



the work and family legal center

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Testimony before New York State Assembly Members Wright, Abbate, Jr., Englebright, Hevesi, and Jaffee

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Submitted by Dina Bakst

Co-Founder & Co-President of A Better Balance: The Work & Family Legal Center

Good morning. My name is Dina Bakst, and I am the Co-founder and Co-president of A Better Balance: The Work & Family Legal Center. A Better Balance is a New York-based legal advocacy organization dedicated to promoting fairness in the workplace and helping workers across the economic spectrum care for their families without risking their economic security.

I want to start by thanking the Assembly Members for convening this hearing to discuss the problem of pay inequity faced by women and minorities in New York State and solutions to combat poverty.

THE PROBLEM OF PAY EQUITY IN NEW YORK

New York City female full-time workers in the for-profit sector earn only 71.5 cents for every dollar that a man earns.¹ For the entire state of New York across all job sectors the figure is also unacceptably low—women earn 83.9 percent of men’s earnings.² As a group, full-time working women in New York lose approximately \$22,340,027,689 each year due to the wage gap.³

Equal pay for women is particularly important in these tough economic times. Millions of Americans are dependent on women’s paychecks just to get by, pay their rent and feed their families. Eliminating the wage gap is incredibly important for impoverished New York families. More than 26% of households headed by women in New York live below the poverty level.⁴ If the wage gap were closed, working women in New York and their families would have enough money for 64 more weeks worth of food, 4.4 more months of mortgage and utility payments, 9 more months of rent, 3 more years of family health insurance premiums, or more than 2,000 extra gallons of gas.⁵

Loopholes in the Federal Equal Pay Law Make Enforcement Difficult. Weak provisions and broad loopholes have limited the effectiveness of the federal Equal Pay Act of 1963 as well as other civil rights laws. For example, employers can often avoid liability if they can show the pay

¹ John Choe, *Gender Equity in the New York City Municipal Workforce*, New York City Comptroller’s Office (April 2011) pg. 11, available at: http://comptroller.nyc.gov/bureaus/opm/gender-equity/NYC_GenderEquityReport_LowFromHi.pdf.

² Catherine Rampell, *The Gender Pay Gap, by State*, N.Y. Times (July 13, 2010), available at: <http://economix.blogs.nytimes.com/2010/07/13/the-gender-pay-gap-by-state/>.

³ National Partnership for Women & Families and AAUW, *New York: Working Women and the State’s Wage Gap* (April 2011), available at: www.nationalpartnership.org/site/DocServer/wf.epd.factsheet.NY.pdf.

⁴ *Id.*

⁵ *Id.*

differential is based on “any other factor other than sex.”⁶ This provision often allows employers to escape liability, even if the employer’s rationale is ultimately a proxy for sex-based disparities.⁷ Unfortunately, many of the job titles performed predominantly by women and people of color are systematically underpaid because of historic discrimination.⁸ For example, some school districts pay teaching assistants less than cleaners despite the fact that teaching assistants are required to have associate’s degrees and cleaners are not.⁹ Due to the shortcomings of the federal Equal Pay Act, there is a heightened need for New York State to address the persistent wage gap.

Family Caregivers Have Insufficient Workplace Support, Which Exacerbates The Wage Gap. Discrimination against caregivers, especially pregnant women and mothers, continues to drag down wages for women.¹⁰ Mothers earn 5% less *per child* than non-mothers, even when statistically controlling for education, work experience and other variables.¹¹ A recent study by New York City Comptroller John Liu, *Snapshot: Gender Equity in the New York City Municipal Workforce*, reported that women with children working in municipal government receive 21.4% less pay than their male counterparts with children.¹² This “motherhood penalty”¹³ is larger than

⁶ National Women’s Law Center, *How the Paycheck Fairness Act Will Strengthen the Equal Pay Act*, (2010), available at: http://www.nwlc.org/sites/default/files/pdfs/broad_paycheck_fairness_fact_sheet.pdf.

⁷ *Id.*

⁸ Equal Pay Coalition NYC/NYWA, *Pay Equity Resource Guide*, available from: <http://newyorkwomensagenda.org/equal-pay-coalition>.

⁹ *Id.*

¹⁰ *A Fair Share for All: Pay Equity in the New American Workplace: Hearing Before the U.S. Senate Comm. on Health, Educ., Labor*, 113th Cong. (Mar. 11, 2010) (statement of Stuart Ishimaru, Acting Chairman of the Equal Employment Opportunity Commission).

¹¹ Stephen Benard, In Paik, & Shelley J. Correll, *Cognitive Bias and the Motherhood Penalty*, 59 *Hastings L. J.* 1359, 1359 (June 2008), available at: http://uchastings.edu/hlj/archive/vol59/Benard-Paik-Correll_59-HLJ-1359.pdf.

