

Dr. Nirit Toshav – Eichner

**The Woes of Gender Discrimination**  
Fired For Being Female

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**Dr. Nirit Toshav – Eichner**

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*The Woes of  
Gender Discrimination*  
**Fired For Being Female**



This book is dedicated to people with  
a passion for the fight for equality.

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I would like to end with the hope that this book will serve as a theoretical and practical foundation for an attempt to initiate change within Israel's fragmented culture with regard to the treatment of pregnant employees, as well as the management of other issues that require constant guidance, coordination, cooperation, and a fight for equality.

## Opening Thoughts

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The discourse surrounding gender inequality in the workforce deals with, among other things, the imagined character of “the ideal worker” (Acker 1990). This worker is presented as a white male who is available and dedicated to his employers at all times. Nonetheless, in an era in which the meaning of physical work is open to interpretation, many women are able to blur gender lines. However, during pregnancy and after giving birth, the form of the female body and its obvious physical difference from the “ideal worker” model becomes clearer than ever. On the axis upon which the male—whose entire being is dedicated to working as an “ideal” or “natural” employee—is located, the pregnant employee is his polar opposite. She thus becomes less desirable to the employer and is exposed, more than ever, to discrimination on the basis of gender. In order to deal with cases in which equality is breached within the labour market, different

countries employ a range of welfare policy schemes, known as Family Policy, containing legislation intended to protect employees during pregnancy. Discrepancies exist nonetheless between written law and its practical implementation, and the consequences are likely to damage the state's objective—to prevent gender-based discrimination.

This book seeks to closely chart the manner in which legislation preventing pregnant women from being dismissed is translated into standard behaviour within institutions, and to examine the layers of mechanisms that generate the level of protection available to women wishing to seek help from the state if and when they are dismissed. Two further questions are considered: to what degree the regulatory system for preventing pregnant women from being made redundant reflects the intent of the legislature, and how the “clients” of said regulation—the women themselves and the employers whose workspace is limited by it—function within it.

In Israel, Family Policy, which seeks to safeguard the positions of pregnant women, is organised through interventional regulation whose aim is to prevent job loss before it occurs. This mechanism functions by way of the state, which examines the employer and the female employee separately, and it is structured according to Section 9a of the Women's Labour Law of 1954, “An employer shall not dismiss a female employee who is pregnant and has not

yet begun her maternity leave without permission from the Minister of Labour and Welfare, and the Minister shall not authorise said dismissals if the dismissals are, in his opinion, related to the pregnancy.” The language of the law was decided upon at the birth of the State of Israel, which is still considered a pro-birth country today (Berkovitch 1999; Ajzenstadt and Gal 2001). Interventional regulation is meant to act as a universal, equal channel for employers and for women as an alternative to the legal proceedings that occur in most western countries in cases of dismissal during pregnancy. However, despite the intention of the legislature to minimise gender inequality in the labour force, each year more than four thousand pregnant women are dismissed; in some cases, the state turns a blind eye and in others without the state’s awareness.

The law itself has undergone numerous reincarnations regarding the length of the protection offered to pregnant employees prior to and after giving birth. The gist of the changes appears in the spirit of the law and its aims, according to the legislatures who designed it, and in the manner of implementation, within the regulatory systems set up to uphold it. In the first three decades of Israel’s existence, the law was implemented in the spirit of paternalism<sup>1</sup> and “overprotectiveness”, particularly during

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1 Paternalism is the intervention by the state or by an individual in the affairs of another person, against the wishes of said person, employing the justification that the person for whom

negotiations among employees and the workers' unions in the main labour force, who during that period enjoyed great influence over the structure of employment conditions. Beginning in the late 1970s, with the weakening of the unions and the rise of neoliberalism, the state's regulatory mechanisms were diminished, particularly within the framework of what was then the Ministry of Labour and later became the Ministry of Employment, which is a division of the Ministry of Industry, Trade and Labour (the latter's name was changed in 2013 to the Ministry of the Economy). In the past decade, Israeli legislatures have made a concerted effort to promote human rights and to minimise gender inequality in the labour force.

