

Women Part I

Traditionally, men have been society's breadwinners and women the population's poorer half. More and more women now are entering the work force to support their families. Women accounted for 46% of total United States labor force participants in 1994 and are projected to comprise 48% in the year 2005.¹ According to the US Census Bureau, 70% of women work out of economic necessity.² Many women are forced to sacrifice their employment and economic status to care for family members. This is especially true for single women with families. Almost 50% of families in poverty are headed by a single parent, and more than 75% of those families are headed by women.³

The jobs that women are employed in are heavily concentrated in the service-producing industries, such as retail trade and government. In 1999, four-fifths of the new jobs

¹ Equal Rights Advocates, *Working Women and Economics*, at <http://www.equalrights.org/facts/ecostats.htm> (1998).

² *Id.*

³ CA Women's Law Center, *About the CWLC*, at <http://www.cwlc.org/about.html#jobs> (last visited July 11, 2001).

produced were in this industry.⁴ These jobs are often low-paying and only part-time.

Not surprising then, women, in 2000, still only earned \$0.83 of every dollar a man earns.⁵ In 1999, women only made \$26,324 in full-time job, as compared to the \$36,476 that full-time working men made.⁶

According to the AFL-CIO, the figures are even more devastating for women of color.⁷

Women who grow up in poor families tend to remain poor. Others become poor when their relationship with the workforce terminates due to their husband's violent acts.⁸ Other factors that commonly create poverty in women include: widowhood, caring full-time for an incapacitated spouse, or diminishing income and resources as they progress into old age.

⁴ U.S. Department of Labor, *Women's Jobs 1964-1999: More than 30 Years of Progress*, at <http://www.dol.gov/dol/wb/public/jobs6497.htm> (1999).

⁵ U.S. Department of Labor, *Women's Earnings as Percent of Mens, 1979-2000*, at http://www.dol.gov/dol/wb/public/wb_pubs/2000.htm (2000).

⁶ U.S. Department of Labor, *Median Annual Earnings*, at http://www.dol.gov/dol/wb/public/wb_pubs/achart.htm (Oct. 2000).

⁷ Equal Rights Advocates, *Welfare, Women Work, But Their Work Does Not Pay* at <http://www.equalrights.org/welfare/stats.html> (1997).

⁸ NOW Legal Defense and Education Fund, *Employment Rights for Survivors of Abuse*, at <http://www.nowldef.org/html/issues/work/ersastart.shtml> (last visited July 12, 2001).

Increasingly, women become poor when they leave their husbands because of physical and emotional abuse. In 1998 84.1% of children lived with a single mother, 15.9% with a single father.⁹ In 1997, the average California family that received welfare was a single mom with two children.¹⁰ In 1997, custodial mothers were three times as likely as custodial fathers to be poor, 32.1 percent and 10.7 percent, respectively.¹¹ Overall, custodial mothers with agreements or awards received \$15.8 billion of the \$26.4 billion in support they were due (59.8%) in 1997.¹²

Violence against women is rising at a rate four times faster than violence against any other group. Nearly one-third of American women report being physically or sexually abused by a husband or boyfriend at some point in their lives, according to a 1998 Commonwealth Fund survey.¹³

Poor women are greatly in need of affordable legal services. At least 75% of legal services clients in California are women and their children, a staggering client base with diverse and complex needs.¹⁴

⁹ Julie Jeffrey, *Single Parents Facts and Figures*, at <http://singleparents.about.com/library/weekly/aa112999a.htm> (Nov. 29, 1999).

¹⁰ See source cited *supra* note 7.

¹¹ Gender Center, *Child Support Facts*, at <http://www.gendercenter.org/support.htm> (last visited July 12, 2001).

¹² *Id.*

¹³ Family Violence Prevention Fund, *Domestic Violence is a Serious, Widespread Social Problem in America: The Facts*, at <http://fvpf.org/newsdesk/facts/> (last visited July 12, 2001).

¹⁴ See source cited *supra* note 11.

Income

In 1999, the median income for 4-person families in the United States was \$59,981.¹⁵ In families with a male head of the household, the median income has \$41,838; for families with a female head of the household, \$26,164.¹⁶

11.8% of all families were below the poverty level in 1999.¹⁷ However, 42% of families headed by single women were poor in 1999.¹⁸ Additionally, one in every two children under age of six who lives in a female-headed family — 50.3 percent of such children — lived in poverty last year.¹⁹

Of women age 65 and older, 14% of women were living below the poverty level, compared to 8.4% of men age 65 and older.²⁰ Poverty hits unmarried elder women the hardest - - 20.2% of widows, 46.5% of separated women, and 27.6% of

¹⁵ U.S. Census Bureau, *Median Income for 4-person Families*, at <http://www.census.gov/hhes/income/4person.html> (last visited July 12, 2001).

¹⁶ U.S. Census Bureau, *Income 1999*, at <http://www.census.gov/hhes/income/income99/99tablea.html> (1999).

¹⁷ U.S. Census Bureau, *Poverty Rate Lowest in 20 Years, Household Income at Record High*, *Census Bureau Reports*, at <http://www.census.gov/Press-Release/www/2000/cb00-158.html> (Sept. 26, 2000).

¹⁸ Children's Defense Fund, *Fair Start: FAQs*, at <http://www.childrensdefense.org/fairstart-faqs.htm> (last visited July 16, 2001).

¹⁹ See source cited *supra* note 19.

²⁰ Center on Budget and Policy Priorities, *Options for Reducing Poverty Among Elderly Women by Improving Supplemental Social Security Income*, at <http://www.cbpp.org/1-27-00socsec.htm> (Jan. 27, 2000).

women never married are living below the poverty line.²¹ The poverty rate for elderly women of color is three times the rate of white elderly women, 34.8% for African American women and 33.7% for Latina women.²²

Only 30% of all women aged 65 or older were receiving a pension in 1994 (either worker or survivor benefits), compared to 48% of men.²³

Women's poverty rates have been slower to decline than men's even with the addition of pensions.²⁴ Because women earn less than men while they are working,²⁵ pensions for never married women are lower, on average, than pensions for never married men.

Social Security benefits are based largely upon a person's thirty-five highest earnings years.²⁶ Women who took time off to have children, did not work a significant portion of their lives, or earned significantly less than men when they did work, are not able to support themselves.²⁷ Further, elder women are more likely

²¹ *Id.*

²² *Id.*

²³ Social Security Office of Policy, *Women and Retirement Security*, at <http://www.ssa.gov/policy/pubs/womenrs.html> (last visited July 16, 2001).

²⁴ Sara S. McLanahan and Erin L. Kelly, *The Feminization of Poverty*, at <http://www.uakron.edu/hefe/econdep/feminiz.htm> -- located under 2.3: Changes in Public Benefits (last visited July 16, 2001).

²⁵ *Id.*

²⁶ Rare Information, *Poverty: The Legacy of our Social Security System*, at <http://www.rareinformation.com/poverty.htm> (last visited July 16, 2001).

²⁷ *Id.*

to outlive their male partners, living alone on one pension rather than two.²⁸

Housing

Unlawful housing discrimination by landlords often occurs in the form of discrimination due to sex and familial status.²⁹ Some landlords unlawfully deny housing to families -- many of which are women with children -- only locate families with children in a single portion of a complex, place an unreasonable restriction on the total number of persons who may reside in a dwelling, or limit their access to recreational services provided to other tenants.³⁰

Some landlords sexually harass women tenants by threatening eviction if they do not perform sexual acts.³¹ Women who are poor, and who have limited housing options, often have little recourse but to tolerate the humiliation and degradation of sexual harassment or risk having their families and themselves removed from their homes.³² In addition, unlawful pricing discrimination in mortgage lending may also adversely affect women, particularly minority women.³³

²⁸ See source cited *supra* note 25.

²⁹ U.S. Dept. of Justice Civil Rights Division Housing and Civil Enforcement Section, *The Fair Housing Act*, http://www.usdoj.gov/crt/housing/housing_coverage.htm (last updated Jan. 5, 2000).

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

Women

Part II

Education

12% of female high school students dropout before they graduate.³⁴

Between one half and two-thirds of all female dropouts cite pregnancy as their principal reason for leaving school.³⁵ Further, students of low-income families were six times more likely to leave school than students of high-income families.³⁶ The children of poor working women often do not have access to programs, such as Head Start, which provides early education to children before kindergarten.³⁷

Women experience sexual harassment in schools and this operates as a barrier to equal

³⁴ AmeriStat, *High School Dropouts: The Gender Gap*, at <http://www.ameristat.org/edu/dropouts.htm> (last visited July 16, 2001).

