



the work and family legal center

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Testimony before the New York City Council Committee on Civil Service and  
Labor  
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Submitted by Sherry Leiwant, Co-President, and Phoebe Taubman, Senior Staff  
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A Better Balance: The Work and Family Legal Center

Thank you for the opportunity to testify today in support of legislation that will improve working conditions for New Yorkers. Our organization, A Better Balance (ABB), is dedicated to leveraging the power of the law to promote equality and expand choices for women and men at all income levels so that they may care for their families without risking their economic security. Over the past decade, we have advanced legislation in dozens of cities and states around the country to promote fairness in the workplace and value the work of caregiving. A Better Balance also hosts a free legal helpline to assist low-income working New Yorkers with workplace problems related to family leave, sick time, pregnancy discrimination, and caregiving responsibilities. We receive calls from across the tri-state area as well as from individuals all over the nation in response to our advocacy efforts. Our testimony is informed by the experiences of our callers as well as our own experience promoting flexible work arrangements, and we are pleased to support of all the Fair Work Week bills under consideration at today's hearing. We submit this testimony in support of the full package of bills addressing the serious problem of workers' lack of control over their schedules. As an organization dedicated to helping workers balance the demands of work and family, we believe all bills in this package are critical to workers' ability to care for their loved ones while maintaining their economic security.

## **Intro 1399-2017: Right to Request Flexible Work**

Intro 1399-2017 is the one bill in this package that will apply to all private sector workers in New York City. It does three things: (1) allows workers to request schedule changes or alternate work arrangements and receive a response to the request from their employer, though the employer is not required to grant the request; (2) prohibits retaliation against the worker for making that request; and (3) in certain specifically defined emergency situations, permits the worker to change his or her schedule to address that situation. This law is an important step in increasing workers' ability to address their scheduling needs without requiring employers to do anything but entertain the request and not punish the worker for asking, unless the request is the result of an immediate personal health and safety or caregiving emergency.

**Increasing flexibility in the workplace is a critical need for New Yorkers.** Workplace and demographic trends over the past generation have created a growing tension between work and family responsibilities that harms a majority of workers. As women and mothers have steadily increased their workforce participation the marketplace has demanded longer and less predictable hours of all workers, leading to an ever-tightening time crunch between paying work and the unpaid, and often invisible, work for caring for children, the sick, and the elderly. The squeeze is especially tight in New York City, where full-time workers spend over 49 hours per week working and commuting, giving them the longest combined workweeks in the nation.<sup>1</sup> New Yorkers must manage these long workdays alongside the demands of family care. 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.<sup>2</sup> More workers are also shouldering elder and family care responsibilities, especially as the baby boomer generation ages: more than one in six American workers provides care to an elderly or disabled family member, relative, or friend.<sup>3</sup> This number is even higher for families living below the poverty line<sup>4</sup> 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.<sup>5</sup>

Rigid and inflexible workplace rules – and a lack of control over when, where, and how work gets done – make it difficult, if not impossible, for many workers to care for their families without jeopardizing their economic security. A significant majority of workers—88% of low-wage employees and 87% of higher-wage employees—highly value a more flexible workplace.<sup>6</sup> Yet overall, employers have become less likely to provide reduced hours options and career flexibility since 2008, and the proportion of employers offering flexible work options to *all or most* employees is 30 percentage points lower than the proportion who offer the same options to just *some* employees.<sup>7</sup> In New York City, nearly half of workers surveyed in 2015 reported they had no access to flexible work arrangements on the job as a matter of policy.<sup>8</sup> Of those, more than three-quarters (77 percent) said their lives would be “more manageable” if they did.<sup>9</sup> Working caregivers of aging relatives report having even less access to flexible work and perceive significantly lower job security than workers with childcare needs.<sup>10</sup>

