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CARE IN THE WORKPLACE: THE EMPLOYER'S ROLE IN THE ALLEVIATION OF THE
ELDERCARE PROBLEM

A Thesis
presented in partial fulfillment of requirements
for the degree of Master of Arts
in the Department of Philosophy and Religion
The University of Mississippi

by

Joseph M. Duda

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ABSTRACT

My project examines the problem of having people who are living longer and needing more long-term care. Family members are often relied on to aid their elderly dependents, but doing so has put a financial strain on those who step up to care and their employers. In 2006, the cost of caring for working family members to provide care was approximately \$2000 dollars a month while the cost for employers was nearly \$4 billion. This eldercare problem will only increase as the lifespan of a human beings in the U.S.A continue to increase. My project seeks to make the first moves to remedy the problem of eldercare. I first argue that the Family and Medical Leave Act of 1993 (FMLA) is unable to perform its intended function which is to enable caregivers to aid their elderly loved one's while maintaining job security and allowing employers to retain employees. I then propose that solutions to the eldercare problem can be found when the employer-employee relationship is conceived of as caring relationship. This caring relationship is derived from Nel Noddings' model of care ethics. Ultimately, this relationship would facilitate the kind of open communication and 'teamwork' required to stem financial losses and improve employee retention while also giving employees more opportunities to provide care for elderly dependents. I conclude with a proposal for the reformation of the FMLA. I advocate to adopt a model like New York State's similar paid family leave plan.

DEDICATION

For my Grandmother, Madeline Faccone, who is an exemplar of care. I love you.

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INTRODUCTION

The term “professional relationship” is often used to describe employers and their relation to employees. What is the relationship between an employer and employee? Is the relationship a kind of friendship? Is it a kind of paternalistic relationship? Part of this relationship often implies that a degree of separation is required; that employers should not divulge details that do not pertain directly to work and vice versa. Additionally, the phrase “professionalism in the workplace” often implies that one ought not to develop close relationships with one’s employer. However, employers and employees appear to work better when there is mutual trust and some sort of vested interest in each other. Balancing the amount of information shared with the aim of “professionalism” has given rise to important and growing issues.

One of those issues – the one I address in this paper – is the issue of eldercare in the United States of America. The Center for Disease Control has referred to the group of people, aged 18-35, who have an elderly dependent they care for (by which I mean physical, emotional, or mental assistance necessary for the elderly dependent’s continued living) and are entering the workforce as the “sandwich” generation. These people are at the age where they may be simultaneously raising a child and taking care of an elderly family member.¹ It has been estimated that, as of 2006, 17% of the U.S. workforce belong to the sandwich generation.² In

¹ “Managing Work/Life Fit: Dependent Care and Elder Care.” *Society for Human Resource Management*. <https://shrm.org>.

² MetLife Mature Market Institute, “The MetLife Caregiving Cost Study: Productivity Losses to U.S. Business.” National Alliance for Caregiving. July 2006.

addition to the sandwich generation, there are 44 million people in the U.S. who are taking care of elderly family members without compensation.³ Of these 44 million people, 61% are employed. This need for care has direct implications on the effectiveness of employees as well as the effectiveness and profits of corporations. It is estimated that the average cost (from elements such as workplace interruptions, days without pay, etc.) that an employee will incur is \$2000 a month while it is estimated that employers (stemming from costs associated with finding and training new employees, loss of productivity during working days, etc.) incur approximately \$3.8 billion annually.⁴ Further, it is believed that this problem is only in its infancy. The same study indicates that children who were 10 years old (as of 2006) had a 50% chance of living to be 100 years old.⁵ The overlap between the problem of the growing population of elderly dependents and the workplace gives rise to the question: “Do employers have any responsibilities to employees in aiding the alleviation of this problem?”

I argue that employers have a responsibility to implement policies that relieve issues of care for the elderly dependents of employees in virtue of adhering to the Family Medical Leave Act (FMLA). FMLA in its current state does not adequately serve its function of supporting employees in their pursuit of taking care of their loved ones. In Chapter I, I examine three major ways that the FMLA fails. In Chapter II, I examine two commonly implemented models of employer-employee relationships derived from policies that governs it. These two models, the Master-Slave Model and the Mutually Fiduciary Model give rise to a problematic portrait of the employer-employee relationship. Ultimately, I conclude that these models fail at building the kinds of environments that are capable of handling issues of eldercare as well as accurately

³ Ibid.

⁴ The MetLife Caregiving Cost Study.

⁵ Ibid.

describing the ideal employer-employee relationship. In Chapter III, I examine Nel Noddings' ethics of care and how it will inform a better model for the employer-employee relationship. In Chapter IV, I address how policies would be better clarified by the application of a care ethics approach and I demonstrate what an instantiation of such a policy would look like. In Chapter V, I propose several corrections to the FMLA to improve its effectiveness in dealing with the eldercare problem.

CHAPTER I: THREE PRIMARY PROBLEMS WITH FMLA

Issues surrounding the work-life⁶ balance of employees are not new. Concepts like the 40-hour work week, required breaks throughout a given work day, and maternity leave are just a few ways that governments and employers have sought to strike an appropriate balance between time working and time for all the other facets that contribute to a flourishing human life.

