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TESTIMONY OF A BETTER BALANCE: THE WORK AND FAMILY LEGAL CENTER

ON

“FAMILY FRIENDLY WORK POLICIES FOR WOMEN IN NEW YORK CITY”

**Submitted by: Sherry Leiwant, Executive Director
October 27, 2008**

Thank you for the opportunity to testify today and thank you for putting together this hearing on an issue important to all women and families in New York City.

My organization, A Better Balance: The Work and Family Legal Center (ABB) was founded in New York City by a group of lawyers who, in successfully working together on women's rights and economic issues, came to recognize that work and family issues are central to the daily pressures that confront many Americans—most starkly those with the fewest resources. ABB employs a range of legal strategies to promote flexible workplace policies, end discrimination against caregivers and value the work of caring for families. Our mission is to promote equality and expand choices for men and women at all income levels so that they may care for their families without sacrificing their economic security.

A Better Balance addresses the tensions between work and family responsibilities that increasingly impact American workers and their families, in particular those with the fewest economic resources. The growth of this problem is fueled by the dramatic increase in labor force participation by women who have traditionally been responsible for caregiving work. At the same time, the marketplace demands increasingly longer hours from workers. The failure to value caregiving work, persistent gender inequality in caregiving responsibilities, and lack of societal support or public policy attention, exacerbates this problem. Though the media most often views this problem as that of professional and upper income women “opting out” of the workforce, this is a problem that cuts across class lines but weighs most heavily on women in low-income, marginal jobs, in particular those who are single mothers. They are the workers who most often must make the impossible choice between their economic security and the care of family members. Such women must sometimes work two or more shifts to make ends meet, and they are often docked pay or fired when forced to put family needs before their jobs. They are the workers who most often lack the workplace flexibility that is necessary to both work and provide care for those who depend on them. For the nearly half of New York City workers, most in low-paying jobs, who are denied paid sick days, taking a day off from work for their own or a child's illness can mean losing a day's pay or, for some, even risking unemployment. Welfare reform, with its emphasis on full-time work for single mothers, increased the ranks of women who experience work-family pressures acutely, but have few supports and nowhere to turn for help. Nor is work-family conflict present only for parents of small children. It also affects adult children with aging parents and spouses caring for partners.

The statistics bear out the scope of this problem both nationally and in New York City. More men and women are working longer hours today than they were 30 years ago, and for some workers technology creates a nearly 24/7 work week. Most critical for family life, a dramatically greater proportion of the work force now works full time, mostly accounted for by women, among whom the percentage working full time all year has grown from 41% in 1970 to 60% today. Demands on workers for overtime have also dramatically increased. According to the International Labour Organization, Americans now work more hours than workers in any other industrialized country, and the proportion of people who work extremely long work weeks (48 hours or more) has also increased tremendously in the last decade.

The most significant demographic change in labor over the last 30 years, however, has been the increased labor force participation of mothers of children under 18, which since 1975 has grown from 47% to 72%. Marking an even greater change, the proportion of mothers with children

under the age of 3 working full time has surged from 34% to 61%. Converging in little over a generation, the movement of women into the work force, unprecedented growth in the number of mothers with children working outside the home, and the dramatic increase in hours worked by both men and women have made responsibility for childcare and the economic and emotional pressures on families pressing issues across the income spectrum.

But while this crisis affects all families, those with higher incomes are better able to afford high quality, reliable child care and to manage on one income at least for some period of time. The conflicting pressures of work and family particularly hurt lower income families. In New York City, 65% of low income workers lack even a single day of paid sick leave. A sick child means a day without pay or, worse, loss of a job. The National Alliance for Caregiving, based on survey data, estimated that families spend an average of \$5,000 per year caring for aging or ill family members, an amount of money difficult for low income workers to find. It is clear that parental involvement in a child's education is a key factor in that child's success. Recent research has shown that primary caretakers are the individuals with the greatest impact on determining how well children do both in school and when faced with a health problem. However, many parents are unable to take time from work to meet with teachers when a child is having difficulty in school or is diagnosed with a learning disability. This problem is particularly acute for low-income parents in jobs that provide little or no access to time off or flexibility. For the same reasons, it is difficult for low income parents to find time to address their children's chronic health conditions. Studies of welfare reform programs in the states consistently found that having a pre-school child or a child with a disability were among the factors most likely to lead to return to welfare for women who had been able to find jobs.

