



**Testimony of Ann M. O’Leary**

**For House Education and Labor Committee, Subcommittee on Workforce Protections**

**Hearing on The Impact of Women’s Growing Participation in the Workforce:  
“The Shriver Report: A Woman’s Nation Changes Everything”**

**November 13, 2009**

Thank you, Chairwoman Woolsey, for hosting this hearing to highlight the findings of “The Shriver Report” and for your strong leadership over many years on the very issues highlighted in the report—the need for our society and our institutions to respond to the changing nature of the family and our workplaces as a result of women’s growing participation in the workforce.

I am Ann O’Leary, Executive Director of the Berkeley Center on Health, Economic & Family Security at UC Berkeley School of Law and a Senior Fellow with the Center for American Progress. Most importantly for this hearing, I am the co-editor of the Shriver Report, along with my colleague Heather Boushey, a senior economist at the Center for American Progress. I am also co-author, with Karen Kornbluh, a work-family policy expert, of the chapter in the Shriver Report on the government’s response to women’s growing participation in the workforce, “Family Friendly for All Families: Workers and caregivers need government policies that reflect today’s realities.”

“The Shriver Report: A Woman’s Nation Changes Everything” is centered around three key facts:



- For the first time in our history women make up half of all workers in the United States.
- Mothers are now breadwinners—making as much or more than their spouse or doing it all on their own—in nearly 40 percent of families. If you add mothers who are co-breadwinners—contributing at least a quarter of the family income—you find that two-thirds of mothers are either breadwinners or co-breadwinners in their families.

These two facts alone are a dramatic shift from the late 1960s when women were one third of the workers in the United States, and only 27 percent were breadwinners or co-breadwinners in their families.

- The final key fact is that not only has our workforce changed, but the make-up of our families is dramatically different than it was in the mid-1970s when women first began entering the workforce in larger numbers. In 1975, nearly 45 percent of families with children consisted of a male breadwinner and a female homemaker. Today, that number is just 21 percent or 1 in 5 families. In 1975, single parents made up only 9 percent of our families with children. Today, single parent households are 22 percent of our families with children. And, in 1975, 31 percent of families were married dual-income families and today that number has jumped to 44 percent of our families.

What do these facts mean for our families, for our workforce and for our society as a whole? Quite simply, women as half of all workers changes everything.

In “The Shriver Report” top-notch academic and policy experts from around the country examine the major institutions in our society—government, our health and education systems, business, faith-based institutions, and the media—to analyze how they have responded to these key changes in our society and where they have fallen short. In each instance, the authors of the report find that our institutions have not adequately kept up with these changes.

Our government still relies on social policies built around the traditional family. So too does our health system with access to insurance often tied to good jobs, which are more likely to be held by men than women.

Our education system is in many ways a success story with women outpacing or matching men's educational attainment at all levels of education. Still women remain concentrated in traditional female fields such as health and education and are falling behind in entering the higher-paying fields of the future, including science, mathematics, engineering and technology.

In business, women are half of all U.S. workers and this year women were running more than 10 million small businesses with combined sales of \$1.1 trillion. Yet, in our major corporations we still have paltry numbers of women in leadership and too few women overall who have access to the type of supports that would allow them to reach the top—flexible hours, career development, and inclusive work environments.

Too many of our faith-based institutions, which for decades relied on the volunteer work of women to keep them running, haven't adapted to women's new work schedules and demands. And many faith-based institutions have struggled to include women as valued leaders.

The mainstream media outlets often suggest that women have “made it,” portraying women as successful executives at the top of every profession. Yet rarely do we see the face of the millions of everyday women who struggle to make ends meet to juggle work and family.

What affect does the failure of our major institutions to respond to this new reality have on workers and families? It means individuals and families must face these problems as their own personal struggles. These “personal” struggles, however, have a negative impact on the health and well-being of our families and often cause economic detriment—from lost income to lost jobs—that has a lasting impact not only on our families, but our economy as a whole.

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Today, I'd like to focus on how the government has responded to this new reality and what our government could do to lead the way in changing our workplace and family support policies.

As women entered the workforce in droves, women fought hard to get equal access to the rights of men in the workplace. And they succeeded—with the Equal Pay Act, Title VII of the Civil Rights Act, and the Pregnancy Discrimination Act. But it has become clear that merely gaining rights to a workplace where policies on

hours, pay, benefits, and leave time were designed around male breadwinners who presumably had no family caregiving responsibilities and often had a spouse who stayed home full-time to manage the house and care for children, as well as sick and aging relatives, isn't enough for today's workers. Too many workers—especially women and low-wage workers—simply cannot work in the way traditional breadwinners once worked with a steady job and lifelong marriage with a wife at home.