The Family Medical Leave Act of 1993 (FMLA) was established for similar reasons. FMLA acknowledges that, in addition to our employment responsibilities, we have some responsibilities to aid loved ones when they cannot aid themselves. This legislation allows an employee to take up to 12 weeks⁷ of unpaid leave in a 12-month calendar year to obtain medical treatment if she has a serious illness that prevents her from performing her work responsibilities, to take care of a spouse, parent (including guardians or anyone else who stood *in loco parentis* to the employee), or child.⁸

The FMLA's aim of protecting job security (even at the loss of income) is a worthy goal. Enabling caregivers to balance obligations to care with obligations to employers is what any bill

⁶ I believe that the use of "work-life balance" is problematic because it seems to suggest: (a) that one's work and life are separate and (b) that one can achieve a "balance" between a separate work and home life. This ideology is precisely the reason we have issues arising. An employee's life cannot be separated from her career/work. Despite my issues with the language, I continue to use "work-life balance" in line with the empirical literature about the subject.

⁷ This amount is increased to 26 weeks if the person who is being taken care of is a U.S. military personnel or veteran.

⁸ Wage and Hour Division (WHD). U.S. Department of Labor. "Family and Medical Leave Act." Accessed October 03, 2018.

governing work-life balance should strive for (which I will provide further argument for in Chapter V). However, the bill has some unintended consequences. The leave provided by

FMLA is most often taken by married white women who have other sources of income via their spouse.⁹ This means that FMLA leave primarily benefits families that are wealthy enough to be supported by one income. Further, the same leave is mostly taken by those who can afford to have unpaid leave, which tend to be those with a moderate amount of personal wealth, meaning that a good portion of those who are in need of medical or family leave are incapable of taking it.¹⁰ Grestel and McGonagle's findings highlight these and other issues:

One of the major limitations of the act is those employees that it covers: It excludes seasonal and temporary workers as well as those who work in firms with fewer than 50 employees. Our analysis shows that those who reported themselves to be working in organizations that fit FMLA criteria for coverage are more likely to include the relatively affluent. Slightly more than a third (39%) of those who make \$20,000 or less worked for such firms in contrast to two thirds of those who make \$50,000 or more. African Americans (74%) are significantly more likely than non-Latino Whites (54%) or Latinos (48%) to work for such firms (although there is little difference between women and men).¹¹

These statistics suggest that one must be in a relatively wealthy position and a good firm in order to be covered by FMLA. Further, it indicates that one must be in a higher earning position within the firm to be able to afford to take leave. According to Grestel and McGonagle's findings, this excludes a large portion of African Americans.

These observations give rise to at least three major problems with FMLA that warrant revision or new legislation. Problem 1: FMLA's eligibility conditions for employees are too

⁹ Naomi Grestel and Katherine McGonagle, "Job Leaves and the Limits of the Family and Medical Leave Act: The Effects of Gender, Race, and Family", *Work and Occupations*. Vol. 26, Issue 4, 510–534. (Nov. 1, 1999).

¹⁰ *Ibid.*

¹¹ Grestel and McGonagle, "Job Leaves and the Limits of the Family and Medical Leave Act: The Effects of Gender, Race, and Family" 525.

strict and outdated. Problem 2: The FMLA's scope of "family" for whom an employee may take leave is narrow and improperly favors only those who are biologically related to the employee.

Problem 3: Employers either do not comply with FMLA or fail to make eligible employees aware of circumstances in which they are permitted to take their FMLA leave.

There are four conditions that must be met in order to be eligible for family or medical leave: (1) one must be employed by a business that has more than 50 employees (with the exception of public school teachers and government employees), (2) one must have been employed by her employer for at least 12 months (this does not have to be consecutively), (3) one must have worked for at least 1250 hours for her employer, and (4) one must be employed by an employer whose worksite has at least 50 employees within a 75 mile radius of the worksite.¹²

While these four eligibility criteria may seem reasonable on the surface, implementing them leads to undesirable consequences, namely, lack of coverage for people who desperately need it. People who have multiple part time jobs are ineligible and find difficulty taking FMLA leave because of conditions (2) and (3). Condition (4) bars people who work remotely via technology that was not available when FMLA was put in place in 1993. Condition (1) excludes a large number of employees, particularly the less affluent workforce members. The implications of these conditions demonstrate a need for a revision of the FMLA.

The first problem with the FMLA is its narrow conception of "family." I acknowledge that the FMLA does cover people who are legally considered "family", such as step-parents,

¹² Family and Medical Leave Act. The difference between (1) and (4) is that a given business could have 100 remote employees, such that there are 10 separate worksites that 10 people maintain with each cite being 100 miles apart from each other. This kind of company would satisfy condition (1) as they employ over 50 people, but the company fails to satisfy condition (4) because it does not employ more than 50 per worksite. Therefore, people at a company such as this would not be eligible for FMLA coverage.

people who have stood in *loco parentis* to an employee, adopted children, and *legal* spouses. Unfortunately, FMLA as it stands, does not cover relevantly similar family relations that compose the kinds of relationships the bill set out to protect. At the time it was instantiated, FMLA only covered employees who wanted to take leave to care for their partner if they were legally married. In 1993, people of the same sex were unable to be legally married in the United States. Same sex partnerships are fundamentally the same kinds of relationships that heterosexual partnerships are, but FMLA was unable to protect the rights of same sex partnerships for arbitrary reasons until 2015 when the definition of legal marriage was amended in the U.S.

