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# Sloan Work and Family Research Network

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July 2004 • Volume 6(3)

*THE NETWORK NEWS:*  
A WORK-FAMILY NEWS  
PUBLICATION

[www.bc.edu/wfnetwork](http://www.bc.edu/wfnetwork)

## *Conversations with the Experts*

### Understanding the Policy Landscape of Workplace Flexibility



**Chai Feldblum, Ph.D.**

**Bio:** Professor Chai Feldblum joined the faculty of Georgetown University Law Center in 1991 and established the Federal Legislation Clinic in 1993. Chai coined the term “legislative lawyer” in the Clinic to describe a lawyer equally skilled in law and politics who can research, draft and negotiate legislation and administrative regulations. Recently, Chai has become the Director of Workplace Flexibility 2010, an initiative funded by the Alfred P. Sloan Foundation which seeks to expand the knowledge base on which policymakers may draw in addressing the legal and practical issues that facilitate or impede workplace flexibility. She oversees the legal, communications and outreach work of the Initiative. Prior to joining the Georgetown faculty, Chai worked at the AIDS Project of the American Civil Liberties Union, serving as the principal lawyer drafting and negotiating the Americans with Disabilities Act. She also worked as a law clerk to Judge Frank M. Coffin on the First Circuit Court of Appeals and to Justice Harry A. Blackmun on the U.S. Supreme Court. Prior to law school, Chai worked as a lobbyist on population issues and as a staff person to then-Congresswoman Barbara Mikulski. Chai received her B.A. from Barnard College and her J.D. from Harvard Law School.

**Editors Note:** The following interview was conducted with Chai Feldblum, who shared her perspectives about the legislative and legal frameworks relevant to the “the flexible workplace.” Feldblum and her staff at Georgetown University Law Center in Washington, D.C. are preparing a series of papers that will “map” the legislative work-family terrain and will analyze the implications of and opportunities associated with different federal laws. [Click Here](#) to read more about Workplace Flexibility 2010

### An interview with Chai Feldblum, Director of Workplace Flexibility 2010 at Georgetown University Law Center.

**Pitt-Catsoupes:** How do you know that flexibility is important to today's workers?

**Feldblum:** First, it is important to understand that there are many reasons why flexibility is important to people who work. I can think of seven different reasons why people would want flexibility: caregiving, life logistics [meeting the plumber at home], development of skills/training, quality of life [e.g., variations in length of commute; personal “bio rhythms”], community service, desire/need to transition into retirement over a period of time, and differences in capacities/health.

How do I know this is important to people? Because they tell us – in explicit ways (for example, in polls) and in not so explicit ways (for example, in their stress levels).

I'm in Washington – so I'll tell you the context in which I hear about how important flexible options are for employees. This becomes transparent when bills are introduced and discussed. For example, when members of Congress (all Republicans) sponsor bills to amend the Fair Labor Standards Act [FLSA], the testimony and the committee reports reference many different surveys of employees who, in essence, say, ‘We want more flexibility in the scheduling of our hours and how many hours we work when.’ Then, just last month in June, members of Congress (all Democrats) introduced a mandatory paid sick leave bill. Statements made by them and by the supporting organizations reflected the idea that, ‘Workers need this bill; they tell us they need to have flexibility to take time off when they or someone in their family is sick – and the workplace often doesn't allow for that.’

There's plenty of information about how workers want something that they don't feel they're getting now. Now, whether they also specifically want the particular policy that is being pushed in their name – be it amending the

overtime law or mandating paid leave that they will probably pay for in some way – is a different story.

But I think it's clear – whether it's from survey data, or focus groups, or just our ordinary experiences with people – that the workplace is out of sync with workers' needs for flexibility.

**Editors Note:** WFD Consulting has found that when employees are asked how valuable flexible full-time schedules are, nine out of ten rate it valuable (64% of great value, 25% valuable, and 11% of little or no value). (WFD Consulting Employee Database, 1998 - 2004: data from a total of 37,616 respondents representing over 251,000 employees from 12 large corporations and organizations).

**Pitt-Catsouphe:** Flexibility is often considered to be an option for certain employees who work at particular workplaces. That is, some people assume that availability of policies for flexible options is the prerogative of each employer. Why is it important to consider workplace flexibility from a policy perspective?

**Feldblum:** The US is a country where our employment system operates primarily on the free contract model. That is, employers and employees are supposed to contract with each other regarding conditions of employment. So, some people say, if businesses and workers want to contract for flexibility, they should just do that. These people tend to wonder, 'What does government and public policy have to do with it?' Many of them would suggest that laws should 'just get out of the way.'

