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WORK, FAMILY, AND THE LAW IN ISRAEL

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I. INTRODUCTION

Legal rules of a particular legal system are supposed to reflect the basic values of that society. Hence, by looking at legal rules and how they have evolved, been modified, and applied over time, one can teach the story, the sociology, and the important values espoused by the society, in general as well as in the rules' particular subject matter. In Israel, the law regarding work and family is an excellent example.

Our journey starts with a short exposé of the historical, cultural, and societal needs, aspirations, and values that seem to explain the plethora of legal rule regarding work and family. It will be followed by a chapter devoted to a detailed analysis of the legal rules, treating as far as possible not only the "law of the book," but also the "law in action." It begins with the first step toward creating a family, i.e., marriage; and goes through pregnancy; post child delivery and adoption; child rearing; and caring for partners, parents, and other family members. Section IV discusses two relatively new topics: work family balancing measures and the increasing role of fathers in child rearing and other family responsibilities. Finally, Section V summarizes the analysis and highlights the common threads and possible future direction in balancing the legitimate, often conflicting interests of work, work organizations, workers, and workers' families.

II. NEEDS, ASPIRATIONS, AND VALUES

A. *Promoting High Birth Rate*

Increasing the Jewish population has been strategically a high priority need of the nation, even before and especially after the establishment of the State of Israel. In order to promote a high birth rate among the Jews, the first Prime Minister—David Ben Gurion—

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coined the expression "children-blessed families" and encouraged childbirth friendly policies and programs.

Israel is the only non-Arab country in the Middle East. After absorbing millions of immigrants, Israel's population is only 7,000,000 compared to 105,000,000 Arabs in the bordering countries and 367,000,000 in the region.¹ In addition, within Israel's borders there is a large and constantly growing Arab population. In 2004, the Arabs constituted 20% of the total population of Israel.² Furthermore, the natural increase among Arabs inside and outside Israel has been 3.5%, as compared to 1% among non-Arabs.³ This population and birth rate gap has loomed hard and been recognized as a threat to the continuous survival and very ability to maintain Israel as a Jewish state and a homeland for the Jewish people. As a result, demography and birth rate have become an issue of national security.

This reality may explain why Israel invests vast public resources and has become, medically, a leader in high-risk pregnancy, fertility treatment, and in-vitro fertilization. Contemporaneously, the legislature was a pioneer in providing support and stringent legal protection to working women during pregnancy, fertility treatment, delivery, adoption, the breastfeeding period, and child infancy.

B. The Whole Country is an Army

Israel has been since its inception in state of belligerency with the Arab world and under threat to its very survival. There is nationwide mandatory army service for men (three years) and women (two years), as well as many years of reserve service. Serving in the army and serving the army have become an important part of Israel's social upbringing and ethos.

Business and employers are required to contribute their share in various employment related aspects. Among them: a strict prohibition against dismissal during and after army service,⁴ obligation to reinstate veterans who were previously permanent employees,⁵ duty to pay severance pay to workers who resign in order to enlist in the army⁶, duty to employ handicapped veterans.⁷ There is also an interesting aspect that relates to work and family. Under sections 14–

1. ARNON SOFER & EVGENIA BYSTROV, ISRAEL DEMOGRAPHY 2004–2020, 8 (2005).

2. *Id.* at 20.

3. *Id.* at 22.

4. Veterans Law (Reinstatement) 1949, 41–41a.

5. Veterans Law (Reinstatement) 1949, 6–12.

6. Severance Pay Law 1957, 11c.

7. Veterans Law (Reinstatement) 1949, 31.

18 of the Veterans Law (Reinstatement) 1949, an employer of a fallen soldier is required to employ one member of the fallen soldier's family.

C. *Working Mothers*

The founders have never perceived the Israeli family as a household consisting of two parents in which one is the "breadwinner" and the other is the "homemaker," not even during child rearing years. Although women's first priority duties were to give birth and care for their children,⁸ mothers were supposed to work in two jobs. The ethos of mothers' continuing contribution to the labor force was reflected institutionally. The Histadrut—Israel's comprehensive labor movement, which was founded twenty-eight years before statehood, and was described as "a state in preparation of a state"—established an extremely strong federated organization entitled the Working Mothers Association.

In workplace regulation, the value of working mothers has found expression in three avenues. The first being an overly paternalistic legislation, prohibiting employment of women and (more so) mothers, at night, in dangerous jobs during their fertility period,⁹ and more importantly, immediately after childbirth. The second being legislation enabling new mothers to stay at home with the new baby without sacrificing her job and salary, to take a leave of absence, and to be protected against discrimination. The third being standard provisions in collective agreements providing working mothers easier working conditions during breastfeeding and early years of child rearing, such as: shortened working days and daycare subsidies. Contemporaneously, the Working Mothers Association has built an impressive nationwide network of daycare centers.

D. *Strong Family Ties*

Israeli families have been, and still are, tied together. They tend to live in a close proximity, to meet frequently, to celebrate all holidays together, and to share through physical presence good and bad moments. For instance, an outside visitor is stunned to discover

8. Frances Raday, *On Equality*, in *THE STATUS OF WOMEN IN SOCIETY AND THE LAW* 19 (Frances Raday, Carmel Shalev & Michal Liban eds., 1995).

9. A fertility period is defined in the regulations as being limited to the age of forty-five. See Regulations Regarding Women's Work (Prohibited Works, Restricted Works and Dangerous Works) 2001; *Regulations Regarding Women's Work (Radiation)*, 1979, 15 KOVETZ TAKANOT 34 (2001).

the migration of family members to army camps during weekends and holidays, as well as to see family members treating and taking care of their hospitalized relatives, thus relieving the hospital staff from part of its duties. This is probably the reason why Israel does not suffer from such a bad shortage of nurses, and why even though Israel is a very small country, major hospitals have been building hotels, geared for families' stay, within their campuses. At the workplace, this value has been reflected in regulations that allow time off to care for the elderly and the sick as well as for bereavement, and in employer or labor-management jointly sponsored family events, such as children's parties and plant-wide family retreats, as a means for appeasing family members for the time employees spend at work.