The bill's rigidity on its definition of family impedes a host of other relationships that are functionally the same as those of their biological counterpart. Imagine someone, Kate, that grew up in the same household with Alex. Kate considers Alex to be *family*. That is to say, Alex is someone that Kate loves and cares for in the deepest kind of sense. Next imagine that Kate grew up with an abusive, distant parent. FMLA, as it stands in its current form, protects Kate's job if she needs to care for her parent, with whom she has no active relationship, but not Alex with whom she has an active relationship with and views as her brother. The mistake is making biology the litmus test for intimate kinds of relationships that matter for policy. The other FMLA constraints are enough to prevent fraudulent use of FMLA leave. The familial constraint that the FMLA makes is superimposing the belief that only those who would be considered in the limits of an employee's family on a nuclear family model are worthy of taking leave for. This arbitrary act of demarcation hinders employee autonomy by dictating who the employee ought to be able to care for, and adds nothing to the policy itself. If it were removed, the FMLA would still be functionally the same. Grestel and McGonagle point out, FMLA does not cover "that wide range

of kin (such as siblings, grandparents, aunts, or uncles), in-laws, and ‘fictive’ kin (nonblood ties) who routinely need and receive care from those close to them. If members of one’s extended family, who would pass a biological litmus test, are not acceptable to take leave for, one is left to conclude that either the distinctions made about whom an employee may take leave for is arbitrary, or that its purpose is to limit the actual number of people who can take the leave based on the chance that they have family that fall within the limits of FMLA and that they also have a strong relationship with those people. This excludes a sizeable number of employees in a morally suspect way, that runs contrary to the spirit of FMLA which is to aid employees’ obligations to her employer and her loved ones.

The third and final problem of the FMLA that I will address is the issue of non-compliance from employers and poor advertisement of FMLA for eligible employees. Other research by Erin L. Kelly indicates that at least 25% of employers did not comply with FMLA protected leave.¹³ Further, Kelly’s research indicates that “organizations were more likely to provide illegally short maternity leaves than to lack maternity leave completely, and the pattern was reversed for paternity leaves.”¹⁴ Kelly notes that companies with more human resource staff were more likely to comply with FMLA leave.¹⁵ But given that the FMLA is a federal law, it should not have to rely on the strength of human resource departments to ensure that it is correctly protecting the rights of employees. Part of the function of human resources is to provide the relevant information to employees that are pertinent to their employment contract. This suggests then that employees are not well informed enough to know what their legal rights

¹³ Erin L. Kelly. “Failure to Update: An Institutional Perspective on Noncompliance With the Family and Medical Leave Act.” *Law & Society Review* 2010.

¹⁴Kelly 48.

¹⁵ Ibid.

are. Further, the number of non-compliant firms suggests that the penalty for non-compliance is not severe enough or the compliance requirements with FMLA burden firms beyond their ability.

This list of problems with the FMLA is not exhaustive, but it suffices to demonstrate the need to amend or create new legislation that better accomplishes the spirit of the FMLA. In order to properly craft a policy that could achieve this, we must first examine the relationship of the main parties involved here, namely the employer and the employees.

CHAPTER II: TWO COMMON CONCEPTIONS OF THE EMPLOYER-EMPLOYEE RELATIONSHIP

There is a unique type of relationship that is formed between employers and employees. The issue lies with both parties not having a clear and distinct understanding of what the employer-employee relationship entails. It is apparent that the relationship's type and entailments often result from how business is practiced. The resulting relationships between employers and employees caused by these practices are often reduced to one of two descriptive models. These two common models, the Master-Slave Model and the Mutually Fiduciary Model of the employer-employee relationship are often widely assumed to be the "appropriate" kind of relationship for employers to have with employees. This assumption happens in common life, business practice, and in the legal realm. I will demonstrate how these two models yield problematic portraits, giving us reason to reconsider how to view an "appropriate" employer-employee relationship.

The Master-Slave Model

The most traditional conception of the employer-employee relationship, the Master-Slave concept, is taken from the legal doctrine with the same name. This legal doctrine dictates that an employee's role is to serve the functions that are given to them by their employers. If they do not fulfill those functions, they are simply terminated. In exchange, the employer pays the employee

a previously agreed upon price.¹⁶ This is the extent to which employers are said to “owe” employees anything.

This model has employers elevated above their employees conceptually; “slaves”/employees are expendable and can be fired, “let go,” etc. at the discretion of the “master”/ employer. Employees on this model have a duty to their employers and their employers can administer punishment for failing to carry out these duties. These duties are to fulfill the obligations dictated by their employers. If an employee, Priscilla, is hired by Logcorp to chop and haul 10 trees a day in exchange for an agreed upon amount of dollars X, then Priscilla has a duty to chop and haul 10 trees a day. Logcorp has a corresponding duty to pay Priscilla X for her labor on their behalf. The extent to which the employers have duties to employees is limited and asymmetrical. For example, Logcorp has the ability to lower the amount X in the future without consulting Priscilla. Priscilla may choose to no longer be employed by Logcorp. However, she may be forced to because of her dependence on the position’s income generation, and so choose to accept the lower amount of money out of necessity. The circumstances are such that, under the Master-Slave model, it is rarely the case that the employee has any negotiating power, while the employer rarely has to meet the demands of a single employee.