Personally, I agree that public policy is only one component for achieving flexibility in the workplace. In fact, policy can never substitute for two very important factors that will affect the extent to which employers adopt certain policies regarding flexibility: 1) normative, cultural change, and 2) individualized tailoring of flexibility in different jobs for different people. And both of those components are key to actually making workplaces more flexible.

For example, take the situation of someone whose elderly father goes into the hospital for a serious operation. Whether that person can take leave from his job for three days to be with his father will, at this point in time, reflect structural opportunities (for instance, would the leave be paid or unpaid) and normative expectations (for instance, is caregiving to a family member acknowledged in the workplace culture and valued by important people at the workplace such as the supervisor and co-workers).

But policy can help advance each of those components. It can create incentives and remove obstacles for allowing such flexibility – advancing both structural change inside the workplace and shaping a normative, cultural message that leaving work for such activity is considered valuable. And, of course, at certain points, law can directly advance flexibility by imposing a mandate on businesses. But I think we must keep in mind that this is only one possibility and certainly not the only way in which law and policy can advance flexibility.

At Workplace Flexibility 2010 at Georgetown University Law Center, it is our job to find out what employers and employees would like and would need with regard to workplace flexibility, and how current laws and policies intersect with that.

**Pitt-Catsouphe:** Could you give some examples of laws or bills that either encourage or constrain flexibility at the workplace?

**Feldblum:** Sure. Let's go back to the employee who needs to care for an elderly father who lives in a different city.

The employee might work for an organization which offers paid sick days when the employee is ill. However, if the paid sick days can not be applied to caring for a sick relative, the employee's choices about providing care to the father could well be constrained. Some people's answer to this will be to require businesses to offer paid sick leave for such circumstances; other people's answer will be to offer incentives to organizations that do provide such leave. In either case, the absence of law (either as a mandate or as an incentive) constrains flexibility.

The existence of current law can also be problematic. If the employee is an hourly worker, the provisions of the FLSA might further constrain the options available to the employee. The FLSA currently prohibits the employer from letting employees "bank" extra time which they could take as 'paid leave' in a situation when a relative needs care.

We need to be creative about the various ways in which law can help, rather than hinder, the situation as employers and employees together struggle to address these dilemmas.

**Pitt-Catsouphe:** What are the challenges/barriers to the development of public policies that address workplace flexibility?

**Feldblum:** Essentially, I think we are confronting three types of challenges.

1) Crimped conceptual analyses. We need to open up our understanding of the issues and then create new messages so that people can start to talk about the need for flexibility in a fresh way.

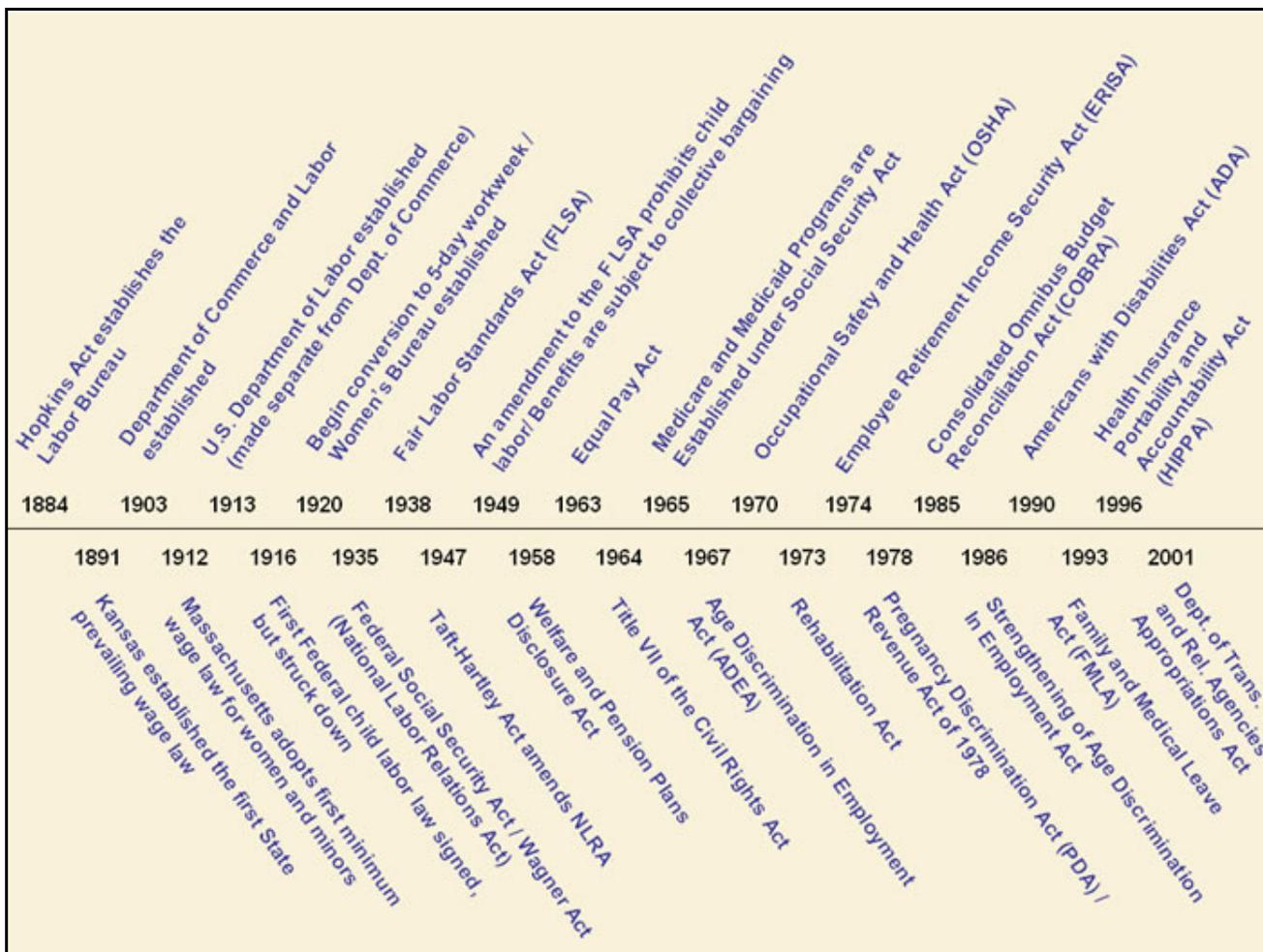
2) Ideological polarization. We have become stuck in the traditional politics of our conversations. I think we need to bring in a range of new stakeholders – social workers, police, teachers, for example – who can help move our creative communication forward.

