

11-1-2011

## Book Review: Pregnant Pause: An International Legal Analysis of Maternity Discrimination

Candace S. Kovacic-Fleischer

*American University Washington College of Law*

Follow this and additional works at: [http://digitalcommons.wcl.american.edu/facsch\\_bkrev](http://digitalcommons.wcl.american.edu/facsch_bkrev)

 Part of the [Law Commons](#)

---

### Recommended Citation

Kovacic-Fleischer, Candace. "Book Review: Pregnant Pause: An International Legal Analysis of Maternity Discrimination."  
*International Journal of Sociology of the Family*, 37 no. 1 (2011): 176-178.

This Book Review is brought to you for free and open access by the Scholarship & Research at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Book Reviews by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact [fbrown@wcl.american.edu](mailto:fbrown@wcl.american.edu).



American University Washington College of Law

Washington College of Law Research Paper No. 2012-12

**BOOK REVIEW: PREGNANT PAUSE: AN INTERNATIONAL LEGAL  
ANALYSIS OF MATERNITY DISCRIMINATION**

Candace Saari Kovacic-Fleischer

This paper can be downloaded without charge from  
The Social Science Research Network Electronic Paper Collection

***Pregnant Pause: An International Legal Analysis of Maternity Discrimination,***  
by Anne-Marie Mooney Cotter: Ashgate, 2010, 375 pp.

*Pregnant Pause* by Anne-Marie Mooney Cooter is an impressive collection of statutes, constitutional provisions, treaties, and other legal documents relating to human rights and discrimination in the workplace, with particular emphasis on maternity and paternity issues. Anyone interested in these subjects can, in this one book, read relevant laws from English speaking countries and Mexico, and provisions in United Nations' proclamations and two international trade agreements, with accompanying explanation. (p. 2, Table of Contents) As a result, *Pregnant Pause* is an important resource for legislators and other policy makers, employers and employees, and academics. It is also an eye-opening work for the general public that demonstrates how out of step the United States is with the rest of the world by not providing paid maternity leave.

While Ms. Cotter disclaims an intent to persuade, (p. 2) she makes a compelling argument for the United States to provide paid maternity leave and for all countries to follow the lead of some by providing paid paternity leave so that discrimination against mothers in the workplace can be reduced or eliminated. (pp. 16-23, 363). In addition, she argues that countries should pay for generous parental leave from social insurance funds because everyone benefits when children become productive members of the society. (p. 22).

*Pregnant Pause* explains why women need paid maternity leave. Without it not only do they receive less income than prospective fathers, but they may be displaced from the workplace when they have a baby. Women pay an economic "child penalty" (p. 16) when they have absences from the labor force. Their employment opportunities are damaged and their lifetime earnings and pensions are reduced. (pp. 2, 16, 206). This is particularly devastating given the increasing rate of divorce. (p. 21).

Not all maternity benefit legislation helps women advance in the workplace, however. *Pregnant Pause* explains that depending on how much or little leave and pay is allocated to men, parental leave policies can either encourage fathers to take part in child raising or can perpetuate the stereotype of mothers as the main care givers. Because men's wages are generally higher than women's and because men are not expected to care for children, men are less likely than women to forego their wages to stay home with a baby. As a result men have less time than women to bond with their children. More time with children at birth could encourage men to be more involved in the later upbringing of their children. When men and women share child raising, women will have more time in the workplace, which will provide them with greater equality with fathers. (p. 20-21) *Pregnant Pause* explains that paid leave for both parents improves families' health and security, as well as workplace productivity. (p. 22).

The United States does not require that anyone, man or woman, who receives leave be paid, nor does it require that all workers receive leave for the birth of a child. (pp. 192-196) While Ms. Cotter acknowledges that the United States has made advancements in civil rights laws, she posits that American values of self sufficiency

(“survival of the fittest”) (p. 2) limit that advancement because the laws fail to provide paid family leave. (p. 2-3) Countries in the European Union, on the other hand, encourage advancement of human rights because of the “unique European approach,” (p. 3) which encourages provision of societal benefits. Ms. Cotter’s implication is that unless one opposes the advancement of civil rights and, indeed, human rights, one would agree that family laws in the United States are deficient.

