

RELATIONAL POWER, LEGITIMATION, AND PREGNANCY DISCRIMINATION

REGINALD A. BYRON

Southwestern University, USA

VINCENT J. ROSCIGNO

The Ohio State University, USA

Pregnancy-based employment discrimination has long been a topic of interest for gender inequality scholars and civil rights agencies. Prior work suggests that employer stereotypes and financial interests leave pregnant women vulnerable to being fired. We still know little, however, about women's interpretations of their terminations and how employers justify such decisions in the face of arguably protective laws. This article provides much needed, in-depth analyses of such dynamics and a relational account of pregnancy-based employment discrimination claims. Elaborating on theoretical expositions of power and research surrounding the patriarchal character of organizational life, we draw on unique quantitative and qualitative data from verified cases of pregnancy-based firing discrimination. Our analyses reveal a two-pronged legitimation process where employers symbolically vilified pregnant workers while simultaneously amplifying ostensibly meritocratic organizational procedures and concerns. Pregnancy discrimination plaintiffs attempted to counter employer arguments. Yet, their limited power within the organizational hierarchy along with the culturally resonant nature of employer logics—logics that seem gender-neutral but that reify gendered assumptions and prioritize business profit—place pregnant women at a considerable disadvantage. Without attending to such cultural and structural power imbalances and the relational processes that undergird them, pregnancy discrimination will remain a significant problem.

Keywords: *pregnancy; discrimination; termination; power; legitimation*

AUTHOR'S NOTE: *This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors. The authors are grateful to Southwestern University for partial funding of this project through their Competitive Professional Development Grant program. We thank the Editor of Gender & Society, Joya Misra, and several anonymous reviewers for their thoughtful reading and guidance on earlier versions of this article. We also thank Frank Dobbin, Alexandra Kalev, and Robin Stryker for comments on an earlier version and Michelle L. Thomas and Desmon Martin for providing us with access to supplemental civil rights data. Correspondence concerning this article should be addressed Reginald Anthony Byron, Southwestern University, P.O. Box 770, Georgetown, TX 78627, USA; e-mail: byronr@southwestern.edu.*

GENDER & SOCIETY, Vol. 28 No. 3, June 2014 435–462

DOI: 10.1177/0891243214523123

© 2014 by The Author(s)

Despite its widespread illegality, pregnancy discrimination remains a pressing social problem—a problem that only compounds other gender-based employment inequalities (i.e., hiring, wages, harassment). Indeed, complaints of workplace pregnancy discrimination to the United States' Equal Employment Opportunity Commission (EEOC) rose 46% between 1997 and 2011 (U.S. EEOC 2012a). Similar concerns in both Australia and Europe prompted a series of national investigations into pregnancy discrimination (Australian Human Rights Commission 1999; EOC 2005), resulting in nearly 50 policy recommendations from the Australian Human Rights Commission, a “Pregnant and Productive” campaign by Britain’s (now obsolete) Equal Opportunities Commission and a 2012–2016 Strategic Enforcement Plan targeting pregnancy discrimination by the U.S. EEOC (Australian Human Rights Commission 2000; EOC 2005; U.S. EEOC 2012b).

Vulnerability to being terminated is an especially widespread issue for pregnant women (Bornstein 2011; Edwards 1996; Glass and Fodor 2011; Slonaker and Wendt 1991). In fact, more than half of all pregnancy discrimination complaints made to the EEOC and state-level Fair Employment Practice Agencies (FEPAs) over the last 15 years pertained to firing¹ (see Figure 1). Notably, however, such claims and associated relational processes—by which we mean workplace interactions and interpretations that are conditioned by prevailing cultural views, organizational policies, and legal understandings—are rarely analyzed (James 2007).

In this article, we draw on detailed narratives from 85 cases of pregnancy discrimination filed within the state of Ohio² to better understand the processes underlying pregnancy-based firing disputes. Narrative charge data offer valuable insight into discrimination and its legitimation. No less important, our results reveal a relational process undergirded by power—employer and employee power within the context of organizational rules and existing sociolegal and cultural paradigms. Women are disadvantaged both structurally and culturally in this organizational milieu, gatekeepers enact gendered assumptions regarding the “ideal worker,” and women who become pregnant are often targeted.

Building on Roscigno’s (2011) theoretical exposition of relational power, structure, and culture, as well as recent work on patriarchy, gender, and workplace inequality (e.g., Benard and Correll 2010; Martin 2004), our analyses juxtapose how employers legitimized their discriminatory conduct relative to pregnant plaintiffs’ accounts. Results demonstrate that powerful organizational actors engaged in a dual-pronged process of *vili-fying* pregnant women and their competencies while also *amplifying*

ostensibly meritocratic policies and capitalist business logic. Pregnant women and their advocates attempted to counter such claims, to be sure. Yet employers' structural advantages along with the cultural and legal resonance of the discourses used make pregnancy discrimination and its fundamentally gendered character difficult to challenge. Such structural-cultural power differentials and the two-pronged legitimation process we highlight can also be applied to gender inequality more broadly and help to explain why most forms of gender-based employment discrimination are difficult to confront.

PREGNANCY DISCRIMINATION COMPLAINTS PREVALENCE AND LEGAL PROTECTIONS

The general surge in pregnancy-based firing complaints, noted in Figure 1, coincides with the overall growth of firing discrimination claims—a trend that Donohue and Siegelman (1991) noted two decades ago. This has been linked to the changing “social contract” over the last several decades, wherein workplace protections have declined and employment has become increasingly precarious (Kalleberg 2009). Indeed, nearly half of all contemporary private sector discrimination charges are now based on the single issue of firing (Byron 2010; Hirsh 2008).

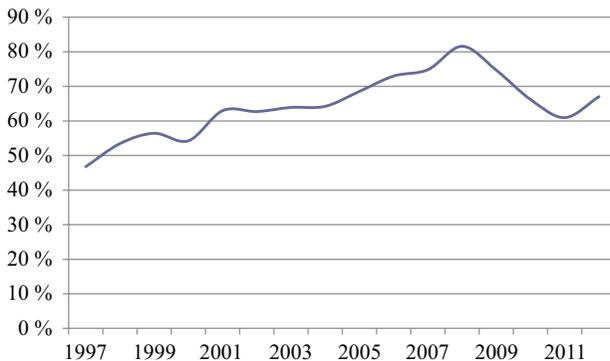


FIGURE 1: Equal Employment Opportunity Commission (EEOC) and Fair Employment Practice Agency percentage of all pregnancy charges involving firing.^a

Note: Raw data, provided by the EEOC, are by fiscal year.

Pregnancy-based firing, despite having some parallels to other forms of discrimination, is somewhat unique. Prior to 1964, the de facto expectation

was that an employee who became pregnant would either voluntarily resign or be dismissed from her position (Feitshans 1994). Title VII of the Civil Rights Act of 1964 disrupted these social norms. Years later, the Pregnancy Discrimination Act of 1978 amended Title VII to explicitly ensure that “women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work” (U.S. EEOC 2013a).