E. Openness to the Moderna

Israel is a modern Western democracy with well-advanced economy, and globally known hi-tech and telecommunication industries. Relative to population size, Israel probably leads the world in travel and studying abroad. As a result, there is wide exposure and openness to new and cutting edge ideas.

In working life, this aspiration for the *moderna* has been reflected in several ways. Among them: experimentation with various Work Family Balancing programs and the emerging rules enabling fathers to enjoy work conditions and privileges related to child rearing, previously accorded only to mothers.

III. THE LEGAL FRAMEWORK

The analysis of the legal framework pertaining to work and family focuses on labor and employment law. It excludes related fields, such as Social Security, Family and Tax law. The analysis attempts to bring to the fore not only the law of the book, but also the law in action and "soft" law. It draws on six written sources: (1) statutory and secondary legislation, i.e., regulations and Extension Orders; (2) case law; (3) multi-employer, multi-plant, and enterprise collective agreements;¹⁰ (4) employee manuals; (5) newspaper clippings; and (6) human resource managers' responses to questions regarding their enterprise's work and family balancing practices,

10. Under section 10 of the Collective Agreements Law 1957, all collective agreements are registered with Collective Agreement Registrar. For this article, only multi-employer, multi-plant and enterprise collective agreements registered during the years 1960–2005 were surveyed. It was assumed that family related benefits and work-family balancing working conditions were not likely to be found in industry-wide and nationwide collective agreements.

harvested from the Human Resource magazine's Web site. The use of multiple sources is necessary in order to draw a comprehensive picture and to solicit custom and usage, which are important sources of rights in Israel's legal system. The analysis starts with the initial step toward creating a family, i.e., marriage, and goes through pregnancy; post child delivery and adoption; child rearing; and caring for partners, parents, and other family members.

Note that, due to the historically special role of collective labor relations in Israel, collective agreements have quite often taken the lead in introducing new and advanced working conditions, and statutory enactment followed. In many areas collective agreement may still provide for above-standard working conditions, i.e., the standard being the statutory requirements.

A. *Marriage*

Labor law protects the institute of marriage in two ways. First, it prohibits any form of discrimination based on an employee's or candidate's family status. Second, in 1986, when the legislature abandoned the sweeping prohibition of night work for women, it allowed women candidates to refuse working at night, for family reasons.¹¹

The law further attempts to address the conflict experienced by spouses, each having a work career in the place she or he resides before getting married. It assumes that quite often one of them would have to leave her or his job. In order to alleviate the problem, at least financially, the law¹² provides a right to statutory severance pay (one month of salary for each year of service). Entitlement is dependant on three conditions: (1) marriage, (2) the resignation was motivated by relocation to the spouse's residence, (3) the distance between the pre-relocation residence and the new residence exceeds.

Once married, the law¹³ recognizes the household as a bearer of rights. For instance, the right for taking time off work in order to take care of one's sick parents also applies to the spouse's parents.

B. *Pregnancy and Fertility Treatment*

Enlarging the family is a natural development in family life. At the same time it is a disturbing event for the workplace. The

11. Women's Work Law, 1954, § 2.

12. Severance Pay Law 1963, § 8.

13. Sick Leave Law (Absenteeism for Treating a Sick Parent) 1998.

employee may be absent more frequently during pregnancy, and after delivery for an extended period of time. In the conflict between family's and work's needs, the legislature preferred the former. Back in 1954 Israel enacted the Women's Work law, which provided a pregnancy-friendly work environment and far reaching protection to pregnant women. Later on, certain provisions were extended, in a limited form, to fertility treatment. The law of 1954 contains two complementary protective measures: a strict prohibition against dismissal and a right to be absent during pregnancy, with or without pay. Note that men are also treated, both as direct participants, e.g., in fertility treatment, and as partners, in their supportive role.

1. Prohibition against Dismissal

According to Women's Work law,¹⁴ an employer may not dismiss a pregnant worker or downsize her job, provided she has been employed for at least six months. Dismissal includes an employer's refusal to extend an expired employment contact for a specific duration. Dismissal in violation of section 9(a) is void,¹⁵ and the sanctions are criminal fine or imprisonment and reinstatement with full back pay. An employer may petition the Labor Ministry for permission to dismiss a pregnant employee or downgrade her job. However, such permission may not be granted if the employer's action is directly or indirectly connected to the pregnancy. In practice, petitions are rarely granted.

The case law seems to interpret the protection broadly. The courts decided that a substantial downgrading in working conditions is also prohibited. It explained that, like downsizing one's job, downgrading working conditions is intended to cause the pregnant employee to resign.¹⁶ In addition, the court laid restrictive rules as to the conditions under which permission can be granted. The employer has the burden of proof that the dismissal was not connected to pregnancy;¹⁷ whenever the employer is aware of the pregnancy before the dismissal, there is an assumption that the dismissal is related to the pregnancy;¹⁸ if the employer fails to prove otherwise, the Labor Ministry has no discretion¹⁹ and permission may not be given; the

14. Women's Work Law 1954, 9(a).

15. 8-3/88 Avner Kopel v. Adi Wise, 20 P.D.A., 57 (1988-1989).

16. 1334/02 Heli Nusezki v. The State of Israel (not published, Dec. 7, 2004).

17. 307/99 Ofir Tours v. Goldenberg Hayat, 38 P.D.A. 170 (2003).

18. 1663/04 Optic Doron v. Mazal Zakai (not published, June 6, 2006).

19. *Id.*

pregnant employee has a right to be heard twice, by management and by the Labor Ministry.²⁰

In two cases from recent years the Labor Courts extended, through judicial activism, the protection against dismissal to pregnant women who were not protected under the Women's Work Law. In the first case,²¹ the pregnant employee has worked only five months, and thus was not protected against dismissal. The court interpreted the prohibition against discrimination on the basis of parenthood, in the Equal Opportunity in Employment Law's anti-discrimination clause,²² to include the pre-parenthood period, i.e., pregnancy. Shortly afterward, the legislature added pregnancy to the Equal Opportunity in Employment Law's anti-discrimination clause. The second case²³ was even more extreme, as the pregnant employee was neither protected under the Women's Work Law as she has not yet started to work, nor under the Equal Opportunity in Employment Law.²⁴ The court ruled that her dismissal was illegal under the premise of equality, embedded in the constitutional principle of human dignity, which is injected into the duty to act in good faith.

