the statutes perpetuates the notion that care-giving remains outside workplace norms and is still an individual problem rather than in institutional one. For example, some statutes permit an employer to require worker-parents to provide detailed documentation of leave after it is taken²⁹⁹ while at the same time

293. HAW. REV. STAT. ANN. § 78-31 (LexisNexis 2009).

294. D.C. CODE § 32-1202(c) (2010).

295. COLO. REV. STAT. § 8-13.3-103(1)(c) (2009).

296. 820 ILL. COMP. STAT. ANN. 147/15, 147/49 (West 2008).

297. MINN. STAT. § 181.9412 subdiv. 2 (2009); R.I. GEN. LAWS § 28-48-12(b) (2010).

298. COLO. REV. STAT. § 8-13.3-103 (2009); VT. STAT. ANN. tit. 21, § 472a(b) (2010).

299. *See, e.g.*, CAL. LAB. CODE § 230.8(c) (West 2010) (employers can request “documentation from the school”); 820 ILL. COMP. STAT. ANN. 147/30 (West 2008) (employees must submit “exact time and date” of the visitation within two working days or be subject “to the standard disciplinary procedures imposed by the employer for unexcused absences from work”); MASS. GEN. LAWS ANN. ch. 149, § 52D(e) (West Supp. 2009) (requiring sufficient certification); 940 MASS. CODE REGS. 20.02 (2009) (describing sufficient certification

permitting employers to refuse leave when it exceeds a statutorily defined “hardship” level for the employer.³⁰⁰ In other words, control of the leave process remains in the hands of the employer, and the employee has minimal control over the process; the employee can request, but not demand, leave subject to the business needs of the employer. This structure reinforces institutional norms regarding the abnormality of caregivers in the workplace as well as norms about the trustworthiness of employees taking workplace leave.³⁰¹

Moreover, the structure of the statutes create a paradox of control and responsibility. Although employers are often in the position of controlling the terms of employee leave-taking by having an “undue burden” or “disruption” trump, they are positioned to be responsible, in most of the statutes, to provide the leave requested or face allegations of discriminatory conduct. In other words, the responsibility for providing conditions that permit leave-taking rest with the employer even though they can also exercise discretion to limit the leave authorized by the express terms of the statute. Similarly, worker-parents face a paradox of control and responsibility; they are responsible for coordinating their educational involvement with the demands of their work, but, in many cases, they can exercise little control over the conditions of that coordination, particularly where the employer makes the ultimate determination about disruption or undue burdens.

Finally, the accommodation and antidiscrimination approaches to craft school involvement leave statutes limit the ways in which possibilities for managing work and family can be discussed. For example, if school involvement leave is characterized as a matter of discrimination, then discussions may be shoe-horned into an analysis of what kinds of conduct in this context are discriminatory, and the discourse may gravitate toward parental rights. And while “rights” can be a positive frame for thinking about work-family management, characterizing the question of school involvement leave as a worker-parent’s right does not go far to solve the questions of *how* parents can become more involved in their child’s school activities while still meeting their employment obligations and how employers can facilitate that involvement. Conversely, if the issue is characterized as one of “accommodation,” then the discussion takes on a tenor of obligation

as one providing the date, duration, and purpose of leave along with the employee’s signature, and suggesting the form the certification should take).

300. See, e.g., D.C. CODE § 32-1202(c) (2010) (allowing employer to deny leave if it will make work “unusually difficult”).

301. Arnov-Richman, *supra* note 5, at 30-31 (noting that the law reinforces structural exclusion and social biases); see also Davis, *supra* note 18, at 543 (noting that employers contend that employees take leave improperly under the FMLA).

and benefit, a tenor that suggests that because the accommodation is a benefit to the employee and a cost to the employer, the employer should strictly control when and how the accommodation is used.³⁰²

In sum, viewing the question of worker-parents' involvement in their children's school activities as a matter of accommodating less-than-ideal-worker obligations or avoiding discrimination against parents in the workplace limits the range of possible strategies and identities worker-parents can use in reconciling work-family obligations. An alternative approach to work-family regulation, which comes from combining concepts found in identity theory and in organizational communication work-family research, is offered below as an alternative frame for crafting school involvement leave policies that can avoid some of the problems associated with the accommodation and antidiscrimination approaches. An empowerment identity approach would enable the statutes to reflect multiple and conflicting worker-parent identities through definitional openness. It would enable worker-parents to coordinate control and responsibility for work-family obligations, and it would assist worker-parents in integrating their parental and workplace identities by creating discursive resources that recognize family obligations as part of work identity.

IV. AN EMPOWERMENT IDENTITY BASED ALTERNATIVE: USING ORGANIZATIONAL COMMUNICATION THEORY TO CRITIQUE AND CRAFT SCHOOL INVOLVEMENT LEAVE LEGISLATION

An empowerment identity approach to work-family regulation synthesizes organizational communication identity studies and work-family discourse studies that place research and practice in an empowerment framework.³⁰³ This approach looks at school involvement leave legislation as a discursive resource for empowering worker-parents to construct authentic identities and to create individualized solutions to tensions arising at the intersection of work and family. Although an admittedly nontraditional approach for crafting and critiquing parental leave legislation, much of the value of the approach lies in its novelty in interrogating and observing the law; it privileges a view of law as a language for identifying and talking about family and work relationships and offers an alternative normative approach for problematizing and regulating those relationships. This approach

302. See Arnow-Richman, *supra* note 5, at 43-44 (noting the critique of accommodation as redistributive); Davis, *supra* note 18, at 548-49 (noting employers have "been described as bearing all of the burdens for making accommodation"); Williams & Segal, *supra* note 7, at 80 (noting the view that accommodation is costly).

303. Kirby et al., *supra* note 16, at 4-5.

does not determinatively reject the accommodation and antidiscrimination approaches; to do so would be to invoke the kind of closure that deters productive synergy in work-family law. Rather, it articulates a vision for what might be legislatively possible by focusing on communication, empowerment, and identity development as frameworks for understanding rather than on accommodation and anti-discrimination claims.³⁰⁴

Part A reviews identity theory developed in the organizational communication context,³⁰⁵ a theory that seeks to explain how individuals are positioned by and “position themselves in the world through language and action,”³⁰⁶ and then links identity theory to the regulation of the relationship between work and family. Part B discusses the work of organizational communication scholars who critique the prevailing frames for understanding the relationship between work and family and describes the empowerment approach, which seeks to address the shortcomings of those frames. Finally, Part C combines identity theory with the empowerment approach to create an empowerment identity approach for thinking about work-family regulation at the legislative level, describes how this approach shares characteristics with other recently proposed approaches to work-family regulation, and shows how an empowerment identity approach can provide an alternative and useful way to view school involvement leave legislation.

A. Identity Theory and Its Relevance to Work-Family Issues in the Employment Setting

Identity can best be described as one’s notion of self within a particular context, produced by “competing, fragmentary, and

304. This author joins other scholars in noting that the problems of the modern workplace are “multifaceted” and require multifaceted solutions. *See, e.g.*, Travis, *supra* note 245, at 7-8 (describing recognition that no one solution can solve the problem of workplace equality).

305. The organizational communication context is particularly relevant to identity in the work-family context since organizational discourses play a significant role in developing one’s workplace identity. *See infra* Part IV.A.

306. ERIC M. EISENBERG ET AL., ORGANIZATIONAL COMMUNICATION: BALANCING CREATIVITY AND CONSTRAINT 199 (5th ed. 2007); Kirby et al., *supra* note 16, at 13 (describing identity as a negotiation and a process through which individuals assume, understand, and interpret their roles at work and in the home); Craig R. Scott et al., *Development of a Structural Model of Identification in the Organization*, 8 COMM. THEORY 298, 303-04 (1998) (describing identity as “a type of knowledge about a part of our self that helps to produce and to reproduce behaviors in specific social situations . . . [that] is shaped by and revealed through discourse”); Sarah J. Tracy & Angela Trethewey, *Fracturing the Real-Self↔Fake-Self Dichotomy: Moving Toward “Crystallized” Organizational Discourses and Identities*, 15 COMM. THEORY 168, 170 (2005) (identity is a notion of “self whose meaning emerges out of reflexive social interactions with others”).

contradictory discourses.”³⁰⁷ It is made up of “core beliefs or assumptions, values, attitudes, preferences, decisional premises, gestures, habits, rules, and so on.”³⁰⁸ Identity is perhaps better thought of as “identities” — multiple rather than singular.³⁰⁹ Because they are contextual, individuals are capable of holding multiple, yet integrated, identities.³¹⁰ In some contexts, certain identities emerge as primary or preferred, while others become secondary or marginal.³¹¹ In other contexts, the identities may occupy a different place in the hierarchy.³¹² And when faced with conflict, individuals will “choose among valued identities” in order to alleviate the conflict.³¹³

More important to this project is how individuals socially construct identity through language. One’s notion of self, or one’s identity, is the product of communication processes³¹⁴ with others within discursive structures. Thought of slightly differently, in order to create a self, individuals engage in the process of identification, drawing upon available institutional and language resources that can be reproduced as their own identity.³¹⁵ In the modern economy, some scholars posit that identification is a greater motivator for individuals in organizations than money.³¹⁶

In contemporary society, organizations such as workplaces have become important locations for identity development³¹⁷ because as

307. Tracy & Trethewey, *supra* note 306, at 168.

308. Scott et al., *supra* note 306, at 303.

309. Organization identity theorists have been leaning against the concept of a monolithic identity or the idea of real and fake selves and have proposed the idea that individuals have multiple identities. *See, e.g.*, Tracy & Trethewey, *supra* note 306, at 186 (describing a “crystallized” identity as “neither real nor fake,” but “multidimensional[.] . . . [having] different shapes depending on the various discourses through which they are constructed and constrained,” and “stronger, more beautiful, and more productive” than a single-faceted self).

310. Kuhn & Nelson, *supra* note 14, at 8 (noting the existence of multiple identities).

311. For one take on the concept of “preferred identity” see Tracy & Trethewey, *supra* note 306, at 178-84 (noting three processes employers use to create a “preferred organizational identity”).

312. *See* Kuhn & Nelson, *supra* note 14, at 11 (describing how identities may be distributed “across several structures” or adjusted in response to conflict).

313. *Id.*

314. *See* Scott et al., *supra* note 306, at 305 (discussing identification as language-based).

315. *See* Kuhn & Nelson, *supra* note 14, at 11 (noting that participation in “social contexts and events [can] activate particular identities”).

316. George Cheney, *The Rhetoric of Identification and the Study of Organizational Communication*, 69 Q.J. SPEECH 143, 157 (1983) (citing the work of John Kenneth Galbraith, who “explains that identification has succeeded pecuniary motivation (and compulsion before that) as the most important motivating force in the modern corporation”).