¹² John Choe, *Gender Equity in the New York City Municipal Workforce*, New York City Comptroller’s Office (April 2011) pg. 12, available at: http://comptroller.nyc.gov/bureaus/opm/gender-equity/NYC_GenderEquityReport_LowFromHi.pdf.

¹³ Stephen Benard, In Paik, & Shelley J. Correll, *Cognitive Bias and the Motherhood Penalty*, 59 *Hastings L. J.* 1359, 1359 (June 2008), available at: http://uchastings.edu/hlj/archive/vol59/Benard-Paik-Correll_59-HLJ-1359.pdf.

it is in the private sector, where it is 18%.¹⁴ The report also draws attention to how a lack of family-friendly policies in the municipal workforce—including inflexible work rules and the lack of paid family leave—could be harming women’s advancement in the workplace and opportunity for fair pay.¹⁵ Far too many families in New York are suffering due to the wage gap and the failure of employers to support workers with caregiving responsibilities.

Part-Time Work Leads to Lower Pay and Benefits. Part-time workers, who are disproportionately women, are paid much less per hour than their full-time worker counterparts—which contributes significantly to the gender wage gap. In 2009, more than 17 million women worked part time.¹⁶ Out of the pool of individuals who work part-time, nearly two-thirds are women.¹⁷ According to an April 2010 Congressional Joint Economic Committee report, for every dollar of earnings a full-time worker receives in a sales or related occupation, a part-time worker receives 58 cents.¹⁸ A similar story is true for workers in computer and mathematics occupations: a part-time worker in these fields receives about 63 cents for every dollar of earnings a full-time worker receives.¹⁹ In addition, outdated laws and policies exclude part-time workers from basic benefits such as health care, paid time off for vacation or sick leave, or pension benefits that full-time workers receive. Because part-time workers are becoming increasingly responsible for family economic security, there is a heightened need to promote high-quality part-time work and to close the pay gap between full-time and part-time

¹⁴ John Choe, *Gender Equity in the New York City Municipal Workforce*, New York City Comptroller’s Office (April 2011) pg. 12, available at: http://comptroller.nyc.gov/bureaus/opm/gender-equity/NYC_GenderEquityReport_LowFromHi.pdf.

¹⁵ *Id.*

¹⁶ Report by the Joint Economic Comm., Rep. Carolyn Maloney, Chair, *The Earning Penalty for Part-Time Work: An Obstacle to Equal Pay* (Apr. 20, 2010), available at:

http://jec.senate.gov/public/?a=Files.Serve&File_id=74203874-3821-44e4-b369-4efbe14d8745.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

workers.²⁰

SOLUTIONS TO PAY EQUITY IN NEW YORK

The New York State Legislature should take several steps to close the gender wage gap and support working families:

New York Should Pass the New York State Fair Pay Act. The New York State Fair Pay Act would fill the gaps in federal law and provide that all workers in New York receive equal pay for jobs evaluated to be of comparable worth.²¹

New York should pass a law that encourages wage transparency. New York State Assemblymember Meng and New York State Senator Krueger have introduced a bill (A08348A/S05674) that would prohibit retaliation based on wage disclosure. Pay confidentiality policies are widespread; in fact, 61% of private sector employees reported that they are discouraged or prohibited from discussing wage and salary information.²² The proposed bill would make it illegal for employers to retaliate against employees or other persons because they disclosed or discussed their wages. If a woman does not know how much her male colleagues

²⁰ *Id.*

²¹ Equal Pay Coalition NYC/NYWA, *Pay Equity Resource Guide*, available from: <http://newyorkwomensagenda.org/equal-pay-coalition>.

²² Institute for Women's Policy Research, *Pay Secrecy and Paycheck Fairness: New Data Shows Pay Transparency Needed*, (Nov. 2010), available at: <http://www.iwpr.org/press-room/press-releases/pay-secrecy-and-paycheck-fairness-new-data-shows-pay-transparency-needed>.

earn, it is difficult for her to know when she is the victim of wage discrimination; transparency is key to fair pay.²³

New York should promote equal pay among State contractors. New York should require all companies to submit a pay equity report as a condition of receiving contracts with the State. The State should then develop a system to evaluate bids so that companies with fair payment are more likely to obtain bids. These reports would be confidential and would be used by the state to ensure that the 13 billion dollars New York taxpayers spend on contractors²⁴ are not being given to companies that discriminate on the basis of sex in wages. These reports would also assist companies in identifying inequities and provide incentives for companies to fix them voluntarily. New Mexico began a similar initiative in 2009 by way of executive order, and it has been successful.²⁵ New Mexico has found little resistance by employers in producing these reports.²⁶ In fact, fewer than 50 contractors even contacted the state for assistance in preparing the reports.²⁷

New York should make Paid Family Leave Insurance a priority. New York should be a leader in developing public policy solutions to make the workplace more hospitable to working families, especially mothers, so they can advance in their careers and help close the wage gap.