The situation is especially dire for low-wage workers who have much less overall control of their work schedule than higher-wage employees<sup>11</sup> yet, on average, experience the time burdens of caregiving more acutely.<sup>12</sup> Over 57 percent of low-income working families are headed by single parents, the vast majority of whom work, and low-income workers are also more likely to provide care to aging parents.<sup>13</sup> Yet nearly 70 percent of low-income workers cannot change their scheduled start or stop time if needed.<sup>14</sup> These workers are particularly vulnerable and report receiving less desirable shifts and fewer hours, or losing their jobs entirely when their childcare falls through.<sup>15</sup> They also are more likely to suffer adverse job actions or job loss because they lack the flexibility to handle family emergencies that require time off but do not qualify for FMLA leave.<sup>16</sup>

**Workplace flexibility offers proven benefits for both employers and employees.**

Research shows that workplace flexibility reduces employee stress, encourages healthier lifestyles, and improves the long-term health of employees.<sup>17</sup> Parents with access to workplace flexibility are more likely to be involved in their children’s education and health care, resulting in numerous long-term benefits.<sup>18</sup> Flexible work that allows for alteration in duties can allow workers to seek adjustments to their job responsibilities,

including travel, which may allow them to be closer, and more responsive on short notice, to family members who require their care. Workplace flexibility also helps to prevent turnover and high attrition rates, saving employers millions of dollars each year.<sup>19</sup>

**Well-founded fears of stigma and retaliation prevent workers from requesting flexible work arrangements.** Despite the increasing need among workers for workplace flexibility, and the proven benefits, too many workers remain afraid to request or take advantage of flexible work options. 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.<sup>20</sup> Long work hours and “flexibility stigma” – particularly regarding part-time work – push many professional workers, especially mothers with caregiving responsibilities, out of the workforce.<sup>21</sup> 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 changes to their work schedules.

A 2015 survey of New Yorkers that ABB worked on with the New York City Comptroller confirms the fear attached to seeking flexible work in our city. Among those surveyed who worked for employers where flexible work was not widely available, 58 percent reported being “uncomfortable” or “very uncomfortable” requesting an alternative schedule.<sup>22</sup> Respondents who sought flexible work arrangements reported receiving negative employment reviews, reductions in hours, and lost promotions, as well as belittling comments from co-workers.<sup>23</sup> This fear of stigma is especially strong among men, who challenge gender-role stereotypes in the workplace when they prioritize care. ABB surveyed over 250 working fathers in 2011 and found that nearly fifty percent would be reluctant to take advantage of flexible work opportunities, and forty percent of them expressed concern about being marginalized or stigmatized by others for using these policies.<sup>24</sup>

This data mirrors the experiences of our helpline callers, who have voiced similar fears and frustrations to ABB. One woman we spoke with in 2015 had consistently worked late, come in early, and covered co-workers’ shifts, even after having a child, thanks to

support from her family. When her son started daycare at a childcare center that was 90 minutes from her workplace, she asked for a slight alteration of her work hours to accommodate dropping him off and picking him up. She was terminated the following week. Another caller was told by his employer that he would have to be available for occasional emergencies, but never received a written schedule. Within a few months, he was regularly being called to work on nights and weekends outside of his normal work hours, which conflicted with his hard-fought visitation time with his son. He asked his employer about returning to his original schedule but was ignored and fired shortly thereafter.

Dena Adams worked at a non-profit for 15 years in a job with regular hours that allowed her to care for her young daughter in the evenings. Shortly after receiving a service award for her loyalty, Dena's position was eliminated and she was told to either accept a position with unpredictable weekend and night hours that made securing childcare nearly impossible, or leave. A single mother, Dena told her employers that she could not leave her daughter alone at night, and tried to negotiate a schedule that would have allowed her to plan childcare arrangements in advance. Her employer refused to engage with Dena or offer an explanation for why they could not grant her request when they allowed her co-worker to adjust his hours to attend school. Instead, they simply repeated, "no." Dena lost her job and spent months looking for work.