317. Tracy & Trethewey, *supra* note 306, at 169 (noting that the workplace is an organizational site where the self is socially constructed and that “[s]cholarship

more individuals enter the workplace and spend time there, workplace resources become readily available to be drawn upon for identification.³¹⁸ Within organizations, articulated norms, policies, and practices, along with social interactions with others, provide “discursive resources” or institutional scripts³¹⁹ for creating particular identities. Discursive resources within organizations are “socially constructed frame[s] drawn from a culture or subculture [within an organization] that enable members to assign meaning to . . . activity,”³²⁰ inviting those organizational “members to enact particular identities.”³²¹ Relatedly, “scripts” have been defined as “knowledge structure[s] that fit[] predictable, conventional, or frequently encountered situations[,] . . . schemas for understanding events or behaviors.”³²² Importantly, identity is located not only in the memory and knowledge of workers but also in institutionalized places such as “rules, rituals, [and] handbooks.”³²³

With respect to work-family relationships specifically, research on identity development related to the workplace reveals that identity is an “ongoing accomplishment[] that [is] continually informed and constructed by discourses of gender, power, and organization.”³²⁴ These discourses are located, in part, within the workplace. Workplaces offer resources for constructing identity that are generally consistent with the public/private divide between work and family and with a masculine norm of what it means to be an employee.³²⁵ The dominant organizational logic offers employees an identity consistent with the ideal worker standard: an employee should be a “male worker whose life centers on his full-time, life-long job, while his wife or another woman takes care of his personal needs and his children,”³²⁶ or the employee should act like that male worker. Moreover,

increasingly indicates that individuals form their identities based on organizational and workgroups [sic] as much or more than on home lives”).

318. These readily available resources are known as “proximate structures.” Kuhn & Nelson, *supra* note 14, at 31.

319. Dennis A. Gioia & Peter P. Poole, *Scripts in Organizational Behavior*, 9 ACAD. MGMT. REV. 449, 449, 458 (1984).

320. Kuhn & Nelson, *supra* note 14, at 12.

321. Tracy & Trethewey, *supra* note 306, at 172.

322. Gioia & Poole, *supra* note 319, at 450.

323. Scott et al., *supra* note 306, at 304.

324. EISENBERG ET AL., *supra* note 306, at 203; *see also* KAREN LEE ASHCRAFT & DENNIS K. MUMBY, *REWORKING GENDER: A FEMINIST COMMUNICOLOGY OF ORGANIZATION* 72 (2004) (stating that “power is produced . . . through the everyday discursive practices that construct team members’ identities”).

325. *See* WILLIAMS, *supra* note 2, at 19-37 (discussing the public/private divide and masculine norms with respect to the ideal employee).

326. Joan Acker, *Hierarchies, Jobs, Bodies: A Theory of Gendered Organizations*, 4 GENDER & SOC’Y 139, 149 (1990).

a worker's private relationships of dependency should not be visible in the workplace to resolve that conflict.³²⁷

But simply because workplaces typically foster one form of identity does not mean that workers are incapable of maintaining multiple and equally important identities.³²⁸ They do maintain such identities, and when those identities are in conflict, workers will often draw upon the most readily accessible discursive resources and scripts to resolve them.³²⁹ Thus, when work identity conflicts with family identity, workers can choose to identify with those structures and resources for identification that are available to them in the workplace.³³⁰ Yet communication scholars note that identity is negotiated and renegotiated anew based on the resources available for that negotiation.³³¹ This means that to the extent that discursive resources or scripts at workplaces change, identity, for both employers and employees, can be renegotiated to incorporate those changes and to reinterpret events and behaviors in a way that is consistent with those new scripts.³³²

Communication theorists exploring identity have been critical of accommodation as an approach to work-family balance issues. First, they critique the accommodation approach for overlooking how the structures of discourse shape individual identities and what kinds of identities are shaped by the discourse.³³³ Second, they criticize an accommodation approach as privileging outcomes over meaning-making. That is, they critique the accommodation approach because it "emphasize[s] what individuals do rather than how their interpretation of what they do constructs personal and social identity."³³⁴ For example, researchers note that work-family research in the 1990s focused "on changing the workplace to accommodate employees with families through programs such as dependent care, alternative workplaces, and flexible scheduling. "[Yet, with an] analytical framework

327. See Eichner, *supra* note 52, at 156-58 (describing the public/private divide between autonomy and dependency).

328. In fact, researchers suggest that role accumulation, that is, seeing many roles as important, will result in greater self-esteem, satisfaction, and less role strain. Donald C. Reitzes & Elizabeth J. Mutran, *Self-Concept as the Organization of Roles: Importance, Centrality, and Balance*, 43 SOC. Q. 647, 654, 665 (2002).

329. See Kuhn & Nelson, *supra* note 14, at 31 (identifying the idea of proximate resources).

330. *Id.* (noting that individuals were more likely to identify with their work groups after a work conflict because "people often look to the most proximate structures for strong identifications").

331. Tracy & Trethewey, *supra* note 306, at 169.

332. See, e.g., Kuhn & Nelson, *supra* note 14, at 11-14 (discussing negotiation of identification and organizational conflicts).

333. See Kirby et al., *supra* note 16, at 15-16 (suggesting that a discourse approach is preferable because it does not overlook these things).

334. *Id.*

in which workplace accommodations are identified as the key to successful management of work and family, [there is a] risk of privileging structure over meaning and agency.”³³⁵

The accommodation approach has also been criticized for overlooking the modern conditions of identity management and social heterogeneity.³³⁶ The problem with taking an accommodation approach to work-family issues is that accommodation implies that “time management is the central issue.”³³⁷ Rather, the real opportunity for change exists where work-family “management [is characterized] as an identity issue rather than [as] a merely logistical issue” and not as a matter of time constraints, managing conflicts, or even altering structures.³³⁸ Thus, even if accommodation is a necessary component for achieving satisfaction in work-family arrangements because accommodations can address logistical problems and time constraints, accommodation alone will not be sufficient to solve the problem.³³⁹ Rather, by characterizing work-family issues as questions of discourse, it is “not possible for workplace accommodations to provide a definitive solution” to the tensions between work and family.³⁴⁰ “[T]he successful management of work and family is as much an identity issue as it is a time management issue.”³⁴¹

B. The Discursive View of Work-Family Issues: Evaluating the Relationship between Work and Family through an Empowerment Frame

Organizational communication scholars who focus their research on communication and work-family issues take a discourse centered approach to their analysis and focus on the “central role of discourse in shaping personal identities and in maintaining and transforming institutional structures.”³⁴² They conclude that the emphasis in work and family research has been too focused on “outcomes rather

335. *Id.* at 15.

336. Annis G. Golden, *Modernity and the Communicative Management of Multiple Roles: The Case of the Worker-Parent*, 1 J. FAM. COMM. 233, 236 (2001).

337. *Id.*

338. Kirby et al., *supra* note 16, at 16.

339. Golden, *supra* note 336, at 236.

340. Kirby et al., *supra* note 16, at 16.

341. Golden, *supra* note 336, at 236.

342. Kirby et al., *supra* note 16, at 3. This approach to identity is informed by structuration theory, which asserts that “individual communication and action is constitutive in producing and reproducing systems and structures. . . . At the same time, structures influence how individuals experience and communicate about [work-family issues].” Erika L. Kirby et al., *Work/Life Conflict*, in THE SAGE HANDBOOK OF CONFLICT COMMUNICATION: INTEGRATING THEORY, RESEARCH, & PRACTICE 327, 328 (John G. Oetzel & Stella Ting-Toomey eds., 2006).

than . . . [on] the process of constructing those outcomes.”³⁴³ Accordingly, they suggest a purposeful shift to a focus on discursive processes that empower individuals to manage the work-family relationship as a process rather than as a static condition or outcome.³⁴⁴

Work-family studies have primarily focused on the problems of compartmentalizing life into competing spheres³⁴⁵ or balancing or managing competing or segmented roles.³⁴⁶ These characterizations “perpetuate an ideology of separate worlds, which holds that work and home are bounded in space and time, carrying out autonomous functions according to distinctive rhythms.”³⁴⁷ In addition, a view of balancing multiple, separate, and conflicting roles is privileged over the view that an individual can construct an integrated self-identity.³⁴⁸ These notions of separate boundaries and separate roles lead to policies and practices that focus on what is appropriate and inappropriate in the workplace³⁴⁹ and perpetuate the notion of “face time,” where the employee’s commitment or loyalty to the workplace is evidenced by the amount of time he or she spends at work.³⁵⁰ Because work and family are treated as separate spheres, conceptualizing the issue of work and family compels individuals to “minimize or disguise their family commitments” at work.³⁵¹ Conceptualizing the relationship between work and family as a boundary or role issue creates a question of permeability: how work and family spill over from one domain to the other.³⁵²

Moreover, the common view of the relationship between work and family is based on “expert rationalities”³⁵³ dominated by a particular

343. Kirby et al., *supra* note 16, at 2.

344. *Id.* at 2-3; *see also* Kirby et al., *supra* note 342, at 342 (“[W]ork/life research should move from roles, conflicts, and outcomes to more subtle processes of identity construction.”); Golden, *supra* note 336, at 236 (noting inadequacy of concepts in work-family research and noting that they do not give needed attention to “the identity aspect of managing work and family”).

345. Kirby et al., *supra* note 16, at 5.

346. *Id.* at 11.

347. *Id.* at 6; *see also* Kirby et al., *supra* note 342, at 329 (describing models of the relationship between work and life based on the view that one interferes with the other and creates strain).

348. Kirby et al., *supra* note 16, at 11-12.

349. *Id.* at 9.

350. *Id.* at 6; *see also* Kirby et al., *supra* note 342, at 338 (noting that “U.S. Protestant work ethic and related notions of meritocracy create the potential for ‘face time’ to be expected: . . . people need to be seen working hard in order for supervisors to know they merit rewards”).

351. Kirby et al., *supra* note 16, at 6; *see also* Kirby et al., *supra* note 342, at 332 (describing situations where employees “are uncomfortable with talking about personal needs with their supervisors, and so ‘managers often assume that their employees have no childcare or eldercare problems’” (citations omitted)).

352. Kirby et al., *supra* note 16, at 7, 11.

353. *Id.* at 17.

set of voices.³⁵⁴ An expert rationality favors predictability and control over the ways work-family issues are addressed and looks for acontextual and generalizable solutions to work-family management problems.³⁵⁵ Applying an expert rationality to work-family issues often results in formulaic responses for dealing with work-family conflict that are presumed to be usefully transferrable to a number of individualized situations.³⁵⁶ So, from the expert perspective, getting the right formula is important; energy is expended to choose a policy that can be generalized to multiple situations, and once the formula is in place, all issues are deemed resolved, regardless of the individual results.³⁵⁷ This expert conceptualization of the work-family relationship results in public policy proposals, such as parental leave statutes, which focus on “time constraints . . . [and] when behaviors acceptable in one area are seen as unacceptable in [another].”³⁵⁸ Although expert rationalities can be useful for developing general policies, they cannot address the individualized discussions of work and family at the relational and organizational levels.³⁵⁹ In short, expert rationalities mask what individuals can learn in their daily lives, in their “practical rationalities” that emerge from daily “experience and discussion with others.”³⁶⁰

Communication researchers conclude that three voices dominate the discussion of work and family: the managerial voice; the traditional family voice; and the “upper- or middle-class, White, professional woman” voice.³⁶¹ The managerial voice uses the “language of financial contribution” to justify work-family policies.³⁶² The focus is on how the work-family policies impact worker productivity, how to control costs, how to retain employees, and how to stop absenteeism or tardiness.³⁶³ Social good or “organizations as community actors”

354. *Id.* at 24. Yamada discusses the Taylorizing of the American workplace, which used time and motion studies to “determine what levels of productivity could be expected of factory workers” and to “rationalize assembly lines and piecework payment.” Yamada, *supra* note 31, at 528.