2. Right to be Absent

Absenteeism during pregnancy may be short, for medical supervision, or long, in case of high-risk pregnancy. Women's Work Law protects both. Not only in that the pregnant employee has a right to be absent, she also gets paid and does not lose on longevity. A pregnant employee may be absent, with pay, for up to forty hours during pregnancy for medical supervision.²⁵ She may also take a non-paid leave of absence if she has to stay home due to a high-risk pregnancy. Although a leave of absence is without pay and is considered a suspension of the employment contract, the law requires that this period should be taken into account for longevity-based rights.²⁶

In-vitro fertilization and fertility treatments are often physically and mentally painful. They may involve absenteeism and interfere

20. Optic Doron, *supra* note 18.

21. 30360/98 Levi v. Rad Ramot (not published, Oct. 24, 2002).

22. Equal Opportunities in Employment Law, 1988, § 2.

23. 1353/02 Margalit Apelboim v. Niza Holzman, 39 P.D.A. 495 (2004).

24. The law does not apply to workplaces with less than six employees. See Equal Opportunities in Employment Law, 1988, § 21.

25. Women's Work Law, 1954, § 7(e)(2).

26. This right is a result of recent amendment. Previously, a woman who stayed home due to high risk pregnancy had no rights since it is not considered illness, which may entitle her to sick leave. Women's Work Law, 1954, § 7(c)(1).

with work performance. The Women's Work law protects the employees, including men,²⁷ during these difficult times. Again, the law shows a clear preference for family needs over workplace needs. It allows women and men to be absent from work due to in-vitro fertilization and fertility treatments. Furthermore, they may use their accumulated paid sick leave,²⁸ under the Sick Leave Law,²⁹ in order to be paid for these days. A woman employee may use her sick leave for in-vitro fertilization and fertility treatments up to four times a year, sixteen days each time. A man may use twelve days of his sick leave each year for fertilization treatment.

The Women's Work law protects the employees involved in in-vitro fertilization and fertility treatments against dismissal, provided the treatments are for the first or second child.³⁰ They may not be dismissed without permission of the Labor Ministry for being absent for in-vitro fertilization and fertility treatments or due to reduced work performance caused by such treatments. The protection is accorded from first day of employment and it runs for 150 days from the end of each treatment. The Supreme Court extended, in obiter, the protection given to women employees during fertility treatment.³¹ The court emphasized that the protection is not limited only to absenteeism, since any dismissal related to fertility treatment violates the ban on discrimination on the basis of sex and pregnancy, contained in Equal Opportunities in Employment Law, 1988. Furthermore, the special protection against dismissal without permission of the Labor Ministry under Women's Work Law, is also not limited to absenteeism. It includes a waiting period for treatment, which may entail absenteeism as well as any case of the fertility treatment having an impact on employee's regular attendance and work performance.

Note that adoption processes that may involve absenteeism, especially when done abroad, have not yet accorded the protections given to pregnancy and in-vitro fertilization and fertility treatments. Recently³² the Labor Court dismissed a claim, based on parity, which was filed by an employee who was discharged due to long periods of absenteeism associated with adoption procedures taking place abroad. The court left the decision whether to extend the protections for the

27. Women's Work Law, 1954, § 7c(1).

28. Women's Work Law, 1954, § 7(3)(4).

29. Sick Leave Law, 1976.

30. Women's Work Law, 1954, § 9(e).

31. B.G.Z. 554/05 Ashkenazi v. The Police Commissioner (not published, Sept. 8, 2005).

32. 301653/98 Berger v. Industry Finance Ltd. (not published, Dec. 21, 2004).

legislature. Notwithstanding, it noted that the employee's claim could be entertained under the broad interpretation of parenthood in the Equal Opportunity in Employment Law's anti-discrimination clause which includes, in the court's opinion, pre-parenthood.

Finally, the law recognizes and aspires to encourage the increasing supportive role of men during pregnancy and delivery. Under a law enacted in 2000,³³ a man may utilize up to seven days of his accumulated sick leave a year for his partner's pregnancy related tests and medical treatments as well as for the delivery.

C. Post Delivering and Adopting

The period immediately after delivering or adopting a child is difficult and sensitive not only because of the need to overcome anxiety, recover, and adjust. It is also the period when parents are the most reluctant to leave the child in others' hands in order to resume work. The law and collective agreements attempt to relieve families, during this vulnerable period, of the fears and internal conflicts that often underlie questions such as: if, when, and under what conditions to resume work. It does it through four measures: mandatory maternity leave; the right to an optional leave of absence; job protection; and gradual return to work, through shorter working day, and easing rules to allow breastfeeding.

1. Maternity Leave

The Women's Work law provides for three months' paid maternity leave, which may start, upon the employee's discretion, one and a half months before delivery.³⁴ In certain circumstances the period of maternity leave might be extended. Among them: delivering more than one baby and post-delivery hospitalization of the baby or the mother.³⁵ The basic rules regarding maternity leave are applicable to adoption, provided the child is not older than ten years old.

According to a recent amendment,³⁶ if the two parents are employees, they are entitled to decide that during the second half of the maternity leave, the mother will resume work and the father will

33. Sick Leave Law (Absenteeism for Partner's Pregnancy and Delivery) 2000.

34. Women's Work Law, 1954, § 6(a)(b).

35. If, medically, as a result of the delivery, the mother is unable to return to work at the end of maternity leave, she may extend her absentee period for additional six months. This period is deemed as sick leave. Women's Work Law, 1954, § 7(c)(2).

36. Women's Work Law, 1954, § 6h(1).

take care of the newborn. In case of adopted child, the law does not insist on the mother taking at least half of the maternity leave. At the same time, it does not allow the adopting parents to divide the leave. Consequently, the two parents need to decide who utilizes the whole maternity leave.³⁷

The law is very strict about disallowing parents, primarily mothers, to work during maternity leave. Employing them is not only illegal, it is very risky. During maternity leave, a person may not be insured under the National Insurance. The underlying reason is to prevent employers from exerting pressure on employees to return to work prematurely. Certain employees, primarily career professionals, resent what they see as over paternalism of the law. In recent years an increasing number of mothers either work from home or are employed as "volunteers" under various deferred pay arrangements.

