



the work and family legal center

P.O. Box 60565, Nashville, TN 37206 | 615.915.2417 | info@abetterbalance.org | abetterbalance.org

Testimony before the Tennessee Human Rights Commission

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Submitted by Elizabeth Gedmark, Staff Attorney/Director of the Southern Office, and Dina Bakst, Co-Founder & Co-President

A Better Balance: The Work & Family Legal Center

A Better Balance (ABB) is a national non-profit legal organization that advocates for workers across the economic spectrum so they can care for their families without sacrificing their financial security. Through our country-wide advocacy work and legal services hotline, we have heard from hundreds of individuals and families who are suffering because U.S. workplace laws and policies lag behind other developed countries, and even many developing countries. ABB leads the charge for policies that help families, such as sick leave, fair and flexible work, pay equity, antidiscrimination laws, and others that value family care.

In January, 2014, we opened our Southern Office, based in Nashville, TN, focusing on the problems of working families in the Southeastern United States. Even though our doors have only been open for 6 months, we have already heard from individuals and valued partners that Tennessee families, especially low-wage working mothers, often face unfair treatment at work and the impossible choice between their job and taking care of their families.



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I. Background

Women make up almost half of the workforce¹ and families rely on women's salaries to make ends meet: Women are the primary or co-breadwinners in almost two-thirds of families² and a recent Pew Research study found that 40% of American families have a woman as the primary or sole breadwinner.³ This demonstrates that the State's economy and Tennessee families depend on a female labor force.

II. Pregnancy Discrimination

In recent years, we have heard from dozens of pregnant women across the country whose employers refused to provide medically necessary reasonable job adjustments, like a stool to sit on, extra restroom breaks, or a temporary reprieve from heavy lifting. This failure to accommodate often results in devastating economic and health consequences for working women and their families, because the women were either forced out of their jobs or required to risk their health.⁴ Although Tennessee state law prohibits pregnancy discrimination, there is no explicit statutory protection for pregnant women, whether suffering from pregnancy-related disabilities or not, who are in need of reasonable accommodations to stay healthy and on the job.

¹ Catalyst, *Statistical Overview of Women in the Workplace*, Dec. 2011, <http://www.catalyst.org/publication/219/statistical-overview-of-women-in-the-workplace>.

² Heather Boushey & Ann O'Leary, *The Shriver Report: A Woman's Nation Changes Everything: Executive Summary*, (Oct. 2009), http://www.americanprogress.org/issues/2009/10/womans_nation.html.

³ 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.

⁴ *It Shouldn't Be A Heavy Lift: Fair Treatment for Pregnant Workers*, 2013, available at: <http://www.abetterbalance.org/web/images/stories/ItShouldntBeAHeavyLift.pdf>.



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It is estimated that *more than one quarter million* pregnant workers are denied requests for accommodations each year, and many more do not even request changes at work, likely because of fear of retaliation.⁵ Here in Tennessee, a truck driver was fired because she needed light work while pregnant, but her company only provided light work for employees injured on-the-job.⁶ She lost her case in court. Thirty different organizations from across Tennessee recently signed on to a letter in support of the federal Pregnant Workers Fairness Act, a bill that would require employers to provide reasonable accommodations to employees with limitations because of pregnancy, childbirth, and related medical conditions.⁷ Tennessee has the third highest infant mortality rate in the country.⁸ Pregnant workers should never have to put their health on the line just to earn a paycheck.

III. Caregiver Discrimination & Equal Pay

In Tennessee, women make 77 cents to a man's dollar, and the statistic is even worse for women of color.⁹ Nationwide, mothers earn 5% less *per child* than non-mothers, even when statistically controlling for education, work experience and other variables.¹⁰ They are also less likely to be hired or promoted at work. Discrimination that prevents parents from staying at their jobs or

⁵ Bryce Covert, "Why Are Workplaces Still Not Ready for Pregnant Workers?," January 31, 2014, available at: <http://thinkprogress.org/economy/2014/01/31/3235471/pregnant-workers-survey/>.