We see three issues as key to increasing support for working families in New York City, all of which can be influenced by actions of the City Council:

1. **Expanding and supporting paid leave for working families.** At the state level, bill that will expand New York's temporary disability insurance program to include paid family leave has been introduced for the past 5 years, will be introduced again this year and should be supported by the Council. At the city level, the Council itself can and should introduce and pass a bill to require paid sick time for all New Yorkers.
2. **Prohibiting discrimination against caregivers.** Those who provide care for their family members, whether their children or aging parents, should not be discriminated against in the workplace because of their family responsibilities. There is a bill before the City Council to outlaw such discrimination and that bill should be passed.
3. **Encourage and support businesses that offer flexible work time.** There are many models of flexibility and many ways that government can provide encouragement to businesses in offering flexibility to their workforce. Recognizing businesses that do a good job of supporting their workers with good flexible work policies, providing information and training on good flexibility practices, developing flexible work pilot projects and asking city agencies to provide models of good flexible work practices are ways government can help promote work flexibility. In addition, the Council should consider a "right to request" law similar to the law being proposed at the Federal level that would give workers the right to request flexibility with no fear of reprisals.

Expand and support paid leave for working families by requiring paid sick time for all New York City workers and supporting state efforts to enact paid family leave.

There are two kinds of paid leave that are extremely important for working families -- paid family leaves and paid sick time. Paid family leave – leave to care for seriously ill members of the family or for a new baby – can only be enacted at the state level. Paid sick time, however, is something that the City Council itself could enact for workers in the city of New York.

Paid sick days is a work-family issue. No worker – no parent -- should be forced to put their jobs and financial security at stake to take care of a sick child or their own important medical needs. Yet most (65%) of New York City’s working poor – an estimated 220,000 workers – **do not get a single paid sick day**. Most low income mothers – the prime family caregivers – do not have paid sick time. The problem is not only a low wage worker problem, however. A majority of the near poor (57%) and 34% of moderate and higher income workers also have no paid sick time. All together, over 900,000 workers in our city have no paid sick time. For them, taking time off from work means the loss of a day’s pay, or worse, loss of a good shift, other retaliation, or firing. And the problem is getting worse. According to a study by the Community Service Society (CSS), the percentage of workers in New York City without paid sick time is climbing.

Around the nation, a movement has begun to make earning paid sick days a basic labor standard. San Francisco and Washington, D.C. have already enacted local ordinances requiring employers to provide paid sick days. Milwaukee voters will act on a ballot initiative this November, and a dozen states are considering measures. Legislation has also been introduced in Congress. While business may raise fears that providing sick days is a “job killer,” the experience from the jurisdiction that has had a law in effect the longest, San Francisco, shows that businesses haven’t been hurt.

Polls show that New Yorkers favor making paid sick days a basic labor standard even when they hear opposing business arguments. Indeed, 76% of New Yorkers favor a law that would require employers to give workers at least 7 days of paid sick time annually.

This is how a law might work: all employees would earn paid sick time based on their number of hours worked. For example, in San Francisco workers accrue one hour of paid sick time for every 30 hours worked. The goal is to provide all workers with a minimum floor of paid time to care for their own or a family member’s medical needs.

The City Council has the authority to enact a paid sick days law. Municipalities in New York State have the home rule authority to legislate with respect to health and safety within their borders as long as there is no state law that pre-empts city action. There is no state law covering paid sick time for workers generally although state law does specify that the Mayor controls paid sick time and other benefits for city workers. Therefore a paid sick time bill would have to exclude city and state workers who generally already have paid sick time. The bill would cover those who do not have paid sick time.

While a limited number of annual paid sick days will help workers deal with routine illnesses, there are times when we may need a longer period of paid leave: the birth or adoption of a child, the need to care for a seriously ill family member or treatment for our own major illness, such as cancer. The federal Family and Medical Leave Act (FMLA) already provides job-protected leave

of up to 12 weeks in these cases. The trouble is that this leave is limited to employees in firms with 50 or more workers and is unpaid. That means that many working women and men who need family leave are left out or cannot afford to take it.

New York has a Temporary Disability Insurance (TDI) for workers in New York State for workers' own disabilities. There is a proposal in the state legislature to expand our TDI program and provide partial wage replacement for up to 12 weeks for workers who need to care for a new baby or seriously ill family member, such as an ailing parent. Cost projections prepared by the state last year estimate that we could make paid family leave insurance a reality in New York State for very little.

As in the case of paid sick days, momentum is building around the country to enact paid family leave. California, the state of Washington, and our neighboring state of New Jersey have already passed paid family leave legislation. New York State should be next. The City Council has in the past passed resolutions supporting the effort to include paid family leave in our TDI program. We urge you to do this again this year when the bill is proposed in the coming legislative session.

Prohibit discrimination against caregivers in New York City by passing Int. No. 565-A.

There is a bill pending in the City Council to prohibit discrimination against those who provide care to family members. The bill would add "caregiver" to the category of those who cannot be discriminated against under New York City's human rights law. That bill should be passed by the Council.