355. Kirby et al., *supra* note 16, at 17-18. Golden equates “modernity” with the “rise of expert authorities.” Golden, *supra* note 336, at 235.

356. Kirby et al., *supra* note 16, at 17.

357. *See id.* at 18-19 (describing “technical/expert rationality” as it applies to work-family research).

358. *Id.* at 18.

359. *Id.* at 19.

360. *Id.*

361. *Id.* at 24; *see also* Kirby et al., *supra* note 342, at 339 (noting the critique that work/life scholars have been overly focused on certain groups of people, such as “white, middle class women” and have ignored the experiences of others). Yamada notes that in the “at-will” context, the extent to which an employee voice is heard is minimal and limited to “mak[ing] requests of, or submit[ting] non-binding suggestions to, an employer.” Yamada, *supra* note 31, at 534.

362. Kirby et al., *supra* note 16, at 25.

363. *Id.*

are not brought into the discussion.³⁶⁴ Moreover, although “households that consist of two biological parents and children represent less than a quarter of American families today,”³⁶⁵ the dominant voice emphasizes the traditional family.

To address the shortcomings associated with the boundary, role, rationality, and voice problematics³⁶⁶ typically used to frame work-family relationships, organizational communication scholars studying work-family issues suggest reorienting both the research and practice of work and family by using an empowerment approach.³⁶⁷ An empowerment view is a process-oriented approach to work-family issues, focusing on “discourse as a means to empowerment in negotiating work-family relationships.”³⁶⁸ Empowerment is “the symbolic construction of one’s personal state as characterized by competence, or the skill and ability to act effectively, and control, or the opportunity and authority to act.”³⁶⁹ Accordingly, the focus in work-family research should be on uncovering how one develops a perception “of the ability to exert social influence through communication behavior.”³⁷⁰ Empowered employees are those who have “widely distributed power, open communication, integrative problem solving, participative decision making, an environment of trust, and encouragement of high performance and self-responsibility.”³⁷¹ In sum, an empowerment orientation emphasizes the process of developing an individual identity, creating meaning, and having agency.

An empowerment view of work-family issues reframes the traditional approaches to work and family. First, instead of viewing a boundary as a static, compartmentalizing, and literal physical barrier, the boundary between work and family can be framed as a “continuous process of symbolic management . . . [where w]ork and family are neither specific places nor groups of people, but social contexts”³⁷² With respect to roles, the empowerment perspective pays attention to “processes through which individuals assume role identities includ[ing] appropriating from a diverse common stock of culturally available role-identity definitions and interpersonal negotiations with role partners in the workplace and the homespace.”³⁷³ Thus,

364. *Id.*

365. *Id.* at 26. Kirby and others note that simply using the term “work-family” creates a danger of a “heterosexist discourse.” Kirby, et al., *supra* note 342, at 328.

366. Problematics are defined as “tensions or concerns that inform a particular area of study but often operate in the background.” Kirby et al., *supra* note 16, at 3.

367. *Id.* at 3.

368. *Id.* at 2.

369. *Id.*

370. *Id.* at 4.

371. *Id.*

372. *Id.* at 8-9.

373. *Id.* at 13 (citation omitted); see also Golden, *supra* note 336, at 236 (noting that

according to this perspective, the primary concern for understanding the boundary between work and family and the competing roles within those boundaries is how the spheres of work and family are defined by language, how they shift over time and space,³⁷⁴ and how role management can be seen as not simply the effort to avoid conflict but to gain a “positive accomplishment of personhood”³⁷⁵ within structural constraints and material conditions.³⁷⁶

An empowerment view faults the formulaic work-family policies for failing to recognize “relationships and positive aspects of work-family negotiations.”³⁷⁷ Instead, an empowerment view would create room in those policies to recognize individual wisdom and the power of “practical knowledge” in navigating everyday life³⁷⁸ and to “enact[] different decision-making procedures in organizations,” that would create opportunities for diverse voices in the process.³⁷⁹ This perspective also encourages “question[ing of] power relations and how they developed over time in work-family . . . language,”³⁸⁰ and seeks to develop more “innovative avenues for incorporating voices into policy formation.”³⁸¹

Finally, unlike the other problematics for considering work and family issues, the empowerment approach includes a “communal orientation,” which extends beyond considering the needs of individual workers to examining and remedying the “structural and societal causes”³⁸² of work-family conflict. An empowerment approach advocates “reenvision[ing] the cultural norms and ideologies of our society as a whole”³⁸³ and promoting “participatory decision processes that question current priorities regarding work, family, and community,” as well as developing policies that address individual’s concerns, and “incorporating [more] voices into policy formation.”³⁸⁴

C. Another Vision: The Empowerment Identity Approach and Rethinking School Involvement Leave Legislation

In her writings on work and family regulation, Nancy Dowd argues that “vision” plays an important role in the development of

“[i]dentity, as it relates to work and parenting, is not static”).

374. Kirby et al., *supra* note 16, at 9, 13.

375. *Id.* at 14.

376. *Id.*

377. *Id.* at 18.

378. *Id.* at 19-20.

379. *Id.* at 30 (citation omitted).

380. *Id.* at 23.

381. *Id.* 33.

382. *Id.* 32.

383. *Id.* 33.

384. *Id.*

policies that regulate the intersect of work and family life.³⁸⁵ Accordingly, this section articulates and applies a new, normative vision — a vision of empowerment identity — for crafting and critiquing work-family regulation that can improve the way the work and family relationship is legally structured.³⁸⁶ The empowerment identity approach can help to create a work-family policy that eradicates discriminatory practices and structures associated with the ideal worker standard and create time and opportunity for employees to better manage the relationship between work and family, positive features of the anti-discrimination and accommodation approaches to work-family issues. But, it does more than that; it invokes a paradigm shift³⁸⁷ that focuses on the communicative construction of meaning and agency, where individualized solutions, appropriate for each worker-parent, are preferred over institutionalized ones,³⁸⁸ where worker-parents play a greater role in defining what the workplace policies should be, and where the pluralistic, heterogenous identities of worker-parents are honored and recognized.

Taking an empowerment identity approach to work-family regulation means recognizing that workplaces and workplace regulations are sites (one material and the other symbolic) where individual identities are communicatively and socially constructed and reconstructed. Regulations, then, are discursive resources for enabling worker-parents to construct identities that equip them to individually influence the management of tensions at the intersection of work and family life. As discussed below, three characteristics are distinctive of the empowerment identity approach as applied to work-family regulation: recognizing the complexity of a work-family life and the need for greater accessibility to diverse worker-parent identities; reframing the relationship between work and family as intersecting

385. Dowd, *supra* note 49, at 339 (“[V]ision defines the dialogue and sets the framework of policy. If the vision is limited, then so are the policies that derive from it.”).

386. See Kirby et al., *supra* note 342, at 339 (“[S]cholars in the United States should broaden their understanding of the ways policy issues directly affect issues and experiences of work and life.”). Scholars should look at how “policies and values are enacted locally[,] . . . [to] unveil[] discursive closures, the ways that micropractices cause certain ways of living to seem natural and neutral and in turn preclude alternative possibilities.” *Id.* at 347.

387. Yamada, *supra* note 31, at 567 (“A ‘[p]aradigm shift’ . . . is exactly what we need to reform the substance and procedure of American employment law.”).

388. This type of approach would recognize the conditions of modernity and the new ways of being that come with it. “Social heterogeneity may be a permanent feature of our cultural landscape, and it may be that there will continue to be ‘no right way to behave.’” Golden, *supra* note 336, at 235. In other words, creating an institutionalized structure and process by which a pluralistic workforce can develop individualized and autonomous approaches to work may be the best way to approach modern working conditions.

commitments; and promoting invested worker-parent engagement in the process of managing work-family relationships.³⁸⁹

Although the empowerment perspective originates in the context of organizational communication to empower individuals to resist dominant and disempowering discourses,³⁹⁰ when combined with principles of identity theory, it can be a normative approach for critiquing and crafting empowering macrodiscourses of work-family, such as legislation.³⁹¹ That is, this approach establishes a framework of norms for evaluating how public regulations constrain or empower individual employees to enact an identity consistent with their own understandings of the relationship between work and family, a purpose that has not yet been fully explored in the context of work-family regulation but has been identified as important.³⁹² As such, the approach can provide a way of not only evaluating, understanding, and critiquing work-family discourses, it can provide a framework for developing new regulations that resolve the “workplace/workforce mismatch”³⁹³ and better serve the needs of individual employees, their children, the employers, and their communities by helping to address “the lack of fit between the structure and expectations of U.S. workplaces and the reality of the lives of their workers.”³⁹⁴

An empowerment identity approach is valuable because it leans against³⁹⁵ common understandings of what regulation of the

389. In her work on remedying second generation discrimination by taking a structural approach, Susan Sturm also described a regulatory model that takes into account many of the concepts noted here, including: the need to recognize complexity of work-family relationships, taking a holistic approach to the work-family question, and moving from a rules enforcement perspective to a problem definition and problem solving approach. Susan Sturm, *Second Generation Employment Discrimination: A Structural Approach*, 101 COLUM. L. REV. 458, 462-65 (2001).

390. Kirby et al., *supra* note 16, at 4 (discussing the authors’ intent to consider “how people can communicatively construct empowered positions for themselves”).

391. This view turns upon an understanding that “structures influence how individuals experience and communicate about [work and family issues]” and that “discourse[s] from multiple levels [(interpersonal, organizational, societal)] can impact how individuals ‘manage’ the interrelated realms” of work and family. Kirby et al., *supra* note 342, at 328-29.

392. *Id.* at 339 (noting that “[e]conomic and political contexts have been largely ignored in studying [work and family issues]” and that scholars “should broaden their understanding of the ways policy issues directly affect issues and experiences of work and life”).

393. Williams & Bornstein, *supra* note 7, at 1320.

394. *Id.*

395. In the 1930s, Kenneth Burke, a literary and social critic, recognized that offering perspectives that lean against dominant work discourses have value in and of themselves as aesthetic adjustments to the “cultural code behind our contemporary economic ambitiousness.” KENNETH BURKE, COUNTER-STATEMENT 121-22 (2d ed. 1953). Although Burke was speaking to the shortcomings he saw in turn-of-the-century capitalism and industrialization, his words are equally applicable to current work-family issues.

employment relationship should be.³⁹⁶ That is, instead of seeing the relationship between employer and employee as one of appropriately unequal power, particularly where the relationship is “at-will,”³⁹⁷ an empowerment identity approach can encourage critiquing our conventional understandings of the employee-employer relationship and questioning whether the relationship should be reframed in the modern economy.³⁹⁸ For that reason, an empowerment identity approach can be a foil to dominant discourses and keep “society from becoming too assertively, too hopelessly, itself.”³⁹⁹

In addition, an empowerment identity approach can call attention to the normative possibilities of law in contemporary society and potentially provide a discursive bridge between individual liberalism and communitarian perspectives regarding the legitimacy of regulating the employment relationship.⁴⁰⁰ Although a discussion of the conflict between individual liberalism and communitarian perspectives is outside the scope of this paper,⁴⁰¹ generally, an empowerment identity approach to work-family regulation recognizes that,

396. For a discussion of the traditional “[m]arkets and [m]anagement [f]ramework” of regulating the employment relationship, see Yamada, *supra* note 31, at 526-29.