The resulting relationship is something akin to its name; “Master-Slave.” Employers are displayed as having an overwhelming dominant position while employees have to accept what they are given or find a new business. The way that this model would inform action in regards to the problem of eldercare would vary drastically between individual instances. If we were to

¹⁶ Matthew T. Bodie, " Employment as Fiduciary Relationship." *Georgetown Law Journal*. 105, 819 (April 2017).

maintain this model, then we would try resolve eldercare issues by incentivizing employers via tax write-offs or government funding, for implementing programs such as on-site or off-site elder day care programs. Another option would be to have insurance companies cover a wider range of services for eldercare and then have corporations offer these insurance policies as part of employee compensation packages. The model itself describes the employer-employee relationship in a way where employers have no obligation or incentive to aid in employee issues without outside intervention.

This model has failed at accommodating employees in areas such as safety and other basic needs historically¹⁷. Despite the fact that this doctrine is still an active legal entity,¹⁸ it has been drastically reformed in virtue of other legislation that protects employers and employees. This model has led to problems like the typical work week being endlessly increased (which has since been safeguarded by laws surrounding the 40-hour work week model), unsafe working conditions, and unfair compensation. The U.S. has already altered this model for the employer-employee relationship by imposing rules and regulations (such as the FMLA among others), which suggests an acknowledgment that the Master-Slave model has a host of issues. While we could continue operating on this model, its rigid structure and employer centric backbone makes it undesirable, particularly in the pursuit of a joint effort to alleviate rising eldercare issues and the financial burdens they bestow on both employers and employees.

¹⁷ What I mean by “failed historically” is that operating on this model lead to some gruesome deaths followed by government intervention that put tighter constraints on employer’s responsibilities to employees. For example, the Triangle Shirtwaist Factory Fire of 1911 that killed 146 people and lead to the creation of the Occupational Safety and Health Administration (OSHA) is one example of how the master-slave model could not accommodate a sustainable environment for emerging corporations (United States Department of Labor, 2011. <https://www.osha.gov/oas/trianglefactoryfire.html>)

¹⁸ The Master–Slave doctrine has not been directly ratified, amended, or otherwise changed as of the time of writing this paper.

The Mutually Fiduciary Model

Another conceptualization of the employer-employee relationship is posed by Matthew Bodie. He argues that employers and employees stand in a mutually fiduciary relationship relative to each other. A mutually fiduciary relationship is one in which each member of the relationship is considered to be a party that is entrusted with sensitive information. Each party acts on behalf of the other's interests as dictated by the scope of the relationship.¹⁹ In the case of employers and employees, certain laws require employers to take responsibilities for employees' actions, as well as to protect sensitive information like employee social security numbers, tax and income information, and sensitive health information. This is different than the master-slave doctrine, an asymmetrical fiduciary model, which only requires *employees* to act as a fiduciary on behalf of the employer, such that their directed actions be in the best interest of their employer when they are acting in their role.²⁰

This model is the result of the legislation that has come after the Master–Slave doctrine. This collection of legislation accommodates the conditions and the protection of sensitive information for both the employer and the employee, such as a safe working environment. In theory, this model would dictate that any information given to an employer about any employee ought to be maintained in confidence unless the safety of others or the employee gives explicit consent or the safety of others necessitates violating confidentiality. Further, this model dictates that both employers and employees go to extensive lengths to protect each other's information and utilize it in the right way. For example, employers have an obligation to file particular tax information with the government. This obligation requires all employers to expend resources at

¹⁹ Bodie 105.

²⁰ Ibid.

no direct cost to the employees to protect them from legal repercussions.²¹ Likewise, an employee may have an obligation to protect sensitive information about the employer as part of the terms of employment. For example, a chef would be obligated to protect a restaurant's secret recipe for a particular dish or a sales associate would be obligated to not divulge crucial information on upcoming products to competitors. This kind of relationship fosters trust between employers and employees and more evenly distributes the power dynamic between employers and employees. A level of trust is necessary on this model, which requires more communication and a sense of “teamwork.”

The issue with the Mutually Fiduciary Model is its scope. This model only requires employers and employees to protect each other's known sensitive information and it only demands certain information to be shared and kept confidential. For issues of eldercare, an employer may have an obligation to protect the information that an employee has an elderly dependent. The employer could also be said to have an obligation to inform an employee of her legal options in terms of taking leave via FMLA, but the Mutually Fiduciary Model itself does not give rise to any obligations that are not dictated by law to help relieve issues of eldercare. This model would not direct an employee to seek relief with care obligations, as only job-specific information is expected to be divulged. The Mutually Fiduciary Model maintains all of the options that the Master-Slave Model has in terms of aiding in the eldercare problem, while maintaining better standards of the employer-employee relationship. However, the problem of eldercare's continued existence suggests that the model is not optimized.

²¹ I say “direct” here because costs like this may be calculated into operating costs and ultimately affect, in some sense, how much compensation any employee may be offered by an employer.