Discrimination against caregivers is a serious problem for a wide range of New Yorkers. This issue is a real one for New Yorkers across the economic spectrum – it affects both men and women, upper, middle and lower income workers. Every day workers are fired, demoted, not promoted or denied other employment benefits due to their family responsibilities. Discrimination against caregivers deprives families of needed income and intimidates those who need to care for their children or a sick family member but are afraid of losing their income.

Real case examples abound. A woman who works for a large company in New York was greeted by a "separation and release" agreement on her first day back at work after taking a few weeks of FMLA leave to care for her 2.5 year old son who had emergency surgery followed by complications. Her employer gave her a short deadline in which to respond to the "agreement." A single mother of an acutely ill two-year old son is subjected to derogatory and derisive remarks about her family responsibilities, threatened with negative work evaluations, and verbally harassed her and then terminated from her employment after calling her supervisor to let her know that she would be 15 minutes late because she was waiting for the babysitter to arrive. A high-level saleswoman working for international company was given progressively worse sales territory assignments following the birth of each of her children. A 34 year old woman with a six figure communications job is laid off after taking a maternity leave. Without her salary, her family loses their home. A woman with an advanced degree in psychology and a good job is demoted when she has her first child because her employer believes she should be at home with her baby and should not remain in a time demanding job. A clerical worker whose mother is ill is fired when he takes her to the doctor. A mother who has worked for the same

employer for 20 years is laid off when she refuses to work 3 hours of overtime on an evening when there is an important event at her child's school.

One indication that discrimination against caregivers is a serious problem is the dramatic increase in the number of cases brought claiming "family responsibilities discrimination" – an increase of 400% from 97 cases to 483 from 1996 to the present during the same period that general discrimination cases declined 23%. New York is one of the places with the greatest number of these cases. Workers have gone to court on these claims despite the fact that there is currently no specific law in New York protecting against caregiver discrimination, in most cases because of the dramatic economic harm caused to their families. Bias against working mothers as well as impatience with the needs of parents with children has often led to unfair treatment of parents and other caregivers in the workplace.

Although mothers are often the targets of discrimination due to caregiving responsibilities, this is not just a woman's issue. Joan Williams in her survey of published legal arbitrations between unions and employers, found that over 50% of the cases were male employees — generally fathers — fired or otherwise disciplined because they experienced work/family conflict and chose to take care of their children or other family members.

Similarly, work-family conflict is not just an upper-middle-class issue. Research indicates that over 2/3s of the employees experiencing severe work-family conflict were in blue collar jobs. In addition, conversations with Legal Aid attorneys representing poor women with children making the transition from public assistance indicate that firing, demotions and poor shift assignments are often the result of the need of single parents to take care of family emergencies.

There is currently no specific law that protects any of these New Yorkers. There have been attempts to use existing civil rights laws, the Federal Family and Medical Leave Act and the Pregnancy Discrimination Act to remedy discrimination against caregivers, but because these laws do not offer specific protection, many individuals fall through the cracks. Because it is complicated to make out a case under statutes designed to protect against different kinds of discrimination, it is important to have a law that specifically outlaws discrimination based on family responsibilities. Indeed, New York City has one of the most comprehensive and far reaching civil rights laws in the country. But currently employers are still free to refuse to hire workers because they have responsibility for family members or fire employees who need to care for family members. This is a loophole in our attempts to insure that all New Yorkers have the opportunity to work free from discrimination and is critical to insuring that New York families have the protection and support they deserve. Int. 565-A should be passed by the Council.

Encourage and support employers who offer flexibility in their work place.

A large body of research shows that flexible work arrangements and other family-friendly programs have a positive bottom line impact for employers.

Workplace flexibility is good for business.

- Workplace flexibility is a critical recruitment and retention tool. According to the most recent Met-Life Survey, workers rank work-life balance as the second most important factor for joining or staying at a firm. Fully 67 percent of employees in businesses with

high levels of workplace flexibility report job satisfaction, compared to only 23 percent in companies with few flexible work arrangements.

- Turnover is expensive business. Research has found that it costs 150% of a salaried employees yearly salary to replace him or her. For hourly employees, turnover costs the employer anywhere from 50 to 75 percent of the employee's annual pay.
- In a two-year study of 1,400 workers, 70 percent of managers and 87 percent of employees reported that workplace flexibility increased productivity. A 2002 Watson Wyatt study found a 3.5 percent rise in shareholder returns resulting from flexible work.
- While estimates of cost savings depend on company size, location and other factors, flexible work arrangements, particularly telecommuting, have been shown to reduce real estate and other overhead costs. In 1996 Bell Atlantic estimated savings in the range of \$1,500-\$5,000 per telecommuter, per year, due to reduced real estate costs.