397. See *id.* at 534-37 (discussing the limitations of at-will employment relationship).

398. For example, in relation to the family, the marketplace is traditionally seen as a public sphere, where individuals enter, voluntarily, to engage in economic activity. In relation to the state, however, the market is a private sphere designed to be free from government intervention. Martha Albertson Fineman, *Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency*, 8 AM. U.J. GENDER SOC. POL’Y & L. 13, 15 n.5 (2000). Thus, in the context where economic activity and family responsibilities conflict, worker-parents are typically seen as navigating a private-private relationship where their family responsibilities are the product of private choice and their employer-employee relationships are the product of private contract. See Eichner, *supra* note 52, at 157-58 (discussing the characterization of both work and family as private spheres that resist regulations). Both of these are, according to liberal individualism, to be free of government regulation. Fineman, *supra*, at 15 n.5. An empowerment identity model can encourage questioning how public and institutional discourses maintain this “private-private” divide and corresponding identities.

399. BURKE, *supra* note 394, at 105.

400. According to the individual liberalism model,

society is composed of a collection of discrete, autonomous individuals engaged in the pursuit of diverse, equally acceptable plans of life. The state’s role in this scheme is to prevent incursions on individuals’ liberty to pursue their individual life plans, rather than to further any particular vision of the good life. Under this view, individuals have no obligations to one another unless they freely consent to them.

Eichner, *supra* note 52, at 151 (describing view). Critics of liberal individualism say that the approach fails in the context of work-family issues because it does not account for the interconnectivity and dependency relationships working parents have with their children. *Id.* at 161. This communitarian viewpoint suggests that parenting policies should emphasize interconnectedness and social responsibility. Fineman, *supra* note 397, at 19.

401. See Eichner, *supra* note 52 for further discussion.

in a society where the obligations of dependency relationships can no longer be realistically assigned exclusively to the private sphere, maximizing the liberty of worker-parents may require greater regulation of the relationship between employers and employees.⁴⁰²

Although perhaps facially paradoxical, regulating work-family relationships from an empowerment identity perspective can be a means of advancing the goals of both liberal individualism and communitarianism. An empowerment identity approach facilitates worker-parents in making authentic choices, exercising free-will, having autonomy, and avoiding “derivative dependency.”⁴⁰³ In addition, it recognizes and supports the interconnectedness workers have with others beyond the workplace and affirms the legal, social, and moral responsibility that parents have to care for their children.⁴⁰⁴ The empowerment identity approach can foster regulation that creates discursive spaces for worker-parents to contemporaneously develop an identity that integrates (rather than bifurcates) autonomy and interconnectedness.

The empowerment identity approach is uniquely grounded in identity theory and organizational communication research and thus provides its own alternative “frame of reference,” thus fulfilling a need that other legal scholars have recognized.⁴⁰⁵ Yet, it shares characteristics with other approaches recently articulated in scholarly legal literature, particularly the “incentivized organizational justice” approach⁴⁰⁶ and the “information-shifting” approach,⁴⁰⁷ these shared traits demonstrate that identity, communicative processes, and employee empowerment are beginning to be recognized within the

402. Seana Shiffrin discusses this theoretical perspective, which she describes as “accommodation,” in her work and from which I have adapted the concept. While I agree with her in idea, I do not agree with her use of the term “accommodation” to express it. See Seana Valentine Shiffrin, *Paternalism, Unconscionability Doctrine, and Accommodation*, 29 PHIL. & PUB. AFF. 205, 236 (2000) (noting that respecting autonomy goes beyond “merely fulfilling autonomy rights,” and “within a complex, interdependent community, respect for autonomy must involve more than mere respect for autonomy rights It must also incorporate some degree of accommodation. . . . That is, citizens should [both] tolerate [and subsidize] some level of burdensome other-regarding behavior.”); see also Eichner, *supra* note 52, at 177 (asserting that parents should define parenting needs as they see fit and receive public support for doing so).

403. “Derivative dependency” is experienced by caregivers where the “major economic and career costs associated with caretaking are typically borne by the caretaker alone.” Fineman, *supra* note 397, at 21.

404. Cf. Eichner, *supra* note 52, at 171 (discussing the need for an approach emphasizing interconnectedness).

405. Arnow-Richman, *supra* note 5, at 28 (recognizing need for alternative frames).

406. *Id.* at 28, 45.

407. Naomi Schoenbaum, *It's Time That You Know: The Shortcomings of Ignorance as Fairness In Employment Law and the Need for an "Information-Shifting" Model*, 30 HARV. J.L. & GENDER 99, 135 (2007).

scholarly legal community as legitimate concepts for envisioning work-family regulation.

Rachel Arnow-Richman has proposed an “incentivized organizational justice” approach to regulate the relationship between work and family.⁴⁰⁸ She suggests that the purpose of work-family regulation should be to create procedures that “encourage proactive personnel practices, in particular employer-administered policies for soliciting and responding to the [accommodation] requests of non-traditional employees.”⁴⁰⁹ Accordingly, she proposes, among other changes, amending the FMLA to require employers to engage in negotiations with workers regarding needed accommodations for a “caregiving-related event” that qualifies under the FMLA.⁴¹⁰ In her model, the law serves as a facilitator of an interactive process between employers and employees that is collaboratively defined by those private actors, that supports voluntary and tailored accommodations, and that will increase the voice of employees in the decision-making process.⁴¹¹

Naomi Schoenbaum’s information-shifting approach to workplace regulation begins with the premise that exclusion of certain kinds of information from the workplace, such as information about a worker’s parenting needs, unfairly masks the identities of individual employees and thus results in unfairness.⁴¹² To correct this unfairness, “employees [need] to have their particular identities and needs recognized,”⁴¹³ and thus information about differences among employees must be legitimated and shared in the workplace. To correct the problem of “ignorance” in the workplace, Schoenbaum suggests that regulations facilitate a genuine dialogue between employees and employers that reveals a “particularized other[.]”⁴¹⁴ This dialogue allows employees to “articulate their own needs in their own voices”⁴¹⁵ and can make the family identities of worker-parents relevant to public discussions and make room for different perspectives in the workplace. With respect to childcare obligations in particular, Schoenbaum asserts that the information-shifting model allows employees to request accommodations based on “what being a parent means to them.”⁴¹⁶

408. Arnow-Richman, *supra* note 5, at 45.

409. *Id.*

410. *Id.* at 56-57.

411. *Id.* 63-64.

412. Schoenbaum, *supra* note 406, at 99-101.

413. *Id.* at 136.

414. *Id.* at 109. Schoenbaum’s work relies on the “discourse ethics” model developed by Jürgen Habermas and further expounded upon by Seyla Benhabib. In that model, fairness is possible only when claims are subjected to “intersubjective argumentation” between a “concrete” and not a “generalized other.” *Id.* at 131-35.

415. *Id.* at 134.

416. *Id.* at 148.

The empowerment identity approach to work-family regulation, as described below in more detail, is similar to these approaches. The empowerment identity approach promotes increased information sharing and dialogue between employers and employees, seeks to promote worker participation in decision-making processes, and creates a foundation for developing concrete solutions to worker-parent issues. Moreover, the approach builds on the information-shifting model by seeking to employ the regulatory structure as a script for authentic, context-relevant information sharing in individual, concrete interactions between worker-parents and employers.

The empowerment identity perspective diverges from both the incentivized organizational justice and information-shifting approaches on the question of accommodation. Both of these approaches frame work-family issues through the lens of accommodation.⁴¹⁷ The empowerment identity approach, however, avoids an accommodation frame so as to not reify the ideal worker standard and over-focus on logistical solutions to work-family tensions.

The empowerment identity approach is characterized by three distinct sensitizing concepts that frame the creation and critique of work-family legislative solutions. First, the approach embraces rather than masks the complexity of worker-parent identities and seeks to emphasize ways to make those identities more accessible. Second, it demands that the relationship between work and family be constructed as points of dynamic intersection rather than as separate, bounded spheres in a static state. Finally, it privileges the process of engaged negotiated problem-solving between employer and employee over traditional relationships of control and reporting.

Applying the empowerment identity approach as a frame of reference demonstrates that although the school involvement leave statutes create conditions where a parent-as-involved-in-school identity is acknowledged in the regulatory language, worker identity is still privileged over parent identity, worker-parent identities are not sufficiently plural, and access to those identities is limited in the regulatory scheme. Moreover, the statutes construct the boundaries between work and family life as rigid and impermeable, focusing more on what activities are allowed and prohibited in each sphere rather than on creating conditions where parents can self-define and integrate an identity as worker-parents. Engagement between worker-parent and employer is limited in that formulas are offered in the statutes as a means for reporting, but a process for negotiating a mutually

417. See *supra* notes 407-15 and accompanying text.

satisfactory leave remains largely undeveloped. Finally, many of the statutes illustrate how employer voice is privileged over that of the worker-parent, thereby diminishing worker-parent motivation to engage in an invested way in negotiating leave.

1. Complexity and Accessibility

Because the workforce has become more pluralistic and other communities are more fragmented, less physical, more virtual, and constantly shifting, work is an increasingly important institution for crafting individual identities.⁴¹⁸ An empowerment identity approach to workplace regulation is suited to the characteristics of the modern workforce and to the increasing importance of the workplace as a site for identity development, because it seeks to address the complexities of and accessibility to worker-identities. Work-family regulations following an empowerment identity approach can create a structure that overtly accounts for, celebrates, and communicates the complexity of worker-parent identities and facilitates self-definition as a worker-parent. In addition, they can ensure that a broad range of workers have access to those identities and the accompanying processes.

Specifically, regulations designed using an empowerment identity approach would enable worker-parents to enact multiple identities rather than reinforce monologic ones. For example, the ideal worker standard, which views ideal workers as free of family demands, requires that worker-parents, by virtue of their hyphenated identity fall outside the “worker” ideal and thus requires accommodation when the parent identity is salient in the workplace. A statute that takes an empowerment identity approach, however, would challenge the current ideal worker norm⁴¹⁹ by recognizing that worker-parents

418. See Golden, *supra* note 336, at 233-34 (describing the impact of technology and social heterogeneity on identity construction); Tracy & Trethewey, *supra* note 306, at 169 (noting that “[s]cholarship increasingly indicates that individuals form their identities based on organizational and workgroups”).