2. Optional Leave of Absence

When the maternity leave period ends, not all mothers are ready to go back to regular work. The law³⁸ enables a mother who has worked for the same employer for two years to take a leave of absence. The length of the leave of absence is based on longevity, and may not exceed one year. A father may be also entitled, under certain conditions, to exercise this right, provided the other parent does not.³⁹ Parents may also divide between them the period of leave of absence.

Many collective agreements have provisions regarding the right to optional leave of absence. They tend to go slightly beyond the Women's Work Law. It might be either by providing a uniform and extended period (one year from delivery or from the end of maternity leave) or by shortening the longevity period required for entitlement (nine to twelve months instead of twenty-four).

3. Job Protection

An employer is not allowed to dismiss parents during the periods of maternity leave and the optional leave of absence. The legislature's intention is that the job be kept for the employee during maternity leave and leave of absence, thus minimizing the damage to employee's professional career. Quite often employers find it difficult to hold the position for the employee and might seize an opportunity to get rid of

37. *Id.* § 6a(a)-(b).

38. Women's Work Law, 1954, § 7(d)(1).

39. Women's Work Law, 1954, § 7(d1).

the employee or the position. In the past, they used to notify the employee about their future discharge during maternity leave and leave of absence.

In order to assure that the employee gets a real chance to actually resume her or his job, the law made this practice more costly by extending the period of job protection.⁴⁰ It prevents the employer from giving a prior separation notice forty-five days after returning from maternity leave and leave of absence. Since, by law, every employee is entitled to notice one month prior, an employer who refuses to allow the employee to resume her or his job has to pay for seventy-five days. In practice, this measure is not regarded as a success story. Many employers prefer to pay the extra days rather than give their employees a real chance of coming back. Recently, the Histadrut's chief legal counsel suggested⁴¹ that employers should not be allowed to dismiss an employee, without permission, for six months after returning from maternity leave and leave of absence.

4. Short Working Day and Breastfeeding

The law attempts to ease the sharp transition from being a full time parent, during maternity leave, to a full-time employee. During the first four months after maternity leave, mothers may choose to shorten their working day by one hour with pay.⁴² Originally, this rule was limited only to breastfeeding. It was replaced by a uniform rule under which all mothers, irrespective of whether they breastfeed or not, are entitled to the privilege. Nonetheless, most people still refer to this practice as "breastfeeding hour" or "breastfeeding leave."

Collective agreements contain an easing rule for breastfeeding. The standard rule is similar to the arrangement under the law. Nonetheless, it is not limited to four months and thus applicable as long as the baby is breastfed. Two out-of-line agreements⁴³ allows mothers two and three hours respectively a day for breastfeeding, limited to one year following delivery.

40. Women's Work Law, 1954, § 9 (c)(1).

41. Talia Livni *Improving Women's Labor Market—Emphasis and Changes in Legislation*, in *AFFIRMATIVE ACTION AND SECURING REPRESENTATION* (Anat. Maor ed., 2004).

42. Women's Work Law, 1954, § 7 (c)(3).

43. The first is a multi-employer collective agreement in the pharmaceutical industry from 1984 (Number 840388). The second is a multi-plant collective agreement in a leading oil company which operates gasoline stations. The agreement is from 1997 (Number 970360).

D. Child Rearing

The long years of child rearing produce a daily conflict between parents' need to have time to create a supportive home for their children and the ever demanding and similarly legitimate needs of the workplace. The conflict is more acute during infancy, early childhood, and times of sickness. Nonetheless, it is always there to one degree or another. The law, collective agreements, employee manuals, and a host of employment practices endeavor to ease this conflict. Some are geared to better integrate family and working life, while others to help avoid the conflict all together. The list of more legally entrenched measures include: legal protection against discrimination, shorter working days during years of infancy and childhood, right to resign with severance pay in order to treat a baby or a sick child, time off in case of child sickness, flexible working day or week, day care arrangements and camps. Other less institutionalized measures embodied in custom and employment practices are discussed the section dealing with new Work Family Balancing programs.

1. Protection against Discrimination Based on Parenthood

The Labor Courts use the prohibition against discrimination based on parenthood⁴⁴ to outlaw employer requirements that put too much pressure on workers in their roles as parents. Two recent cases may illustrate the courts' general attitude.

The first case⁴⁵ involves a working mother with two babies. After having her first child she started working part time. Shortly afterward she had her second baby. Upon returning from maternity leave, she was asked to work an extra hour each day. She refused and was discharged. The court declared the employer's action unlawful on two grounds. First, under the circumstances (having two babies at home), the employer knew or should have known that the employee cannot submit to the demand. Consequently, the very attempt to substantially alter her working conditions, as a prerequisite for allowing her to return to work was an unlawful dismissal in violation of section 2 of the Equal Opportunities in Employment Law. Second, the fact that the demanded change in her working day did not appear to have an objective reason, as well as its timing, immediately after having a second baby, indicates that the dismissal was predicated on her being a parent.

44. Contained in section 2 of the Equal Opportunities in Employment Law, 1988.

45. 2659/01 Dror v. Didi Installations Center Ltd. (not published, Dec. 15, 2003).

In the second case⁴⁶ a mother was discharged, by a gala events organizing firm, for failure to show up for a gala event, which took place at night, due to her daughter's sudden illness. The court resolved the conflict between parent and work related duties in favor of the former. It declared that the dismissal was unlawful, in violation section 2 of the Equal Opportunities in Employment Law, as it was on the ground of her being a parent. The subtext being that as a parent she is less reliable.