Given the relative recency of the Pregnancy Discrimination Act, one might expect robust contemporary enforcement and protections for pregnant women. There are, however, at least three significant barriers to comprehensive protection. One barrier lies in the fact that workers with legal grievances encounter several obstacles as they move through naming, blaming, claiming, and disputing (Felstiner, Abel, and Sarat 1980–1981). An employee that falls into a protected group must first be legally conscious of such protection and then must traverse both employer control over information about existing workplace rights and the threat of retaliation (Albiston 2005; Hirsh and Lyons 2010; Kelly 2010). Moreover, those who reach the dispute stage are often met with tremendous emotional and financial strain, not to mention uncertainty regarding a favorable resolution (Berrey, Hoffman, and Nielsen 2012; Hirsh 2008). Such pressures ensure that many grievances never reach the dispute stage.

A second obstacle is organizational culture—a culture that adopts and reifies societal assumptions about gender, rationalizes inequality and discrimination with seemingly neutral bureaucratic rules, and that is remarkably difficult to change. Especially pertinent here is recent (Glass and Fodor 2011; Kalev 2014; Martin 2004) as well as pioneering work (Acker 1990) that rejects classical sociological assumptions surrounding organizational neutrality and makes explicit the ways in which organizational structures, cultures, and logics are themselves gendered and problematic. This has obvious implications for how pregnant employees, all of whom are women, will be both viewed and treated. Pregnancy is fundamentally tied to one’s gender and to broader gendered valuations. To the degree that organizations treat pregnant women unjustly even in the face of formal legal protections, such treatment will likely be rationalized in neutral, organizational terms (e.g., “business necessity”), and challenges, to the extent they arise, will be met with reactive impression management rather than systemic solutions (Edwards 1996; Wooten and James 2004).

A third barrier lies within current legislation itself. The Family and Medical Leave Act of 1993 (FMLA), for instance, which provides a

maximum of 12 weeks of unpaid job protected leave during any 12-month period, does not apply to private sector employers with fewer than 50 people nor does it grant leave to employees with less than one year of tenure (Bornstein 2011; Feitshans 1994). These loopholes underscore the gendered character of workplaces in the United States. Such limits in legislation, particularly when considered alongside grievance-related resource differentials, retaliation threats, and rationalized organizational cultures, have led scholars to question whether the current arrangement can effectively protect pregnant employees (Bornstein 2011; Feitshans 1994; Golden 2006).

POTENTIAL CAUSES OF PREGNANCY-BASED FIRING

Social science research offers two primary explanations for pregnancy-based discrimination. First, discrimination against pregnant women appears to be driven by stereotypes and statistical discrimination. Compared to other workers, pregnant employees are, on average, viewed as less competent and committed to their job, which is presumed to result in increased absenteeism and quitting (Bornstein 2011; Gatrell 2011; Halpert, Wilson, and Hickman 1993; Masser, Grass, and Nestic 2007). Correll, Benard, and Paik's (2007) audit study of employers is especially poignant in this regard, demonstrating that mothers receive less than half as many callbacks for job opportunities as equally qualified childless women. Motherhood, here, is viewed as a status characteristic that conditions participants to rate working mothers' job competence and commitment more negatively than those of nonmothers (see Correll, Benard, and Paik 2007; Ridgeway and Correll 2004). Moreover, men often receive a bonus for fatherhood, suggesting that it is the complex interplay of both parenthood and gender that drives such inequality (Kmec 2011).

The aforementioned research strongly suggests cultural and gender-laden underpinnings in organizational environments as well as biased expectations that manifest at the relational level. Employers tend to see a pregnant woman as far from meeting the ideal (male) worker norm (i.e., a worker who is resolutely committed, flexible, singularly focused on their job and unencumbered by child bearing or child rearing) (Acker 1990; James 2007; Williams 2000). Such beliefs also expose a longstanding patriarchal view that women cannot be both good mothers and good workers (Benard and Correll 2010; Fuegen et al. 2004; Glass and Fodor 2011; Ridgeway and Correll 2004). It is notable that these sentiments

persist despite the fact that some women actually become more committed to their jobs during pregnancy and others go as far as working while they are ill in a process that Gatrell (2011) calls “presenteeism.” Overarching stereotypes may nevertheless provide sufficient justification for employers to dismiss women who become pregnant, and often very quickly after hearing of an impending childbirth (Bornstein 2011; Edwards 1996; James 2007).

A second impetus for differential treatment lies in the possibility that coworkers and employers see benefits for pregnant workers as conflicting with organizational goals—a point made clearly in Glass and Fodor’s (2011) recent analyses of labor practices and motherhood in Hungary. In this vein, coworkers sometimes express concern about organizational fairness surrounding the workload accommodations that pregnant employees receive (Gueutal and Taylor 1991; Halpert and Burg 1997). Moreover, costs associated with paid leaves, job shifts, and health insurance coverage may be seen as incongruent with the primary objectives of economic efficiency and profit within organizations (Edwards 1996; Glass and Fodor 2011). Some employers even explicitly refer to pregnant women as economic “liabilities” (Byron 2010). And the pregnant body itself—a body that is often portrayed as ailing, hormonal, and uncontrollable—is sometimes thought to disrupt organizational space by affecting coworker and patron comfort levels (Gatrell 2011). In sum, the perceived challenge that pregnant workers pose to institutional priorities, such as fairness, customer satisfaction, and economic efficiency, may be a prime motivation and indeed legitimation strategy for employers who wish to fire them.

RELATIONAL POWER AND LEGITIMATION IN PREGNANCY DISCRIMINATION DISPUTES

Prior work on gender and workplace inequality has laid important foundations by (1) denoting the prevalence of gender inequalities that cannot be explained away with controls for human capital attributes (Budig and England 2001) and/or (2) specifying how interactions, structural disadvantages, and hierarchies at work are laden with gender-reinforcing assumptions and practices (e.g., Acker 1990; Martin 2004). More recent work pertaining to gender and motherhood denotes systematic biases in gatekeeper treatment in the context of job assignments and rewards (e.g., Correll, Benard, and Paik 2007; Glass and Fodor 2011). Additional research on pregnancy discrimination as it manifests in real workplaces,

in the face of legal protections, and how it is legitimated in the disputing process is sorely warranted. A relational framework on power, culture, and organizations, particularly when coupled with unique qualitative data on verified cases of pregnancy discrimination, allow us to do so.

A relational framework recognizes that it is the interplay of more and less powerful actors, but also structure (i.e., law and bureaucratic policy) and cultural discourses that contribute to inequality and power differentials, including those surrounding pregnancy and employment. Scholars of power and its gender-specific manifestations recognize the relevance of structural and cultural processes and, thus, push us to move beyond perspectives emphasizing bureaucratic neutrality or simple bilateral interactions. Acker's (1990) discussion of "gendered organizations" and Martin's (2004) argument concerning "gender as an institution" seem particularly relevant, noting that while proximate processes of interaction and social closure are important, there is something more fundamental about the structures and cultures within which individuals and groups are embedded that fosters institutional inequalities. Pregnancy in the context of workplace inequality is an excellent case in point, and attention to legitimating frameworks provides a window through which to observe the constitutive interplay of structure, culture, and interaction (Roscigno 2011).

Legitimating frameworks—including, in our case, the justifying rationales that employers use in the course of disputing discrimination claims—offer a construction of social reality wherein present arrangements are portrayed as natural. As noted in classical statements, inequality thrives when objective structures that reify prevailing arrangements exist alongside normative frameworks and systems of belief that are consistent with those arrangements (Habermas 1973; Weber 1946). Such legitimation, described by Della Fave (1986, 481), will tend to be hegemonic (and indeed patriarchal) inasmuch as it supports institutional operations, provides a cultural blueprint for ideal roles and self-evaluation, and affords "cultural standards by which role performances are judged" (see also Gramsci 1971; Stryker 1994).

