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Parental Leave Policy: Flexible Or Arbitrary?

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When Justice Department attorney Joan Bernott asked for six months' maternity leave without pay following a difficult childbirth, she almost got fired.

Bernott's boss, civil division chief John R. Bolton disputed her claim that she was too sick to work because he thought she had not produced adequate medical evidence. He threatened to fire her June 1 if she didn't show up at the office.

Faced with the threat, Bernott produced her medical records. While Bolton gave her an official reprimand for her conduct, he backed down on firing her, according to Bernott's attorney. She plans to return to work Oct. 3.

The controversy was an extreme example of a manager taking a tough approach to a parental leave request, according to specialists in the field. Bolton said last night he was "fully satisfied with the outcome." He described his handling of the affair as reasonable and justified by the enormous workload in his division.

More commonly, short leaves are routinely granted, and on occasion the government bends over backwards to accommodate an employee in need.

The government's leave policies are so flexible that they allow managers to grant sick leave in certain circumstances, advance sick leave, approve annual leave, advance annual leave, grant leave without pay, authorize part-time work, job sharing or flexible work schedules—or to refuse to do any of them.

Sometimes the flexibility is stretched to its limit on behalf of employees. That happened for Army computer programmer Karen Sefton, who received months of accrued, advanced, and shared leave while her young daughter was dying of cancer. Sefton, a GS12, had an understanding chain of experienced bosses and a heart-rending, undeniable need.

Bernott, a member of the Senior Executive Service, had a boss who had never met her. She was reluctant to have her medical records passed around the Justice Department. And her case involved childbirth, which evoked mixed reactions from coworkers, with some being more sympathetic about time off than others.

The parental leave policy debate is the latest example of the tension over the need for regulations to protect against arbitrariness and the need for deregulation to prevent the government from being smothered by rules.

It is part of the current political debate on family issues; a parental leave bill is the next item on the Senate agenda after minimum wage legislation.

The Senate bill would require the federal government to grant employees up to 18 weeks of family leave and up to 26 weeks of sick leave with medical certification in a two-year period. If enacted, it would give federal workers a clearly defined new right and federal managers a new set of constraints.

"Federal managers are extremely put upon by regulatory requirements," said Constance Horner, director of the Office of Personnel Management. "I don't want to



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Joan Bernott almost lost job for seeking six months' leave.

do anything to constrain them, but at the same time I want to use my bully pulpit to say this is an important issue, and managers should bend over backwards to accommodate family needs.

"There is now available in the federal government tremendous opportunities for meshing work life and family life," she said. "Federal managers and employees need to take a look at these options systematically and make sure they get used when they need to be used."

But, she said, she has no intention of issuing "marching orders to agency management." Lower-level OPM officials, though, are quick to note that Bernott ultimately won as much maternity leave as she wanted.

"A bureaucracy is a political entity and has its own methods of discipline," Horner said. "If a good worker who pulls his or her own weight isn't treated right, that worker's peers have methods of making managers do the right thing even if they don't want to."

Andrew Feinstein, staff director of the House civil service subcommittee, said the problem with the federal government's leave policies is that "people get hurt at both ends. If you are a very good performer, you don't get leave because you can't be spared and if you're a very poor performer you don't get leave because your supervisor doesn't like you."

Years ago, the Federal Personnel Manual stated that reasonable maternity leave was generally in the range of six weeks before childbirth and eight weeks after, and many federal managers once used that as a general rule of thumb, according to Claudia Cooley, OPM associate director.

Horner's efforts to encourage managers to grant "reasonable" leave requests for dependent care—not just of children, but of elderly parents and other family needs—began in 1986 and have worked relatively smoothly for the majority of federal employees, by OPM accounts.

Of 7,000 federal arbitration cases in recent years, only 19 have involved the denial of leave to care for dependents, Horner said. "This doesn't mean there are no problems," she said, "but it suggests that people have been working them out pretty well."

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