Appendix A: Notes on Sources

Primary Sources

Given the importance of the CAC’s formulation of a pregnancy nondiscrimination standard in 1970 and the EEOC’s adoption of this standard in its 1972 rule, I sought to investigate relevant records in the archives of the EEOC and the CAC. Both were available at the National Archives in College Park, MD, where I examined the following records:

1. Records of the Equal Employment Opportunity Commission, Record Group 403 (National Archives Identifier 669):
   1. EEOC Chair, Chairman and Chairwoman’s Chronological Records, 1969–1999 (containers 1–4)
   2. Records of Chairman Stephen Shulman, 1966–1967 (boxes 1–10)
   3. Speeches of Chairman Stephen Shulman, 1966–1967 (boxes 1–3)
   4. Speeches and Statements of Chairman William H. Brown III, 4/1969–7/1973 (boxes 1–3)
   5. Chairman and Chair Speech Files, 1971–1983 (containers 1–2)
   6. EEOC Memorandums and Records Relating to Compliance Manual Updates, 1973–1990 (boxes 1–2)
2. Records of the Citizens’ Advisory Council on the Status of Women, Record Group 86 (National Archives Identifier 86):
   1. CACSW General Records, 1961–1977 (boxes 18–33)
   2. CACSW Transcripts of Proceedings, 1964–1975 (boxes 46–52)
   3. ICSW Meeting Files, 1963–1968 (boxes 60–61)
   4. Records of Task Forces, 1965–1968 (boxes 62–64)
   5. CACSW Records of Meetings, 1964–1976 (boxes 53–59)
   6. CACSW Subject Files, 1961–1977 (boxes 8–17)
   7. CACSW General Records, 1961–1977 (boxes 34–39)
   8. CACSW Numbered Documents, 1962–1968 (boxes 38–35)
   9. CACSW White House Files, 1964–1976 (box 7)

To investigate women’s movement organizations’ campaigns to pressure the EEOC during this period, I reviewed the records of the National Organization for Women. I also sought out available records of state-level commissions on the status of women in states where pregnancy leave/discrimination policies were proposed or passed in the 1970s. These were available at the Schlesinger Library in Cambridge, MA, where I examined the following records:

1. Records of the National Organization for Women, 1959–2002 (inclusive), 1966–1988 (bulk)
   1. Series III: Conferences (file units 21.2-21.20)
   2. Series VIII: Legislative Office (file units 51.2-51.8, 51.19, 54.65, 55.12)
   3. Series XI: National Action Center, Press Office (file units 87.43, 90.10-90.11)
   4. Series XIII: Task Forces & Conf. Implementation Committees (file units 42.42-43.21, 43.28, 42.42, 43.35-43.41, 44.3, 44.8-44.12, 44.23-44.29, 46.12-46.15, 16.19-46.20)
2. Commissions on the Status of Women collection, 1967-1994 (boxes 2, 3, 8, 13, covering material from California, Connecticut, Massachusetts, and Michigan)

I also examined published reports and documents from organizations such as the Citizens’ Advisory Council on the Status of Women, the National Partnership for Women & Families (the successor to the Women’s Legal Defense Fund), and the Women’s Bureau.

To understand the context in which state-level pregnancy leave and pregnancy discrimination policies were enacted, I sought out legislative histories and other documents published by state agencies and legislatures. Some of these records were available on state government websites. For California and Montana, whose statutes were the subject of subsequent litigation, I requested documents from the California State Archives and the Montana Historical Society. I also examined news coverage of state regulations and statutes in the ProQuest Historical Newspapers Database.

For the two significant federal legislative enactments, the Pregnancy Discrimination Act and the Family and Medical Leave Act, I reviewed legislative histories. I paid particularly close attention to congressional hearings, since this setting enables advocates, opponents, and legislators to advance arguments and interact with each other. For each of the court cases addressed in the article (*Geduldig v. Aiello*, *GE v. Gilbert*, *Miller-Wohl Co. v. Commissioner of Labor & Industry*, and *Cal Fed v. Guerra*), I reviewed syllabi, opinions, filings by petitioners and respondents, and all *amicus curiae* briefs. I also examined news coverage of these cases in the ProQuest Historical Newspapers Database.