**“Right to Request” legislation will help expand access to workplace flexibility.**

Legislation that requires employers to consider employee requests in good faith, and commit an answer and explanation to writing, creates a framework for exploring the feasibility of alternate work arrangements and can reduce the stigma of, and increase access to, workplace flexibility. New Yorkers who presently feel disempowered to pursue flexible work alternatives would feel emboldened by a policy like the one outlined in Intro 1399. According to survey data, 71 percent of New Yorkers who lack a workplace-wide policy would be more likely to request a flexible schedule if all people in their workplace had the option of doing so without fear of retaliation.<sup>25</sup>

This kind of “soft-touch” legislation was enacted in the United Kingdom over a decade ago to grant employees with young or disabled children the right to request flexible schedules from their employers, and later expanded to include parents with minor children or caregivers to adults who live with them, and then, ultimately, all workers. A 2013 government-funded survey in the U.K. revealed that most employers who received requests for flexible work arrangements granted those requests, with only nine percent having turned any down.<sup>26</sup> The survey data also revealed that “a majority of employees who had requested a change to their working patterns had their request accepted (79 percent, with 61 percent having the request accepted without negotiation/ compromise/ appeal and 18 percent having it accepted following negotiation/compromise/appeal).”<sup>27</sup>

Not only has the U.K. law been effective in increasing the prevalence of flexible work, but employers have found it to have a positive impact on their business. Survey results from 2013 showed an increase in positive views among employers, since 2007, regarding the impact of flexible working on employee commitment, employee relations, reducing absenteeism and turnover, and improving recruitment and productivity.<sup>28</sup> Over half (56%) of employers reported that the impact of flexible working arrangements on their business was very or fairly positive, compared to only nine percent reporting a negative impact.<sup>29</sup>

Other countries, including Australia, have also successfully implemented “right to request laws,” as have jurisdictions in the United States including San Francisco (with the right limited to family caregivers), Vermont, and New Hampshire. President Obama also granted this right to federal employees via Presidential Memorandum in 2014.

**Right to receive temporary schedule changes in an emergency can help workers hold onto employment in a family or personal crisis and has basis in existing law.**

As addressed above, too 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. 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.

The right to receive a temporary change from the work schedule in the event of certain emergencies offers an insurance policy for workers, giving them peace of mind that when unexpected and urgent caregiving, health, and safety needs arise, responding to the call will not cost them their job. The temporary schedule change may mean arriving late to work, leaving work early, or taking up to a full day off of work to attend to the emergency. This is particularly critical for those workers, and situations, that are not covered by the federal Family and Medical Leave Act or the New York City Earned Sick Time Act. In a country without a national childcare system, where the trifecta of safe, affordable, and reliable childcare is a privilege of the few, many families depend on informal childcare arrangements involving friends and family that are inherently precarious.<sup>30</sup> In one study, 30 percent of low-income workers disrupted their work schedules to meet family needs in a single week, and nearly half of all the low-wage parents interviewed in another study had been sanctioned at work because of family care responsibilities.<sup>31</sup> Because time off to care for healthy children is not protected under law, except for leave to bond with a new child, parents have limited legal rights if they need to adjust their work schedule when childcare falls through or school closes unexpectedly.

Other examples of time off for emergencies related to caregiving exist in several contexts. In California, the state law guaranteeing unpaid time off from work for parents to be involved in their child's educational activities was amended in 2015 to include childcare provider or school emergencies.<sup>32</sup> Such emergencies include when a parent is required to pick up a child from school or a childcare provider, when the school or childcare provider is closed or unexpectedly unavailable, where there are behavioral or discipline problems, or in the case of a natural disaster.<sup>33</sup> Under the federal Family and Medical Leave Act, family leave is permitted in the case of certain qualifying exigencies related to military service of a family member, including certain childcare and related activities including arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling in or transferring a child to a new school

or day care facility, or meeting with school or daycare staff.<sup>34</sup> The FMLA military exigencies provisions also cover certain activities related to care of the military member's parent who is incapable of self-care, such as arranging for alternative care, providing care on a non-routine, urgent, immediate need basis, admitting or transferring a parent to a new care facility, and attending certain meetings with staff at a care facility, such as meetings with hospice or social service providers.<sup>35</sup> Similar protections exist under the New York State Family Leave Act, and will go into effect in 2018.