Certainly, one could shift the responsibility of solving workplace problems to policy makers, but I suspect this would come at a great cost to employers and employees. Furthermore, being held legally responsible for not divulging sensitive information does not add anything to the employer-employee relationship. It does not inform workplace conduct or behavior, foster healthy human relationships, or better the productivity and profits. What I will propose later in this paper is a model that will not only guide policy and aid in the elderly dependents problem, it will also increase the quality of the workplace and productivity.

CHAPTER III: INTRODUCING CARE

To address these concerns raised in the previous Chapters, I turn to the question of how we should conceive the employer-employee relationship. I propose adopting a Care Model, one that is grounded in the moral framework of care ethics. My proposal will draw from Nel Noddings' *Starting at Home: Caring and Social Policy*.

Noddings argues that *care* is universally desired and intrinsically good.²² That is to say, no matter the time period, culture, or other differences, all people desire care.²³ But what exactly does it mean to care and be cared for? For Noddings, care happens exclusively in relationships, particularly in what she calls “encounters” (whether they be long-term or short-term encounters).²⁴ What it means to have a caring encounter is to have one like the following example. Barb cares for Allie if and only if (i) Barb is attentive towards Allie’s needs and motivations while not superimposing or replacing them with her own; (ii) Barb performs an action in accordance with (i), and (iii) Allie recognizes that Barb cares for her and communicates that to Barb.²⁵

First, let us examine the requirements of the carer. Conditions (i) and (ii) are best defined within terms of the carer’s “attention” and “motivational displacement,” respectively. Attention

²² Nel Noddings *Starting at Home: Caring and Social Policy* 12.

²³ Ibid.

²⁴ Noddings 14-19.

²⁵ Noddings 19.

is thought of by Noddings as being in a state of reception; being able to pick up on the needs of the cared-for.²⁶ It is phenomenologically described as follows: “A soul (or self) empties itself, asks a question, or signals a readiness to receive, but the state that develops is thoroughly relational. When I attend in this way I become, in an important sense, a duality. I see through two pairs of eyes, hear with two sets of ears, feel the pain of the other self in addition to my own.”²⁷ What Noddings is describing here is better demonstrated by the following scenario: imagine you are helping a child with math homework. When you help this child, you cannot be consumed by your own problems because you will not be able to give the proper amount of attention to the child’s needs. You must temporarily put them to the side and focus on the child’s needs. Next, you must acknowledge the needs and how they are to be solved. In this instance, the child needs to learn how to perform certain kinds of arithmetic. It would not answer the child’s need to learn the method of the arithmetic if you simply wrote down the correct answers or told the child the correct answers even if the child struggles. You have to recognize the roadblocks preventing the child from learning the methodology and take those roadblocks as your own. In performing this kind of care, you take on the challenges and frustrations of having this child perform mathematical exercises in such a way that having the child perform the exercise is your goal too. This is how the carer can be said to have motivational displacement.

Next, I will discuss what the cared-for must do in this encounter. It is not sufficient for the cared-for to simply enjoy the benefits bestowed by a carer. The cared-for must do two things: (a) she or he must put out a communicative signal about some unmet need and, (b) she or he must give feedback to the carer after care has been received.²⁸ Condition (a) is important for

²⁶ Ibid.

²⁷ Noddings 15.

²⁸ Ibid.

receiving care; an ideal caring situation would have the cared-for clearly explaining what struggles and needs are not being met. Although it may not always be simple or easy for the cared-for to be able to know her needs explicitly, the goal for the cared-for is to have an honest line of communication with the carer so that care can be administered well. The focus for the cared-for should not be on (a) as much as it is on (b). Condition (b) is a success condition; if the cared-for receives care then the cared-for must provide feedback to the carer. This feedback should include appreciation for the carer's efforts and inform the carer on how the care was received along with any other information that would improve future caring encounters. This is how the cared-for reciprocates care in any given encounter: by communicating that she or he has received care, the carer is reassured that her efforts were good and appreciated. Without (b), the caring relation cannot be completed, and the carer cannot realize the intrinsic rewards of any caring encounter. Condition (b) is how the cared-for reciprocates care to the carer.

Identifying the needs of the cared-for can be difficult. For example, a child who needs antibiotics to resolve an illness does not know that her needs can be fulfilled with a medication. She may only know that she needs for a physical pain to be remedied. It is often the case that the carer will need to aid the cared-for in identifying unmet needs. Noddings distinguishes between two kinds of needs; those that are expressed and those that are inferred.²⁹ An expressed need is one that arises internally from the cared-for; the origin of the need arises either consciously or behaviorally.³⁰ Noddings looks at the home and examines the needs of infants. Infants need food, water, shelter, and clothing to survive. These would all constitute expressed biological needs for all human beings.³¹ An inferred need arises from external circumstances; they come from the

²⁹ Noddings 64.

³⁰ Ibid.

³¹ Noddings 63-64.

relation between the cared-for and the external world relative to her.³² An example of an inferred need might be a student's need for a particular textbook to be successful in a class. She has the project of being successful in a particular area of study and needs the textbook to fulfill that need. She could however, reject or abandon the project, or her life could be a different way, such that she does not need the textbook to achieve her goal. In this way, the textbook can be considered to be an inferred need for the student.