Our report highlights the areas in which government has made progress and has fallen short in creating policies to reflect families' new realities:

Family Leave. In 1993, the Family and Medical Leave Act became law guaranteeing unpaid leave for at least some workers, regardless of gender, to care for family or medical needs. FMLA provides qualified employees with the right to take up to twelve weeks each year of job-protected unpaid leave for the birth or care of the employee's child, care of an immediate family member with a serious health condition, or for an employee's own serious health condition.

While this Act has helped millions of Americans take the leave they need, half of all workers in the United States are not covered by this law. Furthermore, any leave granted under FMLA is unpaid, which means many workers cannot take advantage of it because they cannot afford the loss of family income. In practice, the law favors families with one parent who makes less money (still more often the woman) providing care while the other higher-paid parent continues to support the family at work.

The United States is the only industrialized country without government-sponsored or employer-required paid maternity leave and we are one of only a handful with no paid parental leave for fathers.

Pregnancy and Caregiver Discrimination. Most Americans believe it is illegal today for employers to fire a pregnant worker as a result of the Pregnancy Discrimination Act of 1978. But that is just not the case. Unfortunately, there are many lawful reasons an employer in the United States can fire a pregnant worker and these reasons often disproportionately harm lower-wage workers.

A number of federal courts have interpreted the Pregnancy Discrimination Act to mean that employers that do not allow workers any leave or extremely limited leave to

recover from an illness or a disability are under no obligation to provide leave to pregnant workers. Courts have also been clear that if a pregnant worker is told by her doctor that she should not lift heavy weights or needs to stay off her feet in order to avoid negative health consequences for herself or her baby, then the Pregnancy Discrimination Act does not require her employer to accommodate these restrictions. Instead, the employer can legally fire the pregnant worker.

Finally, women who are pregnant or on maternity leave certainly have no greater right to keep their jobs when lay-offs occur, although if they are targeted because they are pregnant or on maternity leave that is unlawful. In recent recessions, claims of pregnancy discrimination have consistently gone up, meaning women are filing claims at a greater rate suggesting that they are being fired because they are pregnant. These women aren't just imagining discrimination – the percentage of these cases to be found to have merit remains at approximately 50 percent during highs and lows – so more women are found to have valid pregnancy discrimination claims in recessions than at other times.

My colleague, Stephanie Bornstein of the Center for WorkLife Law, will be testifying about caregiving discrimination. The Center for WorkLife Law, led by Joan Williams, has improved the use of Title VII for combating such discrimination. But Title VII and the Pregnancy Discrimination Act only require access to equal terms and benefits of all workers, which often is not enough to aid workers with caregiving responsibilities.

Predictable and Flexible Workplace Schedules. The Fair Labor Standards Act requires premium pay for overtime hours worked above the 40-hour workweek, but it does not address flexible, predictable work schedules. The law currently allows for flexibility within the context of a 40-hour workweek, such as a compressed workweek or daily schedules with differing work hours, but this flexibility is left at the discretion and is in the sole control of the employer. The result is a majority of workers have no ability to control the time that they start and end their work days, no ability to work from a different location, and no ability to reduce the hours they work.

There are no federal laws in place requiring or incentivizing employers to offer predictable work schedules. Low-wage workers, often working in retail, find predictability even more challenging than flexibility. When your employer

changes your schedule from day to day or week to week, it makes it almost impossible to organize consistent, quality child care or elder care for your relatives.

Social Insurance. Our social insurance system was developed around the notion that couples are married for life and that the man earns the family income and the wife takes care of the children and ill or aging relatives. Take Social Security retirement benefits for example. Social security provides benefits directly to workers and to dependent spouses. For many women, this provision has been a lifesaver—the difference between poverty and stability in the retirement years. But too many women today cannot take full advantage of these benefits—because of years taken away from the workforce to raise children or care for ailing parents, they don't earn enough to have their own solid social security retirement and they don't qualify for spousal benefits either because they were never married or they divorced before 10 years.

Child and Elder Care. In the 1970s, Congress passed a universal child care bill, which was vetoed by President Nixon. Today's patchwork of government child care programs provide too little support to meet the needs of today's working families and our aid to families with elder caregiving needs is almost nonexistent.

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Chairwoman Woolsey, you know better than anyone that these issues are not new. For years, you have been a leader in Congress, year after year introducing and pushing for "The Balancing Act," which provides comprehensive solutions for families trying to meet the dual demands of work and family. This year, you have led the way to push for solutions to the need for paid family leave by introducing the Family Income to Respond to Significant Transitions (FIRST) Act.

What is new is our changed reality—women are in the workforce to stay and families must rely on the income of working mothers. The other thing that is new is that the desire to see our government and our businesses lead the way in changing our workplace policies is not coming from women alone. In a poll conducted as part of the Shriver Report, we found that both men and women overwhelmingly believe that government and business need to provide more flexibility in work schedules, paid family leave, and increased child care support.

Further inaction on the part of the government will have real negative economic consequences for our families. Men and women both need the leadership of our government to solve these problems.