The essence of power resides in legitimating discourses and in the labeling and framing of social realities and distinctions therein (Bourdieu 1991). One core mechanism in this regard is what Roscigno (2011, 362–63) refers to as *symbolic vilification*: the process wherein less powerful actors are discursively deemed as less worthy or problematic. A second interrelated aspect is *symbolic amplification*, or discursive processes that imbue and elevate certain elements of cultural and organizational life to a place of almost sacred reverence.

Vilification and amplification, especially when analyzed systematically, are theoretical constructs that move us beyond individualistic interpretations of bias and that, instead, have the potential to reveal systematic patterns linked to both structure and culture. Such discursive practices, as we will show, are often mobilized by gatekeepers in defense of institutional practices while bureaucratic and legal structures (especially when decoupled from real world practice) provide the very cultural valuations and tools of appeal about which we speak. Indeed, in most discrimination disputes, employers denigrate charging parties (symbolic vilification) while simultaneously appealing to the higher power of broader cultural (i.e., good capitalism) and bureaucratic (i.e., meritocracy) principles (see Roscigno 2011). Pregnancy-based discrimination disputes likely operate in a parallel manner. We qualify this with recognition that the two-pronged process about which we speak is more easily captured in disputes that go through extraorganizational legal vetting.

Our focus on how employers legitimize inequality is not to suggest that discrimination plaintiffs are without power (see Piven 2008). To be sure, women experiencing pregnancy-based discrimination can and do contest employer actions. The structural and cultural playing fields, however, are quite uneven—a fact that partially explains the relative infrequency at which pregnant women win favorable judgments (Greenberg 1998; see U.S. EEOC 2012a). Employers, by virtue of bureaucratic access and position, have both culturally resonant discursive strategies and a host of structural advantages that confer greater leverage (see Berrey, Hoffman, and Nielsen 2012). Recognizing this, and incorporating various dimensions of relational power, inequality, and legitimation into conceptual frameworks and analyses, we believe, is not only important to studies of pregnancy discrimination but also to gendered inequality research more broadly (e.g., Glass and Fodor 2011) and feminist theorizing on topics ranging from occupational segregation (e.g., women's underrepresentation in science) to the sociology of law (e.g., legal framings of rape).

METHODS

Our analyses draw on data collected from archived, closed case files from the Ohio Civil Rights Commission (OCRC). Specifically, we were granted access to a quantitative and qualitative data set of sex-based employment discrimination charges filed within the state of Ohio from 1986 to 2003. When an employee contacts the Civil Rights Commission,

a neutral fact-finding agent (investigator) is assigned to the case. The employee (who has the burden of proof) must provide the investigator with supporting documents and witnesses. Evidence in the form of employee (charging party) and employer (respondent) statements, workplace documents, and witness testimonies are all weighed before a determination is made.

A large majority of cases are dismissed altogether because they either lack enough evidence or the charging party chooses to not follow through given the time and monetary or emotional cost. Other cases are verified—that is, they are deemed “probable cause” (denoting that the preponderance of evidence suggests that discrimination has taken place) or are settled in the charging party’s favor before an official determination is reached. We began by limiting our initial focus to verified sex-based firing discrimination cases filed by women ($n = 2,481$).

Verified cases, of course, do not represent the entire “real world” prevalence of discrimination. Discrimination is significantly underestimated in such data given that someone discriminated against must engage the naming to disputing process noted earlier. There is also a subjective dimension to the process—one wherein a charging party’s interpretation and the employer’s responses are shaped by their contact with the civil rights commission and the adjudication format. Yet, using verified cases bolsters confidence that the patterns we report pertain to interpretations of substantiated discrimination rather than just alleged discrimination.

From the aforementioned body of verified cases, we randomly selected 177 cases for in-depth qualitative immersion. Seventy of these cases involved pregnancy. Each included between 15 and 100 pages of detailed accounts and correspondence from workers, employers, and witnesses. Such unique data provide a rare opportunity to witness underlying *processes of inequality and patterns of legitimation* as expressed in pregnancy discrimination disputes.

Given the possibility that shifts in civil rights policies or monitoring may have altered the patterns after our original data were collected, we made a public records request in 2013 to gain access to a more recent set of verified pregnancy-based firing discrimination cases. Because of the time-consuming work involved in case retrieval, these requests are usually granted on a case-by-case basis. However, 15 compatible pregnancy discrimination case files (filed between 2007 and 2011, because older files were disposed of) were identified, collated, redacted, and made available to the authors. We use these cases to supplement the earlier 70 verified cases. Although there are some differences, the demographic and

substantive overlap across time periods reveals that the patterns are not fundamentally distinct⁴ within the full time span of our data (1986–2011).

Analytically, we proceed in two steps. Drawing on the 1986–2003 subsample ($n = 177$), we first provide basic demographic comparisons (Table 1) between (nonpregnancy) gender-based firing discrimination cases and those specifically tied to pregnancy-related firing. This comparison is important for two reasons. First, it helps to highlight vulnerabilities (by age, seniority, or race, for instance) and differences for pregnancy cases in particular. Second, our descriptive comparisons reveal attributes of jobs (e.g., size, gender composition, industry) that are meaningful for understanding the contexts within which pregnancy discrimination charges arise. Table 2 reports comparable statistics for the more recent supplemental sample.

The second, more in-depth portion of our analysis, which draws on both the original and supplemental case files, analyzes interpretations of plaintiffs and the legitimation strategies that employers use. Employee accounts of what occurred were read closely and systematically coded into four emergent categories of experience. Employers' responses to discrimination complaints (or statements from their lawyers) were also read and systematically coded, resulting in seven legitimating rationales. We juxtapose and report employee and employer accounts in Figures 2 and 3, and highlight the most prevalent themes with representative qualitative examples.

COMPARING NONPREGNANCY BASED FIRING DISCRIMINATION TO PREGNANCY-SPECIFIC CHARGES

Table 1 reveals that 40 percent of gender-based firing cases filed by women are related to the issue of pregnancy. This suggests that pregnancy may be a prevalent factor in women's workplace exits (see also James 2007; Slonaker and Wendt 1991). There are also noticeable differences between pregnancy-specific cases and those entailing other (nonpregnancy) gender concerns (see Table 1). For example, those filing on pregnancy tended to be younger (almost 7 years younger) and held less workplace seniority (about 16 months less).

Besides individual attributes like age and seniority, plaintiffs of pregnancy-based firing discrimination were more likely to be fired from female-dominated establishments and female-dominated occupations. Indeed, the typical preference for men that is evident in most cases of gender-based discrimination was not always the reality in pregnancy

TABLE 1: Comparing Pregnancy and Nonpregnancy Gender-Based Firing Discrimination Cases (N = 177)

	Pregnancy	Nonpregnancy	Independent Samples t-Test (p Value)	n ^a
Percentage of firing cases	40.2	59.8		
Charging party demographics				
Percentage white	76.1	75	.873	156
Average age	27.3	34	.000	
Average occupational prestige	34.5	33.3	.462	
Average seniority (months)	22	37.9	.020	124
Job characteristics				
Percentage female employees in the establishment	58.6	47.2	.042	88
Percentage of small employers (<50 employees)	50	40	.348	90
Percentage female in the occupation	64.4	54.1	.012	
Percentage manufacturing job sector	21.1	29.6	.198	
Percentage low-wage service job sector	45.1	39.8	.488	
Percentage high-wage service job sector	31.0	17.0	.046	
Percentage government job sector	0	11.1	.000	

a. Values in this column denote the sample size for the given variable because it is less than the full sample.