⁶ *Reeves v. Swift Transp. Co., Inc.*, 446 F.3d 637 (6th Cir. 2006).

⁷ Letter to U.S. Senator Lamar Alexander, May 6, 2014, available at: http://www.abetterbalance.org/web/images/stories/Documents/Senator_Alexander_PWFA_SignOn_Letter_SENT.pdf.

⁸ Centers for Disease Control, "Infant Deaths Per 1,000 Live Births, By State: 2010," available at: http://www.cdc.gov/nchs/pressroom/states/INFANT_MORTALITY_RATES_STATE_2010.pdf.

⁹ National Partnership for Women & Families, *Tennessee Women and the Wage Gap*, April 2014, available at: <http://www.nationalpartnership.org/research-library/workplace-fairness/fair-pay/2014-tn-wage-gap.pdf>.

¹⁰ 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.



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advancing at work is a significant threat to family economic security. Although Tennessee law does prohibit pay discrimination, there is no explicit protection regarding discrimination against parents or other caregivers. And despite existing protections, pay disparities and violations of these laws persist. Tennessee women, especially mothers, face wage discrimination and unfair treatment in the workplace.

IV. Paid Leave

Nationally, nearly forty percent of private sector workers lack paid sick time and even more are unable to use their paid time off to care for their sick children.¹¹ Low wage workers are particularly hard hit and Tennessee families are suffering from a lack of paid time off to deal with illness at home.¹² Across the world, 178 countries provide paid leave to women who give birth to a child, but not in the United States, where only 11% of employees had access to paid family leave in 2012.¹³ Although Tennessee state law does provide lengthier family and medical leave time than the federal Family and Medical Leave Act, it is *unpaid* leave and many employees do not qualify for coverage because they have not worked for their employer long enough and/or their employer is not large enough to be eligible.

V. Nursing Mothers

¹¹ A Better Balance, *Fact Sheet: Paid Sick Time*, December 2011, available at:

<http://www.abetterbalance.org/web/images/stories/Documents/sickdays/factsheet/PaidSickTimeNational.pdf>.

¹² Read one woman's story here: Kristi Rifkin, *Why I Believe in Paid Sick Leave*, April 25, 2013, MomsRising, available at: <http://www.momsrising.org/blog/why-i-believe-in-paid-sick-leave>.

¹³ A Better Balance, *Investing in Our Families: The Case for Family Leave Insurance in New York and the Nation*, September 2013, pg. 18, available at:

<http://abetterbalance.org/web/images/stories/Documents/familyleave/FLI2013.pdf>.



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Tennessee has strong protections for nursing mothers in the workplace, but violations of the law remain rampant. The Tennessee Department of Health’s website analyzes why there is a gap between women who intend to breastfeed and those who actually breastfeed a child. One of the obstacles named for this discrepancy is: “Lack of accommodation to breastfeed or express milk at the workplace.”¹⁴ We have also seen this problem: women are not provided the time and space they need to express breast milk at work, or they face discrimination for their choice to do so. Employees need to know their rights under the law and employers need to understand their obligations.

CONCLUSION & RECOMMENDATIONS

The Tennessee Human Rights Commission should prioritize enforcement of sex discrimination cases, particularly pregnancy discrimination and caregiver discrimination complaints. The THRC should also work with other government agencies to ensure proper enforcement of protections for nursing mothers and individuals taking family and medical leave under Tennessee state law. Finally, the THRC should support broader laws and policies to advance the rights of working families in the state. We look forward to working with you on these efforts. We would also welcome the opportunity to partner with you in providing public education about existing rights in Tennessee. Thank you for your consideration.

¹⁴ Tennessee Department of Health, *Breastfeeding*, Accessed: June 5, 2014, available at: <http://breastfeeding.tn.gov/index.shtml>.