Along with the legislature and the official regulative bodies, labour courts (or industrial tribunals), employment bureaus, and social security institutions are also working to normalise the status of pregnant women. Further non-governmental players include workers' unions, women's groups and—in cases where the clients can afford it—hired lawyers.

The research presented in the book combines close to one hundred observations from state hearings for employers and female employees within which the strata of interventional regulation were examined. A further source is the integrated data system in which data from

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they intervened will benefit from the intervention, or will be protected from harm (Dworkin 1972).

over the period of a decade was examined regarding submissions by women and employers to the ministry and the sociodemographic profile of those presenting submissions. This data was compared to the amount of women turning to the social security provided by the National Insurance Institute as well as the Labour Bureau, in relation to human resource survey data from the Central Bureau of Statistics for women actually dismissed during pregnancy. Furthermore, a broad survey was conducted among 101 women who acted according to the regulations, 51 who received protection from the state, and women whose positions the state refused to safeguard during their pregnancies. Further analysis was carried out of the relevant archival documents from the year in which the law was legislated (1954) until the end of the 1970s, and qualitative interviews were done with the women and civil servants, as well as employers who worked within the welfare mechanism of the state and wished to dismiss pregnant employees.

The book focuses on intertwined theoretical and practical aspects. First, the ability to evaluate the effectiveness of the state's actions in defending the positions of pregnant employees; from the cross-section of varied methods at the foundation of the study, it becomes clear that when women receive the protection of the state, their ability to continue integrating into the labour cycle improves. Nonetheless, when the state accepts the claims of the employer and authorises dismissal, the women whose

dismissal has been approved have difficulty in returning to and integrating into the labour force. This particularly affects women with no higher education. Therefore, there is great latent potential when the state intervenes to prevent the dismissal of pregnant women, with regard to both the increase in participation by women and mothers in the labour cycle and the need to greatly improve the efficiency of the intervention mechanism. We also learn that a woman acting to prevent dismissal greatly influences her chances of preventing it. Various characteristics of the state welfare mechanism, as well as the worldview of the inspectors who implement it, decide which women will benefit from its protection and impact the type of protection the women will be granted. In this context discrepancies are revealed between the written law and its implementation, along with the significance of the discrepancies. The book seeks to expand the theoretical and practical discourse surrounding the level of the welfare state's contribution through interventional regulation in a neoliberal world that still relies in part on "patriarchal inertia."

## Introduction

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In recent decades, there has been an upswing in the rate of women's participation in the labour force. As a result, pregnancy has become accepted in the workplace. Concern about the availability of the female employee—from the time the pregnancy is announced, through the pregnancy, and for the next few years that involve mothering small children—may cause many employers to reconsider whether it is worth engaging a female employee, which may lead to them terminating her employment.

Furthermore, though the discourse which seeks to explain gender inequality in the labour market is growing, and within this a fairly broad debate exists concerning the influence of childbirth and parenthood on women's careers,<sup>2</sup> there is still very little research concerning the

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2 Izreeli 2000; Herzog 2000; Ben Israel 1998; Frenkel and Hacker 2005; Knijn and Krembher 1997; Rosenfeld et al. 2004;



influence of pregnancy on the work of female employees during pregnancy, as McDonald and Dear explained (McDonald and Dear 2006) in the later study by Russell and Banks (Russell and Banks 2011b):

There is only a narrow research review of the subject of pregnancy at work that focuses on an empirical study of the phenomena, and even less research on the behaviour of the women experiencing the loss of their jobs as a result of dismissal.<sup>3</sup>

Nonetheless, within this limited framework, there are great similarities between the conclusions of the researchers, which point to many women experiencing negative treatment during pregnancy, for example, delays in promotion, a significant reduction in wages, and occasionally even speedy dismissal once the pregnancy is announced.<sup>4</sup> These conclusions were joined over the past two years by three studies carried out in Ireland, as part of two research programmes within Equality Authority I; the HSE Crisis Pregnancy Programme (CPP), whose aim was to examine pregnancy-based discrimination in the workplace. One study succeeded in locating a link between discriminatory, inflexible, and negative behaviour toward

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Orloff 1996; Acker 1990, 1995; Williams 2000; Kymlicka 1990; MacKinnon 1984; Kennedy and Mendus 1987; Mill and Mill 1970; Kraamwinkel 1992; Okin 1982; Hernes 1987.