Note: We now switch from the legal language of “sex-based” discrimination to “gender-based” discrimination because of the processes experienced by the (all female) plaintiffs below.

discrimination cases. Pregnant women were, in fact, often fired and replaced with other (nonpregnant) women. This highlights the need for analyses of organizations and their gendered character to pay close attention to the unique intersection of gender and pregnancy because *differences among women* are an important part of the story (Acker 1990; Ridgeway and Correll 2004). Significant differences across industries are also notable. Pregnant complainants were more likely to be

TABLE 2: Demographic Statistics for the Supplemental Pregnancy Discrimination Data

Data set	2007–2011
<i>N</i>	15
Charging party demographics	
Percentage white	73.3
Average occupational prestige	34.9
Average seniority (months)	28
Job characteristics	
Percentage of small employers (<50 employees)	47
Percentage female in the occupation	69
Percentage manufacturing job sector	0
Percentage low-wage service job sector	40
Percentage high-wage service job sector	60
Percentage government job sector	0

NOTE: Age is excluded because new charge forms do not contain the plaintiff's date of birth. Percentage female within the establishment is omitted because relevant case files were not available.

fired from high-wage service jobs (e.g., law firms, hospitals) and were much less likely to be working in state or city government jobs than women who do not file on the basis of pregnancy. This industrial and job skew, which was similar⁵ across earlier and later data (see Table 2), is consistent with historical protections and the availability of more generous maternity leave policies in the public sector (see Kelly 2010; Kelly and Dobbin 1999).

Symbolic Vilification and Preference for “Unencumbered Workers”

In line with prior research (Halpert and Burg 1997; Masser, Grass, and Nescic 2007), our data reveal that cultural stereotypes and statistical discrimination are an important part of the inequality that pregnant women experience. With the impending onset of motherhood, biased assumptions about pregnant women put them at a clear disadvantage when they were symbolically contrasted to an idealized unencumbered worker (Acker 1990; James 2007; Williams 2000). The preference for workers who prioritize their job above other obligations was reflected succinctly in the following manager's response to a pregnancy discrimination claim:

At [this company] we're a pretty demanding organization and we do not allow family problems to get, you know, to come to work, so to speak. The

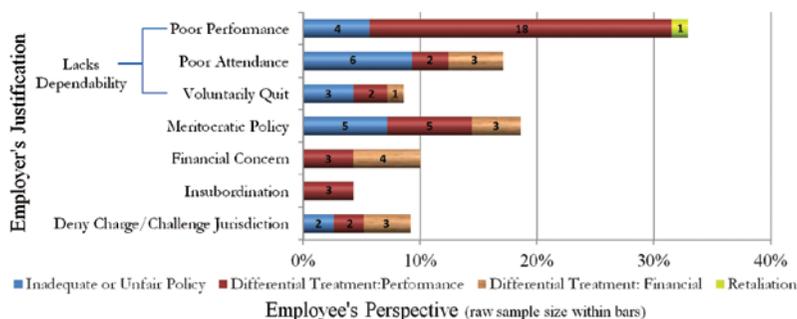


FIGURE 2: Employer/employee perspectives on pregnancy-based firing discrimination ($n = 70$, data from 1986–2003).

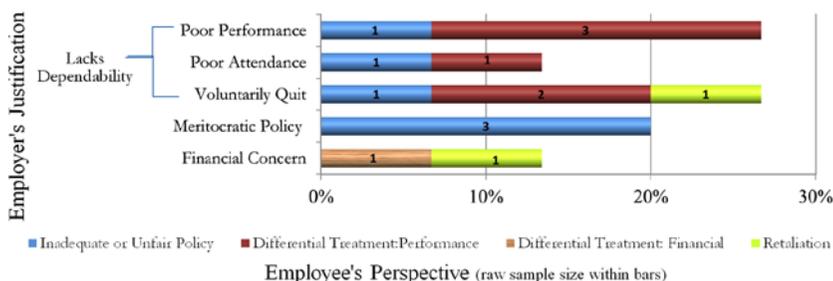


FIGURE 3: Employer/employee perspectives on pregnancy-based firing discrimination ($n = 15$, data from 2007–2011).

employee's obligation is to the company first and to their family second. They have to work those things out.

In explaining why pregnant workers were no longer employed, managers typically engaged in symbolic vilification, with undependability as a principal vehicle through which such vilification was carried out. Around 60 percent of employers across both earlier (1986–2003) and later (2007–2011) time periods used “lack of dependability” to legitimize their actions in the course of the dispute process (see Figures 2 and 3). Employers' stereotypes about working mothers' dependability may be part and parcel of their decision making about whom they want in their workplaces (Browne and Kennelly 1999).

In order to support such claims, employers drew from three vilifying arguments: poor performance, poor attendance, and voluntary quitting.

Poor Performance. Speculation that pregnant workers will be less willing or able to perform their jobs adequately (Cuddy and Fiske 2004) was among the main concerns of employers. Performance, in fact, accounted for around 30 percent of employers' justifications for terminations (see Figure 2 or Figure 3). One employer, for instance, asked her employee "if I could realistically see coming back after having a baby. She told me that I was not going to have the energy and I'm not going to want to work." Such sentiments were prevalent among both male and female managers.

In contrast, plaintiffs in these situations frequently (around 75 percent of the time⁶) asserted that it was soon after their pregnancy disclosure that they began experiencing differential treatment and a questioning of their performance (see Figures 2 and 3). Consider the case of Alicia Green,⁷ a sorter for a shipping company in 1995. Alicia was told the prior Friday that the shipment they expected was running late, but to call back on Monday to see if she was needed.

Mr. Hughes informed her that she should just "come on in." At this point, Ms. Green decided that it was best to tell Mr. Hughes that she was pregnant. Mr. Hughes, in response, told her not to come into work and that he didn't want any pregnant women working for his company.

Though she had not received any physical restrictions from her doctor, Alicia's employer fired her and attempted to vilify her future workplace value by alleging that she "would not be able to lift the 50-pound mail bags." More than 15 years later, in 2011, Jocelyn Meyers, a salesperson at a clothing store, reported a similarly hasty and negative reaction to her pregnancy announcement:

I discovered that I was pregnant and I informed my manager. She immediately made a comment that I could not continue to work due to my pregnancy. . . . Subsequent to this conversation, she began looking for reasons to terminate my employment and made several statements in front of witnesses that she did not want me to work while pregnant. She used the term "no big belly."

Jocelyn's manager claimed that she was fired because she "used her cell phone often during business hours." But, an OCRC on-site investigation

uncovered “information which supported Respondent’s animus against pregnant employees.” Such examples illustrate how women were *compared to themselves* before they were pregnant. In line with statistical discrimination, abrupt terminations of pregnant women may be influenced by assumptions about their future selves—assumptions that portray these women as moving even further away from the ideal unencumbered worker.

Discourses aimed at vilifying pregnant employees often occurred immediately, but also when women were on maternity leave. For example, Angelica Waters, a sales representative, reported a variety of forms of differential treatment regarding her performance:

When I took pregnancy leave to have my baby, my accounts were taken away, my company car was taken away, and my commission was given to a male sales representative. In June 1989, I received a letter terminating my employment.