These statutory examples of time off for emergencies and exigencies reflect an understanding that life happens, and cannot be expected to follow a consistent schedule. New York City has the opportunity to be a pioneer in recognizing this reality and supporting families through life's unexpected, but not unsurprising, ups and downs, while helping workers stay connected to the workforce and keep earning a paycheck.

#### **Intros. 1396, 1387, 1388, 1384 and 1395**

Like Intro 1399, the Fair Work Week bills that apply to fast food and retail workers would give workers more control of their work schedules, addressing practices that make it difficult or impossible for individuals, many of them in low-paying jobs, to manage the demands of work and family.

Intro 1396 would do this by requiring employers to post notice of workers' schedules at least two weeks in advance, and by providing for penalty pay in the event an employer makes last minute changes to, or cancels, the set schedules. Lack of notice is a serious problem for many low wage workers. A recent survey by the Community Service Society found that nearly a third of low wage workers – and half of Latino low wage workers -- receive their work schedules with fewer than 3 days notice.<sup>36</sup> Without sufficient advance notice when they are expected to report to work, it becomes difficult and sometimes impossible, for workers to arrange childcare, transportation, and address other personal and family needs. Additional financial compensation to workers for the burdens that changes in schedule create will alleviate the costs of those last-minute



changes and provide a disincentive to employers to make those changes unless really necessary.

Intro 1387, which bans on-call scheduling for retail workers with less than 72 hours notice, also offers much-needed predictability for workers living paycheck to paycheck. The bill would ban the practice of putting workers on-call at the last minute with no guarantee of being assigned work. This ban will prevent workers from spending on childcare and other family care arrangements to cover work hours that never end up materializing. Not only do workers waste money on unnecessary care coverage in these situations, but without the anticipated work hours, they also lose out on pay to cover those expenses. In addition, schedules that vary dramatically on a monthly, or even weekly basis, can jeopardize workers' eligibility for certain benefits, such as health insurance and child care subsidies, that comprise a substantial segment of their household budget.

Intro 1388 can also help families manage care responsibilities, especially those who rely on tag-teaming. By preventing fast food employers from requiring employees to work two shifts with fewer than 11 hours between the end of the first and the beginning of the second, this bill can help workers who need to be home for a chunk of time to cover childcare while their partner, or other adult household member, is working an alternate shift. According to a work-family conflict report from 2010, tag-teaming is a common strategy, especially for grandmothers who tag-team with their daughters to care for the youngest generation. One-third of the grandmothers who provide care for their grandchildren are employed, and a study found that 40 percent of grandparents had missed work, or come in late or left suddenly because of their caregiving responsibilities.<sup>37</sup>

Finally, we support Intros. 1384 and 1395 because they empower workers to secure the hours and the benefits they need to support their families. Intro 1395 allows workers who want extra hours, so they may earn additional wages and gain eligibility for certain benefits, to have access to that opportunity. And Intro 1384 will allow workers to deduct

funds from their paychecks to support workers' rights non-profit groups that will organize and advocate on their behalf.

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<sup>1</sup> Office of the New York City Comptroller, Scott Stringer, "NYC Economic Brief: The Hardest Working Cities," March 2015, 2, available at [http://comptroller.nyc.gov/wp-content/uploads/documents/Longest\\_Work\\_Weeks\\_March\\_2015.pdf](http://comptroller.nyc.gov/wp-content/uploads/documents/Longest_Work_Weeks_March_2015.pdf).

<sup>2</sup> Dina Bakst, Sherry Leiwant and Janet Gornick, "Promoting Work-Family Balance," Toward a 21<sup>st</sup> Century City for All, available at <http://www.21cforall.org/content/promoting-work-family-balance>.

<sup>3</sup> Gallup Healthways Wellbeing Survey, More Than One in Six American Workers Also Act as Caregivers, July 2011.

<sup>4</sup> 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).