419. The “balanced worker” norm — a workplace norm based on the “assumption that most adults have ongoing caregiving responsibilities” — is one attempt to challenge the ideal worker standard. Williams & Bornstein, *supra* note 7, at 1325. Although Kirby and her colleagues challenge “balance” as a favorable term for the management of the relationship between work and family, Kirby et al., *supra* note 16, at 34 n.1, they would likely agree with Williams’s repositioning of the term as an adjective describing an individual’s state of being — a worker with ongoing caregiving responsibilities — rather than as an abstract noun that suggests that work-family balance exists outside the worker and is a predetermined, static object an individual must obtain as a possession. The use of “balance” as a verb (evoking images of walking with a book on one’s head) would make even greater strides to capture the dynamic, evolving, constantly shifting nature of the relationship between working and parenting.

have multi-faceted, plural, and competing identities, and would avoid overly determinative definitions of worker-parent or accommodation mandates based on parent identities. Such a statute would avoid the problem of categorical distortion by proposing sufficiently open definitions to encompass multiple understandings of what it means to be a worker-parent. In other words, the regulation would recognize the increasing social complexities and uncertainties that accompany working and parenting and make those multiple identities available for discussion. Instead of simplifying the problems associated with that complexity, it would make the complexity visible.

Not only would a regulation enacted using an empowerment identity approach seek to acknowledge the complexity in defining who is a parent, it would also focus on ensuring that the regulatory processes are accessible to all kinds of worker-parents, at all socio-economic levels, and in all types of workplaces, and it would avoid “[p]resumptions of positionality.”⁴²⁰ For example, much of the work-family research has been based on the experiences of upper-income, highly-skilled, heterosexual, married, English-speaking white women in relatively stable workplace environments.⁴²¹ Accordingly, the discursive resources necessary to craft authentic identities as worker-parents for those outside the typically imagined group, such as worker-parents in the low-income, unskilled job market; gay and lesbian worker-parents; non-English speaking worker-parents; worker-parents who are transient workers or work in unstable workplaces; male worker-parents; and worker-parents of non-white ethnic groups can be missing from the work-family regulatory schemes. An empowerment identity approach would result in legislation that is accessible to all types of worker-parents, both as a practical matter and as a matter of creating symbolic spaces that embrace a variety of worker-parent identities and honor different conceptualizations of working and parenting.

In the context of the school involvement leave, many statutes limit the worker-parent who can participate in school activities to the traditional parent or guardian and ignore the role that extended family, friends, or others might have in a child’s educational development. In most states, a custodial relationship is essential to being

420. See Kirby et al., *supra* note 342, at 339 (noting that “[p]resumptions of positionality” make the current discussion of work and family issues a “classist discourse,” which suggests that “certain positions of economic or political privilege” are tied to the ideal resolution of work and family issues).

421. See *id.* at 339 (noting that “work/life scholars have been quick to focus on certain groups of people (specifically White, middle-class women) in their studies while ignoring others” (citation omitted)).

covered under the statute; the child must be a natural, foster, adopted, or stepchild of the worker-parent in order for leave to apply.⁴²² In Washington, D.C., however, aunts, uncles, and grandparents as well as anyone who “acts as a guardian” (but is not legally the guardian) can use the school involvement leave.⁴²³ While this definition is expansive, it is uncommon. For example, even if a child spends more time with a noncustodial grandparent than a custodial parent, and that grandparent would be the person who identifies as the person who would be involved in the child’s education, most of the statutes would not permit the grandparent to take school involvement leave. Additionally, other individuals, whether related or unrelated, may identify as the person who serves as the child’s educational supporter. Yet, most of the statutes do not allow for this type of identification.⁴²⁴

Further, some states exclude new and potentially transient or temporary worker-parents from the scope of the statutes, both of which are groups of parents that could benefit from crafting identities that include greater participation in the educational development of their children. For example, four states that mandate some school involvement leave restrict leave to worker-parents who have worked at a location for a specific length of time ranging from six months to a year.⁴²⁵ Others have specifically excluded independent contractors.⁴²⁶ Colorado, in particular, excludes domestic servants, seasonal workers, and farm laborers.⁴²⁷ As a result, parents who have been in the workforce only for a short time or are temporary or transient workers are excluded from leave statute protection. Implicit in these tenure and type limitations are issues of class, gender, and socioeconomic status. Statistics show temporary and transient workers are often women or minority individuals in low-wage positions.⁴²⁸

These identity limitations are highlighted by attempts in Minnesota in 2007 to expand a worker’s opportunity to participate in a child’s educational activities to a “significant individual,” defined as a person who “reside[s] with the child and participate[s] actively

422. *See supra* Part II.B.2.

423. D.C. CODE § 32-1201(2)(C) (2010).

424. *See supra* Part II.B.2.

425. *See supra* Part II.B.2.

426. Colorado, Illinois, and Minnesota all specifically exclude independent contractors. COLO. REV. STAT. § 8-13.3-102(3)(b) (2009); 820 ILL. COMP. STAT. ANN. 147-10(a)(2) (West 2008); MINN. STAT. § 181.940 subdiv. 2 (2009).

427. § 8-13.3-102(3)(b).

428. *See* U.S. DEP’T OF LABOR, REPORT ON THE AMERICAN WORKFORCE, 19, 24, 41 (1999), available at <http://www.bls.gov/opub/rtaw/pdf/rtaw1999.pdf> (tracking demographics in the American workforce, and noting the fact that “the majority of temporary help workers are women”).

in the child's care and upbringing.”⁴²⁹ Although the proposed statute was more expansive, it still limited the leave to a person who “reside[s]” with the child.⁴³⁰ For example, even with this more expansive definition, a gay partner of a non-custodial biological parent who would like to, and perhaps already does, participate in a child's educational activities, would still not qualify for school involvement leave.

From an empowerment identity perspective, the concept of a “significant individual” is compelling and may be the kind of empowering term that creates space to recognize the modern complexities of parenting and increase accessibility to parenting identities. This term acknowledges that there are relationships of significance between employed individuals and children that do not turn on traditional definitions of parenting. The idea of being a significant individual is empowering; it allows an employee to self-identify his or her own significance in relation to a child's school activity and to request time away from work when those opportunities of significance arise. Moreover, this self-identification process honors the practical wisdom of workers who care for children, in whatever capacity, in understanding the scope of their own relationships with the children in their lives and what is necessary to develop those relationships while at the same time honoring work commitments.

2. *Intersectionality*

Regulations taking an empowerment identity approach would also promote the view that work, family, and other commitments are intersecting, equally important, and neither hierarchically arranged nor in separate spheres. The statutes would recognize autonomy and dependency as coextensive, interconnected states of being rather than as competing and bounded experiences of different worth. They would facilitate opportunities for a worker-parent to self-define how the responsibilities of parenting and work intersect for that worker-parent, taking into account the competing responsibilities of a worker-parent. Additionally, a statute crafted using an empowerment identity perspective would recognize that parenting changes over time. That is, for example, the identity needs of a parent with a young child may be different than the identity needs of the parents of a teenager.

The school involvement leave statutes demonstrate a primarily bounded approach to work and family rather than one based on intersectionality. First, some statutes take a fairly rigid view of the

429. H.B. 744, 85th Leg., Reg. Sess. (Min. 2007).

430. *Id.*

boundaries between work and parent responsibility for school activities by having narrowly limited definitions of what counts as a school activity. In Illinois for example, school activities are physically confined to interactions in a school building and are characterized as only “conferences or classroom activities” that must occur during work hours.⁴³¹ The statute does not take into account other ways school intersects with the parental role, such as during field trips, at sporting events, or when enrolling a child in a school. It does not recognize that, for some parents, the need to devote time to children’s school activities may be at a time when the parent works but school is not in session. For example, for a parent who works the afternoon shift, from 3 P.M. to 11 P.M., guaranteed time away from work to help a child with a special school project is not available because it is not a conference or a classroom activity. Yet, parents’ availability to their children in the evenings and the link to school success has been documented. Research has found that “the more hours parents are away from home after school and in the evening, the more likely their children are to test in the bottom quartile on achievement tests.”⁴³² A statute that takes an empowerment identity approach would recognize that educational stewardship is needed in locations other than in the school itself and would give parents a frame of reference for understanding themselves as participants in their children’s education in multiple settings.

Other states construct an even more rigid boundary around school activities. Hawaii and Texas limit eligible school activity to parent-teacher conferences,⁴³³ and in Colorado, an “academic activity” is limited to a parent-teacher conference or another meeting to deal with a statutorily defined issue, such as special education, truancy, or discipline.⁴³⁴ In these states, presumably, the only cognizable intersection for worker-parents with a school environment is with the teacher or other school administrators. Even though the Colorado statute uniquely reaches children who are homeschooled and thus begins to expand the identity of who needs to attend a child’s activities, the purpose of the leave is still limited to the need for a “meeting[] or conference[]”⁴³⁵ based on narrowly statutorily defined subjects, so it does little to change the boundaries surrounding school activities.

431. 820 ILL. COMP. STAT. ANN. 147/15 (West 2008).

432. HEYMANN, *supra* note 4, at 57.

433. HAW. REV. STAT. ANN. § 78-31 (LexisNexis 2009); TEX. GOV’T CODE ANN. § 661.206(a)-(b) (Vernon 2004).

434. COLO. REV. STAT. § 8-13.3-102(1) (2009).

435. *Id.*

These statutes demonstrate the danger of constructing worker-parent identity around the concept of competing spheres of “face time” — face time, as Kirby and her colleagues note, spent demonstrating loyalty to an employer bounded by face time spent demonstrating loyalty to a school space (i.e., a classroom) or to a school authority (i.e., the teacher).⁴³⁶ In other words, by creating boundaries that emphasize face time, or perhaps “space time,” as the measure of commitment to work and to a child’s education, these statutes script a worker-parent identity that mimics the ideal worker standard that values time in a particular location — at school or with a teacher — over the contribution made in that location.

Other school involvement statutes, on the other hand, create more possibilities for intersection between a worker-parent and school activities by expanding the definition of activity to include a greater variety of places and spaces that could impact a child’s education and placing less emphasis on interactions with an educational authority figure or in a traditional educational space. Washington, D.C., has the best example of this type of expansive statute.⁴³⁷ There, a school activity includes “an[y] activity sponsored by either a school or an associated organization.”⁴³⁸ This definition appears to encompass activities that take place both on and off school grounds, inside and outside of the classroom, directly and indirectly related to traditional learning, and during school and non-school hours. Rhode Island includes “school-related activities”⁴³⁹ in its definition, which suggests that the boundaries of school are also more flexible. So, in Rhode Island, perhaps, it might be possible for a parent who works at night to take time off of work to help a child with a school project since that project is school-related even though the activity for which the parent’s assistance is needed does not take place during school hours.

Interestingly, none of the statutes legitimize a school intersection at the point where a parent needs time from work to facilitate a child’s participation in a non-school-affiliated enrichment activity that enhances a child’s educational and personal development.⁴⁴⁰ For example,

436. See Kirby et al., *supra* note 16, at 5-6 (describing the concept of face time).

437. D.C. CODE § 32-1202 (2010).

438. *Id.* § 32-1201(3).