²³ A Better Balance, *Wage Secrecy in New York: Why We Need a State Wage Disclosure Law*, (June 2011), available at: http://abetterbalance.org/web/images/stories/Documents/fairness/factsheets/ABB_Fact_Sheet_-_Wage_Secrecy_in_NY.pdf.

²⁴ Office of the Attorney General, *A.G. Schneiderman Launches New Initiative To Bolster Recovery Of Taxpayer Dollars & Fight Government Fraud*, (Jan. 27, 2011), available at: http://www.ag.ny.gov/media_center/2011/jan/jan27a_11.html.

²⁵ Martha Burk, *The New Mexico Pay Equity Initiative in State Contracting*, Institute for Women's Policy Research (May 2011), available at: <http://www.iwpr.org/initiatives/pay-equity-and-discrimination>.

²⁶ *Id.*

²⁷ *Id.*

We must follow the lead of other countries that have seen a narrowing of the family wage gap as a result of more supportive family policies.²⁸

Workers with caregiving responsibilities need paid family leave.²⁹ While the Family and Medical Leave Act (FMLA) provides 12 weeks of unpaid leave to bond with a new child or care for a seriously ill family member, many workers cannot afford to take unpaid time off. Additionally, nearly 50% of all workers—and 80% of new mothers—in the United States are not covered by the FMLA.³⁰ New York should follow the example of California and New Jersey and pass the Paid Family Leave Insurance Act (A6289), which would provide paid leave for new parents and those caring for an ill family member. Paid family leave would not increase employers' payroll costs; rather the weekly benefit would be paid for by employees through small paycheck contributions. The benefits of paid family leave are tremendous for working families and can help to narrow the wage gap. Research shows that women with access to paid maternity leave are more likely to return to work after they have a child, thus increasing their lifetime employment and earnings.³¹

New York needs to strengthen anti-discrimination laws. New York State should vigorously combat employment discrimination against caregivers, especially pregnant women and mothers.

²⁸ Jane Waldfogel, *Understanding the "Family Gap" in Pay for Women with Children*, 12 J. Econ. Perspectives 137 (1998).

²⁹ A Better Balance, *Paid Family Leave Insurance: A Priority for Working Families in New York*, (Nov. 2011), available at:

http://abetterbalance.org/web/images/stories/Documents/familyleave/fact_sheets/PaidFamilyLeaveForNewYork.pdf.

³⁰ Eileen Appelbaum and Ruth Milkman, *Leaves that Pay: Employer and Worker Experiences with Paid Family Leave in California*, Center for Economic and Policy Research (Jan. 2011), p. 1, available at:

<http://www.cepr.net/index.php/publications/reports/leaves-that-pay>. For a more comprehensive overview of the Family and Medical Leave Act, see A Better Balance, *Fact Sheet: the Family and Medical Leave Act*, (Jan. 2011), available at <http://abetterbalance.org/web/home/forfam/know-your-rights>.

³¹ Heather Boushey, *Helping Breadwinners When It Can't Wait: A Progressive Program for Family Leave Insurance*, (May 2009), available at: <http://www.americanprogress.org/issues/2009/06/pdf/fmla.pdf>.

Discrimination that prevents caregivers from staying at their jobs or advancing at work is a significant threat to family economic security. Unfortunately, our State's anti-discrimination laws fail to sufficiently protect workers from family responsibilities discrimination. New York should follow the lead of Alaska and the District of Columbia and consider a state law explicitly banning this form of discrimination. New York should also model California and pass a law requiring employers to reasonably accommodate pregnant women.³² Reasonable accommodations might include allowing for bathroom breaks or providing a stool so that a woman does not have to be on her feet all day. Such a law would make a significant difference in helping pregnant women remain on the job without jeopardizing their economic security.

New York should immediately establish a Task Force on Pay Equity & Family Economic Security. Without delay, New York should establish a Task Force to study the gender wage gap by sector with special attention to the motherhood penalty and issue policy recommendations.

CONCLUSION

In these tough economic times, fair pay is more critical than ever to women and their families. New York should be a leader in closing the pay gap and providing an environment where women can flourish. More supportive work-family policies would have a significant impact on the long-term economic security of women and families in New York.

Thank you again for your consideration. My colleagues and I look forward to working with you to make sure that women are paid what they deserve in our State.

³² Cal. Gov't Code § 12945(b)(1).