



the work and family legal center

80 Maiden Lane, Suite 606, New York, NY 10038 | t: 212.430.5982 | info@abetterbalance.org | abetterbalance.org

staff

Dina Bakst
Co-President

Sherry Leiwant
Co-President

Phoebe Taubman
Senior Staff Attorney

Jared Make
Senior Staff Attorney

Elizabeth Gedmark
*Staff Attorney/Director,
Southern Office*

Risha Foulkes
Staff Attorney

Molly Weston
*Liman Fellow/Staff
Attorney*

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Carr Center Fellow

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Kennedy Fellow

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Testimony before the New York City Council Civil Rights Committee
September 21, 2015

Submitted by Dina Bakst, Co-President, and Phoebe Taubman, Senior Staff Attorney
A Better Balance: The Work and Family Legal Center

Good afternoon. My name is Phoebe Taubman, and I am a Senior Staff Attorney at A Better Balance: The Work & Family Legal Center. A Better Balance is a New York City-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. A Better Balance also hosts a free hotline to assist low-income working New Yorkers with pregnancy discrimination, caregiver discrimination, pay discrimination, and other related issues. We receive calls from men and women across the tri-state area as well as from individuals all over the nation in response to our advocacy efforts.

While we are here today to support and offer comments on several legislative proposals designed to strengthen our city's Human Rights Law, we also want to make clear our enthusiasm about and support of efforts at the Human Rights Commission to improve enforcement of this powerful law. Such purposeful attention dedicated to enforcement, along with additional funding to carry out those plans, is critical to ensure that all New Yorkers, including those with the least means, can benefit from the protections offered by the law.

Intro 108A-2014: Caregiver Discrimination

We strongly support Intro 108A-2014 which would modernize the workplace and provide much-needed support for people struggling both to provide and care for their families.

Employment discrimination against caregivers harms a wide range of New Yorkers.

Bias in the workplace against parents and family caregivers affects men and women across the economic spectrum. Nationwide, seventy percent of children are growing up in families headed by a single working parent or two working parents,ⁱ and nearly four in ten mothers are the primary breadwinner for their families.ⁱⁱ In New York City, the majority of two-parent households have both parents in the workforce, and 61% of women with children under age six are in the labor force.ⁱⁱⁱ More Americans are shouldering elder and family care responsibilities, especially as the baby boomer generation ages: more than one in six American workers provide care to an elderly or disabled family member, relative, or friend.^{iv} This number is even higher for families living below the poverty line^v and is likely to increase in New York City, where the number of disabled adults over 60 years old is expected to grow by 40 percent over the next twenty years.^{vi}

Most family caregivers are women (65 percent)^{vii} and the value of all the informal care they provide ranges from \$148 billion to \$188 billion annually.^{viii} These caregivers provide unpaid labor that benefits not only their families but our society and economy as well. They deserve protection from unfair treatment that derails their careers, suppresses their lifetime earnings, and pushes their families onto public assistance and into poverty.

We need legal protections that fit the workforce of today. We met a professional woman with ten years of experience and excellent reviews at her job, who was fired after returning from her second maternity leave and told she was not capable of doing the work anymore because she was the mother of several small children. We spoke with a man working in retail who was fired the day after he asked for a part-time schedule to care for his mother, who had recently been diagnosed with cancer. Another woman, whom we spoke to recently, had been working for years on a schedule that allowed her to care for

her ailing husband. A new manager entered the picture and suddenly changed the woman's hours, making it impossible for her to be with her husband when he needed her, while happily accommodating another worker who was going to school part-time.

Caregiver discrimination is particularly hard on single mothers. Yvette, a single mother of three lost her job at a grocery store, where she had worked for eleven years, after her boss changed her shift to require work on Saturdays. She had no childcare on the weekend and the cost of securing it would have wiped out her wages for the day. She tried to work out alternative shift times, but was rebuffed. A younger colleague without children was allowed to reject the Saturday shift because she was attending school on the weekends. Eight months after Yvette lost her job she was still looking for work.

In the low-wage workplace, caregiver discrimination is also often especially blatant. We have heard from women who are scolded and ridiculed in front of their colleagues for having children and often denied any requests—for a raise, a shift change, even just time off for a doctor's appointment—because they chose to start a family. The economic consequences for these women, and their families, can be severe.