439. R.I. GEN. LAWS § 28-48-12(a) (2010).

440. The benefits of participating in “after-school” programs, defined as those programs which provide school-aged “children . . . with a range of supervised activities intentionally designed to encourage learning and development outside of the typical school day,” are well-documented as having academic, social, emotional, and health benefits for the children who participate in them. Harvard Family Research Project, *After School Programs in the 21st Century: Their Potential and What It Takes to Achieve It*, 10 ISSUES AND OPPORTUNITIES IN OUT-OF-SCHOOL TIME EVALUATION 1, 2 (Feb. 2008), available at

to participate in after-school activities such as music lessons, art lessons, or sports, children may need a parent to transport them to and from the activity. For families with a full-time stay-at-home parent, this is not an issue. But, for worker-parents and their children, after-school activities not affiliated with the school or taking place off school grounds may be unavailable, both as a practical and a legal matter. That is, because a parent cannot get time from work to take a child to these activities, children may not participate in them. Thus when schools eliminate after school supervised enrichment activities, some children may find enrichment activities virtually unattainable.

The absence of enrichment activities from the statutes is significant as an identity issue. That is, without having enrichment activities reflected in the statute, parents may have no discursive resource to draw upon that would allow their stewardship of enrichment activities to be a legitimate part of their identity in the workplace. For example, without the recognition of enrichment activities in the statutes, a worker-parent of a gifted musician could not discuss with his employer the possibility of taking statutorily available leave to accompany his daughter to a private music lesson or to attend a related recital. Thus, even though it seems practical for a worker-parent to envision himself as a steward for his child's in-school and outside-of-school educational activities, a shortcoming of the statutes is that they do not provide a resource for a parent to adopt such an identity.

Embedded within the enrichment activity issue is an issue of socioeconomic class: "children . . . whose families have higher incomes and more education . . . [a]re more likely to participate in enrichment programs, while their disadvantaged peers . . . [do not] reap[] the benefits associated with enrichment experiences."⁴⁴¹ Accordingly, low income workers' access through regulation to a worker-parent identity that includes involvement in enrichment activities may be crucial to children actually participating in these activities. So, to the extent the benefits of enrichment activities are valued for all children, the school involvement leave statutes can provide discursive resources for empowering parents to identify and participate at this intersection.

3. Promoting Invested Engagement

Regulations taking an empowerment identity approach would create a framework for dialogue that invests a worker-parent in the

<http://www.hfrp.org/publications-resources/browse-our-publications/after-school-programs-in-the-21st-century-their-potential-and-what-it-takes-to-achieve-it>.

441. *Id.* at 6.

process of managing his or her own worker-parent relationships.⁴⁴² As with Arnow-Richman's incentivized organizational justice approach, the empowerment identity approach to regulation would give worker-parents a voice in the decision-making process. They would promote dialogue between worker-parents and employers to negotiate individualized identities, rather than create conditions where worker-parents are expected to report predetermined identities. Instead of enforcement, predictability, and control — all characteristics associated with an “expert rationality” for managing work and family⁴⁴³ — the focus of regulations taking an empowerment identity approach would be to use worker-parent-generated wisdom to solve problems confronting worker-parents. Moreover, the processes for engaging and negotiating would enable invested participation among individuals with a wide range of language, literacy, and advocacy skills. That is, the statutes would focus attention on mechanisms for notifying worker-parents about legislatively available work-family approaches, use multiple languages and content addressed to convey different educational levels for conveying information about these approaches, and give guidance to employees on ways to communicate their work-family needs to employers.

Unlike an accommodation approach to work-family regulations, the goal of regulations taking an empowerment identity approach would not be to focus on describing rules for time and space management of parenting conflicts within the workplace. Instead, the goal would be to create structures that provide resources to worker-parents for exercising individual agency and meaning-making, both of which would facilitate one's ability to manage work and family issues. And with respect to the locus of control, an empowerment identity model would not just preclude employers' discriminatory actions but instead facilitate multiple ways that employers and worker-parents might each exercise control in crafting relationships between work and family.

The existing school involvement leave statutes firmly place the locus of control of identity construction with employers. First, the

442. The empowerment approach to work-family issues requires that employees live up to their own work obligations as well as their family ones, thus expecting employee investment not only in the family but in the workplace. As David Yamada explains in his discussion of the “dignitarian” model of employment law, “[w]orkers who are compensated fairly and treated with dignity have a corresponding obligation to perform their jobs competently and ethically.” Yamada, *supra* note 31, at 552. Moreover, research shows that workplace policies that help employees better manage work and family increase morale, job satisfaction, commitment among the workforce, and productivity. Kirby et al., *supra* note 342, at 336-37.

443. Kirby et al., *supra* note 16, at 17.

statutes contain formulas that emphasize predictability and control over individualized problem-solving approaches. Examples of the formulaic statutory response are found in the requirements that prescribe exact standards for worker-parents in verifying their whereabouts. For example, in Illinois, employees are required to submit verification of "exact time and date" of visit to school.⁴⁴⁴ In Massachusetts, a certification that gives the date, duration, and purpose of the leave can be requested, and an employer can ask for even more verification if that verification is not unduly burdensome.⁴⁴⁵ These formulas privilege reporting and control over discussion and participatory problem-solving by encouraging formal communication patterns that are disciplined by universalized requirements rather than encouraging particularized and open communication between employers and worker-parents in specific situations. This type of formalized reporting requires that school activities be limited to the kinds of activities that can be supervised by the school, such as classroom activities and parent-teacher conferences, so that the worker-parent's attendance can be reported. Accordingly, the reporting requirements suggest a lack of trustworthiness on the part of the worker-parent,⁴⁴⁶ an attribute which does not encourage positive, invested, and engaged problem-solving activity on the part of either the employee or the employer.

Second, the statutes favor a managerial voice over an employee one. The managerial voice in some statutes is expressed in the way the employer's interests trumps the employee's interests in the event of an irreconcilable conflict. For example, in the Washington, D.C., statute, an employer can deny leave if it "would disrupt the employer's business and make the achievement of production or service delivery unusually difficult."⁴⁴⁷ Similarly, in Illinois, employers are not required to give employees school involvement leave if doing so would result in more than five percent of the workforce taking involvement leave on the same day.⁴⁴⁸ In California, employers can deny leave to parents in the workplace who want to take leave simul-

444. 820 ILL. COMP. STAT. ANN. 147/30 (West 2008).

445. 940 MASS. REG. CODE 20.02 (sufficient certification), 20.04 (additional verification) (2009).

446. Skepticism about the commitment and ethic of the worker is not new. Yamada notes that need for time and motion studies proposed by Frederick Taylor in the early twentieth century were based in part upon the need for standards so that worker could not "manipulate their jobs and connive to set output levels far below their actual capacity." Yamada, *supra* note 31, at 527-28; *see also* Davis, *supra* note 18, at 542-43 (noting concerns by employers that employees abuse the FMLA).

447. D.C. CODE § 32-1202(c) (2010).

448. 820 ILL. COMP. STAT. ANN. 147/49 (West 2008).

taneously.⁴⁴⁹ In Minnesota and Rhode Island, the worker-parent must make reasonable attempts not to “disrupt unduly” the employer’s business operations.⁴⁵⁰

These statutes do not articulate a process for taking into account additional considerations when an employer’s legitimate interest and others’ legitimate interests, including the interests of schools and children, come into conflict with the employer’s interest. For example, if five of an employer’s one hundred employees seek school involvement leave in Illinois on the same day, the employer can deny the leave to those five employees, regardless of the importance of the school activity, the relative needs of the worker-parents, or the ability of the workplace to successfully function while these parents are away from work.⁴⁵¹ This statute, like all the others, has no language available to account for a worker-parent’s wellness or mental health, a child’s individual needs, or the needs of the school as factors in the decision-making process. By privileging the employer perspective in the statute in this way, the participation of worker-parents in problem solving and decision making is limited. This limitation can make it even more difficult for a worker-parent to see herself as an invested participant in crafting an identity that can effectively combine work and parenting.

Some of the statutes do more to empower employees to participate in the decision-making process. Illinois, for example, requires that employees “consult” with their employer to make sure that leave does not “disrupt unduly” the employer’s operations.⁴⁵² The word “consult” in the statute connotes a negotiating rather than a reporting activity, which suggests employee participation in the process. Moreover, in Illinois, a worker-parent has the right to make up work hours missed for school involvement activities, and employers must make good faith efforts to enable the worker-parent to make up that work.⁴⁵³ Colorado takes a similar approach to substituting paid leave and making up missed work.⁴⁵⁴ Again, these provisions structure an environment where an employee can adopt an identity that encompasses both a responsibility to a child’s education and a certain amount autonomy and responsibility for managing that commitment in conjunction with work obligations. Although these provisions still speak with an economic voice that privileges the employer’s interests and

449. CAL. LAB. CODE § 230.8(a)(2) (West 2010).

450. MINN. STAT. § 181.9412 subdiv. 2 (2009); R.I. GEN. LAWS § 28-48-12(b) (2010).

451. See *supra* text accompanying note 444.

452. 147/15(a).

453. *Id.* 147/20.

454. COLO. REV. STAT. § 8-13.3-103(1)(a) (2009).

fails to include non-economic factors (such as employee wellness, for example) in the equation, they provide examples of regulatory spaces where consultation and negotiation between employers and worker-parents can happen and demonstrate how regulatory language can go further to empower worker-parents.

CONCLUSION

Issues related to work and family are not going to ebb any time soon. In fact, in light of the economic downturn, the continuing increase of dual-earner and single-parent households, and the increasing diversity of worker-parent backgrounds, experiences, and expectations, these issues are more acute than ever and call for more innovative⁴⁵⁵ legal approaches. One response is to continue to envision work-family legislation as a way to accommodate the legitimate needs of worker-parents or as a way to protect worker-parents from unacceptable discriminatory practices. While these approaches both have merit, neither facilitates the development of worker-parent identities that challenge the prevailing narratives of work and family and are consistent with today's working realities. One way forward on work-family issues in the legal context, it seems, is to have legislation that creates ways for worker-parents to develop integrated identities and for workplaces to recognize the legitimacy of those identities. An empowerment identity approach provides a framework for making this legislative turn.

In the context of school involvement leave statutes, the question remains how to craft statutes, or perhaps a model statute, that would meet the identity needs associated with modern conditions of working and parenting. While that project is one for the future, however, at minimum an empowerment identity approach to school involvement leave legislation suggests three possibilities for improving the statutory language.

First, definitions within the statutes could be expanded to give employees more discursive resources for crafting an identity as a

455. Innovative does not necessarily mean "something new under the sun." BURKE, *supra* note 394, at 110. Rather, an innovation can be "an emphasis to which the contemporary public is not accustomed." *Id.* "Any 'transvaluation of values' [can be] an innovation," even if it harkens back to earlier values. *Id.* An emphasis on the connections between, rather than the separation of, work and family is not particularly novel; connection between the two was the state of affairs that dominated agrarian living and preceded the cult of domesticity and the industrial revolution. WILLIAMS, *supra* note 2, at 20-21. Re-emphasizing and rethinking those connections is the emphasis here.

worker-parent. The statutes could offer more open definitions for “parent”⁴⁵⁶ or “child” and could also expand the types of activities that merit school involvement leave. The statutes could also acknowledge that the types of involvement worker-parents need could change over the course of a child’s educational development and provide for ways of negotiating those changes.