2. Shorter Working Day

Most collective agreements contain provisions under which mothers are entitled to work a shorter working day, with pay, for quite a long period of time. This important measure was first introduced in a collective agreement for the whole public sector in 1972.⁴⁷ The arrangements tend to vary with regard to time allotted for child rearing and conditions of entitlement. Generally speaking, mothers are allowed to work between half an hour to one hour less daily.⁴⁸ As to entitlement, there are three common models. The first differentiates between infancy (until the baby is one year old) and childhood. The second bases entitlement only on the children's age, usually ranging between eight and twelve years old. The third combines the number of children and age. For example, entitlement runs as long as a single child is less than eight years old, and in case of two children until fourteen. More advanced and creative agreements are better geared to actual needs. For instance, they may differentiate between a single parent and a two-parent household or between regular working days and days when children are not in school, e.g., holidays and summer vacations. As will be discussed later, according to section 4 of the Equal Opportunities in Employment Law, under certain conditions fathers are eligible for shortened working days.

3. Right to Resign with Severance Pay

The law appreciates the fact that until the baby is one year old the inside conflict as to whether to return to work is in its zenith. One consideration against continuing staying at home, with the baby, is the fear of losing severance pay that is paid upon dismissal. Severance payments are considered by many employees as a form of savings for

46. 1618/00 Ezer v. The Israeli Center for Events (not published, Jan. 1, 2001).

47. Number 720373.

48. In rare case working day for mother with children is two hours shorter.

times of unemployment or retirement. It amounts to income, mostly non-taxable, of one monthly salary for each year of service.

Section 7 of the Severance Pay Law of 1963 removes this consideration from the parents' table. It provides that if a mother resigns, within nine months following delivery in order to treat her baby, her resignation will be treated as dismissal for the purpose of severance pay. In other words, she will be entitled to severance pay. Twenty-five years after its enactment this privilege was extended, under limited conditions, to fathers.⁴⁹

The courts interpreted the right to resign with severance pay quite broadly, stipulating the following rules: (1) Based on the purposive test, a mother who does not return to work after maternity leave, but fails to give a notice about her intention to resign, does not lose her entitlement;⁵⁰ (2) The mother's resignation within nine months after giving birth raises an assumption that she did it in order to look after her baby. The employer carries the burden of refuting the assumption;⁵¹ (3) In contrast to other circumstances under which an employee is entitled to severance pay upon resignation, a mother is not obliged to give the employer an opportunity to change her working conditions in order to avoid her resignation;⁵² (4) There is no need to deeply scrutinize the decision to resign in order to find whether it was motivated by additional reasons. Provided that one of the reasons was to treat the baby;⁵³ and (5) The expression "in order to look after the baby" need not be narrowly construed. It is not required that following the resignation, the mother devotes her time fully and exclusively to the baby. She may resign in order to work elsewhere on a part time job, thus having more free time for the baby.⁵⁴

The Severance Pay Law⁵⁵ introduced the concept of comparing illness related resignation to dismissal, for the purpose of severance pay. It enables parents to resign, with severance pay, in case of a child's sickness. Entitlement is based on two conditions. First, the resignation is motivated by the child's medical conditions; second, there is just cause for the resignation based on the medical data, the

49. Section 7(B).

50. 300022/98 Hazan v. Ortal Manpower Services Ltd. 36 P.D.A. 172 (2001).

51. 3-2950 Livne v. I.S. Ltd. 20 P.D.A. 3 (1988–1989). In the particular case the court dismissed the claim for severance pay since the employer proved that the employee resign in order to move to another employer.

52. 2809/03 Gordon v. Viankum Ltd. (not published, May 19, 2004).

53. *Id.*

54. 3-51/95 Haba v. Super Drink Ltd. 28 P.D.A. 471 (1996).

55. Severance Pay Law 1963, § 6.

resigned parent's working conditions, and other circumstances. Due to the second test, the employee has to enable the employer to make adjustments that may address the special needs that gave rise to the decision to resign.⁵⁶

4. Time off in Case of Child Illness

In 1993 the legislature enacted a specific statute⁵⁷ that enables parents to forgo working in order to take care of their children in times of illness. Parents to children under sixteen years old may utilize their accumulated paid sick leave in order to attend to their sick children. Note that the statutory amendment followed the footsteps of the collective agreement signed eleven years earlier in the public sector.⁵⁸

Like other statutes, there are different rules for two parents and a single parent household. In the case of the latter, the entitlement is for twelve days a year, in contrast to eight in cases of two-parent households. In addition, a two parent household needs to satisfy two conditions: (1) the privilege may be utilized by one of the parents; (2) the other parent is either an employee or independent contractor who actually continues working whilst the other parent attends to the child.

The law provides specific rules for the case of cancer. First, the age limit is eighteen. Second, the number of days increases. For two parent households—sixty days for one parent or thirty days for each parent and for a single parent, sixty days. Third, the days may be paid either as sick days or annual vacation days. Our survey reveals one collective agreement, which allows parents to forgo seventy-five working days.⁵⁹

5. Flexible Working Day or Week

One of the promising measures of integrating work and family life has been flexible working day or week, including compressed day or week, commonly referred to as "flextime." This measure is very helpful for families with two demanding jobs or careers as well as for single parents. One of the problems that might stand in the way of implementing any flextime program is overtime payment.

56. 3-22/73 Zilber v. Globis Ltd. 4 P.D.A. 153 (1972-1973).

57. Sick Leave Law (Absenteeism in Case of Child's Illness) 1993.

58. Women's Work Law, *supra* note 40.

59. Agreement covering Mishan v. the Histadrut owned golden age homes and assisted living facilities from 1997 (Number 980045).

Israel is a good example. It has an outdated statute regulating overtime work.⁶⁰ It requires paying overtime on daily (after nine hours) and weekly (after forty-three hours) basis. In addition, overtime pay is considered *ius cogens*. As a result, a firm that introduces flextime in order to attend to parents' needs is bound to run the risk of massive overtime claims.

Since the legislature has been unable to rewrite the statute to fit into today's work needs, the Labor Courts have done it piecemeal through case law. In recent years the National Labor Court announced⁶¹ its readiness to accept flextime programs as an exception, provided they stand two-pronged test. First, they are initiated for and designed to attend the needs of the employees and the employer; second, they are not harmful to employees' health and safety as well as to their family and personal life.

6. Day Care Arrangements and Camps

In addition to infancy and times of child illness, working parents experience severe pressure during very early childhood and at all ages when children are not in school. Labor and employment law hardly addresses this difficulty. Some easing measures, such as daycare arrangements and summer camps, may be found, if at all, in collective agreements and employment practices.