³⁵ Education Resources Education Center, *Teen Pregnancy*, at http://eric.uoregon.edu/trends_issues/soceco/n/07.html (last visited July 16, 2001).

³⁶ Gary Hopkins, *Who are Today's School Dropouts?*, at http://www.education-world.com/a_admin/admin026.shtml (Nov. 6, 1997).

³⁷ American Federation of Teachers, *President Feldman Calls for National Commitment to Universal Pre-School*, at <http://www.aft.org/press/index.html> (July 12, 2001).

education.³⁸ For girls, 87% of whites report having experienced sexual harassment, compared with 84% of African Americans and 82% of Hispanics.³⁹

Studies have shown that teachers devote more attention to boys in class than girls, and that girls in the middle school years are socialized to care less about academics than boys.⁴⁰ While there is evidence that girls are improving in science and math, new gender gaps have been revealed in areas such as technology and career preparation programs.⁴¹

School officials discriminate against pregnant and parent teens.⁴² This works to stigmatize, marginalize and penalize pregnant and parenting teen students, adding to the reason why 80% of teens who become mothers before the age of 18 do not finish

³⁸ NOW Legal Defense and Education Fund, *Education*, at <http://www.nowldef.org/html/issues/edu/index.htm> (last visited July 16, 2001).

³⁹ Equal Rights Advocates, *Facts about Sexual Harassment in Schools*, at <http://www.equalrights.org/sexhar/school/ssf/acts.htm> (1993).

⁴⁰ Public Education Network, *Educational Equality*, at <http://www.publiceducation.org/resources/equity.htm> (last visited July 16, 2001).

Information on these studies can be found in: "Shortchanging Girls, Shortchanging America," and its follow-up report, "How Schools Shortchange Girls," from the American Association of University Women. *Id.*

⁴¹ American Association of University Women, *Gender Equity in Education: Myth vs. Reality*, at <http://www.aauw.org/1000/fspp.html> (Jan. 2001).

⁴² California Women's Law Center, *Program Issue Priorities*, at <http://www.cwlc.org/program.html#violence> (last visited July 16, 2001).

high school and struggle to survive financially.⁴³

Education and training for higher wage jobs is key for women who are poor. In 1997, women who were high school graduates working in full-time, year-round jobs earned a median hourly wage of \$10.91.⁴⁴ Women who were college graduates earned a median hourly wage of \$17.14.⁴⁵ Statistics are hopeful. 57% of students in college are women, as of 2000.⁴⁶ 30% of women attained a bachelor's degree by 1999, as compared to 27% of men.⁴⁷

However, in terms of training, most females are still concentrated in traditionally female and low-paying occupational programs in vocational schools. For example, Trade and Industry, the largest vocational category, is considered one of the categories with the greatest potential for economic pay-off, especially if students continue in an apprenticeship program or obtain an Associate Degree from their community college.⁴⁸ Yet few of its

⁴³ *Id.*

⁴⁴ See source cited *supra* note 7.

⁴⁵ *Id.*

⁴⁶ Studentadvantage.com, *Women in College: The New Century's Student Body*, at <http://www.studentadvantage.lycos.com/lycos/article/0,4683,c1-i76-t0-a42248,00.html> (July 26, 2000).

⁴⁷ U.S. Census Bureau, *High School Completions at an All Time High*, at <http://www.census.gov/Press-Release/www/2000/cb00-151.html> (Sept. 15, 2000).

⁴⁸ Elizabeth A. Homer, *Title IX in Michigan: Vocational Education*, at <http://www.geocities.com/Wellesley/6628/vocatio.htm> (1998).

programs have any more girls enrolled than in the past.

Violence and Abuse

An estimated 3 to 4 million American women are beaten each year by their husbands or partners.⁴⁹ Women are ten times more likely than men to experience violence committed by an intimate partner.⁵⁰ Experts estimate that a woman has between a one-in-three and a one-in-four chance of being physically assaulted by a partner or ex-partner during her lifetime.⁵¹ According to the American Medical Association, Approximately 30% of women seen in hospital emergency rooms are the victims of domestic violence.⁵²

One woman is murdered by her intimate partner every six hours.⁵³ According to the FBI, several thousand women are killed nationwide by their husbands and boyfriends each year.⁵⁴ Murders most often occur when a woman is taking steps to leave her abuser through divorce or

⁴⁹ American Bar Association Network, *American Bar Association Commission on Domestic Violence*, at <http://www.abanet.org/domviol/cdv.html> (last visited July 16, 2001).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Domestic Abuse Services Inc., *The Devastating Effects of Domestic Violence and Abuse*, at <http://www.dasi.org/facts%20page/facts.htm> (1992).

⁵³ California Women's Law Center, *Murder at Home*, at http://www.cwlc.org/newsarticles/news_murder.html (2000).

⁵⁴ Suzanne Pharr, *The War at Home: Hate Violence Against Women*, at <http://www.sistahspace.com/nommo/viol1.htm> (1992).

separation.⁵⁵ Too often, spousal murder trials resemble family law hearings rather than criminal murder trials.⁵⁶ As a consequence, batterers convicted of murder may receive lesser sentences because courts and juries view the act as a family tragedy rather than a murder.⁵⁷

Domestic violence also impacts friends, co-workers, and family members. Forty to sixty percent of men who beat their female intimate partners also beat their children.⁵⁸ According to the Bureau of Juvenile Justice Digest, violent juvenile delinquents are four times more likely to come from homes in which their fathers beat their mothers.⁵⁹

Homeless women who have been victimized face significant barriers to employment.⁶⁰ Abusive partners often sabotage training and employment efforts.⁶¹ Without appropriate support services, the emotional consequences of abuse, such as depression, may interfere with women's efforts to work.⁶² Further, abusers may attack, stalk or harass their partners at work and some employers penalize or retaliate against employees who have experienced domestic violence, sexual assault, or stalking.⁶³

⁵⁵ See source cited *supra* note 52.

⁵⁶ See source cited *supra* note 45.

⁵⁷ *Id.*

⁵⁸ See source cited *supra* note 52.

⁵⁹ *Id.*

⁶⁰ The Better Homes Fund, *Violence in the Lives of Homeless Women*, at <http://www.tbhf.org/violence.html> (last visited July 17, 2001).

⁶¹ *Id.*

⁶² *Id.*

⁶³ NOW Legal Defense and Education Fund, *Employment Rights' for Survivors of Abuse*,

In 1998, the U.S. Conference of Mayors found that 46% of the cities surveyed cited domestic violence as a primary cause of homelessness.⁶⁴ Sixty-three percent of homeless women have been victims of intimate partner violence at some point in their adult lives, according to a study conducted in Massachusetts by the Better Homes Fund.⁶⁵ A staggering 92% of homeless women experienced severe physical and/or sexual assault at some point in their lives.⁶⁶ Many of these homeless women have children and are forced to go back to their abusers because of lack of money or housing.

Too many people, including police, prosecutors, judges, and jurors, continue to believe that domestic violence is a private matter between a couple, rather than a criminal offense that merits a strong and swift response.⁶⁷ Even when cases are brought, domestic crimes are difficult to prosecute.⁶⁸ Often victims are so terrorized that they fear for their lives if they call the police.⁶⁹ When noting is done about domestic violence, studies have shown that the pattern of abuse perpetuates.⁷⁰

at

<http://www.nowldef.org/html/issues/work/ersastart.shtml> (last visited July 17, 2001).

⁶⁴ See source cited *supra* note 53.

⁶⁵ See source cited *supra* note 61.

⁶⁶ *Id.*

⁶⁷ U.S. Department of Agriculture: Safety, Health and Employee Welfare Division, *Domestic Violence Awareness Handbook*, at <http://www.usda.gov/da/shmd/aware.htm> (last visited July 17, 2001).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Sunshine For Women, *Domestic Violence: Now or Never*, at

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Part III

Employment

Discrimination against women in the employment arena works in a variety of ways. Women are discriminated against during pregnancy, childbirth or related medical conditions, hiring, and layoffs. Discrimination also occurs in the amount that women are paid and in access to promotions and senior management positions.

A 1997 study found that over 2 million working women in the United States have babies each year.⁷¹ Lack of childcare and parental leave makes it difficult for women with children to work. Rearing a family usually requires that parents are able to take leave from work to care for family members from time to time. Employees from households with incomes of less than \$20,000 are less likely to return to work if they leave.⁷² Seventy-eight percent of employees noted a main reason for not taking leave when needed was

<http://www.pinn.net/~sunshine/news/dv2.html#facts> (last visited July 17, 2001).