Targeted legislation is necessary to prevent caregiver discrimination. Without a law on the books that explicitly prohibits discrimination based on caregiver status, individuals who have suffered job loss and lost income from this kind of unfair treatment often find themselves without legal redress. Some caregivers may be able to make out claims under existing civil rights laws if they can prove, for example, that the discrimination they faced was based on sex or association with a disabled person. But too many cases fall through the cracks. For instance, women facing caregiver discrimination often find it hard to articulate their legal claims as sex discrimination because they cannot point to a comparator—a man or woman without young children who has placed similar requests for time off or the like and who has received better treatment. Men also have trouble convincing courts that they are victims of sex discrimination because of their caregiving responsibilities.^{ix} Barriers to justice exist for low-wage workers as well, who tend to work in isolated settings or do not have the freedom to confer with colleagues to uncover

information necessary for a legal claim. Clearly designating caregiver status as a protected class under the law would give these women hope for economic stability, job protection, and basic human dignity at work.

Making caregiver discrimination explicitly illegal would help employers as well. Without clear legal guidance, employers are confused about what kind of conduct is prohibited. Creating an unambiguous ban on discrimination against caregivers would help prevent unfair treatment and invite a discussion about caregiver bias, both in the workplace and more broadly, that could help workers retain their jobs and much-needed income for their families.

Other cities around the country have enacted laws to prevent discrimination against caregivers. New York city would join dozens of other cities and localities that have prohibited employment discrimination based on familial or caregiver status.^x In addition, the District of Columbia^{xi} prohibits discrimination based on an employee's family responsibilities and Alaska^{xii} outlaws workplace discrimination against parents.

Targeted reasonable accommodations for caregivers will support struggling families without harming business. Using standards already in the Human Rights Law, Int. 108A would require employers to provide workplace accommodations for certain categories of caregivers, but only if such changes do not cause "undue hardship" for their business. These caregivers would be granted the same interactive process that disabled workers enjoy, allowing them to propose, for example, alternative work arrangements to help them meet the requirements of the job while also attending to their family responsibilities.

Other countries that have included caregivers in their civil rights laws have also enacted reasonable accommodations requirements, acknowledging their debt to the United States for creating the concept in the context of disability.^{xiii} The Canadian Supreme Court noted with approval that an anti-discrimination standard accompanied by a reasonable accommodation requirement fosters workplaces that accommodate the potential

contributions of all employees. Under this approach, employers may still have rules that burden caregivers, but they must explore reasonable alternatives in such cases.^{xiv} New South Wales, Australia, in response to mothers dropping out of the workforce and the growing wage gap between women and men, created a strong caregiver anti-discrimination law with a reasonable accommodation provision, which has been used to increase workplace flexibility for caregivers who need it to stay in the labor market.^{xv}

Accommodations for workers caring for a dependent with a disability

“Reasonable accommodation” has worked well to ensure that workers with disabilities are not treated unfairly or driven out of the workplace. It is equally important that employers provide accommodations, when possible and reasonable, to the loved ones who care for someone suffering from a disability while also holding down a job.

Existing law provides limited protections for these workers. While federal and New York City laws prohibit discrimination against employees based on a relationship with a disabled person, they do not guarantee reasonable accommodations to help workers provide care to disabled relatives.^{xvi} Some caregivers may be entitled to leave time under the Family and Medical Leave Act, but 40 percent of the workforce is excluded from the protections of that law. And caregivers of the elderly and impaired have an even steeper hill to climb than mothers and fathers when attempting to prove unfair treatment based on gender. As a result, working caregivers of aging relatives report having less access to flexible work and perceive significantly lower job security than even workers with childcare needs.^{xvii}

An accommodation provision that is tailored to address the needs of both employers and employees can help to keep caregivers attached to the workforce, while promoting the wellbeing of New Yorkers with disabilities and offering potential savings on health care costs to businesses and taxpayers.

Accommodations for a parent to participate in a child's educational events

Research has confirmed, time and again, that parental involvement in children's education leads to positive outcomes for children's academic achievement and future success. There is strong evidence that parent participation in school activities of elementary school-age children produces gains in literary performance,^{xviii} as well as possible improvements in school engagement, socio-emotional adjustment, absences, and math achievement.^{xix} When parents, and particularly fathers, observe their children in the classroom, attend parent-teacher conferences, and meet with counselors, their children more frequently achieve academic success.^{xx} Parental involvement in early education contributes significantly to children's wellbeing as well: parental "responsibility for learning activities, such as reading to children, and providing complementary learning experiences . . . has the power to alter the influence of poverty on children's language and literacy development."^{xxi}

Despite these benefits, many parents cannot engage with their children's academic achievement because of rigid work schedules that keep them away. Unfortunately, parents who most need flexibility to help their children with school problems, i.e. those whose kids are struggling with academics or discipline issues, are least likely to have such benefits.^{xxii} Research shows that parents who can alter their work hours are more likely to be involved in their children's education, resulting in numerous long-term benefits for their children's wellbeing.^{xxiii}

