

THE CHRONICLE

of Higher Education

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April 14, 2003

The Subtle Side of Discrimination

By Joan C. Williams

Stop the tenure clock. That's the first solution offered when academics talk about how the tenure system and other workplace policies may discriminate against female professors with families.

In my first column for Career Network, I wrote about how mothers are disadvantaged by the way academe defines the ideal worker as someone who can move at will and needs no time off for childbearing or child-rearing. Stopping the tenure clock is an important solution. But even if every tenure clock in the world could be stopped without repercussions, academic women would still be disadvantaged in more subtle ways by work and family roles.

Take, for example, the routine practice of giving faculty members a major pay raise only if it's necessary to match an offer from an outside institution. According to Donna Euben, staff counsel for the American Association of University Professors, "Many institutions have this informal practice of only matching outside offers, which can disproportionately affect women who don't always feel as comfortable playing those kinds of games."

Why don't women play? Children are a big factor: Euben's impression is that many female faculty members "won't even go out there and get that offer to avoid uprooting their families."

Selflessness remains a key tenet of motherhood, so many mothers may be reluctant to force a transition that requires their kids to leave friends and schools where they feel comfortable, for the new and unknown. True, many American mothers describe this as the choice they made in response to their children's needs. And not dragging kids around through six different moves probably does reflect a healthy sense of priorities.

Yet a woman's reluctance to "uproot her family" has a masculine/feminine dynamic as well as a parent/child one. We need to beware of the pressures that cause women to link to "children's needs" actions that also benefit their partners.

The cultural linkage of motherhood with selflessness means that tying your decision not to change jobs to your children's needs

signals that you are a good mother. On the other hand, tying that decision to your husband's career interests makes not only him, but you, look bad: Don't you believe in gender equality?

As a result, much that is explained in terms of children turns out to benefit partners quite tidily.

In the past, husbands had the legal right to determine the family's place of residence, and any wife who refused to follow risked being charged with abandoning the home. Informal social forces still leave women trailing. Because we often still "measure masculinity by the size of a paycheck" (to quote Robert Gould), many women still feel the need to follow "their" men. As Beverly Sills put it, explaining her decision to follow her husband to Cleveland, "my only alternative was to ask Peter to scuttle the goal he'd been working towards for almost 25 years. If I did that, I didn't deserve to be his wife."

A 1992 study by William and Denise Bielby found that over half of female respondents, but only 16 percent of men, reported a reluctance to relocate because of family considerations. This creates what we call a "trailing-spouse gap": Women are more likely than men to trail along so their husbands can take a desirable job. The trailing-spouse gap translates very directly into a salary gap.

Institutions need to avoid feeding this dynamic, and can do so in a number of ways. One is to avoid pinning raises to outside offers. This could prove more difficult than it sounds.

Whenever institutions give merit raises, they want to be able to point to an objective reason for doing so. Pinning raises to outside offers provides a reason that appears gender neutral on its face: Anyone who gets an outside offer can use it to get a pay raise.

Yet many practices that appear neutral have a disproportionately negative impact on women. Lotte Bailyn, a professor of business at the Massachusetts Institute of Technology, notes that when raises are tied to outside offers, "Women get hit with a triple whammy. They are less likely to get offers because they are typically viewed as less moveable; women are also less likely to use an offer as leverage unless they are extremely serious and set to leave; and, finally, there is some evidence that women may be less likely to get counteroffers."

Facially neutral practices that disproportionately affect women often wind up in the courts. Federal law forbids such practices unless they can be justified as a business necessity, where no alternative approach is feasible. The law is a blunt instrument to communicate the message that people of good will need to re-

examine whether a given practice is consistent with widely held ideals of gender equality.

Besides being potentially illegal, practices inconsistent with gender equality are often inefficient as well. Linking raises to outside offers "wastes a lot of intellectual energy," observes Linda Kerber, a historian at the University of Iowa. "It is colleagues who hire and colleagues who have to decide whom to recruit. If we are doing that because there's a realistic opportunity of strengthening our department," it is a worthwhile expenditure of energy. But the practice of linking raises to outside offers ensures that departments spend a lot of energy on candidates who don't really want to move; they just want a raise where they are.