Company representatives, in defense, focused on undermining her performance record: “Angelica Waters was forced to terminate her employment due to low sales performance, which was unrelated to her pregnancy condition.” Despite such vilification by the employer, which we found in most of the cases analyzed, thorough investigations revealed a refutation of employer claims, especially when coworker and witness statements were considered. In Angelica’s case, a coworker who trained her asserted that

Angelica performed her duties at the same level as other sales representatives, and the reason her sales were low was because she was required to obtain her quotas from cold calling (contacting new customers) . . . the other sales representatives all had house accounts, which consisted of customers who are already doing business with the Respondent.

The 2010 termination of Patty Washington, a registered veterinary technician, also revealed differential treatment while on maternity leave. Patty stated,

I had my baby in September 2010 and started my six weeks of unpaid maternity leave on that day. [At the end of September] I received a call from my manager who stated that I would be considered terminated on November 1st. I was three weeks into my six weeks of maternity leave. In the employee handbook, it states that, under the maternity leave section, employees receive six weeks unpaid maternity leave. . . . When I was working, towards the end of my pregnancy, my hours were reduced without my being informed.

Her manager responded by not focusing on the maternity leave but rather challenging Patty's performance as an employee:

Patty was released from employment due to poor performance and attitude with doctors, staff, and customers. Repeatedly, she was unprofessional to requests made by doctors and managers. Her poor performance encumbered the work flow of the clinic and caused disruptions with other staff members.

Yet again, the commission found that a "review of Patty's personnel record does not support this." Additionally, OCRC staff interviewed a coworker and witness who "admitted that the Respondent did not begin to document concerns regarding Patty's performance until after management was made aware of her pregnancy."

Employers' vilification of pregnant women, claiming that they were *less dependable than other workers*, is in line with prior work on motherhood (Browne and Kennelly 1999). Employer beliefs, however, may reflect shifting standards where other employees are privy to more lenient evaluations (regarding, e.g., sales quotas) than are pregnant women (see also Fuegen et al. 2004).

Poor Attendance. Another core vilification strategy connected to "undependability" involved attendance (see Figures 2 and 3). Here, around 15 percent of employers claimed that pregnant women were undependable and were fired because of poor attendance and/or tardiness. Take, for instance, the case of Melissa Easton in 1993.

Easton was an undependable employee, missing seven days of work during her first six months of employment. Further, she showed up late for work on several occasions and left work early on several occasions. . . . She notified [us] approximately three to four weeks prior to termination . . . of her pregnancy, and, therefore, this fact played no part in her termination.

What is particularly notable, however, in such cases, is that nonpregnant employees are not similarly policed or held to the same ostensibly neutral attendance standard. In Melissa's case, evidence collected from the civil rights investigator revealed that

there is no evidence that Melissa Easton received any written reprimands regarding her alleged poor performance or attendance. Easton's male counterpart received several written warnings but was retained. . . . She did

receive an unsatisfactory evaluation; however, this review was not received until the day of her termination.

Consider a more recent case, in which Emma Jones, a call center quality analyst, was fired. The company claimed:

In September 2006, Ms. Jones received a written warning for absenteeism and tardiness. During the month of August she had three incidents of unscheduled absences, one of them being a no call–no show, one incident of leaving early, and 12 incidents of arriving late for her scheduled shift. Ms. Jones was warned to immediately improve her attendance to meet company minimum standards and failure to do so would lead to further disciplinary action up to and including discharge.

However, “evidence corroborates that Ms. Jones did in fact inform her supervisor of her need to leave early due to a pregnancy related doctor’s appointment . . . [and] non-pregnant employees have committed ‘leave early’ infractions without similar disciplinary consequences.”

Employee quitting. A third vilification pathway involved the claim that a pregnant employee effectively quit her job by not returning to a downgraded post-leave position (see also Glass and Fodor 2011). Figures 2 and 3 indicate that this claim may be increasing in prevalence over time. For instance, Charlise Marshall, a housekeeper, was terminated in 2008 because she did not accept the new (less desirable) position that was offered to her. Company representatives nonetheless attempted to paint Ms. Marshall as ungrateful for their flexibility:

Ms. Marshall’s employment was terminated the first week of June since she gave no indication of accepting the work that was offered. It must also be noted that Ms. Marshall did not qualify for FMLA, falling short of the required 1250 hours needed as well as failing to work for us for one full year. . . . Ms. Marshall missed considerable amount of work days very early in her pregnancy. . . . We allowed other staff to continually assist her so she could maintain her job even though it meant that the department would be operating at a deficiency.

Symbolic Amplification, Policy, and Business Interest

In the course of discursive conflicts over firing, and beyond the vilification of pregnant employees, employers simultaneously engaged in symbolic amplification. Here, cultural and institutional logics are highlighted in a manner that portrays inequality and the firing of pregnant

employees as legitimate and just. Amplification is an important part of the legitimation process because it provides a cultural and evaluative benchmark of sorts for uninvolved parties to make sense of inequality. It also minimizes employer culpability by communicating to external observers and even employees themselves that employers are acting in a rational and fair way. Employers in our data amplified ostensibly meritocratic policy and business interests in their justifications for terminations.

Meritocratic Policy. In nearly 20 percent of cases (see Figures 2 and 3), managers invoked and amplified seemingly neutral, meritocratic leave policies as a way to dismiss pregnant employees, despite protections arguably afforded by law. Consider the case of Bethany James, a pregnant secretary at a law firm:

On June 14, 1993 I was informed by Jimmy Purcell that he did not allow leaves of absence and that I would work until June 29, 1993, my intended date of maternity leave. Jimmy Purcell, Senior Partner, also told me that he needed three full-time secretaries and would not hire a temporary. . . . A full-time replacement, Louise Swisher, began working in my placement on July 3, 1993.

In response to her claims of discrimination, Bethany's employer responded,

On June 14, 1993, after learning "through the grapevine" in our office that Mrs. James might wish to return to work after the birth of a child, a meeting was initiated by me with Mrs. James and my partner, Ted Boden, at which meeting she was advised that our office, as a standard practice, has never granted a leave of absence for any reason.

In such cases, there is an appeal to formalized policy and standard practice, suggesting neutrality regardless of the employee about which an employer is speaking. But according to the Civil Rights Commission investigation,

the regulation adopted by the Commission does not permit an employer to maintain a policy of no medical leaves for any person for any condition. . . . If the employer has no leave policy, childbearing must be considered by the employer to be a justification for leave of absence for a female for a reasonable amount of time.

Bethany's views that such policies were inadequate and unfair were central to her complaint. Her boss asserted, "allowing pregnancy leave,

where no other leave exists, creates an inequality between men and women.” Yet, the case investigator concluded, “To put men and women on an equal basis, when only women can bear children, is inherently unequal.”

In other cases, like Lucy Garcia’s in 2008, employers suggested that *all employees* were subject to the same neutral policy whereby “only work related illnesses or injuries are accommodated, non-work related injuries or illnesses [like pregnancy] are not.” Employers also pointed to supposedly equitable company policies that require employees to have full-time status and to work for at least two years of uninterrupted employment before being granted leave. Policies such as these may make part-time pregnant employees and those with less seniority more vulnerable to being fired (see Table 1). Furthermore, employers with too few employees to be covered under FMLA often provided very short leave policies (see also Kelly 2010). The 2008 case of Leslie Ryan, a nurse for a private contractor, offers a pertinent example:

In September, I spoke with [my boss] to clarify the parameters of my maternity leave. He required that I return to work within four weeks. When I informed him that I probably could not be medically released in that time, he agreed to give me more time. . . . In late October, [my female supervisor] informed me that if I could not obtain an early release from my physician to return to work, I would be terminated. . . . My supervisor also stated that she was tired of working overtime to accommodate people on maternity leave.