There are only few employer operated daycare centers in Israel, located primarily in hi-tech campuses. There is, however, a network of well equipped and run daycare centers operated by Na'amat—the successor of Working Mothers Association. Starting as back as 1974,⁶² many collective agreements provide for daycare and non-public kindergarten subsidies and allowances. The emerging pattern provides for employer's reimbursement of 50% for children under five years old. Some agreement may pay as high as 80%.⁶³

Many employers, sometimes jointly with the union, either organize or subsidize summer camps and children's activities during the long holiday vacations. The subject of summer and holiday camps tends not be covered in collective agreements. Nonetheless, as working conditions they have shown high degree of sustainability and

60. Hours of Work and Rest 1951.

61. 91-3/96 *Philosof v. B. Shor & Co.*, 33 P.D.A. 49 (1999).

62. A multi-employer agreement governing working conditions in public health (not registered, 1974).

63. Agreement for the lottery's employees from 2004 (Number 20040172).

only improve over time. The first time it appears in a collective agreement is 1982.⁶⁴

E. Caring for Parents, Spouses, and Relatives

Most of the discourse regarding balancing work and family life centers on child bearing and raising. Notwithstanding, there are times and unfortunate circumstances, especially as people move through middle age, when employees experience as much anxiety and distress due to the conflict between work duties and their family duties toward their needy parents, spouses, and other relatives.

Labor and Employment law barely touches upon this aspect of balancing work and family. Nonetheless, when things get really bad, there is a slight attempt to ease the pressure experienced by employees as they are torn between work and family obligations and needs. Again, the law does it through the right to be absent from work and the right to resign with severance pay.

1. Right to be Absent from Work

As part of a series of law regarding caring for the ill, the legislature enacted the Sick Leave Law (Absenteeism Related to Parent's Illness) 1993. The law enables employees, who need to take care of sick parents, to utilize up to six days of their accumulated sick leave every year. For the purpose of the law, "sick parent" is defined as a parent who is over sixty five, not staying in an assisted living facility, and dependant on others for daily and routine activities, such as washing, dressing, and eating. The statute approaches the family and the employee's household as one unit. First, entitlement is not limited to the employee's own parent. It includes spouse's parents. Second, in case of two employee households, only one may have the privilege, and the same holds for two brothers or sisters. A similar arrangement, only without the qualifications, appeared in collective agreement seven years earlier.⁶⁵

2. Right to Resign with Severance Pay

Section six of the Severance Pay Law of 1963 introduced the concept of comparing illness related resignation to dismissal for the purpose of severance pay. The right is not limited to employee's

64. Agreement covering employees of the largest bank (Number 830065).

65. Collective agreement in Tambour the larger paint manufacturer (Number 870784).

illness. It encompasses close relatives' illness as well. It includes the employee's spouse, child, parent, grandparent, grandchild, and spouse's parents, provided they live and are economically dependent on the employee. As alluded previously, entitlement is based on two conditions. First, the resignation needs to be motivated solely by the employee's relative's medical conditions; second, there is just cause for the resignation based on the medical data as well as the resigned employee's working conditions and other circumstances. Due to the second requirement, the employee has to enable the employer to make adjustments that may address the special needs that gave rise to the decision to resign.⁶⁶

Case law does not mandate that the relative must be treated and cared for by the resigned employee personally. There must be a casual link between the relative's medical conditions and the resignation. For instance, severance pay was granted when an employee resigned in order to take care of his sick relative's farm,⁶⁷ or when an employee had to move to another city in order to enable his wife to undergo psychiatric treatment.⁶⁸

IV. THE NEW FRONTIERS

Recent years have witnessed a growing interest in balancing work and family life as a subject for academic, human resource management, labor management, and public policy discourse.⁶⁹ It also has brought to the front new and emerging themes. Two themes deserve separate, albeit short, treatment. These include the increasing child care role of the working father, and the "family friendly" programs, benefits, and practices that are introduced under the heading "Work Family Balancing" or "Work Life Balance."

A. *The Increasing Child Care Role of the Working Father*

The typical Israeli household has never been, and increasingly is not today, a two-parent household with a male breadwinner and a wife staying at home, attending children and home needs. The new theme has to do with how two-career families, which are occupied

66. Gordon, *supra* note 52.

67. 166/66 Asdi v. Kit Production 60 District Court Cases 81.

68. 3-18/70 Benzilovitz v. Ata Ltd. 2 P.D.A. 41 (1970-1971).

69. See, e.g., THOMAS A. KOCHAN, *RESTORING THE AMERICAN DREAM: A WORKING FAMILIES' AGENDA FOR AMERICA* (2005).

with three jobs, of whom two are paid and one unpaid,⁷⁰ share the unpaid job. In other words, how one assures that men do more of childcare and home related duties. The idea is that it may relieve some of the women partners' stress associated with the constant struggle over balancing work and family life. At the same time, it will reduce the negative impact on their women partners' career development caused by their periodic and long withdrawals from work as well as by their inability to conform to the "ideal worker" model.⁷¹

Some critics argued that labor and employment law has been reinforcing the stereotype of mothers taking the lion's share of child care responsibilities by making them the subject of legally mandated privileges, such as maternity leave.⁷² They further contended that the basic approach of protective labor legislation has created "inhibitive affirmative action" for working women.⁷³ As a result, their earning power and opportunities for advancement and self-actualization within their organizations and professions will always be limited.

In response, the legislature extended rights and privileges, formerly bestowed only on mothers, to fathers; a move from maternity to parental based model of rights. In addition, it introduced the "choice model."⁷⁴ Under this model, a two household working family can choose how to divide child care and other family responsibilities, such as treating sick relatives, and who will be the subject of rights and privileges bestowed by law. For this end, the statute adopted a broad definition of "law," to include rights emanating from various sources.

A good example is the 1995 amendment to the Equal Opportunities in Employment Law 1988.⁷⁵ It provides that in cases where working mothers enjoy special parenting related working conditions at the workplace; these conditions need to be applied to fathers. Parenting related working conditions include: the right to be absent from work in case of child illness; shortened working day;

70. The idea is adopted from Ralph E. Gomory & Kathleen E. Cristensen, *Three Jobs—Two People*, as quoted in KOCHAN, *id.* at 17.