To locate further examples of the activities and arguments made by advocates and opponents, I reviewed contemporaneous news coverage. I searched for articles published between 1960-1993 in the ProQuest Historical Newspapers Database with the search term “(pregnan\* NEAR/25 leave) OR (matern\* NEAR/25 leave) OR (prengan\* NEAR/25 discrimin\*).” I applied a filter for four nationally circulated publications: the *New York Times*, the *Washington Post*, the *Wall Street Journal*, and the *Chicago Tribune*. I have used these newspaper sources only where they serve to illustrate inferences made using other primary and secondary sources. As such, I am not concerned about selection bias.

Secondary sources

The article’s analysis is indebted to the work of several historians. In particular, scholarship by Dorothy Sue Cobble, Alice Kessler-Harris, Serena Mayeri, Katherine Turk, and Lise Vogel informed my understanding and framing of the women’s movement during this period. The full extent of secondary sources upon which I have relied is reflected in the citations throughout the article.

In my account of developments during 1984–93, I drew on several sources produced by journalists and actors involved in the policy process. Two sources, Ronald D. Elving’s *Conflict and Compromise* and Anya Bernstein’s *The Moderation Dilemma*, are partly based on interviews of key political actors conducted by the authors. Elving’s journalistic account provides invaluable detail on the campaign for the FMLA, but it unfortunately does not offer specific references for many claims. Wherever possible, I have cross-referenced Elving’s claims with evidence from other sources. I also draw on publications from several political actors who were involved in the policy process: Anne Radigan (a staff member at CCWI), Donna Lenhoff and colleagues at the WLDF (which later became the National Partnership on Women & Families), and Rep. Pat Schroeder (D-CO). Some of these documents were written during policy development, while others are post hoc recollections. I also relied on law review articles by Lenhoff, Wendy Williams (the primary attorney in *Geduldig v. Aiello* and a member of the advocacy coalitions behind the PDA and FMLA campaigns in Congress), Elizabeth Koontz (president of the Women’s Bureau), and their contemporaries. These law review articles contain detailed descriptions of ongoing legislative, administrative, and advocacy activity.