Eighteen states and the District of Columbia have recognized the importance of this issue and adopted school-related leave laws or regulations to help parents attend their children's educational events.^{xxiv} Providing reasonable accommodations to allow parental participation in school-related events will give parents in New York City the opportunity to contribute to their children's academic achievement without risking their employment. It is also critical for the ultimate success of this Administration's strategy to improve low-performing schools through greater parental participation.^{xxv} A Better Balance would be supportive of further clarity, however, regarding the language of this provision as

amended. Clarity could include specifying the types of circumstances covered by the term “caring for a child or children in facilitating involvement in education,” to include attending or participating in school- or preschool-related events related to the academic achievement of the employee’s child.

Accommodations for childcare and eldercare emergencies

Many New Yorkers have limited control over their work hours, leaving little margin of error in the event of a family emergency or childcare crisis. Low-wage workers are especially vulnerable and report receiving less desirable shifts and fewer hours, or losing their jobs entirely when their childcare falls through.^{xxvi} Offering a bit of wiggle room to these caregivers can help them stay attached to the workforce and earning critical income for their families while weathering inevitable, but infrequent, exigencies of home. This can also help to keep caregivers off public assistance and allow employers to retain happier, more productive and loyal employees.

Retaliation

Finally, Intro 108-A would protect caregivers from retaliation when they request a change to the terms or conditions of employment as they relate to their caregiving responsibilities. This protection is critical because workers rightfully fear stigma or other negative repercussions simply for requesting an alternative work arrangement. Research has shown that nearly 80 percent of employees do not take advantage of corporate flexibility policies because they are concerned about jeopardizing their careers.^{xxvii} Long work hours and “flexibility stigma” – particularly regarding part-time work – push many professional workers, especially mothers with caregiving responsibilities, out of the workforce.^{xxviii} And low-wage workers who have little financial cushion in the case of job loss are even less willing to rock the boat by requesting an accommodation.

Intro 180-A would offer all caregivers under the law, even those not explicitly granted the right of reasonable accommodation, the peace of mind to request such

accommodations without fear of being penalized in return.

Intro 804-2015: Reasonable accommodations for individuals with disabilities

A Better Balance does not support Intro 804-2015, which would amend the New York City's broadly protective Human Rights Law to import and enshrine a potentially limiting definition from federal law. As the Local Civil Rights Restoration Act of 2005 made clear, the New York City Human Rights law (NYCHRL) must be construed independently from similar or identical provisions of New York state or federal statutes. There is a strong body of case law describing the interactive process required under the NYCHRL. By codifying a definition of a "good faith interactive process" that tracks federal law, this proposal is unnecessary and could even undermine the scope and impact of City law by encouraging federal judges to forgo a separate analysis of NYCHRL claims before them.

Intro 815-2015: Truthful Information

A Better Balance supports Intro 815-2015 to update and strengthen the impact of the New York City Human Rights Law.

Intro 825-2015: Domestic Workers

A Better Balance has long advocated for the rights of domestic workers, and their quest for workplace justice. We look forward to working with the council on refining this proposal to adequately address the needs of both domestic workers and the individual families who employ them.

ⁱ Heather Boushey, Center for American Progress, *Equal Pay for Breadwinners* 8 (Jan. 2009), available at http://www.americanprogress.org/issues/2009/01/gender_economy_report.html.

ⁱⁱ Wendy Wang, Kim Parker, & Paul Taylor, *Breadwinner Moms Mothers Are the Sole or Primary Provider in Four-in-Ten Households with Children: Public Conflicted about the Growing Trend*, (May 2013), http://www.pewsocialtrends.org/files/2013/05/Breadwinner_moms_final.pdf.

ⁱⁱⁱ Dina Bakst, Sherry Leiwant and Janet Gornick, "Promoting Work-Family Balance," *Toward a 21st Century City for All*, available at <http://www.21cforall.org/content/promoting-work-family-balance>.

^{iv} Gallup Healthways Wellbeing Survey, *More Than One in Six American Workers Also Act as Caregivers*, July 2011.