Second, emphasis could be removed from reporting and compliance and instead be placed on accessibility and negotiation. Formal reporting requirements could be eliminated, and instead guidelines about how employers and worker-parents could communicate with one another in negotiating and taking leave could be offered. The idea of legislatively creating structures and processes for a negotiating flexibility for parenting responsibilities is already recognized: it is expressed in “right to request” laws already enacted in Europe⁴⁵⁷ and proposed in New Hampshire.⁴⁵⁸ Moreover, to make the processes for communication and negotiation accessible to all worker-parents regardless of skill or ability in negotiating, legislation could describe ways to facilitate interactions that lead to positive outcomes for both worker-parents and employers. For example, a code of ethics⁴⁵⁹ for negotiations could be established in addition to a description of the steps for consideration, reconsideration, and appeal of a request to take school involvement leave. Developing such a code and educating both worker-parents and employers could have a significant impact on how the statutes are used to accomplish individualized identities, perhaps allow greater leave access by parents whose children could benefit the most from it, and at the same time ensure that the employer’s interest in a productive workforce is maintained.⁴⁶⁰

456. For a discussion of expanding legally cognizable caregivers beyond the traditional parent, see Melissa Murray, *The Networked Family: Reframing the Legal Understanding of Caregiving and Caregivers*, 94 VA. L. REV. 385, 387-88 (2008).

457. For example, in the United Kingdom, certain employees with children have a statutorily protected right to ask for changes in work hours, times, and location of work when the purpose is for caregiving. JODIE LEVIN-EPSTEIN, CTR. FOR LAW & SOC. POLICY, HOW TO EXERCISE FLEXIBLE WORK: TAKE STEPS WITH A “SOFT TOUCH” LAW 2-3 (2005) (describing statute and its impact); Directgov, Flexible Working and Work-Life Balance, <http://www.direct.gov.uk/en/Employment/Employees/Flexibleworking/index.htm> (follow “The Right to Request Flexible Working” hyperlink) (last visited Feb. 8, 2010) (describing the right to request law).

458. H.B. 663, 161st Gen. Ct., Reg. Sess. (N.H. 2009) (creating a process for employees to request flexible work schedules).

459. See Davis, *supra* note 18, at 554 (calling for a code of ethics that “might require mutual respect, honesty, candor, and the pursuit of harmony” in dealing with work-family issues).

460. *Id.* at 552 (noting that “‘facilitating transitions’ between work and family [could] increase the level of performance and productivity in both settings”); see also JODY HEYMANN & ALISON EARLE, RAISING THE GLOBAL FLOOR: DISMANTLING THE MYTH THAT

Finally, providing mechanisms for increasing worker-parent involvement in setting school involvement leave policies and creating mechanisms for reconciliation in the statutory language itself could facilitate the kind of identity development that an empowerment identity approach favors. Two possibilities for increasing authentic worker-parent personhood in the workplace⁴⁶¹ include requiring committees within organizations that have both employers and employees as members to create and evaluate school involvement leave policies, and providing for internal or external "ombudsmen"⁴⁶² to facilitate resolutions.

Rhetorically reframing the issue of whether and how to regulate the relationship between work and family is a project that interested scholars should pursue with vigor as questions about the continued viability and effectiveness of the antidiscrimination and accommodation approaches emerge. For example, Justice Scalia's recent concurring opinion in *Ricci v. DeStefano*,⁴⁶³ calls into question the viability of aspects of the antidiscrimination approach by questioning whether Title VII's disparate impact theory would withstand future (and assertedly unavoidable) constitutional scrutiny.⁴⁶⁴ Along with Arnow-Richman's incentivized organizational justice and Schoenbaum's information shifting approaches, the empowerment identity approach provides a rhetorical reframing as well as an alternative foundation for both critiquing existing and crafting new legislation. These views, when taken together, call for more attention to be paid to how regulatory language encourages cooperation, communication, transparency, decision-making processes, information-shifting, and self-responsibility. They call for more voices to be heard in the legislative language.

WE CAN'T AFFORD GOOD WORKING CONDITIONS FOR EVERYONE 64-68 (2010) (describing research which shows that "allowing employees to work a decent number of hours and giving them the time they need to care for their own health and that of their families enables them to be more productive at work" and increases retention).

461. Increasing worker voice in the discussion of workplace policies is important; "workers' voices have been systematically excluded from public discourse about the present and future [of the] American workplace." George Cheney, *Democracy in the Workplace: Theory and Practice from the Perspective of Communication*, 23 J. APPLIED COMM. RES. 167, 168 (1995).

462. See Sturm, *supra* note 388, at 524, 564 (noting importance of "intermediaries" in solving issues of workplace discrimination and noting need for individuals like ombudsmen to be individual change agents).

463. 557 U.S. ___, 129 S. Ct. 2658, 2681-84 (2009) (Scalia, J., concurring) (questioning the constitutionality of race-based disparate impact claims under the equal protection clause of the U.S. Constitution).

464. In that opinion, Scalia questions whether the disparate impact provisions are "consistent with the Constitution's guarantee of equal protection" and notes that the "war between disparate impact and equal protection will be waged sooner or later." *Id.* at 2682-83.

They recognize that legal language should reflect the complexities of the modern economy, flatten hierarchies, and promote positive social transformation. They demonstrate that the unique identities of worker-parents should be recognized and that the connections between autonomy and dependence should be not only acknowledged, but celebrated.

APPENDIX

STATE-BY-STATE OVERVIEW OF THE MAJOR CHARACTERISTICS OF
STATE STATUTES THAT REQUIRE SCHOOL INVOLVEMENT LEAVE

State	Paid or Unpaid?	Amount of Leave?	Who counts as a "parent"?	Who counts as a "child"?
California; Cal. Labor Code § 230.7 (disciplinary leave)	Not addressed	Not addressed	Any "parent or guardian of a pupil" ⁴⁶⁵	A pupil suspended for statutorily defined behavior ⁴⁶⁶
California; Cal. Labor Code § 230.8 (activities leave)	Unpaid ⁴⁶⁷	8 hours each month, but no more than 40 per year ⁴⁶⁸	A "parent, guardian or grandparent having custody" of a child and working for an employer with 25 or more employees at a single location ⁴⁶⁹	Children in licensed child care facilities or in public or private schools, grades K through 12 ⁴⁷⁰

465. CAL. LAB. CODE § 230.7(a) (West 2010).

466. *Id.*; CAL. EDUC. CODE § 48900.1(a) (West 2010) ; *see also* § 48900 (outlining the statutorily defined behavior).

467. CAL. LAB. CODE § 230.8(b)(1) (West 2010).

468. *Id.* § 230.8(a)(1).

469. *Id.*

470. *Id.*

State	What counts as a “school activity”?	What limitations can an employer impose?	What are the notice or documentation requirements?	What are the school’s obligations?
CA § 230.7	When requested by a school teacher who has suspended the pupil ⁴⁷¹	Not addressed	Employee must give “reasonable notice” ⁴⁷²	Take into account “reasonable factors that may prevent” a parent from attending ⁴⁷³
CA § 230.8	“activities of the school or . . . child day care facility of any of his or her children.” ⁴⁷⁴	Employers can refuse to allow parents of the same child working at same workplace to take leave simultaneously ⁴⁷⁵	Employees must give “reasonable notice”; employer can require employee to provide documentation of attendance, as deemed “appropriate and reasonable” by the school ⁴⁷⁶	Give documentation of attendance ⁴⁷⁷

471. § 230.7(a).

472. *Id.*

473. CAL. EDUC. CODE § 48900.1(a) (West 2010).

474. CAL. LAB. CODE § 230.8(a)(1) (West 2010).

475. *Id.* § 230.8(a)(2).

476. *Id.* § 230.8(a)(1), (c).

477. *Id.* § 230.8(c).

State	Paid or Unpaid?	Amount of Leave?	Who counts as a "parent"?	Who counts as a "child"?
Colorado	Unpaid ⁴⁷⁸	Up to 18 hours per year; no more than 6 hours per month (part-time employees to a portion) ⁴⁷⁹	A person who is in a "nonexecutive or nonsupervisory capacity [AND] who is the parent or legal guardian of a child" AND who is not an independent contractor, domestic servant, seasonal worker, or farm laborer, AND who is working for an employer as defined by the FMLA. ⁴⁸⁰	Child in K to 12 public, private, or home-based school ⁴⁸¹

478. COLO. REV. STAT. § 8-13.3-103(5) (2009).

479. *Id.* § 8-13.3-103(1).

480. *Id.* § 8-13.3-102(3)-(4); Family and Medical Leave Act of 1993, 29 U.S.C. § 2611(4)(A) (2006).

481. § 8-13.3-102(3)(a).

State	What counts as a “school activity”?	What limitations can an employer impose?	What are the notice or documentation requirements?	What are the school’s obligations?
CO	<p>“Academic activity”: “parent teacher conference” or “meeting[s] related to” statutorily defined topics including special education, intervention, “dropout prevention[,] attendance[,] truancy[,] or disciplinary issues”⁴⁸²</p>	<p>May limit leave to “no longer than three hour increments;” may limit leave “in cases of emergency,” or “situations that may endanger a person’s health or safety” or where employee absence would “halt . . . service or production”; may refuse additional leave under statute if already providing leave that could be used for this purpose; may agree with employee to take paid leave and work hours of paid leave during same week.</p> <p>Employee is to make “reasonable attempt” to schedule activities outside work hours.⁴⁸³</p>	<p>Notice given one week in advance, including written verification from school, if required; if emergency, notice given “as soon as possible” with written verification upon return to work⁴⁸⁴</p>	<p>Give written verification of “academic activity”; “make best efforts to accommodate the schedules of employees”⁴⁸⁵</p>

482. COLO. REV. STAT. § 8-13.3-102(1) (2009).

483. *Id.* § 8-13.3-103(1)(a), (1)(c)-(3), (7)(a).

484. *Id.* § 8-13.3-103(4).

485. *Id.* § 8-13.3-103(3)-(4).

State	Paid or Unpaid?	Amount of Leave?	Who counts as a "parent"?	Who counts as a "child"?
District of Columbia	Unpaid ⁴⁸⁶	24 hours per year ⁴⁸⁷	Natural parents and individuals who have legal custody or who act as guardians, aunts, uncles, grandparents; and anyone married to any of these ⁴⁸⁸	Not addressed
Hawaii	Paid ⁴⁸⁹	2 hours each for 2 conferences per child each year; travel time included ⁴⁹⁰	State employees ⁴⁹¹	Child in licensed day care facility or grades K through 12, public or private ⁴⁹²

486. D.C. CODE § 32-1202(d) (2010).

487. *Id.* § 32-1202(a).

488. *Id.* § 32-1201(2).