An important difference between expressed and inferred needs is that expressed needs are almost always legitimized so long as they are truly expressed. That is, the need for a sufficient amount of nutrients so that one may continue living will always be a legitimate biologically expressed need.³³ An example of a caring encounter that deals with expressed needs would look like this: A school teacher encounters a child who is starving and living in poverty. The school teacher is not wealthy by any means, but has the ability to buy or make some of the child's meals. The teacher would be responding to the child's expressed need for proper sustenance. Notice that the teacher did not have to deliberate whether or not the student actually had a need for food to live, the teacher merely had to evaluate her ability to care and the degree of the need. This is not the case for inferred needs.

Inferred needs, in contrast to expressed needs, may be deliberated on, prioritized among other inferred needs, and negotiated. Noddings gives the example of Ms. A's son, Ben, who must take a third year of college prep math in order to go to Elite U. This is a great school, Ms. A has the means to send Ben, and it is typical for families like theirs to attend such a university. Ben despises the thought of taking another year of math. Unbeknownst to Ms. A, Ben also does not

³² Ibid.

³³ Noddings 63-64

want to attend Elite U. A dialogue is opened between the two of them. Ben's claim that he "simply does not want to take the math course" can be rejected by Ms. A because she believes that his project is to attend Elite U where the third year of math is necessary to be admitted. After further discussion, Ben admits that he does not desire to attend Elite U. Ms. A, as she seeks to continue to provide care to her son, ought not to push too hard on trying to make Ben attend. Rather, she should compromise; she ought to help Ben set an alternative goal that would be good for Ben as a person. This is categorically different from allowing Ben to simply not take the math class.³⁴

Noddings does not want to claim that we should always care for all persons in the way that was just described. It would be too taxing on any individual to have an encounter like that all of the time and to develop long-term caring relationships with every person she comes in contact with. This would cause *harm* to the carer.³⁵

Noddings acknowledges *harm* as being the thing that is most often conjured when the word is used, namely, the physical, material, or mental pain caused to a X.³⁶ The difference here is that there is a focus on the perspective of the one who is claiming harm.³⁷ If I say "your cruel words hurt me," then I can be said to be harmed if those utterances seem to obstruct my project of living a healthy life (or any other of my desired projects). It is important to note that the distinguishing element that differentiates between a *harm* and a *moral wrong* is (a) understanding a person's projects and their consequences as well as (b) trying to maintain one's

³⁴ Noddings 65.

³⁵ Ibid.

³⁶ Noddings avoids talking about whether or not something needs to be a *person* in the philosophical sense in order to be harmed. For our purposes, it is not necessary to distinguish this matter because all employees can be assumed to be worthy of moral consideration.

³⁷ Noddings 33.

own network of caring.³⁸ A carer is not infallible in her judgements of what the cared-for needs are and how to alleviate them. Imagine a scenario where some parents are trying to push their child to be an Olympic gymnast because they believe that is what the child's project is. Meanwhile, the child is only a gymnast because she thinks that it will make her parents happy, but she does not want to be a gymnast. The parents can be said to have harmed their child but it may not have been a moral wrong. Because the parents did not receive feedback or an expression of needs from their child, they were only acting on what they believed their child's life project was. This also demonstrates why feedback and communication on the end of the cared-for is vital for any caring encounter.

In summary, this Chapter posited that care is universally and fundamentally desired by all people. Noddings demonstrates that care, on this proposed framework, centers around evaluating the harms and needs from the perspective of the cared-for. In the next Chapter, I will demonstrate the applicability of this normative theory to the employer-employee relationship.

³⁸ Noddings 51.

CHAPTER IV: THE MODEL OF CARE IN EMPLOYER-EMPLOYEE RELATIONSHIPS

The issue that often arises from moral frameworks is their applicability; even if it is true that all people desire care, how does that inform what employers should do for employees? I argue that we first reconstruct the employer-employee relationship as one of caring. The Care Model of the employer-employee relationship is simple: it is a relationship in which both the employer and the employee provide care to each other in the right way. It would be similar to any caring encounter between two people. For any caring exchange, the carer would examine the needs of the cared-for and evaluate a course of action. Noddings describes the two types of needs as “expressed” and “inferred” but, for the purposes of this model, I will call these needs “basic” and “complex” respectively. The reason for this distinction is that there might be a confusion about the role communication plays in the cared-for’s verbalization of unmet needs in either category. For both kinds of needs, clear and open communication is important, but it is particularly important for complex needs which are difficult to detect and are often subject to misinterpretation without open communication.³⁹

It is often the case that, on the Care Model, the employer will take the role of the carer and the employee will be in the role of the cared-for. This is because, in the context of the workplace, employers will be in the position to give care more than the employees. Needs like having a safe and non-volatile workspace, being praised or blamed for one’s own actions

³⁹ Noddings’ categorization of inferred needs as such implies (prima facie) that the carer is doing all of the uncovering of the needs. While these needs may need to be uncovered in continuous conversation, I do not think that Noddings’ intention was to suggest that the cared-for should not be communicating them, and it certainly is not mine. To avoid this confusion, “complex” is a better fit.

appropriately, and providing compensation, benefits, pensions, retirement options, occupational support, etc. are built into the role of employer and they aim to provide care for employees.