⁷¹ Equal Rights Advocates, *Women in the Workplace*, at <http://www.equalrights.org/facts/wwrkstat.htm> (last visited July 17, 2001).

⁷² See source cited *supra* note 71.

being unable to afford unpaid leave.⁷³

Getting promoted is more difficult for women and, therefore, well paying jobs are harder to find. Only 3-5% of senior management positions are held by women.⁷⁴ Almost 93% of the 439 senior women executives surveyed by Korn/Ferry International in 1992 felt that a glass ceiling for women still existed.⁷⁵ Although women of color make up 23 % of the female workforce, only 15% of female managers are members of minority groups. Several recent court cases involving grocery stores found that women were routinely relegated to lower-wage, dead-end jobs with little hope for advancement while men were hired for jobs that led to management opportunities.⁷⁶ Women are often placed on “mommy-tracks,” meaning they are considered a second class of managers in the workplace and are shunted off onto a slow track if they choose to become mothers.

Women are still paid less than men for performing the same jobs. According to the U.S. Department of Labor in 1997, women earned less than men in 99% of all occupations

⁷³ See source cited *supra* note 72.

⁷⁴ Equal Rights Advocates, *Just the Facts: Why Women Still Need Affirmative Action*, at <http://www.equalrights.org/affirm/stats.htm> (last visited July 17, 2001).

⁷⁵ *Id.*

⁷⁶ National Partnership for Women and Families, *Affirmative Action Programs Help Women Shatter the Glass Ceiling*, at http://www.nationalpartnership.org/workandfamily/workplace/affirmact/aa_glass.htm (1998).

for which data is available.⁷⁷ Further, women in prestigious executive, administrative and managerial occupations earned 69.7% of what men earned.⁷⁸

The lack of affordable childcare⁷⁹ also keeps women from both working and attaining higher paying employment. The deficiency of childcare services is particularly severe for low-income families. A 1997 report on New York City's childcare system, for example, found that 30,060 children were on the waiting list for subsidized childcare assistance.⁸⁰

Women on welfare -- required to work to receive welfare grants -- are desperate for childcare; 61.6% have a child who is not yet in school.⁸¹ Many of the traditionally female-dominated occupations, such as retail and waitressing, require work during non-standard hours or days; yet most existing childcare facilities are not equipped to provide care during evenings, overnight or on weekends.⁸² Inadequate or inaccessible childcare forces many women to either not work or to take time off work to deal with finding

⁷⁷ Equal Rights Advocates, *Pay Equity*, at <http://www.equalrights.org/facts/paystats.htm> (last visited July 17, 2001).

⁷⁸ *Id.*

⁷⁹ NOW Legal Defense and Education Fund, *Access to Child Care: A Cornerstone for Families*, at <http://www.nowldef.org/html/policy/chcacc.htm> (last visited July 18, 2001).

⁸⁰ *Id.*

⁸¹ NOW Legal Defense and Education Fund, *Child Care: Issues for Low Income Women*, at <http://www.nowldef.org/html/policy/chciss.htm> (last visited July 18, 2001).

⁸² See source cited *supra* note 82.

appropriate care.⁸³ These disruptions can affect job performance, can restrict job opportunities such as advancement, and can result in termination.⁸⁴

Sexual Harassment

Millions of women have experienced sexual harassment, where they work, learn or teach or live. A form of sex discrimination, sexual harassment is unwelcome conduct based on sex or of a sexual nature that can make people feel uncomfortable, helpless or afraid.

Harassment in schools is prevalent. Based on the experiences of 1,632 students in grades 8 through 11, 85% of girls have noted being the objects of sexual harassment in school.⁸⁵ Nearly 1 in 4 students who have been sexually harassed report that as a result they did not want to attend school. Eighty-one percent of girls report having been harassed by a male acting alone, 57% by a group of males.

Sexual harassment in the workplace impacts the success of women's professional and personal lives.⁸⁶ Between 40 to 90 % of women in the United States have been victims of some form of sexual harassment on

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Equal Rights Advocates, *Sexual Harassment in Schools*, at <http://www.equalrights.org/sexhar/school/sh-scho.htm> (last visited July 18, 2001).

⁸⁶ Equal Rights Advocates, *Sexual Harassment in the Workplace*, at <http://www.equalrights.org/sexhar/work/wor-kplac.html> (last visited July 17, 2001).

the job.⁸⁷ However, more than 50% of victims do and say nothing about the harassment⁸⁸ because the victim is often economically and emotionally dependent on her aggressor.⁸⁹ This is because one-half of all sexual harassers are the direct supervisors of their target.⁹⁰

Ninety to 95% of sexually harassed women suffer from some debilitating stress reaction, including anxiety, depression, headaches, sleep disorders, weight loss or gain, nausea, lowered self-esteem and sexual dysfunction.⁹¹ They experience job-related costs as well: from job loss, decreased morale, decreased job satisfaction to irreparable damage to interpersonal relationships at the place of work.⁹² 50% of women who filed a complaint in California were fired; another 25% resigned due to the stresses associated with the complaint process or the harassment itself.⁹³

Health Reproductive Rights

Reproductive services include access to all available safe methods of contraception, infertility treatment, pregnancy termination, full range of prophylactic services for victims of rape, incest and domestic violence, prenatal care, gynecological services and sex education. Attacks on

⁸⁷ Equal Rights Advocates, *Facts About Sexual Harassment in the Workplace*, at http://www.equalrights.org/sexhar/work/wor_kfact.htm (last visited July 17, 2001).

⁸⁸ *Id.*

⁸⁹ See source cited *supra* note 80.

⁹⁰ See source cited *supra* note 81.

⁹¹ *Id.*

⁹² See source cited *supra* note 80.

⁹³ *Id.*

access and rights to reproductive services continue.⁹⁴ In addition to abortion rights, affordable and accessible family planning services are also threatened.⁹⁵

In particular, access to reproductive information and services for low-income and minority women is often inadequate.⁹⁶ Although all women are entitled to this access, poor and minority women are often disproportionately affected by restrictive policies due to cultural barriers, a decreasing number of hospitals that accept Medicaid, and lack of access to information.⁹⁷

Some insurance plans do not cover prescription contraceptive drugs and devices.⁹⁸ Often women have to be referred by their primary health provider before they can get access to ob-gyn services, creating more obstacles for women needing reproductive health care.⁹⁹

Additionally, low-income women of all ages, ethnicities and cultural backgrounds are often unable to pay for either emergency contraception or a safe and legal abortion.¹⁰⁰ Over

⁹⁴ NOW Legal Defense and Education Fund, *Reproductive Rights*, at <http://www.nowldef.org/html/issues/repro/index.htm> (last visited July 18, 2001).

⁹⁵ *Id.*

⁹⁶ SOROS Foundation Network, *Reproductive Rights*, at <http://www.soros.org/usprograms/reproductive.htm> (last visited July 18, 2001).

⁹⁷ *Id.*

⁹⁸ National Partnership for Women & Families, *Women's Health and Managed Care: Principles for Quality Health Care*, at <http://www.nationalpartnership.org/healthcare/initiative/principles.htm> (1998).

⁹⁹ *Id.*

¹⁰⁰ Women's Reproductive Rights Assistance Project, *Our Mission*, at <http://www.wrrap.org/> (last visited July 18, 2001).

85% of the counties in this country do not have abortion services, and 9 out of 10 residency programs don't even require doctors to learn abortion procedures.¹⁰¹

HIV, Alcohol and Drugs

Nationwide, a rising number of women are being infected with HIV.¹⁰² Poor women -- often dependent on others for food, shelter and support -- may risk physical danger if they insist on practicing safe sex.¹⁰³ Domestic and street violence also curtails the rights of women in their sexual lives.¹⁰⁴ Further, access to woman-controlled safe sex devices are often not available and are too expensive.¹⁰⁵ Many women contract AIDS through needle use or unprotected sex with an individual who uses injection drugs.¹⁰⁶ However, women represent a small proportion of the individuals in drug treatment programs.¹⁰⁷ Many such programs are unable to meet the needs of women and most do not provide childcare.¹⁰⁸

People who are poor, unemployed or underemployed, and/or malnourished are more likely to get sicker and to die faster than middle-class people with AIDS.¹⁰⁹ Once diagnosed with HIV, poor women have a difficult

time finding access to quality health care, housing, and employment.¹¹⁰

Drug and alcohol use among pregnant women is high, resulting in the birth of substance-exposed infants. There is a 20% chance of transmission of HIV to babies, if the mother is exposed.¹¹¹ Good prenatal care is especially important when a mother is infected with HIV to ensure the health of the mother and child, but many low-income women do not have access to health care or are not aware of the availability of such care.¹¹² Unfortunately, many mothers don't know that they are HIV-positive until the baby is born.¹¹³ Many women with AIDS are single mothers, who face the same problems other single mothers face: access to childcare, food, housing, and financial resources.¹¹⁴ When a mother is sick, these needs are even more urgent.¹¹⁵