489. HAW. REV. STAT. ANN. § 78-31 (LexisNexis 2009).

490. *Id.*

491. *Id.*

492. *Id.*

State	What counts as a “school activity”?	What limitations can an employer impose?	What are the notice or documentation requirements?	What are the school’s obligations?
DC	“an[y] activity sponsored by either a school or an associated organization” including student performances but not when child is spectator ⁴⁹³	Can deny if disrupts employer’s business, makes production or service “unusually difficult” ⁴⁹⁴	Ten days’ advance notice if reasonably foreseen ⁴⁹⁵	Not addressed
HI	Parent-teacher conferences ⁴⁹⁶	Can deny if it will “adversely interfere” with work or require additional costs ⁴⁹⁷	Not addressed	Not addressed

493. D.C. CODE § 32-1201(3) (2010).

494. *Id.* § 32-1202(c).

495. *Id.* § 32-1202(e).

496. HAW. REV. STAT. ANN. § 78-31 (LexisNexis 2009).

497. *Id.*

State	Paid or Unpaid?	Amount of Leave?	Who counts as a "parent"?	Who counts as a "child"?
Illinois	Unpaid ⁴⁹⁸	8 hours per year; no more than 4 hours per day ⁴⁹⁹	Employees who have worked at least 6 months part-time for an employer with 50 or more employees; independent contractors excluded ⁵⁰⁰	A student enrolled in primary or secondary public or private school in Illinois or in a state that borders Illinois, who is a biological, adopted, foster, step-child, or legal ward of employee ⁵⁰¹
Massachusetts	Unpaid ⁵⁰²	24 hours per year (time encompasses additional activities, such as taking a child to a doctor's appointment) ⁵⁰³	Employees as defined by FMLA: employees who have worked at least 1250 hours in the last year for an employer with 50 or more employees in a 75-mile radius ⁵⁰⁴	As defined by FMLA: "a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is (A) under 18 years of age; or (B) 18 years of age or older" and incapacitated ⁵⁰⁵

498. 820 ILL. COMP. STAT. ANN. 147/15(b) (West 2008).

499. *Id.* 147/15(a).

500. *Id.* 147/10(a), 147/40.

501. *Id.* 147/10(c).

502. MASS. GEN. LAWS ANN. ch. 149, § 52D(c) (West Supp. 2009).

503. *Id.* § 52D(b).

504. *Id.* § 52D(a) (adopting the definition from the Family and Medical Leave Act of 1993, 29 U.S.C. § 2611(2) (2006)).

505. *Id.* § 52D(a) (adopting the definition from 29 U.S.C. § 2611(12)).

State	What counts as a “school activity”?	What limitations can an employer impose?	What are the notice or documentation requirements?	What are the school’s obligations?
IL	“school conferences or classroom activities related to the employee’s child” if they “cannot be scheduled during nonwork hours” ⁵⁰⁶	Employee must consult with employer to make sure leave does not unduly disrupt operations; employer can deny if more than 5% of workforce would take visit at same time; employer must make “good faith effort” to allow employee to make up work ⁵⁰⁷	7-day advance written request before arrangements are made; if emergency, no more than 24-hour notice can be required; must submit verification of the “exact time and date” of visit ⁵⁰⁸	Must have regular school hours and evening hours for visits if not emergency; must notify parents of school visitation rights ⁵⁰⁹
MA	“school activities directly related to the educational advancement . . . such as parent-teacher conferences or interviewing for a new school” ⁵¹⁰	Not addressed	7 days’ advance notice of foreseeable leave; “practicable” notice otherwise; “certification” can be requested ⁵¹¹	Not addressed

506. 820 ILL. COMP. STAT. ANN. 147/15(a) (West 2008).

507. *Id.* 147/15(a), 147/20, 147/49.

508. *Id.* 147/15(a), 147/30.

509. *Id.* 147/15(c), 147/25.

510. MASS. GEN. LAWS ANN. ch. 149, § 52D(b)(1) (West Supp. 2009).

511. *Id.* § 52D(d)-(e).

State	Paid or Unpaid?	Amount of Leave?	Who counts as a "parent"?	Who counts as a "child"?
Minnesota	Unpaid ⁵¹²	16 hours per year ⁵¹³	All employees who have worked at least part-time for employer; independent contractors not eligible ⁵¹⁴	Individual under 18 or under 20 and still attending secondary school ⁵¹⁵
Nevada (requested conference or emergency)	Not addressed	Not addressed	Any employee who is a "parent, guardian or custodian of a child" ⁵¹⁶	Child who has an emergency or upon request of private or public school administrator for a conference ⁵¹⁷
Nevada (activities leave)	Unpaid ⁵¹⁸	4 hours per school year for each child enrolled in public or private school ⁵¹⁹	Any employee who is "parent, guardian, or custodian of a child" and is working for an employer who "has 50 or more employees for each working day in each of 20 or more calendar weeks in the current calendar year" ⁵²⁰	Child enrolled in public or private school ⁵²¹

512. MINN. STAT. § 181.9412 subdiv. 3 (2009).

513. *Id.* § 181.9412 subdiv. 2.

514. *Id.* § 181.9412 subdiv. 2; § 181.9412 subdiv. 1 (limiting the application of the statutory definition of employee for the purposes of school involvement leave).

515. *Id.* § 181.940 subdiv. 4.

516. Act effective Aug. 15, 2009, ch. 292, 2009 Nev. Stat. 1246, 1249.

517. *Id.*

518. *Id.* § 1.

519. *Id.*

520. *Id.*

521. *Id.* §§ 1, 4.

State	What counts as a “school activity”?	What limitations can an employer impose?	What are the notice or documentation requirements?	What are the school’s obligations?
MN	“school conferences or school-related activities related to the employee’s child” that “cannot be scheduled during nonwork hours” ⁵²²	Employee must make “reasonable” attempts not to “disrupt unduly the operations of the employer” ⁵²³	If foreseeable, “reasonable” notice ⁵²⁴	Not addressed
NV (req. conf./ emerg.)	Requested school conference or emergency ⁵²⁵	Not addressed	Not addressed	Not addressed
NV (act. leave)	“Parent-teacher conferences, . . . school related activities during regular school hours,” to be involved at the school during regular school hours, “school sponsored events” ⁵²⁶	Increments of 1 hour minimum; written request from employee 5 days in advance; leave at a time mutually agreed upon between employee and employer ⁵²⁷	Provide documentation that “during the time of the leave, the employee attended or was otherwise involved at the school or school-related activity” for statutory purpose ⁵²⁸	Not addressed

522. MINN. STAT. § 181.9412 subdiv. 2 (2009).

523. *Id.*

524. *Id.*

525. Act effective Aug. 15, 2009, ch. 292, 2009 Nev. Stat. 1246, 1249.

526. *Id.* § 1.

527. *Id.*

528. *Id.*

State	Paid or Unpaid?	Amount of Leave?	Who counts as a "parent"?	Who counts as a "child"?
North Carolina	Unpaid ⁵²⁹	4 hours per year ⁵³⁰	"[a]ny employee who is parent, guardian, or person standing in loco parentis" ⁵³¹	"school aged" ⁵³²
Rhode Island	Unpaid ⁵³³	10 hours per year ⁵³⁴	Any employee who has been working 30 hours per week for a year for a private employer of 50 or more, or the state ⁵³⁵	Child of a "parent, foster parent, or guardian" ⁵³⁶
Tennessee	Not addressed	1 day per month ⁵³⁷	State employees ⁵³⁸	"children enrolled in schools" ⁵³⁹

529. N.C. GEN. STAT. § 95-28.3(b) (2009).

530. *Id.* § 95-28.3(a).

531. *Id.*

532. *Id.*

533. R.I. GEN. LAWS § 28-48-12(c) (2010).

534. *Id.* § 28-48-12(a).

535. *Id.* §§ 28-48-1(2)-(3), 28-48-12(a).

536. *Id.* § 28-48-12(a).

537. TENN. CODE ANN. § 49-6-7001(b)(5) (2009).

538. *Id.*

539. *Id.*

State	What counts as a “school activity”?	What limitations can an employer impose?	What are the notice or documentation requirements?	What are the school’s obligations?
NC	For the purpose of being “involved” in child’s school ⁵⁴⁰	Time must be mutually agreed upon ⁵⁴¹	Employer may require 48 hours’ advanced notice; employer may request verification ⁵⁴²	Not addressed
RI	“school conferences or other school-related activities” ⁵⁴³	Employee must make reasonable effort not to unduly disrupt employer’s business ⁵⁴⁴	Not addressed	Not addressed
TN	Activities related to the “educational and teaching process” that “enables the parent to more fully observe and understand the school, the faculty, the students and the educational and teaching activities” ⁵⁴⁵	Department or “immediate supervisor” must approve leave ⁵⁴⁶	Not addressed	School shall provide documentation verifying participation if employee requests ⁵⁴⁷

540. N.C. GEN. STAT. § 95-28.3(a) (2009).

541. *Id.* § 95-28.3(a)(1).

542. *Id.* § 95-28.3(a)(2).

543. R.I. GEN. LAWS § 28-48-12(a) (2010).

544. *Id.* § 28-48-12(b).

545. TENN. CODE ANN. § 49-6-7001(b)(1)-(2) (2009).

546. *Id.* § 49-6-7001(b)(5).

547. *Id.*

State	Paid or Unpaid?	Amount of Leave?	Who counts as a "parent"?	Who counts as a "child"?
Texas	Paid (through use of sick leave) ⁵⁴⁸	8 hours per year ⁵⁴⁹	State employees only ⁵⁵⁰	"child who is a student attending a grade from prekindergarten through 12th grade" ⁵⁵¹
Vermont	Unpaid ⁵⁵²	24 hours per year (time encompasses additional activities, such as taking a child to a doctor's appointment) ⁵⁵³	Any employee who works an average of thirty hours a week a year for an employer with 15 or more full-time employees ⁵⁵⁴	"employee's child, stepchild, foster child or ward who lives with the employee" ⁵⁵⁵

548. TEX. GOV'T CODE ANN. § 661.206 (Vernon 2004).

549. *Id.* § 661.206(b).

550. *Id.* § 661.201, .206.

551. *Id.* § 661.206(a).

552. VT. STAT. ANN. tit. 21, § 472a(a) (2010).

553. *Id.*

554. *Id.* § 471(3).

555. *Id.* § 472a(a)(1).

State	What counts as a “school activity”?	What limitations can an employer impose?	What are the notice or documentation requirements?	What are the school’s obligations?
TX	Parent- teacher conferences ⁵⁵⁶	Not addressed	Required to give advance notice ⁵⁵⁷	Not addressed
VT	“preschool or school activities directly related to the academic educational advancement . . . such as parent- teacher conference” ⁵⁵⁸	Can require no less than 2-hour increments; employees must make a “reasonable attempt” to schedule during nonwork hours ⁵⁵⁹	7 days’ notice, except in emergency ⁵⁶⁰	Not addressed

556. TEX. GOV’T CODE ANN. § 661.206(b) (Vernon 2004).

557. *Id.* § 661.206(c).

558. VT. STAT. ANN. tit. 21, § 472a(a)(1) (2010).

559. *Id.* § 472a(a)-(b).

560. *Id.* § 472a(b).