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- ^v Jody Heymann, "Inequalities at Work and at Home: Social Class and Gender Divides in Unfinished Work: Building Equality and Democracy in an Era of Working Families," ed. Jody Heymann and Christopher Beem. New York, NY: The New Press (2005).
- ^{vi} County Data Book: Selected Characteristics—New York City, New York State Office for the Aging (2011), available at <http://www.aging.ny.gov/ReportsAndData/CountyDataBooks/30NYCALL5.pdf>.
- ^{vii} Id.
- ^{viii} *Women and Caregiving: Facts and Figures, Family Caregiver Alliance*, http://www.caregiver.org/caregiver/jsp/content_node.jsp?nodeid=892.
- ^{ix} Stephanie Bornstein, *The Law of Gender Stereotyping and the Work-Family Conflicts of Men*, 63 *Hastings L.J.* 1297, at 1338.
- ^x Stephanie Bornstein and Robert J. Rathmell, *Caregivers as a Protected Class?: The Growth of State and Local Laws Prohibiting Family Responsibilities Discrimination*, Center for WorkLife Law, University of California at Hastings (Dec. 2009), available at <http://worklifelaw.org/pubs/LocalFRDLawsReport.pdf>.
- ^{xi} D.C. Code Ann. §2-1401.01-02
- ^{xii} Alaska Stat. §18.80.200
- ^{xiii} European Union Directive on Equal Treatment (2000).
- ^{xiv} Central Alberta Dairy Pool, 2 S.C.R. 489, 518 (1990).
- ^{xv} Conference Report, *Working Time Discrimination and the Law: The Family Responsive Workplace in Europe and the United States* (March, 2005), pg. 11.
- ^{xvi} *Young v. U.S. Dep't of Homeland Sec.*, 10 CIV. 9571 RJS, 2011 WL 6057849 (S.D.N.Y. Dec. 5, 2011) (explaining that the ADA's association provision, which the NYC HRL mirrors, was intended to prevent stereotyping about disabled individuals and their caretakers, but 'does not obligate employers to accommodate the schedule of an employee with a disabled relative.'")
- ^{xvii} M. Pitt-Catsouphes, C. Matz-Costa, and E. Bensen, *Age and Generations: Understanding Experiences in the Workplace*. Research Highlight 6 (Chestnut Hill, MA: The Sloan Center on Aging and Work at Boston College, March 2009)
- ^{xviii} Harvard Family Research Project, "Family Involvement In Elementary School Children's Education," 2007, p. 3 (citing McBride, B. A., Schoppe-Sullivan, S. J., & Moon-Ho, H., 2005).
- ^{xix} Charles V. Izzo, Roger P. Weissberg, Wesley J. Kaspro, and Michael Fendrich, A Longitudinal Assessment of Teacher Perceptions of Parent Involvement in Children's Education and School Performance, *AMERICAN JOURNAL OF COMMUNITY PSYCHOLOGY*, 1999, 27(6), 817–839, 829.
- ^{xx} Harvard Family Research Project, Family Involvement In Elementary School Children's Education, p. 3, (citing B.A. McBride, S.J. Schoppe-Sullivan, and H. Moon-Ho, (2005). The Mediating Role Of Fathers' School Involvement On Student Achievement, *JOURNAL OF APPLIED DEVELOPMENTAL PSYCHOLOGY*, 26(2), 201–216.
- ^{xxi} Harvard Family Research Project, "Family Involvement in Early Childhood Education," 2006, p. 3-4.
- ^{xxii} Jody Heyman, *The Widening Gap: Why America's Working Families are in Jeopardy—And What Can be Done About It*, 57 (2000).
- ^{xxiii} Flatley, Jean McGuire, and Kaitlyn Kenney. "Promoting Children's Well-Being: The Role of Workplace Flexibility, Workplace Flexibility 2010." Retrieved [workplaceflexibility2010.org/images/uploads/FF_Color_CD_Facts\(1\).pdf](http://workplaceflexibility2010.org/images/uploads/FF_Color_CD_Facts(1).pdf)
- ^{xxiv} A Better Balance, Fact Sheet: Educational Leave, September 2015, available at <http://www.abetterbalance.org/web/images/stories/Documents/fairness/factsheets/educationalleave.pdf>
- ^{xxv} See Kate Taylor, *A Door-To-Door Push to Get Parents Involved at Struggling Schools*, *NY Times*, Sept 8, 2015.
- ^{xxvi} *Listening to Workers: Child Care Challenges in Low-Wage Jobs*, National Women's Law Center, pg. 7, June 2014.
- ^{xxvii} Galinsky, Ellen, James T. Bonk, and E. Jeffrey Hill. "When Work Works: A Status Report on Workplace Flexibility: Who has it? Who wants it? What difference does it make?" Families and Work Institute, 2004.
- ^{xxviii} Joan Williams and Heather Boushey. "The Three Faces of Work-Family Conflict: The Poor, the Professionals, and the Missing Middle," Center for American Progress and Center for Worklife Law, 2010, 54, available at <http://www.americanprogress.org/issues/labor/report/2010/01/25/7194/the-three-faces-of-work-family-conflict/>.