To advance the argument that maternity leave laws in the United States are deficient, *Pregnant Pause* lists 173 countries, from Afghanistan to Zimbabwe, that provide maternity leave. (pp. 12-16) *Pregnant Pause* notes that in addition to the United States, only Lesotho, Liberia, Swaziland and Papua New Guinea do not guarantee paid maternity leave. (p. 16-17) That statistic could cause policy makers to wonder why the United States is in the company of these small, less developed countries. *Pregnant Pause* points out that while some countries like Australia and Canada do not provide paid leave, they provide “baby bonuses” or facilitate payments from insurance funds. (pp. 17, 97, 175)

*Pregnant Pause* might have delved more into why United States’ leave laws do not correspond to those of most of the world.. It is not that its policy makers do not value civil rights; rather, they apply a different method for achieving those rights than that applied by most other countries. The answer to the question “what is equality?” has confounded policy makers, scholars and people generally who ponder what it means not to discriminate. One can define equality as applying the same rules and benefits to all despite their differing situations, or as adjusting rules and benefits to account for peoples’ differences. (p. 8) Scholars refer to the former as the “equal treatment” model and the latter as the “equal opportunity,” or, disparagingly, as the “special treatment” model. One problem with “equal treatment” laws, as *Pregnant Pause* notes, is that they are applied to a workplace that was structured to fit a man’s abilities, long before many women sought to enter it. (p. 364) On the other hand, a problem with “equal opportunity” laws is that they appear to provide special benefits to some at the expense of others. Another is that lawmakers must determine which groups need different benefits and what types of benefits produce equality.

The United States follows the equal treatment approach in its leave laws. Its Family and Medical Leave Act of 1993 requires employers to provide both men and women with 12 weeks of unpaid leave per year, not just for the birth or adoption of a child, but also for caring for a seriously ill relative or one’s self. Not only is the leave unpaid, but the requirement that employers provide any leave at all applies only to companies with 50 or more employees. (pp. 17, 192-196). To portray the United States as having no paid maternity or paternity leave is not entirely accurate, however. Some employers provide paid leave as a fringe benefit, and a few states have set up insurance mechanisms to provide paid leave. Under United States law, whatever is provided should be provided equally to men as well as women. What is accurate, however, is that many workers in the United States do not receive paid leave, or any leave, because there is no federal law mandating either for everyone in the workplace.

The type of equality that *Pregnant Pause* advocates, and that much of the world adopts, is equal opportunity. (p. 9) As *Pregnant Pause* documents with its extensive collection of laws, most countries provide paid, often lengthy, maternity leaves, sometimes followed by longer unpaid leaves that provide job security. Many countries also provide paid paternity benefits, but none provide fathers with the same benefits as mothers. These laws assume that because women are, at times, different from men, they need different benefits to make the work place accessible to them.

*Pregnant Pause* demonstrates the conundrum that policy makers have in deciding whether to choose between equal or differential treatment. The United States' choice is to treat everyone equally, but stingily, leaving many mothers facing an economic child penalty. The choice of most other countries is to provide generous benefits to help mothers, but no comparable benefits to fathers.

*Pregnant Pause* advocates that people should have "real freedom to choose one's amount of participation in the workforce in the pursuit of flexibility as to a just remuneration and access to employment." (p. 363) Yet questions remain as to how to combine employees' freedom and employers' needs. How much time away from work will enable parents to raise their children and also participate meaningfully in the workplace? Who will do the work when others are on leave? *Pregnant Pause* notes that the latter is "one of the more difficult" issues for employers. (p.113 ) A final question involves funding paid parental leaves. Some countries fund benefits with taxes or insurance funds. (p. 18) The United States requires parents and employers to shoulder that burden. (p.22) *Pregnant Pause* advocates that parental benefits be provided through social insurance, but does not explain how to change the United States' cultural and political aversion to increased taxes and social insurance.

Although *Pregnant Pause* does not provide a detailed blueprint for how maternal equality can be achieved, its collection of legislation and other legal documents from a number of countries and international organizations, and its discussion of some of the relevant issues, will provide policy makers, teachers and scholars in the field, and others around the world a helpful resource, and an opportunity to compare different solutions. While a more detailed analysis of the legal, political, social and cultural issues as well as the economic feasibility and pros and cons of various benefit policies would be welcome, it is beyond the intended scope of this otherwise useful book.

*Pregnant Pause* recognizes that discrimination, including maternal discrimination, cannot be eliminated immediately, particularly because achieving it requires "sustained economic growth," (p. 10) whereas these are "troubling times" (p. 1) with the world facing serious financial challenges. (p. 76). The international community, in the meantime, can develop a "vision." of how to achieve equality. (p. 75) An important step in achieving that vision is "awareness and information" of the issues surrounding equality and the suffering of those discriminated against. (p. 76) This book provides information to inform that awareness.

**Candace Saari Kovacic-Fleischer**  
*American University Washington College of Law*