3 Author's translation.

4 Adams et al. 2005; La Valle et al. 2008; James 2004.

pregnant employees and poor health during pregnancy (Russell and Banks 2011b). A further study, carried out with a sampling of 2,300 women who gave birth between 2007–2009, found that 33% suffered a crisis in pregnancy, approximately half (49%) experienced financial worries, and over a quarter (27%) of them claimed that the crisis stemmed from discriminatory responses by the employer or from unequal treatment by work colleagues (Russell et al. 2011). A third study focused on those cases brought before the labour courts and before the equality tribunal, who in cases of pregnancy-based discrimination refer cases to voluntary mediation behind closed doors. This study presents the final results of court decisions, but it criticises the inability to examine either institutional behaviour in mediation hearings or even the decision-making process and its repercussions (Russell and Banks 2011a).

The question of dismissals during pregnancy deeply conflicts with the aim of the legislature—in many countries, including Israel—to reduce gender inequality. We will focus on the “Israeli case”<sup>5</sup> due to its uniqueness compared with western countries, and in Israel, there is an interventional state regulation whose purpose is the prevention of dismissals before they occur. In contrast to the possibility of legal suits—the only action available in other

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5 The Women’s Labour Law is unique to Israel, and a small number of other countries who employ interventional processes.

countries to pregnant women who have been dismissed — Israel's Family Policy, which requires the employer to inform the state of requests to dismiss an employee during pregnancy, does not require that the female employee be aware of the existence of the law or have the financial and social resources needed to manage a suit of this sort. Therefore, the Israeli welfare mechanism seeks to be more universal and egalitarian than those systems which place the onus upon the woman to appeal the courts, and its purpose is to provide equal protection for all women.

The language of the law regarding protection of jobs for pregnant women in Israel was established prior to the founding of the state. During the first decades following legislation, its implementation was based on intra-state negotiations regarding its interpretation. While employers were given a voice in these discussions, female employees were denied any opportunity to present their cases. In the past three decades, separate hearing procedures have been instated for the employee and for the employer; following an investigation, the decision is reached whether to authorise the petition to dismiss during pregnancy or to deny it and instruct the employer to continue engaging the female employee. Nonetheless, despite relatively progressive legislation and the clear intent by the legislature to promote gender equality and prevent the dismissal of pregnant or post-natal women, in 1998–2008 more than 4,000 pregnant women were made redundant in Israel each year. The discrepancy between the legislation and

the achieved results raises crucial questions concerning the link between formal policy and its implementation, as well as the ability of the policy to promote significant social change through regulatory means.

We will closely chart the manner in which legislation preventing pregnant women from being dismissed is translated into standard behaviour within institutions, and to examine the layers of mechanisms that generate the level of protection available to women wishing to seek help from the state if and when faced with dismissal.

The first part of the book describes the structure of the state regulatory system. Particular emphasis will be placed on interests, ideologies, public image, and the basic—and occasionally conflicting—premises that characterise the various state players and the negotiators and the power relations within which the regulatory actions take form.

The second part of the book examines the interactions among the players, which occur in the field of research; these players are, in other words, those who implement the “regulation” SLB<sup>6</sup> (street-level bureaucracy), state clients, the employers, the women, and the lawyers involved. In this section, the system’s differential accessibility to various population groups is examined. Further, on the

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6 “Street-level bureaucrats” is an expression that appears in the article by Lipsky (Lipsky 1980), examining the level of influence of civil servants on policy regarding state clients.