Directly at issue here is the interpretation of Civil Rights Law. Ohio Administrative Code 4112-5-05 (G)(2) states, “Where termination of employment of an employee who is temporarily disabled due to pregnancy or a related medical condition is caused by an employment policy under which insufficient or no maternity leave is available, such termination shall constitute unlawful sex discrimination” (Ohio Administrative Code 2003). While the employer felt that four weeks was sufficient, “it is the position of the Commission that employees shall be afforded 12 weeks of maternity/pregnancy leave.” Seemingly neutral organizational policies were nevertheless amplified in such cases to justify discriminatory conduct and conceal employers’ relative inflexibility regarding pregnancy rights⁸ while simultaneously providing an air of fairness. Such a strategy, which creates a tenuous employment situation for countless pregnant women, has also seen increasing deference from lawyers and judges who infer nondiscrimination when formal policies are invoked (Edelman et al. 2011).

Business Interests and Financial Concern. Instead of amplifying specific organizational policies, some employers resorted to broader appeals of business costs and interests—costs and interests that carry significant weight in U.S. culture as a reasonable justification, for instance, for mass layoffs. Our analyses, and the patterns reported earlier in Figures 2 and 3, suggest that about 10 percent of employers invoked business needs, profit, and efficiency in reference to pregnancy discrimination cases. Consider the following case of Joanna Walsh:

On March 23, 1995, I was discharged from my position as Assistant Manager. . . . I have an excellent work record with only minor warnings some years ago. I have been the first Assistant Manager and was considered the best labor manager. In approximately January 1995, my employer learned of my pregnancy. For the last six weeks David Clark [Joanna's supervisor] has been highly critical of me and difficult to work with.

The company, in response, claimed:

David Clark informed Joanna Walsh that the company was restructuring, and Mr. Clark explained to Joanna that [the owner] determined that each restaurant was overstaffed with the current structure of a general manager, as well as three assistant managers. . . . Mr. Clark was directed to choose only two of three managers to remain in management. . . . Mr. Clark informed Joana that she was let go due to the restructuring.

Deeper immersion into these cases revealed that restructuring for “business reasons,” while legitimate at face value, was often a pretense for pregnancy discrimination (see also Glass and Fodor 2011).

Evidence [from the civil rights investigation] substantiates that Sean Calloway was hired as a manager following Joanna's discharge and following Respondent's restructuring. This manager was hired by David Clark, according to witnesses, and to the same restaurant Joanna worked for.

The 2008 case of Julie Vestal, a facilities manager, similarly revealed how economic imperatives offered a legitimating rationale for the employer. The case investigator noted,

Respondent contends that its facility has been in the process of reorganization since 2006 and that Ms. Vestal was aware that her job would be eliminated. However, the “investigation reveals that shortly after the respondent became aware of Ms. Vestal's pregnancy she decided to eliminate her

position and create a position with a reduction in pay of seventeen thousand dollars.”

Employers in these cases also relayed concerns about the cost and difficulty of hiring a temporary employee to cover their pregnant employee’s work. Pearl Spears’ experience is pertinent in this regard:

I am qualified to remain in the RN Oncology position. Respondent removed me from my position following my doctor’s release to work on January 23rd, 1992, regardless of my qualifications and length of service and Respondent retained [another female employee] with equivalent qualifications, who was not pregnant.

Pearl’s manager stated,

The ability to replace a full-time oncology nurse temporarily is very difficult and this particular time was impossible. To hire a RN not skilled in oncology for a temporary position is not feasible. This is from patient safety and economical standpoints.

Clearly, financial concerns provide employers a strong justification for the discriminatory firing of pregnant women (Edwards 1996). Such concerns take on a different form in business contexts requiring significant public contact. In several of these cases, managers explicitly took issue with the pregnant body itself and the supposed disruption it brought to organizational space and customer satisfaction (Gatrell 2011). Recall the 2011 case of Jocelyn Meyers, a clothing store salesperson, and the manager’s use of the phrase “no big belly.” Similarly, Stacy Wells was fired from her job as a bartender in 1992 because “customers did not want a woman in her condition working around them.” Megan Brady, a customer of the bar, served as a witness on the case. She reported to the commission what she heard from the bar’s owner: “Trish Henderson, the bar’s owner, did not want a pregnant female in the bar because it was not attractive. . . . Trish also stated that she did not want to be liable if Stacy slipped and fell or hurt herself.”

In other service jobs, pregnant women reported that employers communicated concern about their weight gain during pregnancy and felt that “as my pregnancy became apparent, the owner and supervisor exhibited a complete change in attitude towards me. They made derogatory remarks about me and my pregnancy and generally made me feel unwanted.” Any direct financial considerations that employers had about pregnancy costs,

in such cases, were compounded by concerns about the image of pregnant bodies and the discomfort of customers.

Many of these justifications came from small business owners. Terminations from small businesses are a likely consequence of the lack of maternity leave benefits or the administrative incapacity of smaller organizations to know of and implement the law (see Kelly 2010). Given that about half of the pregnancy discrimination cases in our data involved small businesses composed of fewer than fifty employees (see Table 2), it is clear that such settings would be a fruitful arena for further research.

CONCLUSION

Although current legal protections should ideally keep pregnant employees from being unjustly fired, the findings in this article suggest significant limitations and persistent vulnerabilities. Building on prior work, we have theoretically prioritized the significance of culture, structure, and interaction in understanding pregnancy discrimination and have highlighted, through in-depth case analyses, the pertinence of legitimation. Employers' power to legitimize inequality, in fact, resides in both organizational policies—policies that employers can invoke or not and that are often treated with deference within the legal-judicial process (see Edelman et al. 2011)—and in larger, culturally resonant discursive strategies imbued with gendered proscriptions and that elevate institutional meritocracy and business profit rationales. These insights can and should be used in public education efforts about pregnancy discrimination and speak more broadly to questions about the persistence of gender inequality.

By vilifying pregnant workers' performance and dependability while amplifying ostensibly fair organizational policies and business interests, employers attempted to evade being labeled as discriminatory. If the small percentage (under 5 percent) of probable cause determinations found in recent national pregnancy discrimination cases (U.S. EEOC 2012a) are any indication, this employer legitimation strategy is largely successful. Understanding inequality as being fortified and reified by the mutually constitutive interplay of structure, culture, and interaction holds obvious relevance for understanding the relational character of pregnancy discrimination. The relevance goes even further, in our view, with likely implications for workplace gender inequalities and gender theory generally.

Our theorizing would undoubtedly be shortsighted without consideration of employee power. While prior work has shown that the seeming neutrality of organizational decisions alongside the risks of formally disputing discrimination may cause some pregnant workers to forego this form of legal mobilization (Albiston 2005), it is worth noting that all of the pregnant women in this study exercised some aspects of power by filing a formal discrimination charge. Yet, they largely follow the lead of employers by attempting to vilify organizational actors who directly took part in the discriminatory act while amplifying the need for fairer workplace policies (see Figures 2 and 3). The problem, of course, is that broader essentialist depictions of pregnant women as workers go relatively unchallenged (Williams 2000).