The use of alcohol, tobacco, and/or other drugs (ATOD) during pregnancy remains a leading preventable cause of mental, physical, and psychological impairments and problems in infants and children. According to a recent National Institute on Drug Abuse study, 5.5% of the women surveyed reported using illicit drugs while they were pregnant, 18.8% reported using alcohol, and 20.4% reported

¹⁰¹ *Id.*

¹⁰² SF AIDS Foundation, *Women with HIV/AIDS*, at <http://www.sfaf.org/aids101/women.html> (last visited July 18, 2001).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

using tobacco.¹¹⁶ Fetal alcohol syndrome, low birth weight, addiction in babies, and sudden infant death syndrome can all result from heavy use by the mother of alcohol and/or drugs.¹¹⁷ A report by the National Center on Child Abuse and Neglect found that 50 to 80% of all child abuse and neglect cases involve some degree of alcohol and other drug use by the child's parents.¹¹⁸

Women who abuse drugs alcohol are at risk for sexual assault, unprotected sex, unwanted pregnancies, and sexually transmitted diseases.¹¹⁹ Some women develop drug or alcohol dependencies as a way of coping with past abuse.¹²⁰ For example, childhood sexual abuse is a strong predictor of later problem drinking.¹²¹ According to the U.S. Department of Health, among 12- to 17-year-olds, females surpass males in the use of alcohol, cigarettes, cocaine, crack, inhalants, and prescription drugs for nonmedical reasons.¹²² Further, women are more likely than men to combine alcohol with prescription drugs, leading to

dangerous drug-alcohol interactions.¹²³

Most services available are fragmented, uncoordinated programs. Women need access to appropriate, effective treatment for drug and alcohol dependence and access to HIV treatment.

¹¹⁶ The National Clearinghouse on Drug and Alcohol Information, *Alcohol, Tobacco, and Other Drugs & Pregnancy and Parenthood*, at <http://www.health.org/govpubs/ml010/> (1995).

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ The National Clearinghouse on Drug and Alcohol Information, *Alcohol, Tobacco, and Other Drugs & Women's Health*, at <http://www.health.org/govpubs/ml011/> (1995).

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

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Part IV

Gender Bias in Adjudicatory Forums

Lynn Hecht Schafran, director of the New York-based National Judicial Education Program, lists 60 areas of substantive and procedural law where gender bias remains rampant. Bias occurs most often in cases involving domestic violence, sexual harassment, right-to-die issues, social security, and bankruptcy.¹²⁴ Bias creeps into disability hearings where men and women seeking identical disability payments are perceived differently.¹²⁵ Studies by physicians of right-to-die cases show that without an advance directive, a woman's wish to die, as communicated by family and friends, is honored less often than a man's wish to die.¹²⁶ Despite the perception that mothers always prevail in custody cases, studies show that fathers who contest custody win sole or joint custody in 40 to 70 % of cases.¹²⁷

¹²⁴ California Bar Journal, *Gender Bias*, at <http://www.calbar.ca.gov/calbar/2cbj/00oct/page1-3.htm> (Oct. 2000).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ National Organization for Women, *Women Face Gender Bias and a NOW Chapter Comes Under Fire*, at <http://www.now.org/nnt/winter-99/courtwt.html> (1999).

Despite laws in at least 38 states stipulating that judges must consider domestic violence when making custody decisions, there are numerous stories of judges awarding custody to abusers.¹²⁸

Bias against women in the legal profession is also rampant and this affects the career opportunities and job satisfaction of women.¹²⁹

Eighty-five percent of the women lawyers surveyed by the State Bar of CA perceived a subtle but pervasive gender bias within the legal profession.¹³⁰

Older Women

Almost three-quarters of all older persons with incomes below the poverty level are women.

In 2001, according to the U.S. Administration on Aging, women accounted for approximately 58% of the population age 60 and older and 70% of the population age 85 and older.¹³¹

Compared with men, older women:

- are three times more likely to be living alone,
- spend more years and a larger percentage of their lifetime

¹²⁸ *Id.*

¹²⁹ Juliet Bourke, *Gender Bias in the Legal Profession*, at http://www.lawsocnsw.asn.au/resources/lcj/archive/feb1997/52_1.html (Feb. 1997).

¹³⁰ Institute for Continuing Legal Education, *What Lawyers Need to Know About Gender Bias in the Legal Profession*, at <http://www.lectlaw.com/files/att06.htm> (1995).

¹³¹ The U.S. Administration on Aging, *Meeting the Needs of Older Women: A Diverse and Growing Population*, at <http://www.aoa.gov/factsheets/ow.html> (last updated June 20, 2001).

disabled,

- are nearly twice as likely to reside in a nursing home, and
- are more than twice as likely to live in poverty.

Most older women today are widows dependent on Social Security benefits as their primary source of income. However, older women are only about half as likely as older men to be receiving pension income. Those who do receive pensions and retirement benefits, often receive less than men because women traditionally earn less money than men and many take time out from work to raise children. Therefore, Social Security benefits are often insufficient and leave women at greater risk of impoverishment throughout their older years. Further, the current health care system ties access to affordable health insurance to employment and marital status, often placing women at a disadvantage.

Many older women are forced to work to make ends meet after rearing families. However, negative stereotypes about older women proliferate in the workplace. Women aged 55 and older only earn only 68% as much as men aged 55 and older.¹³² Age discrimination begins at 40 and employers often discriminate against older women by equating attractiveness with youth. Therefore, it is often difficult for older women to find work.

¹³² U.S. Department of Labor, *Equal Pay Day Time to Separate Fact from Fiction on the Pay Gap*, at <http://www.dol.gov/dol/esa/public/media/pres/ofccp/equalpay.htm> (May 11, 2000).

Income

TANF [42 U.S.C. §§ 602, 606]. Temporary Assistance for Needy Families is available through grants given to states to implement programs for poor families with children to move from welfare to work.¹³³ Each state has different programs, such as CalWorks in California.¹³⁴ TANF dollars are used for both women who leave welfare for below-poverty jobs and women who have even more barriers to overcome.¹³⁵ TANF provides money for a package of work supports: job training and placement, wage supplements, transportation help, child care, etc.¹³⁶

Food Stamps [7 U.S.C. § 2012(i), 2014] The Food Stamp program provides that any “household,” broadly defined as people who live and prepare food together, that satisfies the financial criteria may qualify to receive food stamps.¹³⁷ State and local welfare agencies actually administer the Food Stamp Program, under guidance and standards established by Congress and the U.S. Department of Agriculture

¹³³ See Welfare Information Network, *State/Tribal TANF Plans and Welfare Reform Initiatives*, at <http://www.welfareinfo.org/tanf.htm> (May 30, 2001); See also Children’s Defense Fund, *New Welfare Regulations Signal Opportunities to Meet the Growing Needs of Working Poor Families*, at http://www.childrensdefense.org/fs_wr_index.htm (2000).

¹³⁴ *Id.*

¹³⁵ Children’s Defense Fund, *Tell Congress Not to Raid TANF Funds*, at http://www.childrensdefense.org/fs_tanf_ho_use.htm (April 2, 1999).

¹³⁶ *Id.*

¹³⁷ See Food and Nutrition Service, *Food Stamp Program*, at <http://www.fns.usda.gov/fsp/> (June 27, 2001).

(USDA).¹³⁸ Households must have gross incomes below 130% of the poverty line and net incomes below 100% of the poverty line.¹³⁹ Eligibility in the Food Stamp Program includes work requirements.¹⁴⁰ The majority of recipients of food stamps are children and the majority of adults receiving food stamps are women.¹⁴¹

Social Security Nearly two-thirds of women 65 and over get a majority of their income from Social Security.¹⁴² Social Security benefits will vary depending on the individual woman's earnings history and, if she was married for at least 10 years, that of her spouse or ex-spouse.¹⁴³

Social Security does provide a widow's benefit equal to 100 percent of the payment a deceased spouse was receiving.¹⁴⁴ Further, for women who have not worked, a retirement benefit equal to 50 percent of her spouse's benefit is provided.¹⁴⁵ This benefit that is tied to the earnings of one's husband

¹³⁸ Food Research and Action Center, *Food Stamp Program Frequently Asked Questions*, at

http://www.frac.org/html/federal_food_programs/programs/fsp_faq.html#1 (last visited July 19, 2001)

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Food Research and Action Center, *Federal Food Programs: Food Stamp Program*, at

http://www.frac.org/html/federal_food_programs/programs/fspcharacteristics.html (last visited July 19, 2001).