71. The "ideal worker" was described as a long-term full time employee who can devote his total commitment to work. *Id.* at 19–21.

72. Leora Bilsky, *Cultural Importation: The Case of Israeli Feminism*, 25 TEL AVIV UNIV. L. REV. 523, 544 (2005).

73. Moshe Pinto & Hillel Somer, *From Specific Legislation to General Doctrine—The Role of the Judiciary in Reinforcing Affirmative Action in Israel*, in AFFIRMATIVE ACTION AND SECURING REPRESENTATION IN ISRAEL 195, 209–10 (Anat Maor ed., 2004).

74. RUTH BEN-ISRAEL, EQUALITY, OPPORTUNITIES AND PROHIBITION AGAINST DISCRIMINATION IN EMPLOYMENT 2, 612 (1998).

75. Equal Opportunity in Employment Law, 1988, § 4.

employer-operated daycare; daycare vouchers or subsidies. In order to be entitled, the father has to show that his spouse either does not have or does not actually use the special working conditions at her workplace. In a case that came before the National Labor Court,⁷⁶ it emphasized that the purpose of the amendment was to ease the stress working mothers experience due to family obligations and to enhance their chance for development and self-actualization at work. Furthermore, the court decided that the amendment needs to be interpreted broadly. In conjunction with this approach, the court decided, *contra lege*, that in order to enjoy the benefits, the employee's spouse need not be an employee. He or she can also be an independent contractor.⁷⁷

Another example for the new approach and the "choice model" is an amendment to the Women Work Law 1954 introduced in 1998.⁷⁸ It changed the concept of maternity leave to parental leave. It allows the mother to give up the second half of the leave and return to work. The father takes her place. He enjoys the paid leave and takes care of the baby. The legislature took a similar path regarding the right to use sick leave days in cases of child's⁷⁹ and parents'⁸⁰ illnesses as well as the right to resign, with entitlement to severance pay, in order to take care of a baby⁸¹ and in the case of relatives' illnesses.⁸²

Feminists' writings⁸³ and empirical data⁸⁴ suggest that, with some exceptions, the statutory amendments have not changed practice. The main problem is with shortened working days and maternity leave. In 2005, seven years after the law was amended, only 157 fathers (0.2%) exercised their right to share maternity leave with their spouses.⁸⁵ Apparently, men still hesitate to exercise their parental rights or to take advantage of the shortened working day. They find it difficult to break away from the traditional division of labor and probably fear the stigma attached to breaking the norms and the negative

76. 1039/00 The State of Israel v. Yahav 38 P.D.A. 26 (2003); 1155/02. The State of Israel v. Moskolenko 39 P.D.A. 337 (2004).

77. The State of Israel, *supra* note 76.

78. Section (h) § 6.

79. Sick Leave Law (Absenteeism in Case of Child's Illness) 1993.

80. Sick Leave Law (Absenteeism in Case of Parent's Illness) 1993.

81. Severance Pay Law, 1963, § 7(b).

82. Severance Pay Law, 1963, § 6.

83. Noya Rimalt, *Legal Feminism in Israel—From and to where? Reflections on Being Different, Dignity and Equality*, 27 TEL AVIV UNIV. L. REV. 857 (2004).

84. Ruth Sinay, *Only 157 Men Took Maternity Leave in 2005*, HA'ARETZ, Aug. 28, 2006, at 11.

85. *Id.*

implications to their career. In short, the formal rules have failed to overcome the informal norms or culture.

B. "Family Friendly" and "Work Family Balancing" Programs

The following discussion tries to make a distinction between family related benefits and family friendly or balancing work family programs. The distinction is sometime blurred. Both are geared to help working families cope with their needs. Nonetheless, it is important for our analysis. Family related benefits are benefits associated with the employee being a family member. They have three common features: they are usually universal, i.e., they apply uniformly to all employees, irrespective of their level or position; rules of entitlement are based on family profile; and they are intended to save the employee's family resources and to improve the working family's quality of life outside and unrelated to the enterprise and the job held by the family member. In contrast, family friendly or balancing work family programs are meant to ease the conflict between work and family life by introducing changes in the organization's jobs, work schedule, work practices, and culture. There is also a third, in-between category, which includes two types of benefits or practices. First, employer-operated daycare centers and daycare tuition vouchers or subsidies; second, camps during long holiday vacations and summers. These two are in a special category since they are a very effective means of relieving stress caused by the conflict between work and family, yet they do not involve any organizational or work related change.

1. Family Related Benefits

Collective agreements and employment practices provide a host of family related monetary and in-kind benefits. The monetary type of benefits include: family allowance (first paid in 1964);⁸⁶ child allowance based on number of children, tuition vouchers and subsidies (ranging from 50% to 115%⁸⁷); for non-public school, including boarding school, college, and university, subsidized family membership in sporting clubs and subscriptions for theatre, ballet, and opera; and free or subsidized use of the enterprise's services by

86. A multi- employer agreement covering the public sector (654242).

87. A collective agreement from 1987. The agreement covers the employees of Pazgaz—one of the three leading gas providers (Number 890535). The additional 15% is probably intended to cover school related expenses, like books.

employee's immediate family, such as public transportation, airlines, and shipping.

Employees are entitled to paid vacation days for special family events, such as: mothers' day, the employee's wedding (one to three days), a newborn (one to three days), the day of circumcision for a newborn boy and a welcoming party for a newborn girl, the day of employee children's bar or bat mitzvah, and the day of employee's child's wedding. A multi-industry extension order, applicable to a large part of the workforce, provides for seven-day bereavement leave for first tier relatives.

The in-kind family related benefits are often run and administered by the union, usually with management's financial assistance and cooperation. In non-unionized enterprises they are part of HRM programs. The list of in-kind family related benefits include: parties and other children activities, plant wide parties and family retreats, mutual aid and loan funds, and family blood bank.