An alternative course entails transcending the individual–organizational tug of war and challenging the very structures and cultures that maintain such power imbalances (Berrey, Hoffman, and Nielsen 2012; Williams 2000). In this vein, Acker (1990), Williams (2000), and James (2007) remind us that there remains widespread distaste for encumbered pregnant workers. This is partially an extension of capitalist business logic and longstanding cultural and patriarchal biases against pregnant women within the arena of work (Buzzanell and Liu 2005). A relational approach, such as we have outlined in this article, seeks to unravel these complex dynamics, their interactional nature, and relevant cultural and structural leverage differentials.

Academics, policy makers, employees, and their legal advocates must remain cognizant of, if not help to expose, the *links* between gender-laden cultural (and capitalist) orientations and our legal and structural policies (Greenberg 1998). Some, for instance, have suggested that because the Pregnancy Discrimination Act and the Family and Medical Leave Act were scripted and passed with the economic costs of employers in mind, they will, by default, always be limited in the protections they afford (Feitshans 1994; Golden 2006). The same gender-laden economic priorities and cultural interpretations of fairness could very well underlie why flexible assignments and generous maternity leave policies are so hard to come by (Grossman and Thomas 2009–2010). Analyses such as ours represent a first step in exposing how cultural and structural power disparities are reinforced by the culturally resonant strategies employers invoke in pregnancy discrimination disputes.

Though the current arrangement hardly goes far enough in protecting pregnant employees, it does not have to be this way. Green and Kalev (2008) point us to a number of useful individual (e.g., diversity training)

and relational (e.g., interdependent work teams) strategies that can reduce biases, while Kalev (2014) highlights ways in which internal legal accountability may reduce women's vulnerability in the face of efficiency and cost decisions. Moreover, rather than mandate immediate exclusion from the FMLA for small employers, Golden (2006) suggests one alternative arrangement might be to assess whether employers can afford to provide leave, or whether leave could be government subsidized for smaller organizations.

Exploring possible reforms, such as those noted above, is crucial. It is also important to acknowledge regional and cultural variation regarding work–family benefits, maternity leaves, and antidiscrimination enforcement (Appelbaum 2012; Glass and Fodor 2011; Kelly 2010). Paying comparative attention to alternative legal policies, organizational structures, and cultural valuations that reduce such inequality will bring us a step closer to fair treatment of pregnant workers and women.

NOTES

1. Employers also have positive reactions to pregnancy, of course, although these examples are not present in data on complaints.

2. Though the data are limited to one state, Ohio is a particularly good case to investigate pregnancy-based employment discrimination because, compared to the United States in general, it has a very similar industrial structure and percentage of unemployed women (U.S. Census Bureau 2013).

3. Between 2008 and 2011, the percentage of pregnancy discrimination claims that involved firing dropped temporarily. This is very likely due to national trends in extended mass layoff separations related to the recent economic recession (see Solis and Galvin 2012). This pattern is also in line with Oyer and Schaefer's (2000) hypothesis that employers sometimes use "layoffs" (as opposed to termination) to displace workers in order to reduce the likelihood of litigation.

4. One noticeable pattern of difference is the increased likelihood that employees view their terminations as retaliatory in the supplemental data set. This pattern follows national trends in increasing retaliation claims (U.S. EEOC 2013b).

5. The change in the percentage of pregnant plaintiffs working in manufacturing jobs is likely related to the sharp decline in U.S. manufacturing jobs (see Kalleberg 2009).

6. Eighteen out of twenty-three in Figure 2 and three out of four in Figure 3.

7. All names used in this article are pseudonyms.

8. We use the word "rights" as opposed to "accommodations" to differentiate between equal treatment and special treatment. Joan Williams persuasively argues, "Women need not demand accommodation but their due" (Williams 2000, 241).

REFERENCES

- Acker, Joan R. 1990. Hierarchies, jobs, and bodies: A theory of gendered organizations. *Gender & Society* 4:139-58.
- Albiston, Catherine R. 2005. Bargaining in the shadow of social institutions: Competing discourses and social change in workplace mobilization of civil rights. *Law & Society Review* 39:11-50.
- Appelbaum, Eileen. 2012. Reducing inequality and insecurity: Rethinking labor and employment policy for the 21st century. *Work and Occupations* 39:311-20.
- Australian Human Rights Commission. 1999. Pregnant and productive: It's a right not a privilege to work while pregnant. http://humanrights.gov.au/sex_discrimination/publication/pregnancy/report.html.
- Australian Human Rights Commission. 2000. HREOC assessment of government responses to recommendations. http://humanrights.gov.au/sex_discrimination/publication/pregnancy/recommendations.html.
- Benard, Stephen, and Shelley J. Correll. 2010. Normative discrimination and the motherhood penalty. *Gender & Society* 24:616-46.
- Berrey, Ellen, Steve G. Hoffman, and Laura Beth Nielsen. 2012. Situated justice: A contextual analysis of fairness and inequality in employment discrimination litigation. *Law & Society Review* 46:1-36.
- Bornstein, Stephanie. 2011. Poor, pregnant, and fired: Caregiver discrimination against low-wage workers. Center for WorkLife Law. <http://worklifelaw.org/pubs/poorpregnantandfired.pdf>.
- Bourdieu, Pierre. 1991. *Language and symbolic power*. Cambridge, MA: Harvard University Press.
- Browne, Irene, and Ivy Kennelly. 1999. Stereotypes and realities: Images of Black women in the labor market. In *Latinas and African American women at work: Race, gender and economic inequality*, edited by Irene Browne. New York: Russell Sage Foundation.
- Budig, Michelle J., and Paula England. 2001. The wage penalty for motherhood. *American Sociological Review* 66:204-25.
- Buzzanell, Patrice M., and Meina Liu. 2005. Struggling with maternity leave policies and practices: A poststructuralist feminist analysis of gender organizing. *Journal of Applied Communication Research* 33:1-25.
- Byron, Reginald A. 2010. Discrimination, complexity, and the public/private sector question. *Work and Occupations* 37:435-75.
- Correll, Shelley J., Stephen Benard, and In Paik. 2007. Getting a job: Is there a motherhood penalty? *American Journal of Sociology* 112:1297-338.
- Cuddy, Amy J. C., and Susan T. Fiske. 2004. When professionals become mothers, warmth doesn't cut the ice. *Journal of Social Issues* 60:701-18.
- Della Fave, L. Richard. 1986. Toward an explication of the legitimation process. *Social Forces* 65:476-500.
- Donohue, John J., and Peter Siegelman. 1991. The changing nature of employment discrimination litigation. *Stanford Law Review* 43:983-1033.