¹⁴² National Women's Law Center, *Social Security: FAQs*, at <http://www.nwlc.org/details.cfm?id=237§ion=social%20security> (last visited July 20, 2001).

¹⁴³ *Id.*

¹⁴⁴ Social Security Network, *Social Security: A Woman's Issue*, at http://www.socsec.org/facts/Issue_Briefs/women.htm (1998).

¹⁴⁵ *Id.*

is also available to homemakers who divorce after at least ten years of marriage.¹⁴⁶ However, for women who are single, making little money, and who were not previously married for ten years, benefits can be much less than, for example, a spouse who never works and never raises children, as long as she was married to a rich worker for 10 years or more.¹⁴⁷ Due to the fact that women are more likely than men to receive survivor's benefits or spousal benefits based on the income of a higher-earning spouse, it is more likely that elderly women will be living in poverty. Therefore, there is an inherent inequality in the Social Security system.¹⁴⁸

SSI (Supplemental Security Income)

SSI is a joint federal/state entitlement program that provides a monthly income to poor elderly and poor disabled and visually impaired individuals that are of any age.¹⁴⁹ SSI establishes a minimum level of cash assistance to help meet food, clothing and shelter expenses.¹⁵⁰ The monthly benefit consists of a federal payment, which is indexed to inflation and increases each year, and a state portion.¹⁵¹

Any receipt of cash or in-kind payment for "food, clothing, or shelter" will reduce the amount of SSI available.¹⁵²

¹⁴⁶ *Id.*

¹⁴⁷ National Center for Policy Analysis, *Divorce and Social Security*, at <http://www.ncpa.org/ba/ba291.html> (May 20, 1999).

¹⁴⁸ *Id.*

¹⁴⁹ Social Security Income, *Supplemental Security Income*, at <http://www.ssa.gov/pubs/11000.html#PART%201> (last visited July 20, 2001); *See also* California Registry, *SSI*, at <http://www.calregistry.com/resources/ssi.htm> (last visited July 20, 2001).

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

Therefore, alimony and child support can work to reduce SSI payments.¹⁵³ In 39 states, an SSI recipient automatically qualifies for Medicaid and in these states if an individual becomes ineligible for SSI, she will also not receive Medicaid.¹⁵⁴ In California, SSI recipients are not eligible for food stamps.¹⁵⁵

Child Support

A court order is needed for the non-custodial parent to be legally obligated to pay support.¹⁵⁶ The amount and requirements for child support differ depending on the state.¹⁵⁷

California is fairly typical. A mandatory minimum amount of child support is outlined in state guidelines and is used unless there is a reasonable agreement between the parents.¹⁵⁸ The guidelines consider such things as the current income of both parents and the amount of time the children spend with each parent to determine the minimum

amount.¹⁵⁹ In California, child support payments last until the child is 19 or graduates from high school, whichever is earlier.¹⁶⁰

WIC

Women, Infants and Children is a federally funded preventive nutrition program that provides nutritious foods, nutrition education, and access to health care to low-income pregnant women, new mothers, and infants and children at nutritional risk.¹⁶¹ Eligibility for WIC is based on the following four criteria: participants must be a pregnant, postpartum, or breast-feeding woman, an infant, or a child under the age of five.¹⁶² The participant's household income must be below 185 percent of the poverty line. WIC participants must be certified by a health professional to be at nutritional risk.¹⁶³

¹⁵³ Neighborhood Legal Services, Inc., *Using Creative Alimony, Child Support and Property Settlements to Maximize SSI, Medicaid and Create Funding for Assistive Technology*, at http://www.nls.org/ssifmaty.htm#N_2 (August, 1999).

¹⁵⁴ *Id.*

¹⁵⁵ Social Security Administration, *Understanding SSI*, at <http://www.ssa.gov/notices/supplemental-security-income/text-understanding-ssi.htm> (last visited July 20, 2001).

¹⁵⁶ Supportkids, *Court Order and Child Support Essentials*, at <http://www.supportkids.com/content/public/stateinfo/support.asp> (last visited July 20, 2001).

¹⁵⁷ *See Id.* for the laws in each particular state.

¹⁵⁸ Supportkids, *How is Child Support Determined in California?*, at <http://www.supportkids.com/content/public/stateinfo/childsupport/supportCA.asp?origin=/tour/return.asp> (last visited July 20, 2001).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ Food Research and Action Center, *Special Supplemental Nutrition Program for Women, Infants and Children*, at http://www.frac.org/html/federal_food_programs/programs/wic.html (last visited July 18, 2001).

¹⁶² *Id.*

¹⁶³ *Id.*

Women

Part V

Housing

The Fair Housing Act (FHA) of Title VIII [42 U.S.C. §§ 3601-3631]

This Act prohibits discrimination on the basis of sex in the sale and rental of housing.¹⁶⁴ A number of courts have held that this prohibition parallels the prohibition under Title VII in employment, encompassing sexual harassment claims.

The Fair Housing Act also covers situations where landlords create an untenable living environment by demanding sexual favors from tenants or by creating a sexually hostile environment for them.¹⁶⁵

In a lawsuit that could affect subsidized-housing policies nationwide, several civil rights and women's rights groups challenged, as a form of sex discrimination, an Oregon zero-tolerance policy allowing the eviction of the entire household after a domestic assault.¹⁶⁶

Criminal Interference with Fair Housing Rights

When force or threat of force is used to interfere with rights guaranteed by the Fair Housing Act, the Department of

Justice may bring criminal prosecutions that can result in prison sentences and/or fines for those convicted of such crimes.¹⁶⁷ These crimes include written and oral threats and assaults on persons attempting to exercise their fair housing rights.¹⁶⁸ Sexual harassment by a landlord threatening to take away housing that involves threats and/or assault could be considered a crime.

Equal Credit Opportunity Act [15 U.S.C. §§1691 et seq.]

This Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age, or because an applicant receives income from a public assistance program.¹⁶⁹

Fair Employment and Housing Act (FEHA) [CA Gov. Code Section 12955 et seq.]

Under this Act, it is unlawful for the owner of any housing accommodation to discriminate against or harass a person based on his/her sex in California.¹⁷⁰ It is also unlawful to discriminate in all areas of housing based on family status.¹⁷¹

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ U.S. Dept. of Justice Civil Rights Division Housing and Civil Enforcement Section, *Equal Credit Opportunity Act*, at http://www.usdoj.gov/crt/housing/housing_ecoa.htm (last updated Oct. 30, 2000).

¹⁷⁰ Fair Employment and Housing Act, *Fair Employment and Housing Act*, at <http://www.dfeh.ca.gov/feha.htm> (last visited July 26, 2001).

¹⁷¹ Department of Fair Employment and Housing, *Familial Discrimination*, at <http://www.dfeh.ca.gov/famDiscrimination.htm> (last visited July 26, 2001).

¹⁶⁴ See source cited *supra* note 32.

¹⁶⁵ *Id.*

¹⁶⁶ Tamar Lewin, *Zero-Tolerance Policy is Challenged*, at <http://www.Zero-TolerancePolicyIsChallenged.html> (July 11, 2001)—email by rosemary.

Other Possible Claims

Wrongful eviction and wrongful constructive eviction can possibly be claimed.¹⁷²

Education

Title IX of the Educational

Amendments of 1972 [20 U.S.C. §§ 1681-1687]

Title IX prohibits public institutions that receive federal funding from excluding women from activities and programs.¹⁷³

This includes the overwhelming majority of public and private elementary, secondary, vocations, post-secondary and professional education institutions nationwide. With limited exceptions, principally in the area of admissions, Title IX applies to all forms of sex discrimination in education. Title IX is enforceable through the Department of Education and through a private right of action. The legislation has been used to ensure a greater level of sexual equality in everything from college sports to academic courses.¹⁷⁴

Violence and Abuse Protective Orders

All states have procedures for getting protective orders restraining the batterer from abuse. In most parts of the country, a woman can also ask for child custody and child support at the same time.¹⁷⁵

California: The Domestic Violence Protection Act allows women to obtain orders restraining the batterer from abuse through excluding the batterer from the residence.

California Penal Code §2439(e) provides for criminal penalties against spouses, former spouses and cohabitants.¹⁷⁶ An additional provision of the California Penal Code mandates arrest for restraining order violations (**Penal Code §836**).¹⁷⁷

In California, up to \$2,000 in housing relocation funds are available for domestic violence victims.¹⁷⁸ Further, Family Code § 3044 requires that Family Courts make a presumption that giving custody to a perpetrator of domestic violence is detrimental to the child.¹⁷⁹

Violence Against Women Act (VAWA), H.R. 3344, 103d Cong., 2d Sess. (1994), [42 U.S.C. § 13981].