3) Silo thinking which adopts either a labor law or a discrimination/civil rights perspective. We need to reframe the issues and re-define the constituent elements of flexibility. We should focus on 'what it means' for employers and for employees.

There is a lot of work we need to do. The good news is that a lot of people want to make a good faith effort to make some progress. We hope to be a part of that.

To contact Chai, please e-mail her at [feldblum@law.georgetown.edu](mailto:feldblum@law.georgetown.edu) or call her at 202-662-9595.

### Timeline: Selected US Labor Laws and Regulations



[Click Here](#) to zoom in.

[Click Here](#) for more information on each of these pieces of legislation

### Additional Resources: Related to Policy and the Flexible Workplace

**AFL-CIO:** The AFL-CIO (American Federation of Labor and the Congress of Industrial Organizations) is comprised of over 60 national and international labor unions that seek fairness for employees and their families.

- For more information, please visit the [AFL-CIO website](#).
- [Click here](#) for a short report about family-friendly work schedules.
- [Click here](#) for alternative work schedule bargaining facts.

**Flexibility:** Based in the United Kingdom, this website provides current information and research pertaining to flexible work arrangements. Global Perspectives

- For more information, please visit the [Flexibility website](#).
- [Click here](#) to download a full report titled Flexible working-Business benefit or personal perk? The report is based on research conducted by Nextra, an IT and communications infrastructure provider.
- For more details about the “right to request flexible work” provision in the Employment Act 2002, please [click here](#).

#### Committee on Education and the Workforce:

- For more information, please visit the [Education and the Workforce website](#).
- [Click here](#) for information regarding H.R. 1119 Family Time Flexibility Act.

**National Organization for Women:** For over 35 years, NOW has worked towards women’s equality. It is “the largest organization of feminist activists in the United States”.

- For more information, please visit the [National Organization for Woman website](#).
- [Click here](#) for information regarding H.R. 1119 Family Time Flexibility Act

**Department of Trade & Industry:** This United Kingdom government department is invested in the success of businesses and organizations. Global Perspectives

- For more information, please visit the [Department of Trade & Industry website](#).
- For further details about legislation changes to the Employment Act of 2002, as well as useful information for employees and employers regarding these provisions, please [click here](#).

**Texas Workforce Commission:** This state government agency provides training, information about workplace legislation, and additional development services to businesses.

- For more information, please visit the [Texas Workforce Commission website](#).
- [Click here](#) for a listing of nationwide businesses and organizations that offer flexible work arrangements

The Sloan Work and Family Research Network appreciates the extensive support we have received from the Alfred P. Sloan Foundation and the Boston College community.

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*The Sloan Work and Family Research Network is funded by the Alfred P. Sloan Foundation*