2. Family Friendly or Balancing Work Family Programs

Collective bargaining partners have tended to spend all their energy and creativity on enriching and diversifying family related benefits as well as on arrangements for daycare and summer camps for employees' children. In addition, the Histadrut has invested its resources in building and running a network of daycare centers, operated by Na'amat—the successor of Working Mothers Association, as well as golden age homes and assisted living facilities. The only direct measures of balancing work and family needs to be found in collective agreements, are shortened working days and above-standard norms regarding time off for breastfeeding and caring for young children and the ill. There are also few flextime agreements. Another, more indirect measure is the practical limitation on mandatory overtime, embedded in the need to consult or acquire the consent of the union regarding overtime work. In many large enterprises there is a special position of a social worker or welfare manager whose duties include helping workers with child and elder care referral and other support services. In unionized enterprises, a union officer may carry out this function. In a non-unionized workplace it is part of HRM.

In recent years firms with advanced HRM policies have been experimenting with family friendly or work family balancing programs. These programs commonly referred to as "work life balance," apply primarily to the professional, high salaried and hi-tech

workers. They include: flextime, part time career option, gradual return from maternity leave,⁸⁸ special facilities for breastfeeding mothers, one day a week during which the employee may work from home, a mandatory time limit on scheduling meetings and telephone conferences (starting and/or ending), and one afternoon off every week during which employees are required to switch off their cellular telephones and email.

The impression is that many of these flexible options are grossly under-used, and the rules are not adhered to. The reason is that organizational culture has not changed to support the policies and the programs. Employees still fear, partly because they do not receive contrary cues from their managers, that using the flexible options or insisting that programs be kept, especially in times of pressing deadlines, may hurt their career. In order to create a cultural change and assure that managers do not pay lip service to these programs, many of these firms require their management in all levels attend lectures and workshops on work family balancing issues. The underlying premise is that balancing work and family life is part of management's concern and responsibility.

V. CONCLUSION

This article was set out to examine how the law in Israel assists parents and working families with the ever-existing conflict between work and family life. The mosaic picture that was unfolded in the preceding pages shows that, like in many other cases, the law has been slow in catching up with the increasing fluid boundaries between work and home and the need for working parents to create a supportive home for their children and family. As a result, it can't be said that Israel has a truly family-centered labor market policy. Nonetheless, the law exhibits sensitivity to employees' family needs and internalizes the inherent conflict between working and family life. For the law, family life issues and needs are not just an employee's personal problem and private choice. The frequent statutory amendments indicate that the legislature perceives working family issues to be a high priority concern for public policy and prefers to see it as one of the employer's responsibilities.

88. Intel introduced such a program which included shorter shifts and other easier working conditions. The company reported that as a result turnover of mothers declined from 21% to 3%. Nirit. Cohen, *Intel- Social Responsibility in Work Environment*, in COLLECTION OF ARTICLES IN HUMAN RESOURCE MANAGEMENT 157 (2006).

In practice, however, the law has a limited set of tools with which it attempts to somewhat reduce the stress on working families as well as workers with family and to ease the employees' never ending struggle between their conflicting work and family duties. The collective agreements, the union-run institutions, such as the Histadrut's network of daycare centers, assisted living and golden age homes, as well as the employment practices, seem to serve as effective complementary means. The richness of family related benefits and the creativity of the "Family Friendly" and "Work Life Balance" employment practices indicate the importance of the non-statutory workplace governance mechanisms in addressing the conflicting demands of work and family.

The courts have given the statutory scheme a broad interpretation and have used judicial activism to extend the statutory privileges to the needy. Judges have acted with an eye toward promoting other values, such as equality for working women and better and more equitable division of childcare responsibilities between parents.

Over the years, the legislature has embarked on a transition from mothers' only family related rights, which have been criticized as a form of "inhibitive affirmative action," to parental rights. This transition accompanied by the "choice model," leaving the two parent households to decide who will bear the caretaking responsibilities and the ensuing rights, is a major step toward redefining fathers' role in child rearing. At the same time, it opens up better opportunities for women to advance within their workplace and profession. Although not yet felt in practice, this paradigmatic transition, from mother's rights to parental rights, may gradually shed the existing stereotypes and lead to a cultural change. The sad story about the rich and creative family friendly or work family balancing programs that are grossly under-utilized proves that such cultural change is badly needed.

However, there is one problem that runs as a common thread throughout the law's easing rules. They tend to assist working families to take care of pressing family needs by providing them with time off (with or without pay), job security, and right to resign with severance pay. The law hardly requires positive or affirmative action aimed at integrating and harmonizing work and family life. A good example is the right of an employee to resign with severance pay in order to take care of a sick child, parent, or relative. Often it may provide the family with an immediate relief in the form of a substantial sum of money and symbolizes public policy's recognition

and sensitivity to family's needs. At the same time, it takes the parent out of the job and the labor market.⁸⁹ In conclusion, by adopting protective disengagement⁹⁰ from work, temporarily or permanently, as a standard vehicle of legal intervention, the law chooses the easy way out. It gives up any serious attempt to integrate work with family needs and to assist workers to cope with the conflict between work and family life without interfering with their career.

The cure probably lies in creating a more homey,⁹¹ caring, attentive, and flexible workplace. This may include building, with or without public funding, daycare centers and other child rearing related services in or near the place of work, imposing duty on employers to provide administrative and advisory assistance in cases of child's and relative's illness, such as child and elder care referral and other support services, and to require employers to be proactive in redesigning work to meet the "dual agenda"⁹² requirements of workplace and family diverse needs and responsibilities.

The only question is whether it is realistic to expect the law to implement such an agenda. It might well be that it is more appropriate to leave it to the collective and individual actors in employment relations, and to relational-based and interests-based rather than rights-based discourse.

89. Israel Doron & Galia Liyozik, *Old Age and Work in Israel: The Law and Employees who are Treating their Relatives*, 9 WORK SOC'Y & L. 197 (2002).

90. The "choice model" is supposed to reduce mothers' disengagement periods.

91. Rimalt, *supra* note 83, at 881.

92. Kochan, *supra* note 69, at 28; RONA RAPOPORT, LOTTE BAILYN, JOYCE K. FLETCHER AND BETTYE H. PRUITT, BEYOND WORK-FAMILY BALANCE: ADVANCING GENDER EQUALITY AND WORKPLACE PERFORMANCE (2002).