¹⁷² Nolo: Law for All, *How Evictions Work*, at <http://www.nolo.com/encyclopedia/articles/1t/lt2.html?r=00150068903202000> (last visited July 26, 2001).

¹⁷³ Student Advantage, *Women in College: The New Century's Student Body*, at http://www.studentadvantage.lycos.com/lycos/article/0_4683.c1-i76-t0-a42248.00.html (July 26, 2000).

¹⁷⁴ *Id.*

¹⁷⁵ American Bar Association Commission on Domestic Violence, *Five Ways to Fight Violence*, at

<http://www.abanet.org/domviol/fiveways.html> (last visited July 23, 2001).

¹⁷⁶ Women's Justice Center, *California Passes Tough New Domestic Violence Laws*, at

http://www.purpleberets.org/violence_new_1aw.html (2001).

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*; See AB606. *Id.*

¹⁷⁹ *Id.*

This was passed as part of the 1994 Crime Bill. It requires states to give full faith and credit to any protection order issued after reasonable notice and opportunity to be heard.¹⁸⁰ To discourage mutual orders of protection, VAWA provides that orders against a petitioner are not to be honored and enforced except in limited circumstances.¹⁸¹ Another provision makes it a federal crime for a person to travel across state lines to injure a spouse or partner or to violate a protection order.¹⁸² VAWA also broadens the evidence the Immigration and Naturalization Service (INS) must consider to document abuse of an immigrant woman (married to a citizen or Legal Permanent Resident) in her application for immigration.¹⁸³

VAWA's most controversial provision was the civil rights remedy which provided victims of gender-based violence the ability to sue their alleged attackers for damages, including compensatory and punitive damages, injunctive and declaratory relief, in federal court.¹⁸⁴ This form of relief was overturned by the United States Supreme Court in United States v.

Morrison, 120 S. Ct. 1740 (2000).¹⁸⁵ In *Morrison*, the plaintiff alleged that she was raped by two football players while she was attending college.¹⁸⁶ The Court held that neither the Commerce Clause nor the Fourteenth Amendment provides Congress with the constitutional authority to enact the civil remedy provision of Section 13981.¹⁸⁷

VAWA (VAWA II) was reauthorized in 2000. It did not reinstate the civil rights remedy, but added provisions that make it easier for battered immigrant women to become permanent residents.

Employment Rights for Survivors of Abuse

Several states¹⁸⁸, including California, have passed laws that prohibit employers from firing or retaliating against domestic violence victims in certain circumstances.¹⁸⁹ For example, in California under Cal. Lab. Code §230, an employer can not discharge, retaliate, or discriminate against an employee who is a victim of domestic violence for taking time off to obtain judicial relief to held ensure the employee's safety, health or welfare or that of the employee's children.¹⁹⁰

¹⁸⁰ Chapter 110A, Section 2265(a); See Violence Against Women Office, *Subtitle B—Safe Homes for Women*, at http://www.ojp.usdoj.gov/vawo/laws/vawa/s_title_b.htm (last visited July 23, 2001).

¹⁸¹ Chapter 110A, Section 2265(c); See *id.*

¹⁸² Chapter 110A, Section 2261(a)(1); See *id.*

¹⁸³ Section 40701; See Violence Against Women Office, *Subtitle G—Protections for Battered Immigrant Women and Children*, at http://www.ojp.usdoj.gov/vawo/laws/vawa/s_title_g.htm (last visited July 23, 2001).

¹⁸⁴ Jennifer DeCarli, *Supreme Court Strikes Down Civil Rights Remedy of the Violence Against Women Act*, at <http://www.gulpony.org/Legal%20Services%20Journal/LSJ%20July%202000/JY00dv1.htm> (July, 2000).

¹⁸⁵ Susan Price-Livingston, *Supreme Court Decision on "Violence Against Women Act,"* at <http://www.cga.state.ct.us/2000/rpt/olr/html/2000-r-0735.htm> (July 27, 2000).

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ These include: CA (CAL. LAB. CODE § 230 (Deering 2000).), ME (26 ME. REV. STAT. § 850 (2000)), MD (Md. Exec. Order No. 01.01.1998.25 (1998)), NY (N.Y. PENAL LAW § 215.14 (Consol. 2000)), RI (R.I. GEN. LAWS § 12-28-11 (1999)). NOW Legal Defense & Education Fund, *Discrimination Against Domestic Violence Victims*, at <http://www.nowldef.org/html/issues/work/StateLawFactsheets/DiscriminationLaws.htm> (last visited July 23, 2001).

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

Sixteen states¹⁹¹ have passed laws that explicitly provide unemployment insurance to domestic violence victims in certain circumstances.¹⁹² In California, “good cause” is required for a domestic violence victim to receive unemployment insurance if she quits her job to avoid or flee abuse. “Good cause” includes leaving employment to protect the employee or the employee's children from domestic violence.¹⁹³

Some states, including California, have enacted laws that provide domestic violence victims with leave from work to go to court, to the doctor or to take other steps to address the violence in their lives.¹⁹⁴ This leave is most often unpaid leave.¹⁹⁵

¹⁹¹ These include: CA (CAL. UNEMP. INS. CODE §§ 1030, 1032, 1256 (West 2000)), CO (COLO. REV. ST. ANN. § 8-73-108 (1)(r) (West 2000)), CN (CONN. GEN. STAT. 31-236(a)(2)(A) (West 2001)), DE (DEL. CODE ANN. tit. 19, § 3315(1) (2000)), ME (ME. REV. STAT. ANN. tit. 26, § 1043(23)(B)(3) (West 1999)), MN (2001 Minn. Laws 175), MT (2001 Mont. Laws 520), NB (NEB. REV. STAT. ANN. § 48-628(1)(a) (Michie 2000)), NH (N.H. REV. STAT. ANN. tit. 23, § 282-A:32 (2000)), NJ (N.J. REV. STAT. § 43:21-5 (2000)), NY (N.Y. LAB. LAW § 593(1)(a) (McKinney 2000)), NC (N.C. GEN. STAT. § 96-14 (1)(b)(1f) (2000)), OR (2001 Or. Laws 144), RI (R.I. GEN. LAWS § 28-44-17.1 (2000)), WI (WIS. STAT. § 108.04(7)(s) (2000)), & WY (WYO. STAT. § 27-3-311 (2000)). *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ These states include: CA (CAL. LAB. CODE §§ 230 & 230.1 (Deering 2000)), 26 ME. REV. STAT. § 850 (2000), & NY (26 ME. REV. STAT. § 850 (2000)). *Id.*

¹⁹⁵ *Id.*

Women

Part VI

Employment

The Equal Pay Act of 1963 [29 U.S.C. §206d]

The Equal Pay Act prohibits unequal pay for equal or "substantially equal" work performed by men and women.¹⁹⁶

"Substantially equal" means that the jobs must be equal in skill, effort, and responsibility, and must be performed under similar working conditions.¹⁹⁷

Once a disparity is established by the employee, the burden shifts to the employer to defend his actions by showing the

following: it was based on a seniority system, a merit system, a system that determines wages based on the quantity or quality of work produced, or some other "factor other than sex."¹⁹⁸

Title VII of the Civil Rights Act of 1964 [42 U.S.C. §2000e]

Title VII prohibits employers with 15 or more employees from discriminating on the basis of sex in hiring, firing and setting compensation.¹⁹⁹ In County of Washington v. Gunther, 452 U.S. 161

¹⁹⁶ National Partnership for Women & Families, *The Equal Pay Act and Title VII*, at <http://www.nationalpartnership.org/workandfamily/workplace/paydiscrim/equalpayact.htm> (last visited July 24, 2001).

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

(1981)²⁰⁰, the Supreme Court ruled that Title VII goes beyond the Equal Pay Act to prohibit discrimination not only in pay between jobs that are equal but also between jobs that are different.²⁰¹

However, since *Gunter*, lower courts have been hostile to Title VII claims that challenge wage discrimination.²⁰² Title VII was also amended by the Pregnancy Discrimination Act and it may be used to challenge discrimination that is based on the fact that an employee is pregnant.²⁰³

The Pregnancy Discrimination Act of 1978 [42 U.S.C. § 2000e(k); 29 C.F.R. Pt. 1604]

Under this Act, an employer who employs 15 or more workers can't discriminate against an employee because of pregnancy, childbirth, or pregnancy-related conditions.²⁰⁴ This means that employers must treat pregnancy the same way they treat any other temporary medical disability, including the same level of medical benefits.²⁰⁵ Protection may also be found in state or local laws prohibiting pregnancy discrimination.²⁰⁶

Family and Medical Leave Act (FMLA) [29 U.S.C. §§2601 et seq.; 29 C.F.R. Pt. 825]

²⁰⁰ FindLaw, *County of Washington v. Gunter*, at <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=452&invol=161> (last visited July 24, 2001).