<sup>5</sup> 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>.

<sup>6</sup> James T. Bond and Ellen Galinsky, "Workplace Flexibility and Low Wage Employees," Families and Work Institute, 2011, p. 2, available at <http://familiesandwork.org/site/research/reports/WorkFlexAndLowWageEmployees.pdf>.

<sup>7</sup> Kenneth Matos and Ellen Galinsky, "2014 National Study of Employers," Families and Work Institute, 2014, p. 8, 19, available at <http://familiesandwork.org/downloads/2014NationalStudyOfEmployers.pdf>.

<sup>8</sup> Scott Stringer, "Families and Flexibility: Building the 21<sup>st</sup> Century Workplace," September 2015, 3, available at <http://comptroller.nyc.gov/wp-content/uploads/documents/FlexSurveyReport.pdf>.

<sup>9</sup> Ibid.

<sup>10</sup> 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)

<sup>11</sup> Dina Bakst, Sherry Leiwant, and Janet Gornick, "Promoting Work-Family Balance," Toward a 21<sup>st</sup> Century for All, p. 15, available at [http://www.21cforall.org/sites/default/files/pdf/21cforall\\_workfamily.pdf](http://www.21cforall.org/sites/default/files/pdf/21cforall_workfamily.pdf) (citing Heather Boushey, Shaw Femstad, Rachel Gragg, and Margy Waller. "Understanding Low-Wage Work in The United States." Center for Economic and Policy Research, 2007; Jodi Heymann, *THE WIDENING GAP: WHY AMERICA'S WORKING FAMILIES ARE IN JEOPARDY – AND WHAT CAN BE DONE ABOUT IT*, 2000, p. 103).

<sup>12</sup> Ibid. (citing Heymann, *The Widening Gap*, p. 102; The Urban Institute, "Fact Sheet: Low-Income Working Families: Facts and Figures," 2005).

<sup>13</sup> Comptroller Scott M. Stringer, "Families and Flexibility: Reshaping the Workplace for the 21<sup>st</sup> Century," 6, available at [http://comptroller.nyc.gov/wp-content/uploads/documents/Families\\_and\\_Flexibility.pdf](http://comptroller.nyc.gov/wp-content/uploads/documents/Families_and_Flexibility.pdf).

<sup>14</sup> Bakst, Leiwant, and Gornick at 21.

<sup>15</sup> Listening to Workers: Child Care Challenges in Low-Wage Jobs, National Women's Law Center, pg. 7, June 2014.

<sup>16</sup> Bakst, Leiwant, and Gornick at 21 (citing Amy Richman, Arlene Johnson, and Lisa Buxbaum. "Workplace Flexibility for Low Wage Workers." Corporate Voices for Working Families, 2006, p. 15).

<sup>17</sup> A Better Balance: The Work and Family Legal Center. *Fact Sheet: Public Health Case for Flexibility*. November 2010.

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- <sup>20</sup> 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.
- <sup>21</sup> 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/>.
- <sup>22</sup> Stringer, “Families and Flexibility,” Sept. 2015, 3.
- <sup>23</sup> Ibid.
- <sup>24</sup> Dina Bakst, Jared Make, and Nancy Rankin, “Beyond the Breadwinner: Professional Dads Speak Out on Work and Family,” A Better Balance, June 2011, 15, available at <http://www.abetterbalance.org/resources/report-beyond-the-breadwinner-2011/>.
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- <sup>27</sup> Ibid.
- <sup>28</sup> Ibid at 11.
- <sup>29</sup> Ibid at 102.
- <sup>30</sup> 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, January 2010, 18, available at <https://cdn.americanprogress.org/wp-content/uploads/issues/2010/01/pdf/threefaces.pdf>
- <sup>31</sup> Ibid.
- <sup>32</sup> Cal. Lab. Code § 230.8 (2016)
- <sup>33</sup> Ibid.
- <sup>34</sup> 29 CFR § 825.126(b)(3).
- <sup>35</sup> 29 CFR § 825.126(b)(8).
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