Here is an example of this model in action: An employee, Taylor, asks his employer Allison, if she will allow him to work from home so that he can take care of his aunt who has Alzheimer's. Allison recognizes Taylor's complex needs; the need to care for a loved one while maintaining a source of income. Allison then must confirm or deny if Taylor's complex need is true. Does Taylor have a loved one that needs constant care and can Allison accommodate that need? She goes through her available evidence and sees that Taylor has indeed performed excellently and has not had any noted acts of dishonesty. Allison must then make sure the company has the available resources to adjust Taylor's schedule. If she does not, then Allison may deny Taylor's adjusted schedule request, but offer him alternatives like noting other options that the company's healthcare packages provide or any other options the company can offer. Allison may note that Taylor is a great employee and may offer to give him a slight pay increase so that Taylor can get his aunt a live-in aid or find an eldercare facility for her. The important thing is that an open and honest dialogue is engaged and that together, as a team, time is spent examining Taylor's situation and solutions that are feasible for Allison to give. It is important that, no matter what course of action is taken, Taylor acknowledges Allison for her efforts and tells her (in some way) that Allison's efforts were successful.

The important feature of this model is that open and honest communication is established and strengthened for the entirety of employment. The employers and employees will become invested in each other's projects because of repeated and prolonged caring encounters. Each party should desire and aim at the success of the other party to the best of their ability. While it is foreseeable that the employer will often be the one caring, it is certainly the case that the

employee will find herself or himself in a position where the responsibility to care for her or his employer arises. For example, Taylor must work hard and to the best of his ability, acting in a way that would not harm his employer, Allison.⁴⁰ However, if Taylor deliberately shows up for work late, does not try hard, and is willing to leave his position when he is most needed, he is not exhibiting care for his employer. This is not to say that leaving one position of employment for another is a failure to care. Taylor could have just been informed that he will be having his third child and his employer cannot meet the financial needs that are necessary for him to care for his family. After coming to Allison for the raise and explaining his situation, Allison should, as an act of care, offer to write him a letter of recommendation and give any advice that she can offer.

Allison's advocating for Taylor's change in employment may seem counterintuitive to employers at first, and one may object that Taylor's leaving will harm the company and therefore he is not issuing proper care. In response, while Taylor's company may suffer a loss in the sense that they will lose a good employee and incur costs by finding a replacement, the employer is preserving Taylor's need to care for his family as well as preserving the web of care that the employer has established with all of its other employees. This signals that true care exists and is occurring between employers and employees.

At this point I can hear the various objections rising: "That's no way to run a business! With such a heavy focus on employee needs, how can a business ever hope to turn a profit?" This is a fair objection; the employer-employee relationship cannot turn a blind eye to the employer making a profit. Profit for the employer is like food for the child; it is a basic need that sustains the continued existence of any given corporation. Employees ought to exhibit care for

⁴⁰ So long as the projects of both do not have a malicious intent.

employers by staying late (when asked to or needed), being understanding when asked to forgo raises when the business is hurting, and performing their duties to the absolute best of their ability so long as they are capable of doing so. I acknowledge that smaller businesses and start-up companies may not have access to the same resources, but they can still exhibit the same level of care by working with employees, establishing honest and open communication, and tackling the unmet needs of employees. That is how smaller businesses exhibit care. This model would only require them to provide care when and where they are able to do so.

Further, studies by Eissa and Wyland suggest that having an employer/supervisor that is attentive to the needs of employees and exhibits care leads to decreased aggressive behavior between employees and lower levels of hindrance stress which depresses workplace efficiency.⁴¹ These effects were observed by examining employees who had employers that were ethical leaders; those leaders who demonstrate normatively appropriate behavior through personal actions and relationships through the promotion of said conduct for supervisees by way of two-way communication, reinforcement, and decision making.⁴² Eissa and Wyland also claim that “ethical leaders tend to be interested in how employees feel, empathize with their worries, and take time to discuss their work-related emotions. As noted by Kalshoven and Boon, ethical leadership is a resource for employees that provides ‘a safety net to fall back on when they experience low levels of well-being.’ In other words, ethical leaders help invigorate resources, allowing employees to respond positively to negative situations.”⁴³ Ultimately, the model I

⁴¹ Gabi Eissa and Rebecca Wyland. “Work-Family Conflict and Hindrance Stress as Antecedents of Social Undermining: Does Ethical Leadership Matter?”. *Applied Psychology: An International Review*, 67 (4), 645–654

⁴² Eissa and Wyland 648.

⁴³ Ibid.

propose conceives of a model that optimizes care, honest two-way communication, and problem solving in regards to all parties' need for care—each of which need care in various forms.