Appendix B: Inclusion of Sex in State-Level Employment Discrimination Laws

The data used to generate Figure 1 were drawn from annual reviews of labor legislation published in the *Monthly Labor Review* (abbreviated below as *MLR*) during 1961–1993, published by the Bureau of Labor Statistics. Several additional sources were used to identify missing data and for cross-referencing.[[1]](#footnote-2) The below table shows years of passage and specific sources for each state.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **State** | **Employment discrimination law** | | **Sex discrimination provision** | |
| **Year** | **Source** | **Year** | **Source** |
| WI | 1957 | Chen 2007 | 1961 | *MLR*, Dec 1961; Kanowitz 1968 |
| HI | 1963 | Chen 2007; *MLR*, Nov 1963; Murray & Eastwood 1965; Kanowitz 1968 | 1963 | Murray & Eastwood 1965; Kanowitz 1968 |
| NY | 1945 | Chen 2007 | 1965 | *MLR*, Dec 1965; Murray & Eastwood 1965; Kanowitz 1968 |
| MA | 1946 | Chen 2007 | 1965 | *MLR*, Dec 1965; Kanowitz 1968; Murray & Eastwood 1965 |
| MO | 1961 | Chen 2007 | 1965 | *MLR*, Dec 1965; Kanowitz 1968; Murray & Eastwood 1965 |
| AZ | 1965 | *MLR*, Dec 1965 | 1965 | *MLR*, Dec 1965; Kanowitz 1968; Murray & Eastwood 1965 |
| MD | 1965 | *MLR*, Dec 1965 | 1965 | *MLR*, Dec 1965; Kanowitz 1968; Murray & Eastwood 1965 |
| NE | 1965 | *MLR*, Dec 1965 | 1965 | *MLR*, Dec 1965; Kanowitz 1968; Murray & Eastwood 1965 |
| UT | 1965 | *MLR*, Dec 1965 | 1965 | *MLR*, Dec 1965; Kanowitz 1968; Murray & Eastwood 1965 |
| DC | 1965 | *MLR*, Dec 1965 | 1965 | *MLR*, Dec 1965; Kanowitz 1968; Murray & Eastwood 1965 |
| WY | 1965 | *MLR*, Dec 1965 | 1965 | *MLR*, Dec 1965; Kanowitz 1968; Murray & Eastwood 1965 |
| CT | 1947 | Chen 2007 | 1967 | [Leg. history for CT General Statutes, Ch. 814c, Sec. 46a-60 (formerly Sec. 31-126)](https://web.archive.org/web/20190209053923/https:/www.cga.ct.gov/2012/sup/chap814c.htm#Sec46a-60.htm) |
| ID | 1961 | Chen 2007 | 1967 | Kanowitz 1968 |
| NV | 1965 | [Leg. history for NV Revised Statues 613310](https://web.archive.org/web/20190529171126/https:/www.leg.state.nv.us/NRS/NRS-613.html) | 1967 | [Leg. history for NV Revised Statues 613310](https://web.archive.org/web/20190529171126/https:/www.leg.state.nv.us/NRS/NRS-613.html) |
| OK | 1968 | *MLR*, Jan 1969 | 1968 | *MLR*, Jan 1969 |
| NM | 1949 | Chen 2007 | 1969 | *MLR*, Jan 1970 |
| OR | 1949 | Chen 2007 | 1969 | *MLR*, Jan 1970 |
| AK | 1953 | Chen 2007 | 1972 | *MLR*, Jan 1973 |
| MN | 1955 | Chen 2007 | 1969 | *MLR*, Jan 1970 |
| PA | 1955 | Chen 2007 | 1969 | *MLR*, Jan 1970 |
| CO | 1957 | Chen 2007 | 1969 | *MLR*, Jan 1970 |
| NJ | 1945 | Chen 2007 | 1970 | *MLR*, Jan 1971 |
