

# ONE SICK CHILD AWAY FROM BEING FIRED:

*When “Opting Out” Is Not an Option*



## WORK LIFE LAW

UC Hastings College of the Law

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

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Distinguished Professor of Law and  
Founding Director, Center for WorkLife Law  
University of California, Hastings College of the Law

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

## OVERVIEW

(full report available at [www.worklifelaw.org](http://www.worklifelaw.org))

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

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

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

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

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

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

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

When family crises strike, these families do not have the resources to hire help or seek out professional care for needy or troubled family members. A flood of cases involve phone company workers fired for monitoring their own telephones in a dazzling array of family crises that range from drug-dealing teenagers, to suicide threats, to asthmatic children left home alone, to elders in danger in poor neighborhoods and suffering from dementia.<sup>x</sup> An important right these families lack is one that professional

workers take for granted: to make a phone call, especially in the summer, when one in ten children aged six- to 12-years-old is home alone or with a sibling under age 13.<sup>xi</sup>

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

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

Overtime also poses problems for “tag team” families where dad and mom work opposite shifts and each care for the kids when the other is at work. Tag teaming makes the design of overtime systems a major work/family issue. In *U.S. Steel Corp.*,<sup>xv</sup> a factory worker stated that when his regular babysitter was sick, he – rather than his wife – took off work because his wife’s employer had a stricter absenteeism policy; he was suspended for fifteen days for an unexcused absence. While his frankness was unusual, the problem is widespread.

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

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

But I lost track of time. . . . My intention was [to be] there for my family but not to steal time, as I was accused of.<sup>xvii</sup>

He pointed to his two years of service, and said “I’ve always given the best of my ability to get the job done. . . . Taking away my job from me has put my family in a financial hardship. I cannot survive with having two babies. And my wife being out of work. I deeply regret for what I’ve done, but I need my job back.” He was fired.

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

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

Unions should use their ability to protect workers who need to fulfill their family responsibilities as a valuable organizing tool.

5) *Employers’ inflexibility may well defeat their own business needs.* The business case for family-responsive policies, almost always framed in terms of the need to retain highly trained professionals, may be even more pressing in the working-class context. The business case for family-responsive policies in the working-class context includes: improved quality and consumer safety; improved worker engagement and commitment, which has a direct link to profits; enhanced customer service and productivity; reduced stress, which drives down health insurance costs; cost savings due



to enhanced recruitment and decreased turnover and absenteeism; and avoiding a loss of employer control in unionized workplaces. One example of the business case is an arbitration in which a quality control technician was required to report for work despite the fact that the hospital had instructed him that his wife, who had just had a miscarriage, should not be alone for the first 24 hours. The technician, who was 56-years-old and had 15 years of seniority, became rattled when he called home and his wife did not answer the phone. He was fired after he failed to properly inspect carton seals but signed inspection forms saying he had done so.<sup>xix</sup>

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

These arbitrations help explain why nearly one-third of all unionized employees surveyed – men as well as women – said that their biggest work-related concern was not having enough time for family and personal life.<sup>xx</sup> And in one recent union survey, local presidents representing 75,000 workers said they believed work/family conflict was as bad or worse than five years ago.<sup>xxi</sup> These workers are the lucky ones: all except the UPS driver saw their discipline reduced or dismissals overturned when their union filed a grievance. The 92% of American workers who are not unionized have no appeal. Their fate is dramatized by two incidents from California.

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

Grievances are an aspect of union life unfamiliar to most Americans. Not much background is needed. In a unionized workplace, when a worker is disciplined or fired, the union may file a grievance on the worker's behalf, arguing that the employer lacked just cause. If attempts to negotiate a settlement are unsuccessful, the case goes to

arbitration. Most arbitrations are not public: this study reports on arbitrations that either were published, or were made available to us through unpublished databases.

This report is a follow-up to the Center for WorkLife Law's initial report, *Work/Family Conflict, Union Style*, written by Martin H. Malin, Maureen K. Milligan, Mary C. Still & Joan C. Williams and published on the web in 2004.<sup>xxii</sup> Since then, we have found additional published arbitrations, and also have gained access to the arbitrations of three unions that generously made their databases available to us: the Communication Workers of America (CWA), the Amalgamated Transit Union (ATU), and the Teamsters (UPS database only). (We are currently seeking access to other arbitration databases; please contact the author!)

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

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

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

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

*For the press*, the report raises the question of whether work/family conflict should continue to be reported chiefly as a problem faced by professional women. This approach is understandable, given the hydraulic work/family pressures often experienced by reporters and editors. In this situation, however, the reporter's adage that a trend is something that has happened to three of an editor's friends has several undesirable effects. First, it misrepresents the face of an important economic issue. The press would never cover unemployment by interviewing a handful of Yale students or a few laid-off friends from Princeton.<sup>xxiii</sup> Yet that's how it typically covers work/family conflict, which also involves a major economic issue: in an era when 70% of households have all adults in the labor force<sup>xxiv</sup>, workplaces still often assume an ideal worker without child or other family care issues. In addition – and most important – the press's overly autobiographical approach to covering work/family conflict has a negative impact on public policy.

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

*For unions*, this report points out that many workers either are single parents or "tag team" (where dad and mom work opposite shifts and each care for the kids when the

other is at work). American dual-earner couples work far longer hours than do workers in any other industrialized country,<sup>xxv</sup> which is why surveys report that nearly one-third of unionized employees state that their biggest work-related concern is not having enough time for family and personal life.<sup>xxvi</sup> In fact, work/family conflict often places workers at risk: working class families typically do caregiving work themselves because they cannot afford to buy the kind of high-quality replacement care professionals depend upon. An important message for a union movement newly focused on organizing is that, without contract protection, many workers are one sick child away from being fired. A key potential benefit of unions, *for men as well as women, grandparents as well as parents*, is that they will be protected when they need to respond to their families' legitimate needs for care. Work/family issues are core union issues.

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

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