²⁰¹ See source cited *supra* note 209.

²⁰² *Id.*

²⁰³ National Partnership for Women & Families, *Pregnancy Discrimination*, at <http://www.nationalpartnership.org/workandfamily/workplace/pregdiscrim/pregdiscrimmain.htm> (last visited July 24, 2001).

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

Under federal and state laws, some employees²⁰⁷ have the right to take up to 12 weeks of unpaid leave a year for the reasons including: the employee's own serious health condition which keeps her/him from doing her/his job; to care for a sick child, spouse, or parent with a serious health condition; or to care for a newborn child, newly adopted child, or foster child.²⁰⁸ After taking family or medical leave, the law entitles the employee to return to her/his previous job, or to an equivalent job with the same pay, benefits and other conditions.²⁰⁹

California Family Rights Act (CFRA)
[Gov. Code §12945.2; 2 CCR § 7297.2]
The California law is almost identical to the FMLA.²¹⁰

California Pregnancy Leave

In California, if an employee is disabled due to pregnancy, childbirth, or related medical conditions, the employee may be entitled to take unpaid pregnancy disability leave for up to 4 months.²¹¹ This is in addition to the 12 weeks of family and medical leave provided under FMLA or CFRA.²¹²

²⁰⁷ These employees include: those who have worked for their employer for at least 12 months, those who have worked at least 1,250 hrs. during the 12 months before the leave, and those who have worked for a n employer with at least 50 employees within a 75-mile radius of the employee's worksite. Equal Rights Advocates, *Taking Family or Medical Leave*, at <http://www.equalrights.org/know/family1.htm> (last visited July 23, 2001).

²⁰⁸ *Id.*

²⁰⁹ National Partnership for Women & Families, *What Does the FMLA Do?*, at http://www.nationalpartnership.org/workandfamily/fmleave/fmla_means.htm (last visited July 24, 2001).

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

If an employer provides more than four months of leave for other types of temporary disabilities, the same leave must be made available to women who are disabled due to pregnancy, childbirth, or a related medical condition.²¹³ An employee is entitled to leave, no matter how long she has worked for the employer, and employers must provide leave if they employ five or more individuals.²¹⁴ A woman who takes a pregnancy disability leave is also entitled to take a CFRA leave if she meets the eligibility requirements for a CFRA leave.²¹⁵

Child Care

The Federal guarantee that child care be provided to welfare families was repealed with the adoption of the Temporary Assistance to Needy Families program (TANF).²¹⁶ The only protection that women dependent on welfare have under TANF is that they will not be forced to work if there is no one to care for their children if they are under six years and that requires no sanctions be imposed if the mother of a pre-school age child can show she cannot find appropriate child care.²¹⁷

The Child Care and Development Fund (CCDF) is the major source of Federal child care assistance for low and moderate-income families.²¹⁸ The

²¹³ Department of Fair Employment and Housing, *Pregnancy Leave Requirements*, at <http://www.dfeh.ca.gov/pregnancyLeave.htm> (last visited July 24, 2001).

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ NOW Legal Defense and Education Fund, *Childcare Issues for Low Income Women*, at

<http://www.nowldef.org/html/policy/chciss.htm> (last visited July 24, 2001).

²¹⁷ *Id.* See also Section 407(e)(2), 42 U.S.C. 607(e)(2).

²¹⁸ Administration for Children and Families, *Access to Child Care for Low-Income Working Families*, at

program provides funding to states for subsidizing care of the parent's choice, whether in a family child care home, with a relative, or in a child care center.²¹⁹ Child care assistance under CCDF is generally limited by Federal law to families with children under age 13, although states may assist families with children up to age 19 who have special needs or are receiving protective services.²²⁰ In addition, both parents (or one parent in a single-parent family) must be in a work-related activity and family income cannot exceed 85 percent of state median income (SMI).²²¹ Beyond those basic guidelines, states can set their own eligibility limits.²²² Unfortunately, not all eligible families are able to obtain subsidies due to limited funding, and often the subsidies are insufficient to cover the cost of appropriate care.²²³ In California, only 6% of eligible families were served as of 1999.²²⁴

A small number of employers also help their employees pay for child care through direct subsidies or by negotiating lower rates with certain child care centers.²²⁵ The Dependent Care Tax Credit allows working taxpayers to take a nonrefundable credit against income tax liability for up to 30% of a limited amount of employment-related dependent care expenses.²²⁶ Unfortunately, this credit is nonrefundable and thus cannot be used by lower income families whose credits exceed their liabilities.²²⁷

<http://www.acf.dhhs.gov/programs/ccb/reports/ccreport.htm> (last visited July 24, 2001).

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ See source cited *supra* note 229.

²²⁴ See source cited *supra* note 231.

²²⁵ See source cited *supra* note 229.

²²⁶ *Id.*

²²⁷ *Id.*

Sexual Harassment

Title VII of the Civil Rights Act of 1964 [42 U.S.C.S. § 2000]

This Act recognizes sexual harassment as prohibited sex discrimination.²²⁸ It is defined as, "unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature."²²⁹

In applying this definition, courts have recognized two forms of claims. The first is the quid pro quo ("this for that") claim that involves a supervisory employee demanding sexual favors in exchange for job benefits over which that supervisor has some control or influence.²³⁰ A second is the hostile work environment claim that involves unwelcome behavior of a sexual nature that creates an intimidating, hostile or offensive work environment or has the effect of unreasonably interfering with an individual's job performance.²³¹

Title VII of the Civil Rights Act of 1964, as amended in 1991, strengthened the possible remedies for sexual harassment by allowing sexual harassment victims to recover compensatory damages beyond back pay, and may do so in a jury trial.²³² These damages can also include "future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses."²³³ Further, plaintiffs can collect punitive damages,

²²⁸ U.S. Equal Employment Opportunity Commission, *Facts About Sexual Harassment*, at

<http://www.eeoc.gov/facts/fs-sex.html> (last visited July 24, 2001).

²²⁹ *Id.*

²³⁰ Equal Rights Advocates, *Sexual Harassment in the Workplace*, at

http://www.equalrights.org/sexhar/work/wor_kplac.html (last visited July 24, 2001).

²³¹ *Id.*

²³² *Id.*

²³³ *Id.*

if they can demonstrate that an employer acted with malice or with reckless or callous indifference.²³⁴

Other Bases for Sexual Harassment Claims:

- Federal and state constitutional Equal Protection and Due Process Clauses

- State constitutional equal rights amendments

- State and local equal employment²³⁵, human rights, and public accommodation laws

- **Title IX:** This is federal law that prohibits sex discrimination and sexual harassment in education.²³⁶ It requires all schools that receive federal money to make sure that students are not discriminated against on the basis of sex.²³⁷

- **California Civil Code § 51.9**

This code sets out the elements of a cause of action for sexual harassment that occurs as part of a "professional relationship."²³⁸ There are four elements that the plaintiff must prove including: a business or professional relationship

²³⁴ *Id.*

²³⁵ Fair Employment and Housing Act (FEHA), Cal. Gov. Code § 12900 et. seq., is the law in California that provides protection for an employee if she/he is sexually harassed by her/his employer. *See* Department of Fair Housing and Employment, *Definition of Sexual Harassment*, at <http://www.dfeh.ca.gov/sexualHar.htm> (last visited July 24, 2001).

²³⁶ Equal Rights Advocates, *Sexual Harassment in Schools*, at <http://www.equalrights.org/sexhar/school/background.htm> (last visited July 24, 2001).