- Edelman, Lauren B., Linda H. Krieger, Scott R. Eliason, Catherine R. Albiston, and Virginia Mellema. 2011. When organizations rule: Judicial deference to institutionalized employment structures. *American Journal of Sociology* 117:888-954.
- Edwards, Mark. 1996. Pregnancy discrimination litigation: Legal erosion of capitalist ideology under Equal Employment Opportunity law. *Social Forces* 75:247-68.
- EOC (Equal Opportunities Commission). 2005. Greater expectations: Summary final report EOC's investigation into pregnancy discrimination. http://www.equalityhumanrights.com/uploaded_files/eoc_pregnancygfi_summary_report.pdf.
- Feitshans, Ilise L. 1994. Job security for pregnant employees: The Model Employment Termination Act. *Annals of the American Academy of Political and Social Science* 536:119-34.
- Felstiner, William L. F., Rick L. Abel, and Austin Sarat. 1980-1981. The emergence and transformation of disputes: Naming, blaming, and claiming. *Law & Society Review* 16:631-54.
- Fuegen, Kathleen, Monica Biernat, Elizabeth Haines, and Kay Deaux. 2004. Mothers and fathers in the workplace: How gender and parental status influence judgments of job-related competence. *Journal of Social Issues* 60:737-54.
- Gatrell, Caroline Jane. 2011. I'm a bad mum: Pregnant presenteeism and poor health at work. *Social Science & Medicine* 72:478-85.
- Glass, Christy, and Éva Fodor. 2011. Public maternalism goes to market: Recruitment, hiring, and promotion in postsocialist Hungary. *Gender & Society* 25: 5-26.
- Golden, Nina G. 2006. Pregnancy and maternity leave: Taking baby steps towards effective policies. *Journal of Law & Family Studies* 8:1-38.
- Gramsci, Antonio. 1971. *Selections from the prison notebooks*. London: Lawrence & Wishart.
- Green, Tristan K., and Alexandra Kalev. 2008. Discrimination-reducing measures at the relational level. *Hastings Law Journal* 59:1435-62.
- Greenberg, Judith G. 1998. The Pregnancy Discrimination Act: Legitimizing discrimination against pregnant women in the workforce. *Maine Law Review* 50:225-54.
- Grossman, Joanna L., and Gillian L. Thomas. 2009-2010. Making pregnancy work: Overcoming the Pregnancy Discrimination Act's capacity based model. *Yale Journal of Law and Feminism* 21:15-50.
- Gueutal, Hal G., and Elisabeth M. Taylor. 1991. Employee pregnancy: The impact on organizations, pregnant employees and co-workers. *Journal of Business and Psychology* 5:459-76.
- Habermas, Jürgen. 1973. *Legitimation crisis*. Boston: Beacon Press.
- Halpert, Jane A., and Julia H. Burg. 1997. Mixed messages: Co-worker responses to the pregnant employee. *Journal of Business and Psychology* 12:241-53.

- Halpert, Jane A., Midge L. Wilson, and Julia L. Hickman. 1993. Pregnancy as a source of bias in performance appraisals. *Journal of Organizational Behavior* 14:649-63.
- Hirsh, C. Elizabeth. 2008. Settling for less? Organizational determinants of discrimination-charge outcomes. *Law and Society Review* 42:239-74.
- Hirsh, Elizabeth, and Christopher J. Lyons. 2010. Perceiving discrimination on the job: Legal consciousness, workplace context, and the construction of race discrimination. *Law and Society Review* 44:269-98.
- James, C. Grace. 2007. Law's response to pregnancy/workplace conflicts: A critique. *Feminist Legal Studies* 15:167-88.
- Kalev, Alexandra. 2014. How you downsize is who you downsize: Biased formalization, accountability, and managerial diversity. *American Sociological Review*, 79:109-35.
- Kalleberg, Arne L. 2009. Precarious work, insecure workers: Employment relations in transition. *American Sociological Review* 74:1-22.
- Kelly, Erin. 2010. Failure to update: An institutional perspective on noncompliance with the Family and Medical Leave Act. *Law & Society Review* 44:33-66.
- Kelly, Erin, and Frank Dobbin. 1999. Civil rights law at work: Sex discrimination and the rise of maternity leave policies. *American Journal of Sociology* 105:455-92.
- Kmec, Julie. 2011. Are motherhood penalties and fatherhood bonuses warranted? Comparing pro-work behaviors and conditions of mother, fathers, and non-parents. *Social Science Research* 40:444-59.
- Martin, Patricia Yancey. 2004. Gender as a social institution. *Social Forces* 82:1249-73.
- Masser, Barbara, Kirsten Grass, and Michelle Nescic. 2007. We like you, but we don't want you—The impact of pregnancy in the workplace. *Sex Roles* 57:703-12.
- Ohio Administrative Code. 2003. Sex discrimination. <http://codes.ohio.gov/oac/4112-5-05>.
- Oyer, Paul, and Scott Schaefer. 2000. Layoffs and litigation. *The RAND Journal of Economics* 31:345-58.
- Piven, Frances Fox. 2008. Can power from below change the world? *American Sociological Review* 73:1-14.
- Ridgeway, Cecelia L., and Shelley J. Correll. 2004. Motherhood as a status characteristic. *Journal of Social Issues* 60:683-700.
- Roscigno, Vincent J. 2011. Power, revisited. *Social Forces* 90:349-74.
- Slonaker, William M., and Ann C. Wendt. 1991. Pregnancy discrimination: An empirical analysis of a continuing problem. *Labor Law Journal* June: 343-50.
- Solis, Hilda L., and John M. Galvin. 2012. Extended mass layoffs in 2011. Bureau of Labor Statistics. <http://www.bls.gov/mls/mlsreport1039.pdf>.

- Stryker, Robin. 1994. Rules, resources and legitimacy processes: Some implications for social conflict, order and change. *American Journal of Sociology* 99:847-910.
- U.S. Census Bureau. 2013. The 2012 statistical abstract. <http://www.census.gov/compendia/statab>.
- U.S. EEOC (U.S. Equal Employment Opportunity Commission). 2012a. Pregnancy discrimination charges EEOC and FEPAs combined: FY 1997-FY 2011. <http://www.eeoc.gov/eeoc/statistics/enforcement/pregnancy.cfm>.
- U.S. EEOC (U.S. Equal Employment Opportunity Commission). 2012b. Draft for public release U.S. Equal Employment Opportunity Commission Strategic Enforcement Plan. http://www.eeoc.gov/eeoc/plan/sep_public_draft.cfm.
- U.S. EEOC (U.S. Equal Employment Opportunity Commission). 2013a. The Pregnancy Discrimination Act of 1978. <http://www.eeoc.gov/laws/statutes/pregnancy.cfm>.
- U.S. EEOC (U.S. Equal Employment Opportunity Commission). 2013b. Charge statistics FY 1997-FY 2012. <http://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm>.
- Weber, Max. 1946. *From Max Weber: Essays in sociology*. Oxford, UK: Oxford University Press.
- Williams, Joan. 2000. *Unbending gender: Why families and work conflict and what to do about it*. Oxford, UK: Oxford University Press.
- Wooten, Lynn P., and Erika H. James. 2004. When firms fail to learn: The perpetuation of discrimination in the workplace. *Journal of Management Inquiry* 13:23-33.

Reginald A. Byron is an assistant professor of sociology at Southwestern University, byronr@southwestern.edu. His current research interests include race and gender stratification in occupational, educational, and criminological contexts. His work has appeared in Work and Occupations, The Journal of Higher Education, and The Journal of Research in Crime and Delinquency.

Vincent J. Roscigno is a distinguished professor of arts & sciences at Ohio State University, Roscigno.1@osu.edu. His current research centers on workplace inequality, discrimination, harassment, and bullying and also broader questions of power, culture, and legitimation of inequality. His work has appeared in journals such as the American Sociological Review, Social Forces, Qualitative Sociology, and Human Relations.