The solution? It's simple. Raises need to be linked not only to outside offers but also to excellence in scholarship, teaching, and research. As a practical matter, institutions will need to match some outside offers in order to keep desirable faculty members, but there should also be other ways to recognize faculty contributions. "The outside offer doesn't necessarily represent the value of that person to your institution. She may be an important person who holds your community together, or may provide distinctive scholarship that otherwise you wouldn't have," say Martha Chamallas, a professor of law at Ohio State University.

If linking raises to outside offers subtly disadvantages women, so does a second common practice: the way that hiring and tenure committees typically treat gaps in a faculty member's CV. By gaps, I mean a break in the expected career path, in which the ideal worker is defined as someone who starts work in early adulthood and continues, full time and full force, for 40 years straight.

"It isn't the gap so much as how the gap is interpreted," Bailyn says. "A gap in a man's résumé may well be interpreted as evidence that he is enterprising, whereas a gap in a woman's résumé may be seen as evidence that she is not serious. And, of course, there is no recognition that a gap taken for caretaking can have positive effects when she comes back."

Any interruption of work, notes Chamallas, seems to be given an "exaggerated importance. I'm not sure that not teaching for three or four years is going to make you a less effective teacher or scholar or colleague."

As Linda Kerber and others pointed out long ago, the key years for gaining tenure also are the key years for childbearing and child-rearing. Even where gaps in a woman's résumé do signal time off for children, does this make her less serious? In point of fact, couldn't it

also signal that she is a serious and committed parent as well as a serious and committed scholar, teacher, and colleague?

The frequent assumption in academe that gaps in a CV signal a lack of seriousness will have a disproportionate impact on female job candidates. And that assumption may, in some situations, be illegal, particularly if gaps in a man's CV are treated different from gaps in a woman's. Institutions need to take steps to avoid the stereotypes that associate homemakers and women working part time with rock-bottom competence, and examine the unspoken assumptions about who is serious and who is not.

A related, but still more subtle issue, arises when search committees look at "career trajectory." On its face, what could be more legitimate than to look at the path a faculty candidate has followed in his or her career? Surely everyone wants to back a winner.

But who is winning at what? Some search committees require candidates hired right out of graduate school to have a couple of published articles. For tenure, they expect the rate of publication to speed up, as a signal that the candidate's career is picking up steam. Given that the average age for the granting of a Ph.D. is 33, this means that the rate of publication is expected to speed up during the years when child-care responsibilities are heaviest. Since American women continued to do the majority of the child care and housework, this expectation too has a disproportionately negative impact on women,.

Even more troubling are stories I've heard about conversations where a concern is expressed when a woman has had a second child. As one academic, who asked not to be named, says, "The feeling seems to be that it is understandable that people want to have children, so one is OK. But having a second one may be felt to signal that someone is not willing to do what it takes" to get tenure.

This is not a pretty picture. First, there is the potential for legal liability: One strongly suspects that women but not men are assumed to lack seriousness when a second child is born. Treating women differently from similarly situated men may be a violation of federal and/or state antidiscrimination laws.

Leaving aside the potential for liability, the idea of penalizing women for having the standard-issue number of children clearly seems unfair and inconsistent, not only with widely held ideals of gender equality, but also with widely shared values relating to family life (regardless of sexual orientation, preference, or proclivity).

Let me be quick to say what I do not mean: I do not mean that academic institutions cannot hold candidates to rigorous standards. They can, and they should. I am not saying that merit should not be rewarded. It can and it should.

What I am saying is that some of the accepted ways of measuring merit and rigor are unreliable, inaccurate, and systematically unfair to women. That also makes them unfair to many men who are committed to family care -- and family equality.

Joan Williams, a professor of law at American University and director of its program on gender, work and family, is author of *Unbending Gender: Why Family and Work Conflict and What To Do About It* (Oxford University Press, 2000).

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