| CA | 1959 | Chen 2007 | 1970 | *MLR*, Jan 1971 |
| KS | 1961 | Chen 2007 | 1970 | *MLR*, Jan 1971 |
| IA | 1963 | Chen 2007; *MLR*, Nov 1963 | 1970 | *MLR*, Jan 1971 |
| RI | 1949 | Chen 2007 | 1971 | *MLR*, Jan 1972 |
| WA | 1949 | Chen 2007 | 1971 | *MLR*, Jan 1972 |
| DE | 1960 | Chen 2007 | 1971 | *MLR*, Jan 1972 |
| IL | 1961 | Chen 2007 | 1971 | *MLR*, Jan 1972 |
| IN | 1963 | Chen 2007; *MLR*, Nov 1963 | 1971 | *MLR*, Jan 1972 |
| VT | 1963 | Chen 2007; *MLR*, Nov 1963 | 1971 | *MLR*, Jan 1972 |
| MT | 1965 | *MLR*, Dec 1965 | 1971 | *MLR*, Jan 1972 |
| NH | 1965 | *MLR*, Dec 1965 | 1971 | *MLR*, Jan 1972 |
| WV | 1967 | [Website of WV Human Rights Commission](https://web.archive.org/web/20170810012826/https:/hrc.wv.gov/about/History/Pages/default.aspx) | 1971 | *MLR*, Jan 1972 |
| SC | 1972 | *MLR*, Jan 1973 | 1972 | *MLR*, Jan 1973 |
| SD | 1972 | *MLR*, Jan 1973 | 1972 | *MLR*, Jan 1973 |
| KY | 1966 | Leg. history of KY Revised Statutes 344010, *et seq* | 1972 | *MLR*, Jan 1973 |
| OH | 1959 | Chen 2007 | 1973 | *MLR*, Jan 1974 |
| ME | 1965 | *MLR*, Dec 1965 | 1973 | *MLR*, Jan 1974 |
| MI | 1955 | Chen 2007 | 1976 | Leg. history of Mich; Comp; Laws Section 372102; Gordon 2018 |
| NC | 1977 | Leg. history of NCGSA; § 143-4222 | 1977 | Leg. history of NCGSA; § 143-4222 |
| FL | 1977 | [Website of the FL Commission on Human Relations](https://web.archive.org/web/20190719043014/https:/fchr.myflorida.com/history-of-the-florida-commission-on-human-relations) | 1977 | [Website of the FL Commission on Human Relations](https://web.archive.org/web/20190719043014/https:/fchr.myflorida.com/history-of-the-florida-commission-on-human-relations) |
| TN | 1978 | [Website of the TN Human Rights Commission](https://web.archive.org/web/20190109154947/https:/www.tn.gov/humanrights/about-us/history.html) | 1978 | [Website of the TN Human Rights Commission](https://web.archive.org/web/20190109154947/https:/www.tn.gov/humanrights/about-us/history.html) |
| GA | 1978 | [Website of the GA Commission on Equal Opportunity](https://web.archive.org/web/20190502054734/http:/gceo.state.ga.us/sample-page-2/) | 1978 | [Website of the GA Commission on Equal Opportunity](https://web.archive.org/web/20190502054734/http:/gceo.state.ga.us/sample-page-2/) |
| LA | 1983 | Friedman 1983 | 1983 | Friedman 1983 |
| ND | 1983 | Leg. history of NDCC, 14-024-03 | 1983 | Leg. history of NDCC, 14-024-03 |
| TX | 1983 | *MLR*, Jan 1984; Leg. history of VTCA, Labor Code § 21051 | 1983 | *MLR*, Jan 1984; Leg. history of VTCA, Labor Code § 21051 |
| VA | 1987 | *MLR*, Jan 1988 | 1987 | *MLR*, Jan 1988 |
| AR | 1993 | Beiner 1997 | 1993 | Beiner 1997 |
| AL | NA |  | NA |  |
| MI | NA |  | NA |  |