CHAPTER V: APPLYING THE CARE MODEL TO FMLA

Now that we have examined what day-to-day care might look like in the Care Model, and we have discussed issues surrounding why companies should look to adopt this ethical model, let us now investigate how this model would reform FMLA. An important feature of the Care Model is its non-rigidity. Each employer will have different situations with diverse pools of employees that have varying needs. That being said, it is clear that an employee's need to care for an ill loved one is a combination of a complex need as well as a basic need. The need is complex because it arises based on an external condition that is not a necessary condition for one's continued existence; namely, having a sick elderly loved one that you desire to care for. It is also a basic need because the need to care is intrinsic for all human beings. For this reason, it is a need closer to that of feeding, sheltering, and clothing a child than that of giving a textbook to a math student. The solution on the employer's end is to inquire about what the employee needs; if it is time off to care for a loved one, then the employer ought to allow ample time and provide some portion of pay (to whatever degree their resources allow). If the employee's needs are such that they simply need to hire a care provider, healthcare benefits should be expanded to offer reasonable options. Some of these options might include coverage (either partial or full) for adult day care, live in aids, flex-time, remote working options, or other eldercare facilities.

The details of what programs employers could implement in aiding employees with the rise of elderly dependents goes beyond the scope of this paper. However, I will make a few recommendations for how the FMLA can be amended to better embody the values of a Care Ethic Model. The first steps that should be taken are to amend FMLA at the federal level, to

ensure the greatest amount of coverage for employees. The Care Ethic Model demonstrates that the meaningful connections that define an individual's "loved one" is made by her. Therefore, I purpose that the FMLA relinquish its constraints on the kinds of people an employee may take leave for. The constraints are narrow and do not capture the fluidity of the concept of "family". An employee ought to be able to take leave for anyone that she is going to be a care taker for.

The immediate concern with eliminating this constraint is that, if an employee could take leave for *anyone* then surely, abuse would occur. That abuse might include a scenario where too many employees take FMLA ensured leave because more people will simply be eligible, or people may take leave for any given person who has a seriously illness, despite not having a caring relationship with that person due to the fact that there is no practical way to swiftly determine whether any two given people are in a caring relationship without some legal documentation (guardian, marital partner, or otherwise). I believe these are important concerns to address. I recommend, to alleviate these concerns, additional safe guards be put in place, such as a requirement to provide medical documentation from a licensed physician detailing the condition of the cared-for. This would make it difficult for any given employee to attempt to take leave for a stranger or acquaintance as they would need to gain access to her physician in order to be eligible.⁴⁴

Next, I propose that the federal FMLA policy adopt a similar model to that of the FMLA system set up in the state of New York. In 2018, the New York State Senate established an FMLA system that vastly improves upon the FMLA (1993). New York's system: (1) allows employees who are eligible to take leave are able to be receive 50% of their weekly wages while

⁴⁴ These constraints are present in the New York State Senate's plan for adaptation of FMLA.

on leave, (2) enables employees who work part time (including those employees who work multiple part-time jobs) to be considered for FMLA leave, and (3) enables some seasonal employees to be eligible for leave.⁴⁵ The pay is gathered by either taking a small amount of an employee's wages (in the form of 0.153% of an employee's wage per paycheck) or the employer may opt to pay the cost.⁴⁶ This addresses the earlier issue of abuse by noting that as the money used is either directly coming from the employee's paycheck or is earned in one's position as a benefit included by the employer. Combined with medical documentation, the amount of abuse that will occur will be negligible in regards to the system as a whole.

The majority of the reconstruction of the employer-employee relationship will have its responsibilities fall on the conduct of people in the workplace. This amendment proposal is a safeguard that will help transition the current workplace attitudes to those of a more caring nature, while simultaneously aiding in the alleviation of the growing problem of elderly dependents.⁴⁷

I have argued that the rising age of the U.S. population and the implications for employers and employees warrants a revision of available care options for employees. I argued that some common interpretations of the employer-employee relationship, the Master-Slave Model and the Mutually Fiduciary Model, are not sufficient for informing any viable solutions for these work-life balance problems. With the aims of reformulating the employer-employee relationship, I examined principles of care and the desire for all people to be cared for to

⁴⁵ The New York State Senate, Workmen's Compensation (WKC). Article 9, "Disabilities Compensation." Chapters 203-205. <https://www.nysenate.gov/legislation/laws/WKC/A9>.

⁴⁶ Ibid.

⁴⁷ I would also suggest examining Japan's Gold Plan 21. They noticed a similar eldercare problem and took steps to increase the quality and availability of eldercare in virtue of live-in aids, medical care, and programs established by corporations. Health and Welfare Bureau for the Elderly. Ministry of Health and Labor, and Welfare. "Gold Plan 21". <https://www.mhlw.go.jp/english/org/policy/p32-33.html>.

implement a Care Model of the employer-employee relationship. This model utilizes the relationship to evaluate needs of both employers and employees with the aim of reaching successful compromises. Finally, we looked at how the FMLA of 1993 might be amended so that it would be more inclusive for those whom may take it, and how it will better serve those employees who would take it. Making connections, living as social creatures, it is a need as basic to life as food or water. In the same way that sustenance must permeate the superficial barrier that claims to separate one's work life from her private life, care must not and cannot stop at the doorsteps of employers.

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VITA

Bachelor of Arts in Philosophy with a minor in Business Management, Marywood University

2017

Bioethics Certificate, Marywood University 2018

Teaching Assistant, Marywood University Jan-May 2017

Graduate Teaching Assistant, University of Mississippi Aug-May 2018

Graduate Writing Fellow, University of Mississippi, Aug-May 2019

Recipient of the Marypace Medal for Excellence in Philosophy, Marywood University 2017