²³⁷ *Id.*

²³⁸ Timothy M. Blaine and Jennifer E. Duggan, *California's Civil Code 51.9: Sexual Harassment in Professional Relationships*, at <http://www.fed-soc.org/pp010203.htm> (last visited July 24, 2001).

between the plaintiff and defendant, sexual advances by the defendant that were unwelcome and persistent, inability to easily terminate the relationship without tangible loss, and the plaintiff has suffered or will suffer economic loss or disadvantage or personal injury as a result of the conduct.²³⁹ Although not on the face of the statute, California courts have held in similar contexts that there is a basis for employer liability for the act of their employees under the doctrine of vicarious liability.²⁴⁰

²³⁹ *Id.*

²⁴⁰ *Id.*

Women

Part VII

Health

Medicaid [Authorized under Title XIX of the Social Security Act]

Medicaid is a health care program for the poor and disabled.²⁴¹ Medicaid is administered by each state, funded in part by the U.S. Health Care Financing Administration.²⁴² Each state's program is different.²⁴³

Medi-Cal [California's Medicaid Program]

Eligibility for Medi-Cal depends on income level; less than \$2,000 in countable assets is required for individuals and less than \$3,000 for couples.²⁴⁴ Additionally, the payment of medical bills must leave a single person with less than \$600 a month in living expenses and less than \$934 for a couple.²⁴⁵ Applications for Medi-Cal benefits can be made at local social services offices or online.²⁴⁶

²⁴¹ *Murphy's Unofficial Medicaid Page*, at <http://www.geocities.com/CapitolHill/5974/> (last visited July 10, 2001).

²⁴² *Id.*

²⁴³ *Id.* This website provides links to each of the states' Medicaid programs.

²⁴⁴ California Registry, *Medi-Cal-California's Health Insurance for Low Income Elderly*, at <http://www.calregistry.com/resources/medi-cal.htm> (last visited July 10, 2001).

²⁴⁵ *Id.*

²⁴⁶ Medi-Cal Home Page, <http://www.medi-cal.ca.gov> (last visited July 10, 2001).

Healthy Families Program

This program is a state and federal funded health coverage program for children with family incomes that are above the level eligible for no cost Medi-Cal, but below 250% of the federal income guidelines.²⁴⁷ In addition to coverage for children, pregnant women are eligible for pregnancy-related services under this program and the baby will automatically be covered for the first thirty days of his/her life.²⁴⁸

Ryan White Comprehensive AIDS Resource Emergency (CARE) Act of 1990 [Ryan White CARE Act (Pub. L. 101-3810)]

This Act provides support for a continuum of services to those with HIV disease including women, children, adolescents and families.²⁴⁹ The Act provides emergency relief for areas hit hard by the HIV epidemic based on the cumulative AIDS cases, grants to improve delivery of HIV-related services and monies to support early intervention services.²⁵⁰ Services must be provided free to those whose incomes fall below the federal poverty line; others are based on a sliding scale.²⁵¹

Title X Family Planning Program [42 U.S.C. § 300a; 42 C.F.R. § 59.11]

Title X provides federal funding for family planning clinics and services

²⁴⁷ *Healthy Families, Eligibility*, at <http://www.healthyfamilies.ca.gov/Handbook/HBpg3.htm> (last visited July 24, 2001).

²⁴⁸ *Healthy Families, Summary of Benefits*, at <http://www.healthyfamilies.ca.gov/Handbook/HBpg6.htm> (last visited July 24, 2001).

²⁴⁹ John Hopkins AIDS Service, *Ryan White Care Act*, at http://www.hopkins-aids.edu/manage/ryan_white.html (last visited July 24, 2001).

²⁵⁰ *Id.*

²⁵¹ *Id.*

nationwide.²⁵² These clinics offer a range of services from pap smears and breast cancer screening to helping women to understand options in terms of contraceptives. Title X funding is especially important for poor women who do not qualify for Medicaid.²⁵³ In addition, there is now a Breast and Cervical Cancer Control Program for funding breast and cervical cancer screening.

Gender Bias in Adjudicatory Forums

Judges and lawyers can be sanctioned under codes of judicial conduct that expressly prohibit gender bias, and judicial rulings can be overturned when gender bias undermines due process. Judicial gender bias has caused the reversal of a few cases.²⁵⁴ The pre-eminent case in this area is a sexual harassment case, *Catchpole v. Brannon*.²⁵⁵ The California Code of Judicial Conduct, Canon 3, states: a judge "should not...by word or conduct, manifest bias or prejudice...based upon...sex."²⁵⁶ More than 25 other states have adopted this canon, which is part

²⁵² NARAL Reproductive Freedom and Choice, *Title X: The Nation's Cornerstone Federal Family Planning Program*, at

<http://www.naral.org/mediaresources/fact/titlex.html> (Jan. 26, 2001).

²⁵³ *Id.* under Section IB: Title X Assists Millions of Women.

²⁵⁴ See source cited *supra* note 133.

²⁵⁵ 36 Cal. App. 4th 237; 1995 Cal. App. LEXIS 585; 42 Cal. Rptr. 2d 440 (Ct. App. 1995), *review denied* (Cal. Sept. 14, 1995)); See NOW Legal Defense and Education Fund, *National Judicial Education Program: Task Force on Gender Bias in Courts*, at

<http://www.nowldef.org/html/njep/members.htm> (last visited July 24, 2001).

²⁵⁶ *Id.*

of the American Bar Association's Model Code of Judicial Conduct.²⁵⁷

Older Women

The Tax Reform Act of 1986 [26

U.S.C. §§ 401(a) et seq.]

This Act amends the Employee Retirement Income Security Act (ERISA) [29 U.S.C. §1001], an act that sets federal standards for pension plans sponsored by private employers.²⁵⁸ The TRA amended coverage tests so that more lower-paid workers must be included under pension plans and be allowed to participate. It also reduced the number of years needed to vest in benefits to five.

The Age Discrimination in Employment Act (ADEA) [29 U.S.C. §§ 621 et seq.]

This Act provides protection against discrimination to workers who are over 40 years old.²⁵⁹ Employers who employ more than 20 workers must comply with the ADEA.²⁶⁰ Discrimination can be proven directly, by showing that a plaintiff was treated differently due to membership in the protected class, or by showing a facially neutral policy has an unequal result on the protected class.²⁶¹

²⁵⁷ *Id.*

²⁵⁸ West Group, *2.04 ERISA Overview*, at http://www.hr-resource.com/index.asp?rightframe=hresources/sampleChapters/bgSampleChapter_3.html (last visited July 26, 2001).

²⁵⁹ NOLO: Law for All, *Age Discrimination FAQ*, at <http://www.nolo.com/encyclopedia/articles/emp/emp2.html#FAQ-27> (last visited July 26, 2001).

²⁶⁰ *Id.*

²⁶¹ Department of Labor: Women's Bureau, *Know Your Rights: Age Discrimination*, at http://www.dol.gov/dol/wb/public/wb_pubs/age.htm (last visited July 26, 2001).

Under Title VII, old women may also be able to argue that disparate treatment of a subclass (older women) violates Title VII.²⁶² The "sex-plus" theory of discrimination was first recognized by the Supreme Court as a viable theory under Title VII in *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971), which upheld a discrimination claim challenging a policy not to accept women with pre-school aged children.²⁶³

Some mid-life to older women face employment discrimination that does not fit under the ADEA or Title VII because the discrimination is a fusion of both age and sex. Older women can argue that they were discriminated against under Title VII due to their sex and/or race,²⁶⁴ but this may be difficult to prove if age was part of the reason for this discrimination. The Equal Employment Opportunity statutes, including Title VII and the ADEA, prohibit discrimination against an individual based on his/her membership in two or more protected classes.²⁶⁵ This intersectional discrimination can involve more than one EEO statute, e.g., discrimination based on sex and age.²⁶⁶

²⁶² U.S. Equal Employment Opportunity Commission, *EEOC Compliance Manual*, http://www.eeoc.gov/docs/threshold.html#N_11 (last visited July 26, 2001).

²⁶³ U.S. Equal Employment Opportunity Commission, *Milestones in the History of the EEOC*, <http://www.eeoc.gov/35th/milestones/1971.html> (last visited July 26, 2001).

²⁶⁴ See source cited *supra* note 273.

²⁶⁵ See source cited *supra* note 274.

²⁶⁶ *Id.*

Resources

California Women's Law Center (CWLC)

3460 Wilshire Blvd., 1102
Los Angeles, CA 90010
213/637-9900 Voice;
213/637-9909 Fax;
<http://www.cwlc.org/>

CWLC deals with family law, health care, sex discrimination, reproductive rights, violence against women and breast cancer issues.

Equal Rights Advocates -

www.equalrights.org

has information on employment, reproductive rights, gender inequality, women immigrants, great links on women's issues and more.

NOW Legal Defense & Education Fund -

www.nowldef.org

has material on women's issues; very good publications or legal resource kits on women's rights.

National Partnership for Women & Families -

www.nationalpartnership.org

has comprehensive material on FMLA, economic justice, and other employment issues with links to statutes and regulations.

ABA Commission on Domestic Violence

<http://www.abanet.org/domviol/>

has great info and good links.