Appendix C: State-Level Leave Statutes, 1986–92

The table below shows statutes enacted on the state level that included some form of family, parental, maternity, or pregnancy leave. The data came primarily from annual summaries of labor legislation in the *Monthly Labor Review* (abbreviated below as *MLR*), published between 1986 and 1994. These data were cross-referenced using two additional sources.[[2]](#footnote-3)

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **State** | **Year** | **Sector** | **Types of leave** | **Gender-neutral?** | **Source** |
| Pennsylvania | 1986 | Public | Parental and medical | Yes | Fund 1991 |
| Minnesota | 1987 | All | Parental and medical | Yes | *MLR*, Jan 1988 |
| Oregon | 1987 | All | Parental and medical | Yes | *MLR*, Jan 1988 |
| Rhode Island | 1987 | All | Parental and medical | Yes | *MLR*, Jan 1988 |
| 1990 | All | Family and medical | Yes | *MLR*, Jan 1991 |
| Tennessee | 1987 | All | Maternity and pregnancy | No | *MLR*, Jan 1988 |
| Connecticut | 1987 | Public | Family and medical | Yes | *MLR*, Jan 1988 |
| 1989 | All | Family and medical | Yes | *MLR*, Jan 1990 |
| Iowa | 1987 | All | Pregnancy | No | *MLR*, Jan 1988 |
| Louisiana | 1987 | All | Pregnancy | No | *MLR*, Jan 1988 |
| Maine | 1988 | All | Family and medical | Yes | *MLR*, Jan 1989 |
| Wisconsin | 1988 | All | Family and medical | Yes | *MLR*, Jan 1989 |
| Washington | 1989 | All | Family[[3]](#footnote-4) | Yes | *MLR*, Jan 1990 |
| North Dakota | 1989 | Public | Family | Yes | *MLR*, Jan 1990 |
| West Virginia | 1989 | Public | Family | Yes | *MLR*, Jan 1990 |
| Oklahoma | 1989 | Public | Family | Yes | *MLR*, Jan 1990 |
| Vermont | 1989 | Private | Maternity and pregnancy | No | *MLR*, Jan 1990 |
| 1992 | All | Family and medical | Yes | *MLR*, Jan 1993 |
| DC | 1990 | All | Family and medical | Yes | *MLR*, Jan 1991 |
| New Jersey | 1990 | All | Family and medical[[4]](#footnote-5) | Yes | *MLR*, Jan 1991 |
| California | 1991 | All | Family and medical4 | Yes | *MLR*, Jan 1992 |
| Hawaii | 1991 | All | Family and medical4 | Yes | *MLR*, Jan 1992 |
| Oregon | 1991 | All | Family and medical | Yes | *MLR*, Jan 1992 |
| Florida | 1991 | Public | Family | Yes | *MLR*, Jan 1992 |
| Alaska | 1992 | Public | Family and medical | Yes | *MLR*, Jan 1993 |
| Georgia | 1992 | Public | Family and medical | Yes | *MLR*, Jan 1993 |
| Nevada | 1992 | Public | Parental | Yes | *MLR*, Jan 1993 |
| Maryland | Before 1992[[5]](#footnote-6) | Public | Family and medical | Yes | *MLR*, Jan 1993 |

1. Additional sources: Anthony S. Chen, “The Party of Lincoln and the Politics of State Fair Employment Practices Legislation in the North, 1945–1964,” *American Journal of Sociology* 112, no. 6 (2007): 1713–74; Pauli Murray and Mary O. Eastwood, “Jane Crow and the Law: Sex Discrimination and Title VII,” *George Washington Law Review* 34 (1965): 232–56; Leo Kanowitz, “Sex-Based Discrimination in American Law III: Title VII of the 1964 Civil Rights Act and the Equal Pay Act of 1963,” *Hastings Law Journal* 20 (1969): 305–60; Joel Wm. Friedman, “Fair Employment Legislation in Louisiana: A Critique of the 1983 Act and a Proposed Substitute Statute,” *Tulane Law Review* 58 (1983): 444–502; Theresa M. Beiner, “An Overview of the Arkansas Civil Rights Act of 1993,” *Ark. L. Rev.* 50 (1997): 165; Deborah Gordon, “A History of the Development of Sex Discrimination Law in Michigan,” *Michigan Bar Journal*, May 2018. [↑](#footnote-ref-2)
2. Women’s Legal Defense Fund, “Appendix B: State Laws and Regulations Guaranteeing Employees Their Jobs After Family and Medical Leaves,” in *Parental Leave and Child Care: Setting a Research and Policy Agenda*, ed. Janet Shibley Hyde and Marilyn J. Essex (Temple University Press, 1991), 468–89; Steven K. Wisensale and Michael D. Allison, “Family Leave Legislation: State and Federal Initiatives,” *Family Relations* 38, no. 2 (1989): 182–89. [↑](#footnote-ref-3)
3. This statute covered leave for childbirth and to care for a new or ill child, but not care for an ill spouse or parent. [↑](#footnote-ref-4)
4. Medical leave policy already existed in the form of a temporary disability insurance (TDI) program. [↑](#footnote-ref-5)
5. The *Monthly Labor Review* indicates that the state amended a family and medical leave policy applying to state employees in 1992, but I am unable to find information on when the initial statute was passed. [↑](#footnote-ref-6)