Workplace flexibility decreases absenteeism and worker stress.

- A recent survey found that access to workplace flexibility is a primary way to reduce unscheduled absences from work. Another study found that 63% of employees using flexible work arrangements missed fewer days of work. Reducing absenteeism is a tremendous cost savings to employers. In 2005, 2.5% of organizations reported that absenteeism costs them about \$660/employee. For some larger employers, absenteeism resulted in a loss of over \$1 million per year.
- Workplace flexibility reduces workers' stress, decreasing workers' risk for heart disease and diabetes, according to a large U.K study. In another study, 70 percent of employees reported lower stress compared to those without flexible schedules.⁶ This is a huge cost savings to employers since health care expenditures are nearly 50 percent greater for U.S. workers who report high levels of stress.
- According to a recent Catalyst report, parental are less productive at work because they are concerned about their children's after school time ("PCAST"). These concerns contribute to employee stress, costing businesses an estimated \$50 billion to \$300 billion annually in lost job productivity.

Workplace flexibility is not as available to workers as it should be.

- Research reveals that nearly 80% of employees do not take advantage of corporate flexibility policies because they are concerned about jeopardizing their career.
- Workplace flexibility policies are only effective if employees know they exist. Unfortunately, many workers are not aware workplace flexibility is an option for them.
- Particularly where companies lack formal policies on workplace flexibility, employees report frustration with inconsistent program implementation. For many workers, the ability to work in a flexible manner is up to the sole decision of the worker's manager.

- Most working families have limited or no access to workplace flexibility. Low-wage workers are the least likely to have access to workplace flexibility even though studies show they need it the most to address child development issues and poor family health.

Government has a vital role to play in fostering workplace flexibility.

The City Council can support workplace flexibility in a number of ways.

“Right to request” law. The City Council can pass a law that grants employees a right to request flexible work. This law would also protect employees who have concerns they might be penalized for requesting flexible work schedules. A so called soft touch “right to request” bill was instituted in the United Kingdom giving workers the right to request flexible work time; employers need not grant it, but there can be no repercussions for asking and the employer must give reasons for denying the request.† A similar Federal bill has been introduced.† The New York City Council could enact such a law here in New York City which would provide protection for workers who are afraid to ask for flexible schedules. In addition, the need to articulate reasons might lead to employer recognition that they can accommodate worker requests for flexibility. Although it is a “soft touch” law, it has had a significant effect in the UK and might also change attitudes about the acceptability of flexible work arrangements.

Institute a “Flex in the City” project similar to Houston’s. Faced with a growing traffic congestion problem and a desire to make Houston a more appealing urban destination, Houston launched a Flexible Workplace Initiative designed to encourage Houston employers to adopt productive, flexible work policies. The City challenged some of Houston’s top employers to implement flexible work options as part of a two-week experiment in September 2006 to ease the city’s traffic problems. More than 140 organizations signed up for the two-week experiment, which added up to 20,000 employees working flexible work schedules. Law firms, hospitals nonprofits and accounting firms were among the companies that joined Houston’s “Flex in the City” effort to promote “flexible work options that enhance productivity and mobility.” The impact of this two-week experiment was considerable. The change in commuting patterns resulted in over 5.8% travel-time savings for 32,000 peak-time commuters on two of Houston’s major freeways. According to the post-Flex in the City survey, 66% of participants say their commute was faster or much faster than the previous week. In addition, the study says that 58% of participants of the participants found their morning and/or evening stress levels to be lower or much lower than the previous week, and 96% found their productivity levels to be the same or higher than the previous weeks.

It would make a great deal of sense to undertake a similar initiative in New York City. Traffic congestion is worse in New York City than almost anywhere else in the country. According to the Census Bureau, New Yorkers endured the second-longest commute time in the nation in 2006, and spent an average of one hundred hours a year just getting to work. An innovative report issued by the Partnership for New York City quantifies the amount of excess traffic in the center of Manhattan and traces the way it causes problems for businesses and workers in other boroughs and the suburbs. Economists calculate that gridlock drains \$13 billion from the area's economy every year. They estimate that the city could gain as many as 52,000 jobs if it could solve the problem. In the wake of the failure of the Mayor’s congestion pricing proposal, it

would make a great deal of sense to combine environmental concerns and work-family concerns in an initiative that would encourage employers to help solve both problems with no harm to their bottom line.

Publicize the importance and effectiveness of flexible work policies. Build public awareness of the benefits of responsive scheduling.

Recognize and reward good businesses. Recognize businesses that already have good work/family policies by instituting an employer's honor roll or award for employers who excel at offering and supporting workers with flexible work options.

Tax credits. Establish tax credits for employers who offer alternative or flexible work schedules.